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Maryland
DEPARTMENT OF BUDGET AND MANAGEMENT

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SENATE BILL 472 State Personnel - Collective Bargaining - Revisions and Budget Bill Appropriations (Kramer)

POSITION: OPPOSE

DATE: February 16, 2022

COMMITTEE: Senate Budget & Taxation and Senate Finance

SUMMARY OF BILL:. SB 472 is a Constitutional Amendment (to be submitted to the voters at the November 2022 general election) and implementing legislation that will establish binding arbitration for employee unions that collectively bargain with the State, institutions of higher education, and Maryland Environmental Service (MES).

EXPLANATION: The Department of Budget and Management (DBM) is responsible for negotiating and funding collective bargaining agreements with the six exclusive representatives of approximately 30,000 State employees. DBM does not negotiate agreements on behalf of the University System but the System would also be subject to this bill.

DBM opposes SB 472 because it grants undue influence and control to a private sector arbitrator over significant public fiscal and policy affairs of the State, and because it confers the private arbitrator with an inappropriate amount of power over the State's collective bargaining process.

Binding arbitration is a significant curtailment of the Governor's budgetary authority. The Governor is the only statewide elected official that is accountable to all residents for meeting the State's public service needs. The proposed Constitutional Amendment gives to a non-elected and non-accountable third-party arbitrator the power to determine the appropriate level of limited public funds that should be included in the proposed budget for State employee compensation. About 16.8% of the State's annual budget is dedicated to employee salaries. Thus, this Bill and the proposed constitutional amendment would inappropriately hand significant influence over public funds and public policy determinations to a private arbitrator chosen from a national list, with no accountability to the taxpayers of Maryland.

Regarding the State's collective bargaining process, the bill empowers the private arbitrator to "proctor" the negotiation process, including the authority to determine whether a party is negotiating in good faith under Maryland's collective bargaining law and to issue final, binding, and immediately effective "remedial" orders in this regard, as well as to hold hearings, compel the production of documents and testimony from the State and the unions and control the timing of the arbitration process once impasse is declared.

Operational Impacts (Timeline for Collective Bargaining and the Arbitration Process Impedes Budget Preparation):

- Arbitrator to be chosen by July 15 and be available for all bargaining sessions.
- If an impasse is declared on or after October 1, arbitration shall proceed.
- On the fifth business day after the impasse, each party shall submit to the arbitrator a Last, Best, and Final Offer.
- The arbitrator shall hold a formal hearing within 30 calendar days.
- The formal hearing shall conclude within 45 days after the impasse.
- The arbitrator shall issue a final written award on or before December 15.
- After December 15, if requested by either party, the arbitrator shall issue by January 20 a statement of reasons for the final written award.

The Governor is required to submit a balanced budget proposal to the General Assembly on or by the third Wednesday in January, or in the first year of a new term, by the tenth day of the Legislative Session. The timeline contained in the legislation does not conform to the requisite deadlines for submitting the budget to the General Assembly Article III, Section 52 of the Constitution.

Significant Fiscal Impacts:

The fiscal impact of binding arbitration has the potential to be significant. Just the addition of a 1% COLA across all of Maryland state government would equate to more than $60 million in taxpayer dollars in the FY 2023 budget. Depending on the size of a final binding arbitration decision under the proposed constitutional amendment, it is possible that a properly balanced budget being prepared by the Governor could be put out of balance, which could require substantial last minute reductions to important priority spending programs of the Executive or the General Assembly.

Not only would binding arbitration impact the budget being considered by the General Assembly, but could impose significant additional costs on future budgets because of the costly price tags. This year's negotiation between the State and its largest bargaining unit - AFSCME - provides a good example of the outyear impact of negotiations. The table below summarizes the final offers put forward by the State and AFSCME along with the final year and cumulative price tags.

	FY 22-24 Cost	FY 24 Cost	Description
State of Maryland	$262 M	$124 M	Cumulative 11.2% ongoing, plus $1,000 bonus
AFSCME	$1264 M	$486 M	Cumulative 40.6% ongoing, plus $20,000 bonus

One can see from the $778 million price tag of the AFSCME proposal for fiscal years 2022 and 2023 above that the State's $584 million FY 2023 surplus would have been eclipsed by almost $200 million. Further, the cumulative costs of the AFSCME proposal would lead to a projected budget gap of more than $500 million in FY 2024.

The projected gaps in both FY 2023 and 2024 are concerning because this reflects the cost of negotiating with just one union. If the AFSCME proposal were applied to all state employees, the ongoing cost would be in excess of **$2.4 billion a year**. Even if an arbitrator could split the cost of the State and AFSCME proposals in half, the ongoing cost of an additional 14.7% increase in salary would be more than $880 million a year - clearly unaffordable even with the State's recent good fortune.

It's important to note that the legislation requires the arbitrator to pick either the State's or the union's last, best and final offer in its entirety. This provision eliminates any incentive for employee unions to reach an agreement with the State when they can initiate binding arbitration to ask an arbitrator to award the union either the State's best and final offer or the union's more lucrative counter offer. The State's willingness to put forward reasonable first offers is likewise diminished.

One additional fiscal complexity that would be created with this legislation is that binding arbitration would also apply to both retirement and health benefits. Retirement benefits generally have not been part of negotiations, heretofore. Arbitration decisions could require the state to create multiple health benefit programs that currently do not exist, which would undermine the State's buying power as a large employer while at the same time increasing administrative costs.

Furthermore, bond rating agencies will not look favorably on the imposition of binding arbitration because it unduly restricts the State's ability to restrain spending when needed. Costly decisions of the arbitrator will add unplanned risk for the implementation of each budget.

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