

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

House Bill 984
 Appropriations

(Delegate J. Lewis, *et al.*)

Finance and Education, Energy, and the
 Environment

Public Employee Relations Act

This bill substantially restructures the State’s rules, procedures, processes, rights, and prohibitions regarding collective bargaining by public employees. More specifically, the bill (1) consolidates different collective bargaining laws that apply for different employees into one set of rules and procedures for public employees; (2) repeals the State Labor Relations Board (SLRB), the State Higher Education Labor Relations Board (SHELRB), and the Public School Labor Relations Board (PSLRB), and instead establishes the Public Employee Relations Board (PERB) to oversee collective bargaining for all public employees; and (3) makes several significant and/or substantive changes to the existing collective bargaining processes and requirements. Provisions of the bill deemed invalid are severable. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$642,600 in FY 2024; future years reflect ongoing operating expenses and the elimination of one-time costs. Otherwise, the State may experience administrative efficiencies from the bill’s consolidations. Revenues are not directly affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	642,600	784,400	815,700	848,100	888,400
Net Effect	(\$642,600)	(\$784,400)	(\$815,700)	(\$848,100)	(\$888,400)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures are not anticipated to be materially affected. Revenues are not directly affected.

Small Business Effect: None.

Analysis

Bill Summary:

Consolidation of Collective Bargaining Laws and Conforming and Technical Changes

The bill consolidates many State laws governing collective bargaining for public employees (which include State, local, community college, and local board of education employees) into a new title within the State Government Article. The provisions are moved from the (1) Education Article, where the provisions apply to public university, community college, and local public school system employees; (2) Health-General Article, where the provisions apply for independent home care providers; and (3) State Personnel and Pensions and State Government articles, where the provisions apply to State employees generally.

Consolidation of existing provisions generally results in rules, processes, and procedures that are similar or identical to those that apply under current law, but obsolete provisions are repealed. Any meaningful or significant changes are discussed below in a subsequent section. In the new title governing collective bargaining for public employees, the bill:

- establishes consistent definitions, including definitions for “public employee” and what constitutes a “strike”;
- specifies the intent of the General Assembly that it is the public policy of the State to encourage and protect the exercise by public-sector employees of their collective bargaining rights, as specified;
- specifies that laws related to the labor rights of public employees are intended to follow the National Labor Relations Act and that decisions of the federal National Labor Relations Board may be afforded persuasive weight in any interpretation of the bill;
- enumerates the collective bargaining rights of public employees, including that they may form, join, and participate in, or refrain from forming, joining, or participating in, any employee organization of their choosing;
- specifies that an employee organization may establish restrictions on who may join and provisions for the dismissal of individuals from membership, but may not discriminate, as specified;
- enumerates the rights of the exclusive representatives that represent public employees;
- requires public employers to provide exclusive representatives with employee information, as specified;
- prohibits public employers from engaging in a lockout;
- prohibits public employees from engaging in a strike;

- prohibits public employers and employee organizations from interfering with, intimidating, restraining, coercing, or discriminating against a public employee because the public employee exercises any right granted by the bill;
- prohibits public employers and employee organizations from engaging in any unfair labor practices;
- establishes the right of exclusive representatives to communicate with employees they represent and further establishes rules, procedures, and requirements for exclusive representatives to meet with new hires in bargaining units they represent;
- authorizes the collection of membership dues by an employee organization and includes processes that employers must follow to deduct and remit dues from employee salaries;
- prohibits public employers from taking certain discouraging actions against employees or an employee organization, as specified;
- requires representatives of public employers and exclusive representatives to meet at reasonable times and engage in collective bargaining in good faith and conclude with a written memorandum of understanding, as required by existing collective bargaining laws; and
- specifies that laws and procedures related to grievances continue to apply.

The bill delineates the rights of the State as an employer, which are substantially similar to the rights the State has an employer under current law, including that the State, through its appropriate officers and employees, has the right to:

- determine the mission, budget, organization, numbers, types, and grades of employees assigned; the work projects, tours of duty, methods, means, and personnel by which its operations are to be conducted; technology needed; internal security practices; and relocation of its facilities;
- maintain and improve the efficiency and effectiveness of governmental operations;
- determine the services to be rendered, operations to be performed, and technology to be used as well as overall methods, processes, means, and classes of work or personnel by which governmental operations are to be conducted;
- hire, direct, supervise, and assign employees;
- promote, demote, discipline, discharge, retain, and lay off employees as well as terminate employment for specified reasons;
- set the qualifications of employees for appointment and promotion as well as set standards of conduct;
- adopt State or departmental rules, regulations, or procedures;
- provide a system of merit employment according to the standard of business efficiency; and
- take actions not otherwise specified to carry out the mission of the employer.

