SENATE BILL 794

By: Senator Guzzone
Introduced and read first time: February 7, 2022
Assigned to: Budget and Taxation

A BILL ENTITLED

AN ACT concerning
State Department of Education – Procurement and Personnel Actions

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
SENATE BILL 794

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

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

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

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

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

Article – Education

2–104.

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

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

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

(3) Any other employees to fill positions authorized by the State Board under § 2–104.1 of this subtitle and provided in the State budget.

(b) (1) [(i)] From the nominees proposed by the State Superintendent, the State Board shall appoint all employees to positions in the Department.
Except as provided in § 6–405(a)(3) of the State Personnel and Pensions Article, all positions shall be in the executive service, management service, professional service, or skilled service in the State Personnel Management System.

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

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

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

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

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

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

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

2–104.1.

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

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

(C) THE POLICIES ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE CONSIDERATION OF HIRING A CONTRACTUAL EMPLOYEE TO FILL A VACANT POSITION IN THE SAME OR SIMILAR CLASSIFICATION IN WHICH THE CONTRACTUAL EMPLOYEE IS EMPLOYED.
2–105.

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

2–205.

(R) FROM THE NOMINEES PROPOSED BY THE STATE SUPERINTENDENT, the State Board may appoint or hire employees of the Department under § 2–104.1 OF THIS TITLE WHO ARE NOT SUBJECT TO OR CONTROLLED BY THE PROVISIONS OF STATE LAW RELATING TO OTHER STATE EMPLOYEES.

Article – State Finance and Procurement

11–203.

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

(1) procurement by:

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

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

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

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

2. owned by or loaned to the State;

Article – State Government

8–3A–02.

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

(1) the Secretary of Budget and Management shall compile a list of the position, pay grade, and title of each employee in the State Personnel Management System
who is employed with regard to political affiliation, belief, or opinion under § 4–201(c)(2)(ii) of the State Personnel and Pensions Article; [and]

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

(3) the State Superintendent of Schools shall compile a list of the position, pay grade, and title of each employee in the State Department of Education’s Human Resource System who is employed with regard to political affiliation, belief, or opinion under § 2–104.1 of the Education Article.

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

(2) The State Superintendent of Schools shall provide the list of employees required under subsection (a)(3) of this section to the Secretary of Budget and Management on or before December 15 each gubernatorial election year.

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

Article – State Personnel and Pensions

2–305.

(a) This section applies to all employees of all units in the Executive, Judicial, and Legislative branches of State government, including all units with independent personnel systems except for the Department of Transportation, the State Board of Education, and the University System of Maryland.

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

(c) A State employee may not intentionally take or assist in taking an act of coercion, discrimination, interference, reprisal, or restraint against another employee
solely as a result of that employee’s pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

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

4–302.

(a) This section does not apply to the State Board of Education or the University System of Maryland.

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

(1) provides information about:

   (i) employee performance and efficiency;

   (ii) use of leave by State employees;

   (iii) incentive awards;

   (iv) whistleblower proceedings;

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

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

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

(3) provides information about part–time work and, in the Secretary’s discretion, alternate work schedules, work days, and work locations;

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

(5) makes any recommendations about conditions in State employment that the Secretary considers advisable.
The report required by this section shall be submitted on or before January 1 following the fiscal year to which it applies.

In accordance with the provisions and intent of the Maryland Constitution and other laws of the State, each unit shall:

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

2. cooperate fully with the Coordinator in the investigation of complaints of discrimination in violation of § 5–208 of this subtitle;

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

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

4. for each fiscal year, submit to the Coordinator by the following October an annual report about the activities that the unit undertook in that fiscal year to implement the Program, including:

   (i) information about personnel practices within the unit;

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

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

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

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

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

Notwithstanding any other provision of this subtitle(.]):

(1) the University System of Maryland may satisfy any reporting requirement required by this subtitle or by regulations adopted under this subtitle by
submitting to the Secretary an annual report on the System’s equal employment
opportunity policies and programs in such format as is determined by the System’s Board
of Regents; AND

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

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

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

(i) this subtitle;

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

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

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

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

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

(a) An employee in the skilled service, professional service, or management
service of the State Personnel Management System OR AN EMPLOYEE OF THE STATE
BOARD OF EDUCATION may elect to pursue an allegation of employment discrimination under:

(1) the complaint procedures in this subtitle; or

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

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

(1) the complaint procedures in this subtitle; or

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

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

(1) the complaint procedures in this subtitle; or

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

5–307.

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

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

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

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

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

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

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

(1) a complaint under § 5–309 of this subtitle; or
(2) a grievance under Title 14 of the Education Article.

8–102.

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

(2) In addition, and notwithstanding any other law, the Governor may include in the Executive Pay Plan any executive management position in a unit in the Executive Branch with independent pay-setting authority, except a position in the State Board of Education, the University System of Maryland, Morgan State University, or St. Mary's College.

14–103.

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

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

(2) a personnel policy or regulation that governs classified employees of the State Board of Education, the University System of Maryland, or Morgan State University.

14–201.

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before July 1, 2024, the State Board of Education shall work with the Department of Budget and Management to implement a phased transition of State Board employees from the State Personnel Management System to the personnel system developed by the State Board under § 2–104.1 of the Education Article, as enacted by Section 1 of this Act.
SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.