

SB421_AFSCME3_FAV.pdf

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Position: FAV



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Patrick Moran - President

SB 421 - State Personnel - Teleworking Programs, Policies, and Guidelines - Requirements

POSITION: FAVORABLE

AFSCME Council 3 supports SB 421. This important legislation sets guidelines for telework policies in Maryland's state government, the judicial and legislative branches, and our public institutions of higher education. This legislation also consolidates the bargaining of telework policies in the University System of Maryland so there is one statewide policy, like what is already happening in the executive branch.

In 2021, the Maryland General Assembly passed [HB73/CH0696](#) which required these institutions to have telework policies and to maximize the number of employees participating in a telework program. For state employees who work in jobs that can't be done remotely, their telework policy is just that – they can't telework. For state employees who do have jobs that can be done remotely, SB 421 is necessary to make sure these telework policies are applied consistently and fairly.

Since 2021, we have seen more relaxed attitudes towards teleworking across much of state government, but there are still individual agencies and managers who issue blanket “no telework” policies to the great agitation of staff. We also see inconsistencies where one job or individual is allowed to telework in one agency or campus, and similar jobs with similar duties are not allowed to telework in another agency or campus. Not only is this unfair, but it's also having a detrimental impact on employee recruitment and retention at a time when the state so desperately needs to improve both.

SB 421 fixes these issues by setting some basic guidelines for all telework policies in state government to follow:

1. Telework eligibility should be based on an assessment if the job can be done remotely, if the employee is meeting performance standards, and if the employee has passed their probationary period.
2. In evaluating telework requests, managers should consider:
 - If the job has ever been done successfully remotely,
 - If the requesting employee has ever successfully worked remotely,
 - The operational needs of the unit,
 - The number of employees in the unit who are already teleworking,
 - The possibility of a hybrid and in-person schedule,
 - The flexibility of the requesting employee's work schedule.

Every AFSCME Maryland State and University contract guarantees a right to union representation.
An employee has the right to a union representative if requested by the employee.
800.492.1996

3. Telework requests, approvals, and terminations should be standard across policies and provide for:

- A written response back within 7 days from the appropriate official upon an employee requesting to telework.
- 14 days' notice from an appropriate official upon terminating a telework agreement and an explanation for why.
- A prohibition on denying telework requests on the basis that employee is unable to work remotely when others doing the same work have been allowed to work remotely.
- Established goals and expectations for the position while working remotely.
- A prohibition on entering an employee's home to check up on the employee teleworking.
- A requirement for telework during communicable disease outbreaks.
- An ability to grieve misapplications of the telework policy.

All these improvements are consistent with what we already do with other personnel policies around equal employment opportunities and scheduling. We believe that by adding them as standard guidelines for telework policies we will be able to truly ensure that our state government is maximizing participation. Telework is a win-win for the budget, the environment, traffic reduction, productivity, and for the quality of life for our members.

We urge the committee to provide a favorable report on SB 421. Thank you.

SB421_FAV_Hettleman.pdf

Uploaded by: Shelly Hettleman

Position: FAV



The Senate of Maryland ANNAPOLIS, MARYLAND 21401

SB 421/HB 528 - State Personnel – Teleworking Programs, Policies, and Guidelines – Requirements

For too long, state employees in telework-eligible positions in State Government and at our Public Higher Education Institutions were told they could not telework. Then the pandemic hit, and thousands of state employees across Maryland proved they could keep our state and higher education campuses running while working remotely.

In 2021, the Maryland General Assembly passed [HB73/CH0696](#) which required our state government, judicial and legislative branches, and public institutions of higher education to have telework programs for their employees. This legislation also required that beginning in Fiscal 2023, telework policies would need to be negotiated where employees are covered by collective bargaining. Finally, this legislation added a requirement to track the number of state employees actually participating in telework to the annual report state agencies must file on the number of employees they have that are telework eligible – or work in jobs that have functions that can be performed remotely.

As a result of the legislation, there has been some progress with agencies softening their opposition to telework. But our public unions have not been able to successfully negotiate telework policies in state government or in higher education and this has unfortunately led to inequitable and inconsistent decision-making on who is allowed to telework and who is not. The Department of Budget & Management (DBM) publishes a list of classifications that are eligible to telework, and then individual agency heads decide if they will allow their staff to telework. These decisions are seemingly even more random in higher education.

