

HOUSE BILL 422

P1

EMERGENCY BILL

8lr0954
CF 8lr0953

By: **Delegates A. Miller, Barve, Kelly, Korman, and Mosby**

Introduced and read first time: January 24, 2018

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Vacancy Reform Act**

3 FOR the purpose of altering a certain provision of law to clarify that the Appointments
4 Office in the Office of the Governor is prohibited from taking any action regarding
5 the decision of certain persons to appoint, promote, transfer, reassign, discipline, or
6 terminate certain employees; providing that an individual who was appointed to fill
7 a vacancy in an office during the recess of the Senate or who was nominated to fill a
8 vacancy in an office during a regular session of the Senate is not qualified to serve
9 in the office and is prohibited from continuing to serve in the office after a certain
10 time under certain circumstances; prohibiting an individual who is prohibited from
11 continuing to serve in an office under a certain provision of this Act from carrying
12 out the responsibilities of the office in any capacity and making certain
13 representations; providing that any action taken by an individual who is prohibited
14 from continuing to serve in the office under certain provisions of this Act in violation
15 of a certain provision of this Act is void under certain circumstances; prohibiting an
16 individual who violates certain provisions of this Act from receiving any
17 compensation related to serving in the office or carrying out the responsibilities of
18 the office; providing for the application of certain provisions of this Act; making this
19 Act an emergency measure; and generally relating to appointments in State
20 government.

21 BY repealing and reenacting, with amendments,
22 Article – State Government
23 Section 8–3A–01
24 Annotated Code of Maryland
25 (2014 Replacement Volume and 2017 Supplement)

26 BY adding to
27 Article – State Government
28 Section 17–109
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2014 Replacement Volume and 2017 Supplement)

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

Article – State Government

8–3A–01.

(a) (1) In this section the following words have the meanings indicated.

(2) “Appointing authority” has the meaning stated in § 1–101(b) of the State Personnel and Pensions Article.

(3) “Office” means the Appointments Office in the Office of the Governor that performs the function of recommending to the Governor the appointment or nomination of an individual to serve as a member of a State or local board, commission, council, committee, authority, task force, or other entity that by law requires the membership to be appointed in whole or in part by the Governor, whether or not the appointment or nomination is with the advice and consent of the Senate or House of Delegates.

(b) The Office may not direct [or], overrule, **OR OTHERWISE TAKE ANY ACTION REGARDING THE DECISION OF** an appointing authority, the Secretary of Budget and Management, or any unit of the Department of Budget and Management[, on any decision] to appoint, promote, transfer, reassign, discipline, or terminate an employee under the jurisdiction of the appointing authority.

(c) Only an appointing authority may delegate in writing the authority to act on the appointing authority’s behalf, but only to an employee or officer under the jurisdiction of the appointing authority.

(d) An appointing authority may not delegate the authority to make the final decision on the termination of an employee.

(e) An appointing authority shall notify the Secretary of Budget and Management of any delegation of authority authorized under this section by providing the Secretary a copy of the delegation.

17–109.

(A) THIS SECTION APPLIES:

(1) ONLY TO AN OFFICE FOR WHICH AN APPOINTMENT TO FILL A VACANCY IS REQUIRED TO BE MADE WITH THE ADVICE AND CONSENT OF THE SENATE; AND

1 **(2) REGARDLESS OF WHETHER A SALARY OR ANY OTHER**
2 **COMPENSATION IS PROVIDED TO THE HOLDER OF THE OFFICE.**

3 **(B) AN INDIVIDUAL WHO WAS APPOINTED TO FILL A VACANCY IN AN OFFICE**
4 **DURING THE RECESS OF THE SENATE OR WHO WAS NOMINATED TO FILL A VACANCY**
5 **IN AN OFFICE DURING A REGULAR SESSION OF THE SENATE IS NOT QUALIFIED TO**
6 **SERVE IN THE OFFICE AND MAY NOT CONTINUE TO SERVE IN THE OFFICE AFTER THE**
7 **ADJOURNMENT OF THE REGULAR SESSION OF THE SENATE AT WHICH THE**
8 **NOMINATION WAS MADE IF:**

9 **(1) THE GOVERNOR WITHDREW THE NOMINATION DURING THE**
10 **REGULAR SESSION OF THE SENATE AT WHICH THE NOMINATION WAS MADE;**

11 **(2) THE SENATE FAILED TO ACT ON THE NOMINATION BEFORE THE**
12 **SENATE ADJOURNED THE REGULAR SESSION OF THE SENATE AT WHICH THE**
13 **NOMINATION WAS MADE AND THE INDIVIDUAL WAS NOT REAPPOINTED TO THE**
14 **OFFICE BY THE GOVERNOR;**

15 **(3) THE INDIVIDUAL WITHDREW THE INDIVIDUAL'S NOMINATION;**

16 **(4) THE GOVERNOR FAILS TO MAKE THE NOMINATION ON THE FIRST**
17 **DAY OF THE REGULAR SESSION OF THE SENATE IF REQUIRED UNDER ARTICLE II, §**
18 **11 OF THE MARYLAND CONSTITUTION; OR**

19 **(5) THE INDIVIDUAL IS NOT CONFIRMED BY THE SENATE AND IS**
20 **DESIGNATED BY THE GOVERNOR TO FILL THE VACANCY IN AN ACTING CAPACITY.**

21 **(C) AN INDIVIDUAL WHO IS PROHIBITED FROM CONTINUING TO SERVE IN**
22 **AN OFFICE UNDER SUBSECTION (B) OF THIS SECTION MAY NOT:**

23 **(1) CARRY OUT THE RESPONSIBILITIES OF THE OFFICE IN ANY**
24 **CAPACITY; OR**

25 **(2) MAKE REPRESENTATIONS THAT THE INDIVIDUAL:**

26 **(I) SERVES IN THE OFFICE IN ANY CAPACITY; OR**

27 **(II) IS LEGALLY AUTHORIZED TO CARRY OUT THE**
28 **RESPONSIBILITIES OF THE OFFICE IN ANY CAPACITY.**

29 **(D) IF THE HOLDER OF THE OFFICE IS NOT PROVIDED A SALARY, ANY**
30 **ACTION TAKEN BY AN INDIVIDUAL WHO IS PROHIBITED FROM CONTINUING TO**

1 SERVE IN THE OFFICE UNDER SUBSECTION (B) OF THIS SECTION IN VIOLATING
2 SUBSECTION (C)(1) OF THIS SECTION IS VOID.

3 (E) AN INDIVIDUAL WHO VIOLATES THIS SECTION MAY NOT RECEIVE ANY
4 COMPENSATION, INCLUDING A SALARY OR REIMBURSEMENT FOR EXPENSES OUT OF
5 THE STATE BUDGET, RELATED TO SERVING IN THE OFFICE OR CARRYING OUT THE
6 RESPONSIBILITIES OF THE OFFICE.

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