

# HOUSE BILL 90

P4, P1  
HB 1277/21 – APP

(PRE-FILED)

2lr0600  
CF SB 255

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By: **Delegate Henson**

Requested: September 29, 2021

Introduced and read first time: January 12, 2022

Assigned to: Appropriations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 25, 2022

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Personnel Management System – Office of the Public Defender –**  
3 **Placement and Collective Bargaining**

4 FOR the purpose of specifying that certain positions within the Office of the Public  
5 Defender are in certain employment categories in the State Personnel Management  
6 System; altering certain provisions of law regarding personnel actions within the  
7 Office that relate to the hiring, discipline, and termination of employees; providing  
8 that employees of the Office are subject to collective bargaining under the State  
9 Personnel Management System; repealing a provision of law that excludes attorneys  
10 in the Office from certain grievance procedures in the State Personnel Management  
11 System; requiring the Secretary of Budget and Management to assign each  
12 appointee or employee of the Office to the appropriate employment category within  
13 the State Personnel Management System on or before a certain date; prohibiting any  
14 appointee or employee of the Office from receiving a change in pay or benefits as a  
15 result of a certain transfer or assignment except under certain circumstances; and  
16 generally relating to the personnel of the Office of the Public Defender in the State  
17 Personnel Management System.

18 BY repealing and reenacting, with amendments,  
19 Article – Criminal Procedure  
20 Section 16–203  
21 Annotated Code of Maryland  
22 (2018 Replacement Volume and 2021 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,  
2 Article – State Personnel and Pensions  
3 Section 3–101(a)  
4 Annotated Code of Maryland  
5 (2015 Replacement Volume and 2021 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article – State Personnel and Pensions  
8 Section 3–101(b), 3–102(a), 3–205(a) and (c), and 12–102  
9 Annotated Code of Maryland  
10 (2015 Replacement Volume and 2021 Supplement)

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

13 **Article – Criminal Procedure**

14 16–203.

15 (a) (1) The head of the Office is the Public Defender.

16 (2) The Public Defender shall be appointed by the Board of Trustees.

17 (3) By a vote of at least seven members, the Board of Trustees may remove  
18 the Public Defender for:

19 (i) misconduct in office;

20 (ii) persistent failure to perform the duties of the Office; or

21 (iii) conduct prejudicial to the proper administration of justice.

22 (4) To qualify for appointment as Public Defender, an individual shall be  
23 an attorney admitted to practice law in the State by the Court of Appeals of Maryland who  
24 has engaged in the practice of law for at least 5 years before appointment.

25 (5) The Public Defender shall receive the same salary as a judge of a circuit  
26 court.

27 (6) The Public Defender may not engage in the private practice of law.

28 (7) The Public Defender serves for a term of 6 years.

29 (b) (1) With the approval of the Board of Trustees, the Public Defender shall  
30 appoint:

1 (i) a deputy public defender **WHO IS IN THE EXECUTIVE SERVICE**  
 2 **OF THE STATE PERSONNEL MANAGEMENT SYSTEM**; and

3 (ii) one district public defender for each district of the District Court,  
 4 **EACH OF WHOM IS IN THE MANAGEMENT SERVICE OF THE STATE PERSONNEL**  
 5 **MANAGEMENT SYSTEM**.

6 (2) The deputy public defender and each district public defender shall have  
 7 the same qualifications as the Public Defender.

8 (3) A district public defender shall:

9 (i) assist the Public Defender to perform the duties of the Office; and

10 (ii) subject to the supervision of the Public Defender, be in charge of  
 11 the public defender offices in the district for which the district public defender is appointed.

12 (c) (1) With the advice of the district public defenders, the Public Defender  
 13 may [appoint] **EMPLOY** assistant public defenders in accordance with the State budget.

14 (2) To qualify for [appointment] **EMPLOYMENT** as an assistant public  
 15 defender, an individual shall be an attorney and admitted to practice law in the State by  
 16 the Court of Appeals of Maryland.

