

HOUSE BILL 402

R2, P1

0lr1215

By: **Delegates Barron and Korman**

Introduced and read first time: January 22, 2020

Assigned to: Appropriations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 18, 2020

CHAPTER _____

1 AN ACT concerning

2 **Washington Metropolitan Area Transit Authority – Sovereign Immunity –**
3 **Employee Whistleblower Protection**

4 FOR the purpose of providing that certain whistleblower protections for certain employees
5 of the State apply to the employees of the Washington Metropolitan Area Transit
6 Authority contingent on certain action by the Commonwealth of Virginia and the
7 District of Columbia; specifying certain whistleblower protection laws that the
8 General Assembly considers similar for the purpose of a certain provision of law;
9 establishing the intent of the General Assembly to waive the sovereign immunity of
10 the State extended to the Washington Metropolitan Area Transit Authority for
11 certain purposes; altering the Washington Metropolitan Area Transit Authority
12 Compact to waive jurisdictional sovereign immunity extended to the Washington
13 Metropolitan Area Transit Authority for certain purposes and subject to a certain
14 contingency; and generally relating to the sovereign immunity of the State extended
15 to the Washington Metropolitan Area Transit Authority.

16 BY repealing and reenacting, with amendments,
17 Article – State Personnel and Pensions
18 Section 5–301
19 Annotated Code of Maryland
20 (2015 Replacement Volume and 2019 Supplement)

21 BY adding to
22 Article – Transportation
23 Section 10–209

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
2 (2015 Replacement Volume and 2019 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Transportation
5 Section 10–204 Title III Article XVI Section 80
6 Annotated Code of Maryland
7 (2012 Replacement Volume and 2019 Supplement)

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

10 **Article – State Personnel and Pensions**

11 5–301.

12 **(A)** This subtitle applies to:

13 **(1)** all employees and State employees who are applicants for positions in
14 the Executive Branch of State government, including a unit with an independent personnel
15 system; AND

16 **(2)** IF BOTH THE COMMONWEALTH OF VIRGINIA AND THE DISTRICT
17 OF COLUMBIA ENACT SIMILAR WHISTLEBLOWER PROTECTIONS OR WAIVE THEIR
18 SOVEREIGN IMMUNITY AS APPLIED TO THE WASHINGTON METROPOLITAN AREA
19 TRANSIT AUTHORITY FOR THE PURPOSE OF PROVIDING WHISTLEBLOWER
20 PROTECTIONS, ALL EMPLOYEES OF THE WASHINGTON METROPOLITAN TRANSIT
21 AUTHORITY.

22 **(B)** FOR THE PURPOSE OF SUBSECTION (A)(2) OF THIS SECTION, THE
23 GENERAL ASSEMBLY CONSIDERS THE FOLLOWING WHISTLEBLOWER PROTECTION
24 LAWS TO BE SIMILAR TO WHISTLEBLOWER PROTECTION LAWS ESTABLISHED UNDER
25 TITLE 5, SUBTITLE 3 OF THE STATE PERSONNEL AND PENSIONS ARTICLE:

26 **(1)** THE DISTRICT OF COLUMBIA’S EMPLOYEES OF DISTRICT
27 CONTRACTORS AND INSTRUMENTALITY WHISTLEBLOWER PROTECTION ACT,
28 TITLE 2, CHAPTER 2, SUBCHAPTER XII OF THE CODE OF THE DISTRICT OF
29 COLUMBIA; AND

30 **(2)** THE COMMONWEALTH OF VIRGINIA’S FRAUD AND ABUSE
31 WHISTLEBLOWER PROTECTION ACT, TITLE 2.2, CHAPTER 30.1 OF THE CODE OF
32 VIRGINIA.

33 **Article – Transportation**

1 **10-209.**

2 IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE SOVEREIGN
3 IMMUNITY OF THE STATE NOT EXTEND TO THE WASHINGTON METROPOLITAN AREA
4 TRANSIT AUTHORITY FOR THE PURPOSES OF CLAIMS BROUGHT AGAINST THE
5 WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY BY AN EMPLOYEE OR
6 FORMER EMPLOYEE UNDER:

7 (1) THE FALSE CLAIMS ACT, ~~32~~ 31 U.S.C. § 3729 ET SEQ., AS
8 AMENDED; AND

9 (2) TITLE 5, SUBTITLE 3 OF THE STATE PERSONNEL AND PENSIONS
10 ARTICLE.

11 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
12 as follows:

13 Article – Transportation

14 10-204.

15 Title III

16 Article XVI

17 80.

18 (A) The Authority shall be liable for its contracts and for its torts and those of its
19 directors, officers, employees and agents committed in the conduct of any proprietary
20 function, in accordance with the law of the applicable signatory (including rules on conflict
21 of laws), but shall not be liable for any torts occurring in the performance of a governmental
22 function. The exclusive remedy for such breach of contracts and torts for which the
23 Authority shall be liable, as herein provided, shall be by suit against the Authority.
24 [Nothing] EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SECTION, NOTHING
25 contained in this title shall be construed as a waiver by the District of Columbia, Maryland,
26 Virginia and the counties and cities within the zone of any immunity from suit.

27 (B) THE SOVEREIGN IMMUNITY OF THE DISTRICT OF COLUMBIA,
28 MARYLAND, AND VIRGINIA DOES NOT EXTEND TO THE AUTHORITY FOR THE
29 PURPOSES OF CLAIMS BROUGHT AGAINST THE AUTHORITY BY AN EMPLOYEE OR
30 FORMER EMPLOYEE OF THE AUTHORITY UNDER:

31 (1) THE FALSE CLAIMS ACT, 31 U.S.C. § 3729 ET SEQ., AS AMENDED;
32 OR

1 **(2) A LAW ENACTED BY THE DISTRICT OF COLUMBIA, MARYLAND, OR**
 2 **VIRGINIA THAT AUTHORIZES A PRIVATE RIGHT OF ACTION FOR AN ALLEGED**
 3 **VIOLATION OF A LAW INTENDED TO PROVIDE WHISTLEBLOWER PROTECTIONS.**

4 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act may not
 5 take effect until similar Acts are passed by the District of Columbia and the Commonwealth
 6 of Virginia; that the District of Columbia and the Commonwealth of Virginia are requested
 7 to concur in this Act of the General Assembly by the passage of substantially similar Acts;
 8 that the Department of Legislative Services shall notify the appropriate officials of the
 9 District of Columbia, the Commonwealth of Virginia, and the United States Congress of
 10 the Passage of this Act; and that, upon concurrence in this Act by the District of Columbia,
 11 the Commonwealth of Virginia, and the United States, the Governor of the State of
 12 Maryland shall issue a proclamation declaring this Act valid and effective and shall forward
 13 a copy of the proclamation to the Executive Director of the Department of Legislative
 14 Services.

15 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this
 16 Act, this Act shall take effect October 1, 2020.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.