

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 813
 Appropriations

(Delegate Haynes, *et al.*)

**Higher Education - Employee Rights - Equal Employment Opportunity Program
 and Maryland Whistleblower Law**

This bill extends the authority to administer the State’s Equal Employment Opportunity (EEO) program to include the Board of Regents of the University System of Maryland (USM), the Board of Regents of Morgan State University (MSU), the Board of Trustees of St. Mary’s College of Maryland (SMCM), or the Board of Trustees of Baltimore City Community College (BCCC), in addition to the Secretary of Budget and Management. These boards must adopt regulations in accordance with EEO requirements. The bill clarifies that the EEO program and the Maryland Whistleblower Law apply to USM, MSU, SMCM, and BCCC; it specifies that employees in the bargaining unit of SMCM or BCCC may choose to file an employment discrimination or whistleblower complaint or grievance either with the Secretary of Budget and Management or with their respective boards. USM, MSU, SMCM, and BCCC must adopt policies to comply with the bill.

Fiscal Summary

State Effect: Higher education expenditures increase by \$122,300 in FY 2017 due to additional staffing needs for MSU and BCCC to administer and enforce the EEO program. USM and SMCM can implement the bill with existing resources. Out-year expenditures reflect annualization, elimination of one-time start-up costs, and inflation. Revenues are not affected.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
Higher Ed Exp.	122,300	145,800	151,600	157,600	163,900
Net Effect	(\$122,300)	(\$145,800)	(\$151,600)	(\$157,600)	(\$163,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Equal Employment Opportunity Program

The purpose of the State's EEO program is to promote a work environment free of any unlawful discrimination, harassment, and retaliation and to ensure a system that provides equal opportunity in employment on the basis of merit and fitness. It covers all employees in any Executive Branch agency (including those with an independent personnel system) and applicants for a position in the skilled, professional, and management services (or comparable positions) in those agencies.

The State's EEO program (1) reviews discrimination complaints; (2) investigates whistleblower complaints; (3) monitors agencies' fair practices and EEO programs and policies; (4) provides training and technical assistance to managers and supervisors; (5) ensures compliance with federal, State, and local laws prohibiting discrimination; (6) evaluates State agencies' EEO efforts; and (7) reports annually to the Governor. It also manages the Employee Assistance Program, which provides confidential and professional referral and assessment services to State employees who are experiencing personal difficulties that are adversely affecting their work performance. An employee must file a complaint that alleges an EEO violation within 30 days after the complainant first knew of or reasonably should have known of the alleged violation.

An employee of USM or MSU may choose to file an employment discrimination grievance either through provisions in the Education Article or through the EEO program, but not both. Similarly, such an employee may file a whistleblower complaint either through provisions in the Education Article or to the Secretary of Budget and Management, but not both.

An employee found to have violated EEO provisions is subject to disciplinary action, including termination. An employee who files an EEO complaint may receive various remedies if a complaint is found to be valid. The Secretary of Budget and Management may (1) order the removal of detrimental information from the complainant's State personnel records; (2) require that the complainant be reinstated to a previously held position of employment; (3) award back pay; (4) grant the complainant leave or seniority; and (5) take appropriate disciplinary action against any individual who caused the violation.

The head of each principal unit of State government must appoint a fair practices officer who reports directly to the head of the unit and is an assistant secretary or an employee of the unit with stature similar to that of an assistant secretary. The head of each principal unit must also appoint an appropriate number of EEO officers for the unit. If necessary, the fair practices officer of a unit may also be the unit's EEO officer. The fair practices officer implements the State's EEO program, investigates and resolves complaints, and coordinates EEO officer activities. An EEO officer monitors all personnel actions, attests that EEO procedures were followed in personnel actions, and performs other assigned duties.

Maryland Whistleblower Law

The Maryland Whistleblower Law protects State Executive Branch employees who "blow the whistle" by disclosing information believed to evidence abuse of authority, gross mismanagement or waste of money, a substantial and specific danger to public health or safety, and/or a violation of the law.

The Whistleblower Law prohibits reprisal against an employee who, after making a disclosure, seeks a remedy provided by any law or policy. A complaint under this statute must be brought within six months after the complainant first knew of, or reasonably should have known of, the violation of the whistleblower protection. The Secretary of Budget and Management, or a designee thereof, is required to conduct an investigation and determine whether a violation occurred within 60 days. After reviewing a final decision under the Whistleblower Law, the court may award costs of litigation and reasonable attorney's fees to a prevailing complainant.

An employee is entitled to remedial action if a violation occurred; such action may include:

- mandating the removal of any related detrimental information from the complainant's State personnel records;
- requiring the supervisor to reinstate the complainant in his/her prior position of employment;
- awarding back pay lost by the employee due to the violation;
- granting leave or seniority; and
- requiring that disciplinary action be taken against the person responsible for the violation.

Background: In fiscal 2015, there were nine whistleblower complaints for employees in the State Personnel Management System and the Maryland Department of Transportation.

USM reports approximately 70 EEO and whistleblower complaints were received in fiscal 2015.

State Expenditures: All employees within USM, MSU, SMCM, and BCCC are already subject to the EEO program and the Maryland Whistleblower Law. However, the bill extends the administrative oversight of both programs to be under the boards of USM, MSU, SMCM, and BCCC, in addition to the Secretary of Budget and Management. Thus, among other things, these institutions must administer and enforce the EEO program, and an employee may file a whistleblower complaint with USM, MSU, SMCM, or BCCC, instead of just with the Secretary of Budget and Management.

USM and SMCM advise that the bill does not have a material impact on their operations, but MSU and BCCC advise they each need one fair practices officer to implement the bill's requirements and for outreach to their employees. Thus, higher education expenditures increase by \$58,540 for MSU and by \$63,790 for BCCC in fiscal 2017, which assumes that MSU and BCCC staff are in place as of October 1, 2016, concurrent with the effective date of the bill. This estimate reflects the cost of hiring two fair practice officers (one at MSU and one at BCCC) to administer and enforce the EEO program, and conduct outreach at BCCC. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$107,451
One-time Start-up Costs	13,788
Operating Expenses	<u>1,091</u>
Total FY 2017 State Expenditures	\$122,330

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: SB 618 (Senator Klausmeier, *et al.*) - Finance.

Information Source(s): Baltimore City Community College, University System of Maryland, Morgan State University, St. Mary's College of Maryland, Department of Budget and Management, Department of Legislative Services

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