Workers who have similar duties in one agency or campus might be allowed to telework, but workers with those same jobs in other agencies or campuses may not. Now that pandemic restrictions have largely been lifted, there are still agencies and departments that take a uniform policy stance against their staff teleworking and this inflexibility is harming state workers and is contributing to staff resignations at a time when we so desperately need to retain state workers and attract new ones to work for state government.

SB 421 fixes these equity issues by doing 4 main things –

1. Provides that telework eligibility be based on 3 factors:
 - an assessment that the job can be worked remotely
 - the employee is performing up to standard
 - the employee has passed probation, if applicable.
2. Sets some factors for consideration when evaluating an eligible employee's request to telework:
 - If the job has ever been done successfully remotely
 - If the requesting employee has ever successfully worked remotely
 - The operational needs of the unit
 - The number of employees in the unit who are already teleworking

- The possibility of a hybrid and in-person schedule
- The flexibility of the requesting employee's work schedule

3. Standardizes the telework request, approval, and termination procedures across telework policies to provide for:

- A written response back within 7 days from the appropriate official upon an employee requesting to telework
- 14 days notice from an appropriate official upon terminating a telework agreement and an explanation for the termination
- A prohibition on denying telework requests on the basis that employee is unable to work remotely when others doing the same work have been allowed to work remotely
- Established goals and expectations for the position while working remotely
- A prohibition on entering an employee's home to check up on the employee teleworking
- A requirement for telework during communicable disease outbreaks
- An ability to grieve misapplications of the telework policy

4. Consolidates telework policy negotiations under the University of Maryland System so there is one policy, instead of separate and different policies on each individual campus. Note: the request is for 1 negotiated telework policy to cover around 6,000 employees across the USM. In the executive branch, there is currently 1 (non-negotiated) telework policy that covers over 20,000 employees across state agencies.

While telework may not be for every employee, telework policies should be for every employer. In addition to helping with the [recruitment and retention of state employees](#) (pg. 42), telework has also been proven help reduce traffic and traffic accidents, and is better for the environment. Agencies also accomplish cost savings on office space energy use by allowing workers to telework. Telework in some form has existed in our state government and in higher education for many years. Pre-pandemic, it was quite limited, however, and these divisions too often fell on racial and socioeconomic lines.

SB 421 helps to ensure equity in our telework policies across government by requiring that some basic standards be in place for all telework policies. We did the same with our hiring and EEO policies, and we can do the same for telework.

SB421_USM_UNF.pdf

Uploaded by: Andy Clark

Position: UNF



SENATE FINANCE COMMITTEE

Senate Bill 421

State Personnel - Teleworking Programs, Policies, and Guidelines - Requirements

March 3, 2023

Unfavorable

Chair Griffith, Vice-Chair Klausmeier, and members of the committee, thank you for the opportunity to testify on Senate Bill 421. The bill substantially revises the recently amended current laws governing (1) collective bargaining negotiations for the University System of Maryland (USM) institutions and (2) telework for all state employees.

Last year, the General Assembly amended the law governing collective bargaining at USM institutions to allow “consolidated” bargaining on an exclusive employee representative’s demand. This means that a union can require all institution bargaining units it represents at any of the twelve USM institutions to negotiate, through the USM Chancellor, a consolidated memorandum of understanding covering all of those units. (For example, consolidated negotiations are currently underway with AFSCME on behalf of nine bargaining units representing exempt, nonexempt, and sworn police officer employees.)

However, the law states that certain issues, including telework, may not be included in a consolidated memorandum, but instead shall be negotiated locally by the president of the institution and memorialized in a separate institutional agreement. This law reflects an understanding that certain issues are best handled at the institution level, not the System level. The USM is concerned that Senate Bill 421 would dilute an institution president’s statutory authority and right to make key operational determinations to carry out their institution’s unique mission and needs.

Each USM institution has implemented a telework policy and procedure under the authority of the institution’s president. Telework is widely available at all USM institutions, but is not appropriate for all positions, particularly certain student-facing positions. The requirement that telework be negotiated as a consolidated matter ignores the key distinctions that exist between the USM’s institutions, their diverse missions, their operations and the students they serve. For example, not all institutions have undergraduate students who live on-campus. Not all institutions have students who attend classes on-campus each day. Telework is best negotiated locally at the institution, under the authority of the institution’s president, as current law provides.

