

SENATE BILL 794

F1, P2, P4

EMERGENCY BILL

2lr2430

By: **Senator Guzzone**

Introduced and read first time: February 7, 2022

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **State Department of Education – Procurement and Personnel Actions**

3 FOR the purpose of authorizing the State Board of Education to appoint or hire employees
4 of the State Department of Education who are not subject to or controlled by certain
5 provisions of law that govern the State Personnel Management System; requiring
6 the State Board to establish certain policies and guidelines governing the hiring or
7 appointment, compensation, advancement, and termination of certain personnel;
8 requiring the State Superintendent of Schools to provide a certain list of employees
9 to the Secretary of Budget and Management each year; providing that certain
10 provisions of law governing procurement do not apply to certain procurements by the
11 State Department of Education; establishing that the State Board may satisfy a
12 certain reporting requirement relating to the Equal Employment Opportunity
13 Program in a certain manner; authorizing certain employees to pursue an allegation
14 of employment discrimination or reprisal for the disclosure of information in a
15 certain manner; prohibiting the Governor from including certain positions in the
16 State Board in the Executive Pay Plan; requiring the State Board to work with the
17 Department of Budget and Management, on or before a certain date, to implement a
18 phased transition of certain employees from the State Personnel Management
19 System to a certain personnel system developed by the State Board; and generally
20 relating to procurement and personnel actions by the State Department of
21 Education.

22 BY repealing and reenacting, with amendments,
23 Article – Education
24 Section 2–104 and 2–105
25 Annotated Code of Maryland
26 (2018 Replacement Volume and 2021 Supplement)

27 BY adding to
28 Article – Education
29 Section 2–104.1 and 2–205(r)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2018 Replacement Volume and 2021 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – State Finance and Procurement
5 Section 11–203(a)(1)(xviii) and (xix)
6 Annotated Code of Maryland
7 (2021 Replacement Volume)

8 BY adding to
9 Article – State Finance and Procurement
10 Section 11–203(a)(1)(xix)
11 Annotated Code of Maryland
12 (2021 Replacement Volume)

13 BY repealing and reenacting, with amendments,
14 Article – State Government
15 Section 8–3A–02
16 Annotated Code of Maryland
17 (2021 Replacement Volume)

18 BY repealing and reenacting, with amendments,
19 Article – State Personnel and Pensions
20 Section 2–305, 4–302, 5–205, 5–208(d), 5–209, 5–307, 8–102(b), 14–103, and 14–201
21 Annotated Code of Maryland
22 (2015 Replacement Volume and 2021 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
24 That the Laws of Maryland read as follows:

25 **Article – Education**

26 2–104.

27 (a) The following employees shall be appointed to positions in the Department:

28 (1) No more than three Deputy State Superintendents of Schools;

29 (2) Any assistant State superintendents and directors authorized by the
30 State Board and provided in the State budget; and

31 (3) Any other employees to fill positions authorized by the State Board
32 **UNDER § 2–104.1 OF THIS SUBTITLE** and provided in the State budget.

33 (b) (1) [(i)] From the nominees proposed by the State Superintendent, the
34 State Board shall appoint all employees to positions in the Department.

1 [(ii) Except as provided in § 6–405(a)(3) of the State Personnel and
2 Pensions Article, all positions shall be in the executive service, management service,
3 professional service, or skilled service in the State Personnel Management System.]

4 (2) With the advice of the State Superintendent, the State Board shall set
5 the qualifications for each position in the Department.

6 (3) The State Superintendent may transfer employees within the
7 Department as necessary.

8 (c) [(1) All employees who are assigned to the executive service or management
9 service or who are special appointees shall serve at the pleasure of the State Board and the
10 State Superintendent.

11 (2) All employees in the professional or skilled service shall be removed in
12 accordance with procedures set forth in § 2–105 of this subtitle and Title 11 of the State
13 Personnel and Pensions Article.

