

HOUSE BILL 90

P4, P1
HB 1277/21 – APP

(PRE-FILED)

2lr0600
CF 2lr0601

By: **Delegate Henson**

Requested: September 29, 2021

Introduced and read first time: January 12, 2022

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Personnel Management System – Office of the Public Defender –**
3 **Placement and Collective Bargaining**

4 FOR the purpose of specifying that certain positions within the Office of the Public
5 Defender are in certain employment categories in the State Personnel Management
6 System; altering certain provisions of law regarding personnel actions within the
7 Office that relate to the hiring, discipline, and termination of employees; providing
8 that employees of the Office are subject to collective bargaining under the State
9 Personnel Management System; repealing a provision of law that excludes attorneys
10 in the Office from certain grievance procedures in the State Personnel Management
11 System; requiring the Secretary of Budget and Management to assign each
12 appointee or employee of the Office to the appropriate employment category within
13 the State Personnel Management System on or before a certain date; prohibiting any
14 appointee or employee of the Office from receiving a change in pay or benefits as a
15 result of a certain transfer or assignment except under certain circumstances; and
16 generally relating to the personnel of the Office of the Public Defender in the State
17 Personnel Management System.

18 BY repealing and reenacting, with amendments,
19 Article – Criminal Procedure
20 Section 16–203
21 Annotated Code of Maryland
22 (2018 Replacement Volume and 2021 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article – State Personnel and Pensions
25 Section 3–101(a)
26 Annotated Code of Maryland
27 (2015 Replacement Volume and 2021 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – State Personnel and Pensions
3 Section 3–101(b), 3–102(a), 3–205(a) and (c), and 12–102
4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2021 Supplement)

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

8 **Article – Criminal Procedure**

9 16–203.

- 10 (a) (1) The head of the Office is the Public Defender.
- 11 (2) The Public Defender shall be appointed by the Board of Trustees.
- 12 (3) By a vote of at least seven members, the Board of Trustees may remove
13 the Public Defender for:
- 14 (i) misconduct in office;
- 15 (ii) persistent failure to perform the duties of the Office; or
- 16 (iii) conduct prejudicial to the proper administration of justice.
- 17 (4) To qualify for appointment as Public Defender, an individual shall be
18 an attorney admitted to practice law in the State by the Court of Appeals of Maryland who
19 has engaged in the practice of law for at least 5 years before appointment.
- 20 (5) The Public Defender shall receive the same salary as a judge of a circuit
21 court.
- 22 (6) The Public Defender may not engage in the private practice of law.
- 23 (7) The Public Defender serves for a term of 6 years.
- 24 (b) (1) With the approval of the Board of Trustees, the Public Defender shall
25 appoint:
- 26 (i) a deputy public defender **WHO IS IN THE EXECUTIVE SERVICE**
27 **OF THE STATE PERSONNEL MANAGEMENT SYSTEM**; and
- 28 (ii) one district public defender for each district of the District Court,
29 **EACH OF WHOM IS IN THE MANAGEMENT SERVICE OF THE STATE PERSONNEL**
30 **MANAGEMENT SYSTEM.**

1 (2) The deputy public defender and each district public defender shall have
2 the same qualifications as the Public Defender.

3 (3) A district public defender shall:

4 (i) assist the Public Defender to perform the duties of the Office; and

5 (ii) subject to the supervision of the Public Defender, be in charge of
6 the public defender offices in the district for which the district public defender is appointed.

7 (c) (1) With the advice of the district public defenders, the Public Defender
8 may [appoint] **EMPLOY** assistant public defenders in accordance with the State budget.

9 (2) To qualify for [appointment] **EMPLOYMENT** as an assistant public
10 defender, an individual shall be an attorney and admitted to practice law in the State by
11 the Court of Appeals of Maryland.

12 **(3) ASSISTANT PUBLIC DEFENDERS ARE IN THE PROFESSIONAL**
13 **SERVICE OF THE STATE PERSONNEL MANAGEMENT SYSTEM AND MAY BE**
14 **TERMINATED OR OTHERWISE DISCIPLINED ONLY FOR CAUSE IN ACCORDANCE WITH**
15 **TITLE 11 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

16 (d) The deputy public defender[,] **AND** district public defenders[, and assistant
17 public defenders]:

18 (1) shall serve at the pleasure of the Public Defender; and

19 (2) may not engage in the private practice of criminal law.