A second concern about Senate Bill 421 is that it largely removes a USM institution’s authority to determine the most efficient, effective way to manage its workforce by making individualized decisions about whether a particular position should be eligible for telework. The bill prohibits the university from denying an employee’s application to telework if

another eligible employee “in the same job position or classification” is found eligible for telework. It is noteworthy that this bill does not apply such prohibition to employees in the same department or job, but rather, the same job position or classification.

This means that an institution may be required to approve telework requests for countless employees merely because a single employee in the same job classification has been deemed telework eligible. There may be hundreds of employees who share the same job classification, but they may work in units as distinct as Student Affairs, the Bursar’s Office, the History Department, Human Resources or Dining Services. A “coordinator” in those different units would likely have quite different duties and quite different obligations regarding interacting with students. An “assistant professor” might teach an on-line course, while most assistant professors teach courses that meet in person.

Moreover, the bill would require consideration of whether a position has been performed via telework in the past, which may include telework arrangements during the height of the global pandemic when operations were vastly different from current university operations – all USM institutions shifted to on-line virtual classes, rather than in-person classes, at different points during the pandemic. These provisions would limit the University’s ability to ensure that there is adequate staffing and coverage to support faculty, staff and students throughout the varying operations on campus and would hamstring a university’s right to make innovative changes in operations.

Finally, this bill provides an employee the right to grieve termination of a telework agreement and provides an outside hearing officer the authority to reinstate the employee’s agreement based on that individual’s judgment, without regard for the institution’s right to determine the best way to manage its operations and serve its students and the citizens of the State of Maryland.

For these reasons, we respectfully urge an unfavorable report on Senate Bill 421.



About the University System of Maryland

The University System of Maryland (USM)—one system made up of 12 institutions, three regional centers, and a central office—awards 8 out of every 10 bachelor's degrees in the State of Maryland. The USM is governed by a Board of Regents, comprised of 21 members from diverse professional and personal backgrounds. The chancellor, Dr. Jay Perman, oversees and manages the operations of USM. However, each constituent institution is run by its own president who has authority over that university. Each of USM's 12 institutions has a distinct and unique approach to the mission of educating students and promoting the economic, intellectual, and cultural growth of its surrounding community. These institutions are located throughout the state, from western Maryland to the Eastern Shore, with the flagship campus in the Washington suburbs. The USM includes Historically Black Colleges and Universities, comprehensive institutions, research universities, and the country's largest public online institution.

USM Office of Government Relations - Patrick Hogan: phogan@usmd.edu

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Position: UNF

SENATE FINANCE COMMITTEE

Testimony by
Dr. Brad Phillips, Executive Director
March 3, 2023

SB421 – Teleworking Programs, Policies, and Guidelines - Requirements

POSITION: Unfavorable

The Maryland Association of Community Colleges (MACC), representing Maryland's 16 community colleges, thanks the Senate Finance Committee for the opportunity to share our concerns on this legislation.

Each of our community colleges has a telework policy in place in accordance with State Personnel and Pensions subtitle §2-308. The legislation being heard today would mandate an across the board policy that does not allow individual institutions the ability to manage their personnel. Each campus has different operations, different courses may be offered in different modalities, and their telework policies are best managed at an institutional level as the current law provides.

Second, the use of classification of employees is open to interpretation and may create a surplus of applications for telework eligibility based on job classifications that are not related to an employee's ability to conduct the work successfully online or to the courses that faculty may be teaching.

Finally, the use of historic success in the position as a qualifier for telework arrangements for an employee in light of a global pandemic where many of our colleges had to make major operational adjustments may not meet the reality of operations as our institutions emerge from the pandemic, nor is it the best pedagogy to have a policy where if you taught online you could remain online to detriment of the various learning styles of our students. These provisions would limit the colleges from operational changes as they meet the needs of an ever-changing student population.

For the reasons outlined above, MACC requests an unfavorable report on SB421.

