

**Department of Legislative Services**  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 139

(Delegate Luedtke)

Ways and Means

Education, Health, and Environmental Affairs

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**Correctional Education - Juvenile Services Education Program and Correction  
Education Teachers**

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This bill establishes that, notwithstanding any other provisions of law, certain teachers are in the professional service in the State Personnel Management System (SPMS), specifically each teacher in the Juvenile Services Education (JSE) Program who is employed by the Department of Juvenile Services (DJS) and each teacher in an educational and workforce skills training program in an adult correctional institution who is employed by the Maryland Department of Labor (MDL). The bill requires the Director of Education and Workforce Skills Training for Correctional Institutions to set qualification standards for teachers in workforce skills training programs who are employed by MDL that are similar to the standards for teachers providing career and technology education (CTE) instruction in public high schools. In addition, the bill clarifies that “public agency,” as it applies to specified provisions of law relating to the education of students with disabilities and the reporting of physical restraint and seclusion incidents by public agencies, includes the JSE program. **The bill takes effect July 1, 2022.**

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**Fiscal Summary**

**State Effect:** The bill’s changes can likely be handled with existing budgeted resources, as discussed below. This assessment does not, however, include any potential increased personnel costs associated with collective bargaining, as discussed below. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

### Current Law:

#### *Employment Categories in the State Personnel Management System*

SPMS has four major employment categories designated in statute:

- executive service, which consists of chief administrators of principal units or comparable positions, including deputy secretaries or assistant secretaries;
- management service, which consists of positions that involve direct responsibility for the oversight and management of personnel and financial resources and that require the exercise of discretion and independent judgment;
- professional service, which consists of positions that require advanced knowledge in a field of science or learning and that normally require a professional license, advanced degree, or both; and
- skilled service, which consists of all other positions.

Classification of skilled, professional, management, and executive service positions in SPMS is the responsibility of the Secretary of Budget and Management. The Secretary must likewise establish the standards and procedures used to classify positions in the skilled, professional, management, and executive services and provide advice and guidance on their use.

The head of a principal unit may classify positions in the unit, in accordance with the Secretary of Budget and Management's established standards and procedures, if the Secretary chooses to delegate the classification authority. If the Secretary delegates the classification authority to the head of a principal unit, that person must prepare a position classification plan for the Secretary's approval and classify all positions in accordance with the approved plan. The Secretary must conduct a position classification audit at least once every three years but only if the classification activity was delegated to the head of a principal unit. The Secretary may conduct operational audits of classification practices and records in principal units once every three years.

A temporary employee is not classified in the skilled, professional, management, or executive service in SPMS.

#### *Special Appointments*

Special appointments within SPMS are employees who:

- are appointed directly by the Governor to a position that is not provided for in the State Constitution;
- are appointed directly by the Board of Public Works;
- as determined by the Secretary of Budget and Management, perform a significant policy role or provide direct support to a member of the executive service;
- are assigned to the Government House (the Governor's residence);
- are assigned to the Governor's office; or
- are in positions specified by law to be special appointments.

Collective bargaining laws do not apply to special appointments. Special appointments are the only positions in the Executive Branch that may be filled with regard to political affiliation, but most are not. Positions that may be filled with regard to political affiliation must be so designated and disclosed to the appointee.

### *Juvenile Services Education Program*

Chapter 147 of 2021 repealed statutory provisions regarding JSE within the Maryland State Department of Education (MSDE) and instead established the JSE Board as an independent unit within DJS. Beginning July 1, 2022, the board must oversee and approve all educational services to all juveniles who are in a residential facility, and DJS and the board, subject to a specified memorandum of understanding (MOU), must jointly have the authority and responsibility for implementing JSE programs in the State. DJS, subject to the specified MOU, must employ any staff necessary to carry out JSE as provided in the State budget. Educational staff in DJS must be subject to the career ladder and salary provisions under Title 6, Subtitle 10 of the Education Article.

Uncodified language in Chapter 147 requires any State personnel or contractual employee who is employed in JSE within MSDE on June 30, 2022, to be transferred to DJS on July 1, 2022, as specified. Any State personnel or contractual employee involved in a transfer to DJS under the Act must (1) if applicable, remain in SPMS; (2) remain in a position that is comparable to or most closely compares to their former position, without further examination or qualification; (3) receive no diminution in compensation or accumulated leave solely as a result of the transfer; and (4) if applicable, continue in the same salary grade in DJS. The Act further specifies that the provisions of any collective bargaining agreement for staff in JSE must continue to apply until the bargaining unit for the staff and the State negotiate a new collective bargaining agreement.

### *Workforce Skills Training for Correctional Institutions*

MDL is responsible for the provision of education and workforce skills training programs in the adult correctional institutions in the State. The Correctional Education Council,

under the joint jurisdiction of the Department of Public Safety and Correctional Services and MDL, develops and recommends educational and workforce training programs for each correctional institution in the Division of Correction.

