

Chapter 16

(Senate Bill 687)

AN ACT concerning

State Vacancy Reform Act

FOR the purpose of altering a certain provision of law to clarify that the Appointments Office in the Office of the Governor is prohibited from taking any action regarding the decision of certain persons to appoint, promote, transfer, reassign, discipline, or terminate certain employees; providing that an individual who was appointed to fill a vacancy in an office during the recess of the Senate or who was nominated to fill a vacancy in an office during a regular session of the Senate ~~is not qualified to serve in the office and~~ is prohibited from being nominated for the same office at the same session, unless requested by the Senate, being appointed to the same office during the recess of the Senate, and continuing to serve in the office or being designated to serve in an acting capacity for the same office after a certain time under certain circumstances; prohibiting an individual who is prohibited from continuing to serve in an office under a certain provision of this Act from carrying out the responsibilities of the office in any capacity and making certain representations; ~~providing that any action taken by an~~ prohibiting any votes cast by a certain individual who is prohibited from continuing to serve in the office under certain provisions of this Act in violation of a certain provision of this Act is void under certain circumstances from being counted; prohibiting the presence of a certain individual from being counted for a certain purpose; prohibiting an individual who is designated to serve in an acting capacity to fill a vacancy in a certain office from serving in the office for more than a certain number of days; prohibiting a certain individual from serving in an acting capacity after the adjournment of a regular session of the Senate under certain circumstances; prohibiting an individual who violates certain provisions of this Act from receiving any compensation related to serving in the office or carrying out the responsibilities of the office; providing for the application of certain provisions of this Act; making this Act an emergency measure; and generally relating to appointments in State government.

BY repealing and reenacting, with amendments,

Article – State Government

Section 8–3A–01

Annotated Code of Maryland

(2014 Replacement Volume and 2017 Supplement)

BY adding to

Article – State Government

Section 17–109

Annotated Code of Maryland

(2014 Replacement Volume and 2017 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – State Government

8–3A–01.

(a) (1) In this section the following words have the meanings indicated.

(2) “Appointing authority” has the meaning stated in § 1–101(b) of the State Personnel and Pensions Article.

(3) “Office” means the Appointments Office in the Office of the Governor that performs the function of recommending to the Governor the appointment or nomination of an individual to serve as a member of a State or local board, commission, council, committee, authority, task force, or other entity that by law requires the membership to be appointed in whole or in part by the Governor, whether or not the appointment or nomination is with the advice and consent of the Senate or House of Delegates.

(b) The Office may not direct [or], overrule, **OR OTHERWISE TAKE ANY ACTION REGARDING THE DECISION OF** an appointing authority, the Secretary of Budget and Management, or any unit of the Department of Budget and Management[, on any decision] to appoint, promote, transfer, reassign, discipline, or terminate an employee under the jurisdiction of the appointing authority.

(c) Only an appointing authority may delegate in writing the authority to act on the appointing authority’s behalf, but only to an employee or officer under the jurisdiction of the appointing authority.

(d) An appointing authority may not delegate the authority to make the final decision on the termination of an employee.

(e) An appointing authority shall notify the Secretary of Budget and Management of any delegation of authority authorized under this section by providing the Secretary a copy of the delegation.

17–109.

(A) THIS SECTION APPLIES:

(1) ONLY TO AN OFFICE FOR WHICH AN APPOINTMENT TO FILL A VACANCY IS REQUIRED TO BE MADE WITH THE ADVICE AND CONSENT OF THE SENATE; AND

(2) REGARDLESS OF WHETHER A SALARY OR ANY OTHER COMPENSATION IS PROVIDED TO THE HOLDER OF THE OFFICE.

(B) AN INDIVIDUAL WHO WAS APPOINTED TO FILL A VACANCY IN AN OFFICE DURING THE RECESS OF THE SENATE OR WHO WAS NOMINATED TO FILL A VACANCY IN AN OFFICE DURING A REGULAR SESSION OF THE SENATE ~~IS NOT QUALIFIED TO SERVE IN THE OFFICE AND~~ MAY NOT BE NOMINATED FOR THE SAME OFFICE AT THE SAME SESSION, UNLESS REQUESTED BY THE SENATE, BE APPOINTED TO THE SAME OFFICE DURING THE RECESS OF THE SENATE, OR CONTINUE TO SERVE IN THE OFFICE OR BE DESIGNATED TO SERVE IN AN ACTING CAPACITY FOR THE SAME OFFICE AFTER THE ADJOURNMENT OF THE REGULAR SESSION OF THE SENATE AT WHICH THE NOMINATION WAS MADE, IF:

(1) THE GOVERNOR WITHDREW THE NOMINATION DURING THE REGULAR SESSION OF THE SENATE AT WHICH THE NOMINATION WAS MADE;

(2) THE SENATE FAILED TO ACT ON THE NOMINATION BEFORE THE SENATE ADJOURNED THE REGULAR SESSION OF THE SENATE AT WHICH THE NOMINATION WAS MADE AND THE INDIVIDUAL WAS NOT REAPPOINTED TO THE OFFICE BY THE GOVERNOR;

(3) THE INDIVIDUAL WITHDREW THE INDIVIDUAL'S NOMINATION;

(4) THE GOVERNOR FAILS TO MAKE THE NOMINATION ON THE FIRST DAY OF THE REGULAR SESSION OF THE SENATE IF REQUIRED UNDER ARTICLE II, § 11 OF THE MARYLAND CONSTITUTION; OR

(5) THE INDIVIDUAL IS NOT CONFIRMED BY THE SENATE AND IS DESIGNATED BY THE GOVERNOR TO FILL THE VACANCY IN AN ACTING CAPACITY.

(C) AN INDIVIDUAL WHO IS PROHIBITED FROM CONTINUING TO SERVE IN AN OFFICE UNDER SUBSECTION (B) OF THIS SECTION MAY NOT:

(1) CARRY OUT THE RESPONSIBILITIES OF THE OFFICE IN ANY CAPACITY; OR

(2) MAKE REPRESENTATIONS THAT THE INDIVIDUAL:

(I) SERVES IN THE OFFICE IN ANY CAPACITY; OR

(II) IS LEGALLY AUTHORIZED TO CARRY OUT THE RESPONSIBILITIES OF THE OFFICE IN ANY CAPACITY.

(D) IF THE HOLDER OF THE IS IN AN OFFICE IS NOT PROVIDED A ON A PUBLIC BODY FOR WHICH NO SALARY IS PROVIDED, ANY ACTION TAKEN:

(1) ANY VOTES CAST BY AN INDIVIDUAL WHO, AT THE TIME THE VOTE IS CONDUCTED BY THE PUBLIC BODY, IS PROHIBITED FROM CONTINUING TO SERVE IN THE OFFICE UNDER SUBSECTION (B) OF THIS SECTION IN VIOLATING SUBSECTION (C)(1) OF THIS SECTION IS VOID MAY NOT BE COUNTED; AND

(2) THE PRESENCE OF AN INDIVIDUAL DESCRIBED IN ITEM (1) OF THIS SUBSECTION MAY NOT BE COUNTED FOR PURPOSES OF A QUORUM.

(E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN INDIVIDUAL WHO IS DESIGNATED TO SERVE IN AN ACTING CAPACITY TO FILL A VACANCY IN AN OFFICE FOR WHICH AN APPOINTMENT IS REQUIRED TO BE MADE WITH THE ADVICE AND CONSENT OF THE SENATE MAY NOT SERVE IN THE OFFICE FOR MORE THAN 275 DAYS AFTER THE DATE THE DESIGNATION WAS MADE.

(2) AN INDIVIDUAL MAY NOT CONTINUE TO SERVE IN AN ACTING CAPACITY AFTER THE ADJOURNMENT OF A REGULAR SESSION OF THE SENATE IF:

(I) THE INDIVIDUAL WAS SERVING IN THE ACTING CAPACITY BEFORE THE START OF THE REGULAR SESSION; AND

(II) THE INDIVIDUAL WAS NOT NOMINATED TO FILL THE VACANCY IN THE OFFICE DURING THAT REGULAR SESSION.

(F) AN INDIVIDUAL WHO VIOLATES THIS SECTION MAY NOT RECEIVE ANY COMPENSATION, INCLUDING A SALARY OR REIMBURSEMENT FOR EXPENSES OUT OF THE STATE BUDGET, RELATED TO SERVING IN THE OFFICE OR CARRYING OUT THE RESPONSIBILITIES OF THE OFFICE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Enacted under Article II, § 17(b) of the Maryland Constitution, April 5, 2018.