14 (d)] (1) In addition to the other duties specified in this section, each employee
15 in the Department has the duties assigned to the employee by the State Superintendent.

16 (2) The Deputy State Superintendent designated by the State
17 Superintendent or by the State Board is the acting State Superintendent when the State
18 Superintendent is absent or disabled.

19 (3) Assistant State superintendents and directors have charge of the
20 various divisions of the Department.

21 **2–104.1.**

22 (A) **EXCEPT AS OTHERWISE PROVIDED BY LAW, APPOINTMENTS AND HIRING**
23 **BY THE STATE BOARD ARE NOT SUBJECT TO OR CONTROLLED BY THE PROVISIONS**
24 **OF DIVISION I OF THE STATE PERSONNEL AND PENSIONS ARTICLE THAT GOVERN**
25 **THE STATE PERSONNEL MANAGEMENT SYSTEM.**

26 (B) **IN ACCORDANCE WITH THE REQUIREMENTS OF TITLE 3 OF THE STATE**
27 **PERSONNEL AND PENSIONS ARTICLE, THE STATE BOARD SHALL ESTABLISH**
28 **GENERAL POLICIES AND GUIDELINES GOVERNING THE HIRING OR APPOINTMENT,**
29 **COMPENSATION, ADVANCEMENT, AND TERMINATION OF ALL REGULAR FULL–TIME**
30 **AND PART–TIME PERSONNEL.**

31 (C) **THE POLICIES ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION**
32 **SHALL INCLUDE CONSIDERATION OF HIRING A CONTRACTUAL EMPLOYEE TO FILL A**
33 **VACANT POSITION IN THE SAME OR SIMILAR CLASSIFICATION IN WHICH THE**
34 **CONTRACTUAL EMPLOYEE IS EMPLOYED.**

1 2–105.

2 [The] **SUBJECT TO § 2–104.1 OF THIS SUBTITLE, THE** credential secretary and
 3 statistician of the Department are special appointments in the State Personnel
 4 Management System.

5 2–205.

6 **(R) FROM THE NOMINEES PROPOSED BY THE STATE SUPERINTENDENT,**
 7 **THE STATE BOARD MAY APPOINT OR HIRE EMPLOYEES OF THE DEPARTMENT**
 8 **UNDER § 2–104.1 OF THIS TITLE WHO ARE NOT SUBJECT TO OR CONTROLLED BY THE**
 9 **PROVISIONS OF STATE LAW RELATING TO OTHER STATE EMPLOYEES.**

10 **Article – State Finance and Procurement**

11 11–203.

12 (a) Except as provided in subsection (b) of this section, this Division II does not
 13 apply to:

14 (1) procurement by:

15 (xviii) the Department of Natural Resources, for negotiating or entering
 16 into grants, agreements, or partnerships with nonprofit entities related to conservation
 17 service opportunities; [and]

18 **(XIX) THE STATE DEPARTMENT OF EDUCATION, TO CARRY OUT**
 19 **THE REQUIREMENTS OF TITLE 1, SUBTITLE 3 OF THE EDUCATION ARTICLE; AND**

20 [(xix)] **(XX)** the State Archives for preservation, conservation, proper
 21 care, restoration, and transportation of fine art or decorative art that is:

22 1. in the custody of the Commission on Artistic Property; and

23 2. owned by or loaned to the State;

24 **Article – State Government**

25 8–3A–02.