Public Employee Relations Board and Elections

The bill repeals all references to SLRB, SHELRB, and PSLRB and instead references PERB through a series of technical and conforming changes. PERB must be the successor of these three boards and has all the powers and duties granted by law to those boards. Any investigation, litigation, or other action pending before these three boards on June 30, 2023, must continue before PERB. Regarding PERB, the bill:

- establishes PERB as an independent unit of State government;
- establishes membership requirements, including appointment processes, qualifications, and term limits;
- requires the chair of the board to give full time to the duties of chair, entitles the chair to a salary as provided in the State budget, and specifies that an appointed member of the board is entitled to the compensation provided in the State budget and reimbursement for travel expenses;
- requires the board to appoint an executive director, specifies the duties of the executive director, and authorizes the executive director to hire any staff necessary to implement the bill's requirements;
- enumerates the responsibilities and powers of the board, including granting the board the authority to issue subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence, and requiring the board to adopt and enforce regulations, guidelines, and policies to implement the bill's requirements;
- requires the board to appoint three deputy directors (one for Executive Branch labor relations, one for public school labor relations, and one for public higher education labor relations) and requires each deputy director to receive a salary provided in the State budget;
- requires the deputy directors to investigate unfair labor practice charges and claims using specified processes and procedures and to endeavor at all times to seek informal resolution of charges or complaints;
- authorizes the board to petition the circuit court to order compliance with board orders;
- specifies that the board is bound by prior opinions and decisions of SLRB, SHELRB, and PSLRB, but not by any prior regulation, order, or action of SLRB, SHELRB, or PSLRB (except decisions regarding unit composition), and further specifies that the board is bound by certain judicial orders regarding the scope of bargaining;
- charges PERB with conducting exclusive representative elections as specified and establishes related rules, procedures, and requirements; and
- grants general authority to PERB to determine the appropriateness of each bargaining unit, unless otherwise specified by State law.

Significant and/or Substantive Changes

In addition to the consolidating, technical, and conforming changes discussed above, the bill makes several meaningful and/or significant changes to the State's collective bargaining laws, including:

- expressly requiring additional staff to be hired (*e.g.*, the new deputy director positions) and salaries to be paid (*e.g.*, the chair of the board is a salaried position);
- establishing the duty to investigate unfair labor practice complaints to the deputy directors;
- granting the new labor board the authority to issue subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence;
- establishing more prescriptive processes for exclusive representative elections; and
- establishing a new mechanism by which an exclusive representative must be certified without an election (*i.e.*, if a petition for an election of an exclusive representative is supported by more than 50% of the employees in the bargaining unit).

Current Law:

State Employees and Collective Bargaining

Title 3 of the State Personnel and Pensions Article establishes statutory collective bargaining rights for a large number of State employees. Maryland's collective bargaining law generally applies to employees of the Executive Branch departments, the Maryland Insurance Administration, the State Department of Assessments and Taxation, the State Lottery and Gaming Control Agency, the University System of Maryland (USM), the Office of the Comptroller, the Maryland Transportation Authority ((MDTA) for those who are not police officers), the State Retirement Agency, the Maryland State Department of Education, the Maryland Environmental Service, the Maryland School for the Deaf (MSD), Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC), along with specified firefighters for the Martin State Airport and all full-time MDTA police officers at the rank of first sergeant and below.

The State's collective bargaining law does not apply to:

- Maryland Transit Administration employees;
- Legislative and Judicial Branch personnel;
- elected and appointed officials;
- the Governor's and Lieutenant Governor's staff;

- an employee assigned to, or with access to records of, SLRB;
- special appointees and executive service personnel in the State Personnel Management System (SPMS);
- senior administrators, faculty members, student employees, and other designated employees of USM, MSU, SMCM, or BCCC;
- the chief, deputy, or assistant administrator of a unit with an independent personnel system;
- temporary or contractual employees in SPMS;
- an employee who is entitled to participate in collective bargaining under another law;
- an employee whose participation in a labor organization is contrary to the State's ethics laws; and
- any supervisory, managerial, or confidential employee as defined by regulation.

Parties to the collective bargaining process must make every reasonable effort to conclude their negotiations by January 1 for any item requiring appropriation for the fiscal year that begins the following July 1. If an impasse is reached during the negotiations, either party may request a neutral fact finder; the fact finder's recommendations are advisory and not binding on either party. The Governor must include in the annual budget bill submitted to the General Assembly any amounts in the budgets of the principal units required to accommodate any additional cost resulting from the negotiations for the fiscal year beginning the following July 1, if the legislative changes have been negotiated to become effective in that fiscal year.