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Uploaded by: Matthew Pipkin

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Finance Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 421
State Personnel – Teleworking Program, Policies, and Guidelines –
Requirements
DATE: February 8, 2023
(3/3)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 421. This bill seeks to modify State Personnel and Pensions (“SPP”), § 2-308 which currently requires each branch of Maryland State government to “establish a telework program” and “adopt a telework policy and telework guidelines[.]” Such telework programs must, “to the extent practicable, maximize the number of eligible employees participating”

First, current law recognizes that the Judiciary has broad authority to set its own personnel policies, which include a telework policy.

Md. Code Ann., State Pers. & Pens. § 2-201 provides:

Except as otherwise provided by law, an employee in the Judicial, Legislative, or Executive Branch of State government is governed by the laws and personnel policies and procedures applicable in that branch.

Telework is inherently a personnel policy. The Judiciary operates as an almost entirely public facing entity and, in order to effectively provide access to justice, it must have control of its staffing needs without the imposition of generic metrics.

The Judiciary ensures that its personnel policies apply consistently across the various Judicial Branch units. Maryland Rule 16-801 (b) states:

Budget, Procurement, and Personnel Standards. All units of the Judiciary above shall prepare their proposed budgets and exercise procurement and personnel decisions in conformance with standards and guidelines promulgated by the State Court Administrator.

The above, coupled with the existing Judiciary telework policy, negate the requirements in the proposed bill. Moreover, Division I of the State Personnel and Pensions article,

where the proposed legislation is located, is largely only applicable to the Executive Branch. Accordingly, this bill, if enacted, would undermine existing statutory law by unnecessarily attempting to encroach on the Judiciary's authority to establish its own personnel policies.

Most importantly, the bill conflicts with the Maryland State Constitution's clear recognition of the separation of powers between the branches of government. Article 8 of the Maryland Constitution's Declaration of Rights recognizes: "That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

In addition, Article IV, § 18 of the Maryland Constitution grants to the Chief Justice of the Supreme Court administrative authority over Judicial Branch. Employee telework policies are an administrative matter that fall squarely within the Chief Justice's constitutional duties.

Unlike the other policies to which the Judiciary is subject¹ and which do not impose on judicial functions, the proposed legislation would impose on the Judiciary's day-to-day functioning and therefore it runs afoul of the separation of powers. In acknowledging the limited powers of the legislative branch to impose authority on the judicial branch, the Court of Appeals in *Attorney Gen. of Maryland v. Waldron*, 289 Md. 683, 699 (1981) stated:

There can be no doubt, however, that the deferential respect accorded the legislative branch by the judicial must neither undermine nor dilute the fundamental authority and responsibility vested in the judiciary to carry out its constitutionally required function, an aspect of which, as we have seen, is the supervision of practicing attorneys. Nonetheless, the flexibility that inheres in the separation of powers doctrine allows for some limited exertion of legislative authority. As a consequence of this elasticity, we have recognized, first, that the General Assembly may act pursuant to its police or other legitimate power to aid the courts in the performance of their judicial functions[.]

By instituting specific telework requirements on the Judiciary, the legislature exceeds its permissible "limited exertion of legislative authority . . . to aid the courts in the performance of their judicial function." Instead, the proposed legislation "dilutes the fundamental authority and responsibility vested in the judiciary to carry out its

¹ Specifically, § 2-203, inquiries into criminal record or criminal history of job applicants, is applicable to the Judiciary ("this section applies to all employees in the Judicial, Legislative, and Executive branches of State government."). Also, and probably more analogous to the telework requirement, § 2-311 expressly includes the Judiciary and prohibits requiring an employee to take leave if the employer can provide a reasonable accommodation for the employee's limitation caused or contributed to by pregnancy or childbirth.

constitutionally required function.” The administration of justice does not end at the doors of the courtroom. Rather, the clerk’s offices, where the teleworking requirements would have a large impact, are crucial in ensuring that actions are promptly processed and scheduled, communicating with the bar and the general public, and otherwise allowing each courthouse to function smoothly. The Judiciary must maintain administrative control over employee staffing, including and decisions about teleworking, in order to carry out the judicial function.