26 (a) On or before December 1 of each gubernatorial election year:

27 (1) the Secretary of Budget and Management shall compile a list of the
 28 position, pay grade, and title of each employee in the State Personnel Management System

1 who is employed with regard to political affiliation, belief, or opinion under § 4–201(c)(2)(ii)
2 of the State Personnel and Pensions Article; [and]

3 (2) the Secretary of Transportation shall compile a list of the position, pay
4 grade, and title of each employee in the Maryland Department of Transportation’s Human
5 Resource System who is employed with regard to political affiliation, belief, or opinion
6 under § 2–103.4(b)(2)(ii) of the Transportation Article; AND

7 **(3) THE STATE SUPERINTENDENT OF SCHOOLS SHALL COMPILE A**
8 **LIST OF THE POSITION, PAY GRADE, AND TITLE OF EACH EMPLOYEE IN THE STATE**
9 **DEPARTMENT OF EDUCATION’S HUMAN RESOURCE SYSTEM WHO IS EMPLOYED**
10 **WITH REGARD TO POLITICAL AFFILIATION, BELIEF, OR OPINION UNDER § 2–104.1**
11 **OF THE EDUCATION ARTICLE.**

12 (b) **(1)** The Secretary of Transportation shall provide the list of employees
13 required under subsection (a)(2) of this section to the Secretary of Budget and Management
14 on or before December 15 of each gubernatorial election year.

15 **(2) THE STATE SUPERINTENDENT OF SCHOOLS SHALL PROVIDE THE**
16 **LIST OF EMPLOYEES REQUIRED UNDER SUBSECTION (A)(3) OF THIS SECTION TO THE**
17 **SECRETARY OF BUDGET AND MANAGEMENT ON OR BEFORE DECEMBER 15 EACH**
18 **GUBERNATORIAL ELECTION YEAR.**

19 (c) In accordance with § 2–1257 of this article, on or before December 31 of each
20 gubernatorial election year, the Secretary of Budget and Management shall submit a report
21 to the Governor, the President of the Senate, and the Speaker of the House of Delegates on
22 the total number of State employees employed with regard to political affiliation, belief, or
23 opinion under this section.

24 **Article – State Personnel and Pensions**

25 2–305.

26 (a) This section applies to all employees of all units in the Executive, Judicial,
27 and Legislative branches of State government, including all units with independent
28 personnel systems except for the Department of Transportation, **THE STATE BOARD OF**
29 **EDUCATION**, and the University System of Maryland.

30 (b) During any stage of a State employee’s complaint, grievance, or other
31 administrative or legal action that concerns State employment, the employee may not be
32 subjected to coercion, discrimination, interference, reprisal, or restraint by or initiated on
33 behalf of the employer solely as a result of that employee’s pursuit of the grievance,
34 complaint, or action.

35 (c) A State employee may not intentionally take or assist in taking an act of
36 coercion, discrimination, interference, reprisal, or restraint against another employee

1 solely as a result of that employee's pursuit of a grievance, complaint, or other
2 administrative or legal action that concerns State employment.

3 (d) An employee who violates subsection (c) of this section is subject to
4 disciplinary action, including the termination of State employment.

5 4-302.

6 (a) This section does not apply to the **STATE BOARD OF EDUCATION OR THE**
7 University System of Maryland.

8 (b) The Secretary shall submit to the Governor and, subject to § 2-1257 of the
9 State Government Article, to the General Assembly an annual report covering all units of
10 the Executive Branch of State government, including a unit with an independent personnel
11 system, for each fiscal year that:

12 (1) provides information about:

13 (i) employee performance and efficiency;

14 (ii) use of leave by State employees;

15 (iii) incentive awards;

16 (iv) whistleblower proceedings;

17 (v) each denial of a pay increase, each disciplinary suspension, each
18 grievance, each involuntary demotion, and each rejection on probation; and

19 (vi) a summary of the equal employment opportunity report required
20 under § 5-204 of this article, including hiring, firing, promotions, terminations, and
21 rejections on probation, by race, sex, and age;

22 (2) provides statistics and rankings that compare minority group State
23 employees to all State employees in all job categories;

24 (3) provides information about part-time work and, in the Secretary's
25 discretion, alternate work schedules, work days, and work locations;

26 (4) provides information on the total number of positions designated as
27 special appointments, including special appointments designated with regard to political
28 affiliation, belief, or opinion; and

29 (5) makes any recommendations about conditions in State employment
30 that the Secretary considers advisable.