### *Career and Technical Education Program and Teachers*

The Strengthening Career and Technical Education for the 21st Century Act is the 2018 reauthorization of the federal Carl D. Perkins Career and Technical Education Act (Perkins), which was last overhauled in 2006. The new Perkins law provides approximately \$1.2 billion in formula grants to states to implement CTE programs in their secondary schools and postsecondary institutions. The new law allows states to set their own goals for CTE programs, requires them to make progress toward those goals, and makes other changes to federal CTE law. Generally, Perkins requires states to develop sequences of academic and CTE coursework, called programs of study, that prepare students for postsecondary degrees or industry-recognized credentials. Many of the programs of study – which range from plumbing and culinary arts to aerospace engineering and cybersecurity – include or encourage apprenticeship or pre-apprenticeship opportunities.

State regulations provide four pathways to certification for CTE teachers:

- a bachelor's or higher degree in a State-approved career and technical program from an institution of higher education (IHE);
- a bachelor's or higher degree in a career area to be taught from an IHE and completion of specified professional education coursework;
- an associate's degree in a career area to be taught or a bachelor's or higher degree from an IHE, verification of two years of satisfactory occupational experience in the career area to be taught, and completion of specified professional education coursework; or
- a secondary school diploma, official verification of three years of satisfactory occupational experience in the career area to be taught, and completion of specified professional education coursework.

### *Reporting of Physical Restraint and Seclusion Incidents*

State law requires each public agency (defined as MSDE, a local school system, the Maryland School for the Deaf, or the Maryland School for the Blind) and nonpublic school to annually report to MSDE on physical restraint and seclusion incidents and professional development provided to designated school personnel related to positive behavioral interventions, strategies, and supports and trauma-informed interventions. MSDE must provide guidance to public agencies and nonpublic schools regarding the requirements of the use of seclusion rooms for seclusion and report specified findings and

recommendations to the General Assembly. (*Under the bill*, the JSE program is considered a “public agency” for purposes of the above requirements.)

**State Expenditures:** Among other things, the bill establishes that each teacher in the JSE program who is employed by DJS and each teacher in an educational and workforce skills training program in an adult correctional institution who is employed by MDL is in the professional service in SPMS. The Department of Budget and Management (DBM) advises that, currently, the teacher classifications affected by the bill’s change are in the professional service but are designated as special appointments, which makes them at-will. Thus, these positions are subject to reclassification under the bill. DBM further advises that, typically, at-will employees cannot be converted to skilled or professional service positions if they were not hired in a merit-protected position through a competitive process specified in statute. Accordingly, despite the bill’s “notwithstanding” clause, it is unclear whether DJS and MDL can reclassify teacher positions held by existing employees. If not, these positions can only be reclassified when they become vacant.

#### *Maryland Department of Labor*

MDL does not expect the bill’s changes to impact departmental finances. MDL estimates that approximately 30 teacher positions within MDL are subject to reclassification under the bill. According to MDL, when new correctional education teachers are hired, they are generally classified as being in the professional service; however, when correctional education functions were transferred to the department from MSDE (more than a decade ago), some existing correctional education employees were transferred to MDL as special appointments and remain in the special appointment classification today. As noted above, it is unclear, under current State personnel rules, whether MDL can reclassify positions that are currently held by those existing employees, or whether the positions can only be reclassified as they become vacant. Nonetheless, it is assumed that MDL can handle any additional employee relations activity that may result from the bill with existing budgeted resources.

Otherwise, the Director of Education and Workforce Skills Training for Correctional Institutions can set specified qualification standards for teachers in workforce skills training programs who are employed by MDL, as required under the bill, with existing budgeted resources.

#### *Department of Juvenile Services*

DJS also advises that the bill’s changes do not affect departmental finances. DJS estimates that 127 teacher positions within DJS are subject to reclassification under the bill. As noted, it is unclear whether DJS can reclassify teacher positions that are currently held by existing employees, or whether these positions can only be reclassified as they become vacant.

Nonetheless, it is assumed that DJS can handle any additional employee relations activity that may result from the reclassification of positions under the bill with existing budgeted resources.

Otherwise, the bill's changes with respect to the JSE program are generally clarifying in nature; DJS can handle any applicable requirements with existing budgeted resources.

*Department of Budget and Management*

DBM advises that professional service recruitments must go through DBM's recruitment system (JobApps); however, any impact on DBM workloads can be absorbed with existing budgeted resources.

It is assumed that positions subject to reclassification under the bill become eligible for collective bargaining upon reclassification. Any impact on personnel costs arising from collective bargaining, however, are indeterminate and cannot be reliably predicted.

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**Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Department of Budget and Management; Maryland Department of Labor; Department of Juvenile Services; Maryland State Department of Education; Department of Legislative Services

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