FINANCE COMMITTEE
Senate Bill 9
State Employees – Collective Bargaining – Applicability, Bargaining Processes, and Memorandums of Understanding
February 4, 2021
Urging an Unfavorable Report

Chair Kelley, Vice Chair Feldman, and members of the committee, thank you for the opportunity to share our thoughts regarding Senate Bill 9. This bill would fundamentally change the collective bargaining process at each of the University System of Maryland's ("USM") twelve constituent institutions, potentially disadvantaging employees at the USM's smaller institutions and damaging labor relations between employees and management at each institution. Senate Bill 9 would (1) at a labor union's discretion, require the institutions to participate in consolidated negotiations on behalf of all bargaining units at all institutions represented by the same union, rather than make such consolidated bargaining a voluntary decision by each institution president, as current law provides; (2) revoke the legislative authority of the twelve institution presidents to designate a representative to negotiate on behalf of their institution and assign this role to the USM Chancellor; and (3) give the labor union the power to veto the institution president's right to negotiate matters "particular to an institution."

The broad transfer of authority from the institutions to the University System effected by this bill will damage the institutions and undermine the president's legal role as the institution's "chief executive officer," as established in the Education Article. Title 12 of that law states that the presidents shall have the power to "appoint, promote, fix salaries, grant tenure, assign duties, and terminate personnel…," as well as "create any position within existing funds available to the University…." In order for institution presidents to carry out these duties, they must retain the authority to determine whether it is in the institution's best interest to engage in consolidated bargaining with other institutions, rather than ceding this authority to a labor union. For almost two decades now, seven of the institutions have voluntarily chosen to engage in such consolidated negotiations on behalf of their nonexempt employees – only the University of Maryland College Park, the flagship campus, and the University of Maryland Baltimore, the state's foundational university, declined to join this coalition, understandably for reasons related to their distinct mission, size, and budget relative to the other institutions within the coalition.

Unlike some highly centralized systems of higher education across the country, the University System of Maryland was deliberately designed to be decentralized, with a small system office, and to provide a high degree of autonomy to each of its institutions. This bill would flip the

relationship between the Board and the presidents with regard to managing the institution's workforce.

Under Maryland law, the USM Board of Regents (Board), to whom the Chancellor reports, is responsible for the broad management of the USM, but has no authority over day-to-day management of the institutions. The law requires the Board to "delegate to the president of each institution authority needed to manage that institution ... including the authority to establish policies appropriate to the institution's mission, size, location and financial resources." If the Board were to overstep that authority and engage in hands-on management of institution personnel, it would usurp the president's statutory authority and may violate accrediting standards that require the institution president to exercise a certain level of authority and autonomy.

There are 26 bargaining units within the USM's twelve institutions, represented by three different labor unions. The Fraternal Order of Police represents eight police units, AFSCME represents five exempt units, nine nonexempt units and one police unit, and MCEA represents two nonexempt units and one police unit.

Required consolidated bargaining, as opposed to the voluntary system under current law, likely will disadvantage the USM's smaller institutions that have fewer financial and other resources, which include USM's historically black institutions. It would create pressure on the USM to either "average" the participating institutions' interests, or acquiesce to the interests of the larger institutions, failing to account for the individual needs and desires of employees at different institutions, resulting in wage provisions that exceed the budget and relevant labor market of the smaller institutions.

The bargaining units at the different institutions do not share a "community of interests" with each other. Each institution has its own distinct mission, and they vary considerably by size, budget, research category, geographic location, labor market and distribution and proportion of employees represented in collective bargaining. Consistent with its accreditation standards, each institution develops its own separate recruitment and performance management policies, work hours, chains of command, supervision, shifts, duties, job titles, work assignments, compensatory leave policies, shift differential, and holiday calendar. Within its existing budget, each institution may create positions deemed necessary, without authorization from the Board. Under these circumstances, it would be impractical for the chancellor, who has no role in these decisions, to be responsible for leading negotiations for one consolidated memorandum of understanding covering employees in the police, exempt and nonexempt bargaining units at all USM institutions.

In addition to amending the Maryland collective bargaining law, Senate Bill 9 utterly guts a foundational section of the Education Article. It inappropriately and unnecessarily revokes the authority of the Chancellor to establish general standards and guidelines governing the

appointment, compensation, advancement, tenure, and termination of administrative personnel who are members of collective bargaining units. The Education Article, at 12-110, already conditions the establishment of these general standards and guidelines on the requirements of the Maryland collective bargaining law. The relevant proposed language adds no substantive value. Instead, the bill seeks to create confusion by nullifying existing standards and guidelines applicable to all non-faculty employees, including any administrative standards or guidelines necessary for processing or effectuating personnel actions. The vast majority of these are not mandatory subjects of bargaining and the unions have never requested to bargain them.

Senate Bill 9 also revokes the authority of the USM Board of Regents to define "supervisory, managerial, or confidential" employees, who are excluded from the class of employees who may engage in collective bargaining. In the Board of Regents' place, it directs the State Higher Education Labor Relations Board (SHELRB), a voluntary board with no training or experience in personnel classifications, to define these important employee classifications. In doing so, it requires the SHELRB to adopt definitions consistent with those established by a federal agency that has no jurisdiction or authority over University matters, the National Labor Relations Board.

Abolishing the current definitions and asking the SHELRB to come up with new definitions meeting an inapplicable federal standard defies reason. It would likely prove time-consuming and costly, and would create needless upheaval among the bargaining unit membership. The Board of Regents established the definitions of these employee groups approximately twenty years ago, and USM institutions have consistently applied these same definitions since then. The current definitions were used as the basis for establishing membership in the bargaining units when AFSCME was first certified as the exclusive representative of the exempt and nonexempt bargaining units at multiple USM institutions. To now change these definitions would require an extensive audit of all existing classifications to determine whether to properly include or exclude employees from the bargaining unit based on the newly established definitions.

Finally, Senate Bill 9 adds unnecessary, ambiguous language to the collective bargaining law requiring the parties to "facilitate[e] the meaningful use of a fact finder…." The current collective bargaining law already provides that either party may request that a fact finder be employed to resolve the issues if the parties cannot agree. Amending the statute to require the parties to "facilitate" the "meaningful" use of a fact finder imposes a vague and superfluous obligation, serving only to create confusion and potential disagreement between the parties.

For the foregoing reasons, the USM respectfully urges an unfavorable report on Senate Bill 9.