1 (c) The report required by this section shall be submitted on or before January 1
2 following the fiscal year to which it applies.

3 5–205.

4 (a) In accordance with the provisions and intent of the Maryland Constitution
5 and other laws of the State, each unit shall:

6 (1) comply with all applicable regulations, policies, guidelines, and
7 directives of the Secretary to carry out this section;

8 (2) cooperate fully with the Coordinator in the investigation of complaints
9 of discrimination in violation of § 5–208 of this subtitle;

10 (3) (i) in accordance with the regulations, policies, guidelines, and
11 directives of the Secretary, annually prepare a plan that includes the development and
12 implementation of policies and programs to ensure that protected group members are
13 appropriately represented and that the personnel practices in the unit are not
14 discriminatory; and

15 (ii) submit to the Secretary the progress reports about the plan that
16 the Secretary requires;

17 (4) for each fiscal year, submit to the Coordinator by the following October
18 15 an annual report about the activities that the unit undertook in that fiscal year to
19 implement the Program, including:

20 (i) information about personnel practices within the unit;

21 (ii) a summary of complaints filed, investigated, resolved, and
22 pending;

23 (iii) information about relations with other units of State
24 government;

25 (iv) information about sexual harassment policies and prevention
26 training; and

27 (v) a summary of sexual harassment complaints filed, investigated,
28 resolved, and pending; and

29 (5) provide a copy of the annual report to the Commission on Civil Rights.

30 (b) Notwithstanding any other provision of this subtitle[,]:

31 (1) the University System of Maryland may satisfy any reporting
32 requirement required by this subtitle or by regulations adopted under this subtitle by

1 submitting to the Secretary an annual report on the System's equal employment
2 opportunity policies and programs in such format as is determined by the System's Board
3 of Regents; AND

4 **(2) THE STATE BOARD OF EDUCATION MAY SATISFY ANY REPORTING**
5 **REQUIREMENT REQUIRED BY THIS SUBTITLE OR BY REGULATIONS ADOPTED UNDER**
6 **THIS SUBTITLE BY SUBMITTING TO THE SECRETARY AN ANNUAL REPORT ON THE**
7 **STATE BOARD'S EQUAL EMPLOYMENT OPPORTUNITY POLICIES AND PROGRAMS IN**
8 **SUCH FORMAT AS IS DETERMINED BY THE STATE BOARD.**

9 (c) An appointing authority shall provide each employee subject to this subtitle
10 with a notice of:

11 (1) the protections and remedies against employment discrimination
12 available to the employee under:

13 (i) this subtitle;

14 (ii) the laws governing the Commission on Civil Rights; and

15 (iii) the laws governing the Equal Employment Opportunity
16 Commission; and

17 (2) the applicable time limitations for filing complaints under those laws.

18 5-208.

19 (d) (1) Except as provided in paragraph (2) of this subsection, personnel
20 actions concerning special appointments or applicants for special appointment in the State
21 Personnel Management System or comparable positions in an independent personnel
22 system in the Executive Branch of State government shall be made without regard to
23 political affiliation, belief, or opinion.

24 (2) For the positions that are designated by the Secretary under §
25 4-201(c)(2)(ii) of this article, **BY THE STATE BOARD OF EDUCATION UNDER § 2-104.1**
26 **OF THE EDUCATION ARTICLE**, or by the Secretary of Transportation under §
27 2-103.4(b)(2) of the Transportation Article, personnel actions concerning special
28 appointments or applicants for special appointment in the State Personnel Management
29 System or comparable positions in an independent personnel system in the Executive
30 Branch of State government may be made with regard to political affiliation, belief, or
31 opinion.

32 5-209.

