

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 246  
Finance

(Senator Waugh)

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**State Personnel - Maryland Hatch Act**

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This bill specifies the types of political activity in which State employees may and may not engage and the conditions under which they may engage in some political activities.

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**Fiscal Summary**

**State Effect:** Any change in State activities does not materially affect State finances, as discussed below.

**Local Effect:** The bill is not expected to materially affect local government finances.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** A State employee may take an active part in political management or in political campaigns, but may not:

- use the employee's official authority or influence to interfere with or affect an election;
- knowingly solicit, accept, or receive a contribution unless in specified instances involving employee organizations;
- run for the nomination or as a candidate for election to a partisan political office; or
- knowingly solicit or discourage the participation in any political activity of any person who is involved, as specified in the bill, with the employee's office.

A State employee generally may not engage in political activity while on duty or under other specified circumstances, but the bill does not prohibit an employee from exercising the right to vote or not vote or expressing an opinion on candidates and issues of political debate. Also, specified employees of the Governor's Office may engage in some political activity otherwise prohibited by the bill if the costs of that political activity are not paid for by money derived from the State Treasury or the treasury of a local government.

A person may not (or attempt to) intimidate, threaten, command, or coerce any State or local government employee to engage in or not to engage in any political activity. A person who violates the bill is subject to removal, reduction in grade, debarment from State or local employment for up to five years, suspension, reprimand, or a civil penalty imposed by the Secretary of Budget and Management of up to \$1,000.

Except for Governor-appointed board members, an employee of the State Board of Elections (SBE) or a local board of elections may not request from, receive from, or give specified individuals a political contribution. Also, except for Governor-appointed employees and board members, an employee of the Office of the Attorney General (OAG), SBE, a local board of elections, the State Ethics Commission, or a State or local law enforcement agency may not act as the campaign manager, treasurer, or similar position of a campaign finance entity.

A State employee is no longer explicitly prohibited from advocating the overthrow of the government by unconstitutional or violent means.

**Current Law:** State employees may freely participate in any political activity and express any political opinion but may not engage in political activity while on the job during working hours or advocate the overthrow of the government by unconstitutional or violent means. Department of Legislative Services employees and employees of a local board of election have additional restrictions on their political activities, as required or authorized by State law. State employees may not be required to provide any political service, and public officials or State employees may not require any State employee to make a political contribution.

The State Ethics Commission indicates that generally the Maryland Public Ethics Law and other State laws have been interpreted to allow State employees and officials to run for public office provided they do not use State time, facilities, equipment, or otherwise misuse their State position or confidential information.

Under conflict of interest provisions of the Maryland Public Ethics Law, an official or employee is prohibited from intentionally using the prestige of office or public position for that official's or employee's private gain or that of another. The State Ethics Commission, which administers the Maryland Public Ethics Law, has, in advisory opinions, discussed

the application of the prestige of office provision to campaigning and fundraising. In one opinion the commission stated: “With regard to political campaigning and fundraising ... the Commission has advised individuals of the continuing application of the [prestige of office provision] and the need to avoid circumstances where a person’s position may figure in private campaigning. Individuals are consistently advised to take care in campaign activities about soliciting campaign funds or assistance from individuals who are subject to the agency’s authority or that are vendors or likely vendors to the individual’s agency employer.” A public official or employee may not use public resources or one’s title to solicit a political contribution. A State official may not use public resources to solicit a political contribution.

Generally, a local government employee may freely participate in any political activity and express any political opinion but may not engage in political activity while on the job during working hours or advocate the overthrow of the government by unconstitutional or violent means. A local government employee may not be required to provide a political service. A person who violates these provisions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to six month and/or a fine of up to \$3,000.

**Background:** The federal [Hatch Act](#) limits certain political activities of federal employees, as well as some state, District of Columbia, and local government employees who work in connection with federally funded programs. The law’s purposes are to ensure that federal programs are administered in a nonpartisan fashion, to protect federal employees from political coercion in the workplace, and to ensure that federal employees are advanced based on merit and not based on political affiliation. Covered state, District of Columbia, and local employees may not:

- be candidates for public office in a partisan election if their salary is paid for entirely by federal funds;
- use official authority or influence to interfere with or affect the results of an election or nomination; or
- directly or indirectly coerce, attempt to coerce, command, or advise a state, District of Columbia, or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

**State Fiscal Effect:** A person who violates the bill is subject to removal, reduction in grade, debarment from State or local employment for up to five years, suspension, reprimand, or a civil penalty. Thus, grievances and appeals on disciplinary actions from State employees may increase minimally, but the Office of Administrative Hearings can likely handle any increase in cases with existing resources. The bill’s civil penalty provisions are not expected to materially affect general fund revenues.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Howard and Montgomery counties; Office of Administrative Hearings; Office of the Attorney General; Governor's Office; Department of Budget and Management; Department of State Police; Maryland State Board of Elections; State Ethics Commission; U.S. Office of Special Counsel; Department of Legislative Services

**Fiscal Note History:** First Reader - February 18, 2018  
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