A "confidential employee" is an employee:

- who has access to confidential or discretionary information regarding the formulation of policy or procedures;
- whose functional responsibilities or knowledge concerning employee relations makes the employee's membership in an employee organization incompatible with the employee's duties; or
- who is the personal secretary of the chief administrative or executive officer of an agency.

Rights of Employees

Employees subject to the State's collective bargaining law have the right to (1) take part or refrain from taking part in forming, joining, supporting, or participating in any employee organization or its lawful activities; (2) be fairly represented by their exclusive

representative, if any, in collective bargaining; and (3) generally, engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Rights of the State

Under the collective bargaining statute, the State has the right to:

- determine the mission, budget, organization, numbers, types and grades of employees assigned, the work projects, tours of duty, methods, means, and personnel by which its operations are to be conducted, technology needed, internal security practices, and relocation of its facilities and to maintain and improve the efficiency and effectiveness of governmental operations;
- determine (1) the services to be rendered, operations to be performed, and technology to be utilized and (2) overall methods, processes, means, and classes of work or personnel by which governmental operations are to be conducted;
- hire, direct, supervise, and assign employees;
- promote, demote, discipline, discharge, retain, and lay off employees and also terminate employment due to lack of funds and other specified reasons;
- set the qualifications of employees for appointment and promotion, and set standards of conduct;
- promulgate State or department rules, regulations, or procedures;
- provide a system of merit employment according to the standard of business efficiency; and
- take actions, not otherwise specified, to carry out its mission.

Labor Relations Boards

SLRB is a five-member independent unit of State government responsible for administering and enforcing the State's collective bargaining law, particularly the establishment of new collective bargaining units and the certification of exclusive employee representatives for those units. In that capacity, the board holds elections for exclusive employee representatives, when petitioned to do so, and adjudicates dispute resolution cases related to the collective bargaining process. SHELRB is responsible for enforcing collective bargaining laws with respect to employees of public State institutions of higher education, and PSLRB is responsible for administering and enforcing the labor relations laws for local boards of education and their employees. The three labor boards are currently staffed by a common executive director, assistant Attorney General, and administrative staff.

Institutions of higher education must have separate bargaining units, and for these institutions, appropriate bargaining units must consist of (1) all eligible nonexempt

employees except sworn police officers; (2) all eligible exempt employees; and (3) all eligible sworn police officers. Additionally, MDTA police officers at the rank of first sergeant and below must have a separate bargaining unit, and faculty at MSD must have a separate bargaining unit.

State Expenditures: As previously noted, the three existing labor boards share staff, and there are currently three existing full-time staff: one executive director, one special assistant, and one assistant Attorney General. This analysis assumes that these existing staff are transferred to PERB since PERB is the successor agency of the boards; however, additional salary and staffing costs are anticipated because the bill:

- entitles the five board members to compensation for their services, with the chair of the board being required to serve full time;
- authorizes the executive director to hire any staff necessary to implement the bill;
- requires the hiring of three deputy directors (which do not exist under current law and may be required to be attorneys given the deputy directors’ responsibility to oversee unfair labor practice disputes and determine whether there is probable cause to issue a complaint); and
- authorizes the board to issue subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence (the breadth of these responsibilities likely requires *at least two* assistant Attorneys General).

For purposes of this analysis, it is assumed that (1) four of the board members receive an annual stipend for their services of \$20,000 each; (2) the chair receives a salary of approximately \$100,000 annually; (3) the three deputy directors receive a salary of approximately \$80,000 annually; (4) one additional special assistant is hired at an annual salary of approximately \$60,000; and (5) one additional assistant Attorney General is hired at an annual salary of approximately \$90,000. This reflects the *minimum* in additional salary and staffing costs for PERB; PERB may be required to set higher salaries to attract high quality legal candidates and may require even more staff.

Thus, general fund expenditures increase by an estimated \$642,585 in fiscal 2024, which accounts for a 90-day start-up delay from the bill’s July 1, 2023 effective date. The estimate reflects the cost of hiring and/or paying the salaries listed in the above assumptions. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	6.0
Salaries and Fringe Benefits	\$538,131
Prorated Board Member Stipends	60,000
Operating Expenses	<u>44,454</u>
Total FY 2024 State Expenditures	\$642,585

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 367 (Senator Lam) - Finance and Education, Energy, and the Environment.

Information Source(s): State Labor Relations Board; Department of Budget and Management; Maryland Department of Transportation; University System of Maryland; Office of Administrative Hearings; Morgan State University; Baltimore City Community College; Maryland Environmental Service; Maryland Municipal League; Anne Arundel County Public Schools; Frederick County Public Schools; Department of Legislative Services

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