33 (a) An employee in the skilled service, professional service, or management
34 service of the State Personnel Management System **OR AN EMPLOYEE OF THE STATE**

1 **BOARD OF EDUCATION** may elect to pursue an allegation of employment discrimination
2 under:

3 (1) the complaint procedures in this subtitle; or

4 (2) the grievance procedures in Title 12 of this article.

5 (b) An employee of the University System of Maryland who is eligible to file a
6 grievance under Title 13 of the Education Article may elect to pursue an allegation of
7 employment discrimination under:

8 (1) the complaint procedures in this subtitle; or

9 (2) a grievance under Title 13 of the Education Article.

10 (c) An employee of Morgan State University who is eligible to file a grievance
11 under Title 14 of the Education Article may elect to pursue an allegation of employment
12 discrimination under:

13 (1) the complaint procedures in this subtitle; or

14 (2) a grievance under Title 14 of the Education Article.

15 5–307.

16 (a) An employee in the State Personnel Management System **OR AN EMPLOYEE**
17 **OF THE STATE BOARD OF EDUCATION** who seeks relief for a violation of § 5–305 of this
18 subtitle may elect to file:

19 (1) a complaint under § 5–309 of this subtitle; or

20 (2) a grievance under Title 12 of this article.

21 (b) An employee of the University System of Maryland who is eligible to file a
22 grievance under Title 13 of the Education Article and seeks relief for a violation of § 5–305
23 of this subtitle may elect to file:

24 (1) a complaint under § 5–309 of this subtitle; or

25 (2) a grievance under Title 13 of the Education Article.

26 (c) An employee of Morgan State University who is eligible to file a grievance
27 under Title 14 of the Education Article and seeks relief for a violation of § 5–305 of this
28 subtitle may elect to file:

29 (1) a complaint under § 5–309 of this subtitle; or

1 (2) a grievance under Title 14 of the Education Article.

2 8–102.

3 (b) (1) The Executive Pay Plan shall include each permanent position in the
4 Executive Branch of State government, including each permanent position in the
5 Governor’s office, that is not included in the Standard Pay Plan and has a pay rate equal
6 to or exceeding the lowest pay rate in the Executive Pay Plan.

7 (2) In addition, and notwithstanding any other law, the Governor may
8 include in the Executive Pay Plan any executive management position in a unit in the
9 Executive Branch with independent pay–setting authority, except a position in the **STATE**
10 **BOARD OF EDUCATION, THE** University System of Maryland, Morgan State University,
11 or St. Mary’s College.

12 14–103.

13 Except as otherwise specifically provided by State law, this State, its officers, and its
14 units may not raise the defense of sovereign immunity in any administrative, arbitration,
15 or judicial proceeding involving an employee grievance or hearing that is held under:

16 (1) this Division I or a regulation adopted under it; or

17 (2) a personnel policy or regulation that governs classified employees of the
18 **STATE BOARD OF EDUCATION, THE** University System of Maryland, or Morgan State
19 University.

20 14–201.

21 In this subtitle, “award” means a final monetary or benefit award or judgment in an
22 administrative, arbitration, or judicial proceeding involving an employee grievance or
23 hearing that is held under:

24 (1) this Division I or a regulation adopted under it; [or]

25 (2) a personnel policy or regulation that governs classified employees of the
26 University System of Maryland or Morgan State University; **OR**

27 **(3) A PERSONNEL POLICY OR REGULATION THAT GOVERNS**
28 **CLASSIFIED EMPLOYEES OF THE STATE BOARD OF EDUCATION.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before July 1, 2024, the
30 State Board of Education shall work with the Department of Budget and Management to
31 implement a phased transition of State Board employees from the State Personnel
32 Management System to the personnel system developed by the State Board under §
33 2–104.1 of the Education Article, as enacted by Section 1 of this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
2 measure, is necessary for the immediate preservation of the public health or safety, has
3 been passed by a yea and nay vote supported by three-fifths of all the members elected to
4 each of the two Houses of the General Assembly, and shall take effect from the date it is
5 enacted.