17 **(3) ASSISTANT PUBLIC DEFENDERS ARE IN THE PROFESSIONAL**  
 18 **SERVICE OF THE STATE PERSONNEL MANAGEMENT SYSTEM AND MAY BE**  
 19 **TERMINATED OR OTHERWISE DISCIPLINED ONLY FOR CAUSE IN ACCORDANCE WITH**  
 20 **TITLE 11 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

21 (d) **(1)** The deputy public defender[, ] **AND** district public defenders[, and  
 22 assistant public defenders]#

23 ~~(1)~~ shall serve at the pleasure of the Public Defender; ~~and.~~

24 (2) **THE DEPUTY PUBLIC DEFENDER, DISTRICT PUBLIC DEFENDERS,**  
 25 **AND ASSISTANT PUBLIC DEFENDERS** may not engage in the private practice of criminal  
 26 law.

27 (e) The Public Defender shall [appoint] **EMPLOY** investigators, stenographic  
 28 assistants, clerical assistants, and other personnel as may be required to assist the Public  
 29 Defender and the district public defenders to perform the duties of the Office in accordance  
 30 with the State budget.

31 **(F) (1) SUBJECT TO SUBSECTIONS (B)(1) AND (C)(3) OF THIS SECTION,**  
 32 **ALL OTHER POSITIONS IN THE OFFICE ARE IN THE EXECUTIVE, MANAGEMENT,**

1 **PROFESSIONAL, OR SKILLED SERVICE OF THE STATE PERSONNEL MANAGEMENT**  
 2 **SYSTEM.**

3 **(2) EMPLOYEES IN THE PROFESSIONAL OR SKILLED SERVICE MAY BE**  
 4 **TERMINATED OR OTHERWISE DISCIPLINED ONLY FOR CAUSE IN ACCORDANCE WITH**  
 5 **TITLE 11 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

6 **[(f)] (G)** (1) Subject to paragraph (2) of this subsection, the Public Defender  
 7 shall establish and maintain suitable offices in the State.

8 (2) At least one Public Defender's office shall be in each district.

9 **[(g)] (H)** The number of positions, compensation, and expenses for the Office  
 10 shall be in accordance with the State budget.

### 11 **Article – State Personnel and Pensions**

12 3–101.

13 (a) In this title the following words have the meanings indicated.

14 (b) “Board” means:

15 (1) with regard to any matter relating to employees of any of the units of  
 16 State government described in § 3–102(a)(1)(i) through (iv) and (vi) through **[(xi)] (XII)** of  
 17 this subtitle and employees described in § 3–102(a)(2) and (3) of this subtitle, the State  
 18 Labor Relations Board; and

19 (2) with regard to any matter relating to employees of any State institution  
 20 of higher education described in § 3–102(a)(1)(v) of this subtitle, the State Higher Education  
 21 Labor Relations Board.

22 3–102.

23 (a) Except as provided in this title or as otherwise provided by law, this title  
 24 applies to:

25 (1) all employees of:

26 (i) the principal departments within the Executive Branch of State  
 27 government;

28 (ii) the Maryland Insurance Administration;

29 (iii) the State Department of Assessments and Taxation;

1 (iv) the State Lottery and Gaming Control Agency;

2 (v) the University System of Maryland, Morgan State University,  
3 St. Mary's College of Maryland, and Baltimore City Community College;

4 (vi) the Comptroller;

5 (vii) the Maryland Transportation Authority who are not police  
6 officers;

7 (viii) the State Retirement Agency;

8 (ix) the State Department of Education;

9 (x) the Maryland Environmental Service; [and]

10 (xi) the Maryland School for the Deaf; AND

11 **(XII) THE OFFICE OF THE PUBLIC DEFENDER;**

12 (2) firefighters for the Martin State Airport at the rank of captain or below  
13 who are employed by the Military Department; and

14 (3) all full-time Maryland Transportation Authority police officers at the  
15 rank of first sergeant and below.