An additional issue raised by the bill is whether there exists any enforcement or dispute resolution measure. The bill states that “[a]n employee may initiate a grievance procedure for the termination of a teleworking agreement . . . under the appropriate statutory grievance procedure.” This provision does not appear applicable to the Judiciary since the standard employee grievance statutes—found in Title 12 of the State Personnel and Pensions Article—do not apply to the Judiciary per SPP § 12-102. Nothing in the bill addresses potential disputes over denial of telework applications. So Judiciary employees seemingly would not have an ability under this bill to challenge any actions regarding telework decisions unless Judiciary personnel policies are modified to permit such challenges.

In summary, the Judiciary already has a telework policy in place that meets the needs of the Judicial Branch and, thus, the bill is unnecessary and administratively burdensome. Moreover, the bill runs afoul of the separation of powers doctrine.

cc. Hon. Shelly Hettleman
Judicial Council
Legislative Committee
Kelley O’Connor

SB 421 Letter of Information.pdf

Uploaded by: Helene Grady

Position: INFO



SENATE BILL 421 State Personnel – Teleworking Programs, Policies, Guidelines - Requirements

STATEMENT OF INFORMATION

DATE: March 3, 2023

COMMITTEE: Finance

SUMMARY OF BILL: SB 421 specifies requirements for teleworking programs for state employees.

EXPLANATION: The bill establishes criteria to allow state employees to telework, outlines specific requirements for agency telework programs, and establishes that employees may file a grievance to dispute the termination of a telework agreement.

Changes to the state's telework policies are subject to negotiations with the exclusive bargaining representatives. The Department of Budget and Management (DBM) recognizes the value of telework as an integral part of the state's recruitment and retention efforts.

However, DBM believes that the needs of the workforce change over time. Therefore, DBM would like the Committee to consider that it is in the best interest of the state to avoid prescribing the specifics of the telework programs in statute. This will allow policies to be adaptable to emerging workforce needs as agreed upon by the state and the exclusive bargaining representatives.

**For additional information, contact Cindy Kollner at
(410) 767-4716 or cindy.kollner@maryland.gov.**

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Position: INFO



**2023 SESSION
POSITION PAPER**

BILL: SB 421 – State Personnel – Teleworking Programs, Policies, and Guidelines – Requirements
COMMITTEE: Senate Finance Committee
POSITION: Letter of Information
BILL ANALYSIS: SB 421 establishes certain requirements for each teleworking program, policy, and guideline adopted by a certain appropriate official in State government.

POSITION RATIONALE: The Maryland Association of County Health Officers (MACHO) provides a letter of information for SB 421. All local health departments (LHDs) have instituted teleworking arrangements for select employees. Health Officers appreciate the advantages of teleworking for certain staff and worked to make this option available to those whose job positions are suited for remote work. However, many positions at LHDs require in-person service to best aid members of our communities. There are health services that cannot be provided remotely, and since those LHDs assist skew toward lower income, a disproportionate percentage of our clientele are unable to access the help they need online.

We ask the Finance Committee to **reconsider** the following section of SB 421 found on **Page 4, Lines 1-5:**

(V) PROHIBIT AN APPROPRIATE OFFICIAL FROM DENYING AN APPLICATION TO TELEWORK ON THE BASIS THAT THE EMPLOYEE IS UNABLE TO PERFORM THE EMPLOYEE’S DUTIES AWAY FROM THE EMPLOYEE’S WORKPLACE IF ANOTHER EMPLOYEE IN THE SAME JOB POSITION OR CLASSIFICATION IS FOUND ELIGIBLE TO TELEWORK

The state’s Human Resources system is a patchwork of job classifications that in many cases lump disparate duties under a single hodgepodge umbrella. Nurses, community health workers, therapists, and many other classifications perform their work in a variety of contexts some of which are appropriate for telework while others are not. The above noted section of SB 421 would either:

- 1) Force LHDs to allow employees to telework regardless of negative impacts this arrangement has on their ability to perform their duties simply because another employee in the same classification, but with very different responsibilities, was granted telework status; or
- 2) Have the unintended effect of denying appropriate employees telework status out of concern that this would force managers to grant matching arrangements to others in the same job position or classification regardless of the negative consequences.

For these reasons, the Maryland Association of County Health Officers submits this letter of information for SB 421. For more information, please contact Ruth Maiorana, MACHO Executive Director at рмаiora1@jhu.edu or 410-937-1433.