16 3-205.

17 (a) The Board is responsible for administering and enforcing provisions of this  
18 title relating to employees described in § 3-102(a)(1)(i) through (iv) and (vi) through [(xi)]  
19 **(XII)**, (2), and (3) of this title.

20 (c) (1) The Board may not designate a unique bargaining unit for each of the  
21 units of government identified in § 3-102(a)(1)(vi) through (ix) AND **(XII)** and (2) of this  
22 title.

23 (2) At the request of the exclusive representative, the Board shall:

24 (i) **EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**  
25 **SUBSECTION**, determine the appropriate existing bargaining unit into which to assign  
26 each employee in the units of government identified in § 3-102(a)(1)(vi) through (ix) AND  
27 **(XII)** and (2) of this title; and

28 (ii) accrete all positions to appropriate existing bargaining units.

1           (3)   (i)   Notwithstanding Subtitle 4 of this title, at the request of the  
2 exclusive representative, the Board shall conduct a self-determination election for each  
3 bargaining unit representative for the accreted employees in units of government identified  
4 in § 3-102(a)(1)(vi) through (ix) AND **(XII)** and (2) of this title.

5                   (ii)   All elections shall be conducted by secret ballot.

6                   (iii)   For each election, the Board shall place the following choices on  
7 the ballot:

8                   1.    the name of the incumbent exclusive representative; and

9                   2.    a provision for “no exclusive representative”.

10           **(4)   THE BOARD SHALL ACCRETE POSITIONS TO EXISTING**  
11 **BARGAINING UNITS AS FOLLOWS:**

12                   **(I)   ASSISTANT PUBLIC DEFENDERS, INTAKE SPECIALISTS, AND**  
13 **INVESTIGATORS IN THE OFFICE OF THE PUBLIC DEFENDER INTO BARGAINING UNIT**  
14 **F FOR SOCIAL AND HUMAN SERVICES PROFESSIONALS; AND**

15                   **(II)   ALL OTHER POSITIONS IN THE OFFICE OF THE PUBLIC**  
16 **DEFENDER INTO APPROPRIATE EXISTING BARGAINING UNITS AS DETERMINED BY**  
17 **THE BOARD.**

18 12-102.

19           (a)   Except as otherwise provided by law, this title applies to all employees in the  
20 State Personnel Management System within the Executive Branch and independent  
21 personnel systems.

22           (b)   This title does not apply to:

23                   (1)   an employee who is appointed by the Governor whose appointment  
24 requires the Governor’s approval;

25                   (2)   an employee in the executive service of the State Personnel  
26 Management System;

27                   (3)   a temporary employee;

28                   (4)   an attorney in the Office of the Attorney General [or the Office of the  
29 Public Defender];

30                   (5)   a State Police officer;

1 (6) an employee under § 7–601 of the Transportation Article who is subject  
2 to a collective bargaining agreement that contains another grievance procedure;

3 (7) an employee, including a member of a faculty, who is subject to a  
4 contract or regulation governing teacher tenure;

5 (8) a member of the faculty, an officer, or an administrative employee of  
6 Baltimore City Community College;

7 (9) a student employee;

8 (10) an individual who, as an inmate or patient in an institution, is  
9 employed by the State; or

10 (11) an administrative law judge in the Office of Administrative Hearings.

11 SECTION 2. AND BE IT FURTHER ENACTED, That on or before January 1, 2023,  
12 the Secretary of Budget and Management shall assign each appointee or employee of the  
13 Office of the Public Defender to the appropriate employment category in accordance with  
14 Section 1 of this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding any other  
16 provision of law, any appointee or employee transferred to the State Personnel  
17 Management System or assigned to a bargaining unit in accordance with this Act may not  
18 receive a change in pay or benefits in the course of or as a result of the transfer or  
19 assignment, except to be placed on a new salary schedule at a grade and step that results  
20 in an increase in annual rate of pay or benefits.

21 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2022.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.