20 (e) The Public Defender shall [appoint] **EMPLOY** investigators, stenographic
21 assistants, clerical assistants, and other personnel as may be required to assist the Public
22 Defender and the district public defenders to perform the duties of the Office in accordance
23 with the State budget.

24 **(F) (1) SUBJECT TO SUBSECTIONS (B)(1) AND (C)(3) OF THIS SECTION,**
25 **ALL OTHER POSITIONS IN THE OFFICE ARE IN THE EXECUTIVE, MANAGEMENT,**
26 **PROFESSIONAL, OR SKILLED SERVICE OF THE STATE PERSONNEL MANAGEMENT**
27 **SYSTEM.**

28 **(2) EMPLOYEES IN THE PROFESSIONAL OR SKILLED SERVICE MAY BE**
29 **TERMINATED OR OTHERWISE DISCIPLINED ONLY FOR CAUSE IN ACCORDANCE WITH**
30 **TITLE 11 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

31 **[(f)] (G) (1)** Subject to paragraph (2) of this subsection, the Public Defender
32 shall establish and maintain suitable offices in the State.

1 (2) At least one Public Defender's office shall be in each district.

2 [(g)] (H) The number of positions, compensation, and expenses for the Office
3 shall be in accordance with the State budget.

4 Article – State Personnel and Pensions

5 3–101.

6 (a) In this title the following words have the meanings indicated.

7 (b) “Board” means:

8 (1) with regard to any matter relating to employees of any of the units of
9 State government described in § 3–102(a)(1)(i) through (iv) and (vi) through [(xi)] (XII) of
10 this subtitle and employees described in § 3–102(a)(2) and (3) of this subtitle, the State
11 Labor Relations Board; and

12 (2) with regard to any matter relating to employees of any State institution
13 of higher education described in § 3–102(a)(1)(v) of this subtitle, the State Higher Education
14 Labor Relations Board.

15 3–102.

16 (a) Except as provided in this title or as otherwise provided by law, this title
17 applies to:

18 (1) all employees of:

19 (i) the principal departments within the Executive Branch of State
20 government;

21 (ii) the Maryland Insurance Administration;

22 (iii) the State Department of Assessments and Taxation;

23 (iv) the State Lottery and Gaming Control Agency;

24 (v) the University System of Maryland, Morgan State University,
25 St. Mary's College of Maryland, and Baltimore City Community College;

26 (vi) the Comptroller;

27 (vii) the Maryland Transportation Authority who are not police
28 officers;

- 1 (viii) the State Retirement Agency;
- 2 (ix) the State Department of Education;
- 3 (x) the Maryland Environmental Service; [and]
- 4 (xi) the Maryland School for the Deaf; AND

5 **(XII) THE OFFICE OF THE PUBLIC DEFENDER;**

6 (2) firefighters for the Martin State Airport at the rank of captain or below
7 who are employed by the Military Department; and

8 (3) all full-time Maryland Transportation Authority police officers at the
9 rank of first sergeant and below.

10 3-205.

11 (a) The Board is responsible for administering and enforcing provisions of this
12 title relating to employees described in § 3-102(a)(1)(i) through (iv) and (vi) through [(xi)]
13 **(XII)**, (2), and (3) of this title.

14 (c) (1) The Board may not designate a unique bargaining unit for each of the
15 units of government identified in § 3-102(a)(1)(vi) through (ix) AND **(XII)** and (2) of this
16 title.

17 (2) At the request of the exclusive representative, the Board shall:

18 (i) **EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**
19 **SUBSECTION**, determine the appropriate existing bargaining unit into which to assign
20 each employee in the units of government identified in § 3-102(a)(1)(vi) through (ix) AND
21 **(XII)** and (2) of this title; and

22 (ii) accrete all positions to appropriate existing bargaining units.

23 (3) (i) Notwithstanding Subtitle 4 of this title, at the request of the
24 exclusive representative, the Board shall conduct a self-determination election for each
25 bargaining unit representative for the accreted employees in units of government identified
26 in § 3-102(a)(1)(vi) through (ix) AND **(XII)** and (2) of this title.

27 (ii) All elections shall be conducted by secret ballot.

28 (iii) For each election, the Board shall place the following choices on
29 the ballot:

30 1. the name of the incumbent exclusive representative; and

1 2. a provision for “no exclusive representative”.

2 **(4) THE BOARD SHALL ACCRETE POSITIONS TO EXISTING**
3 **BARGAINING UNITS AS FOLLOWS:**

4 **(I) ASSISTANT PUBLIC DEFENDERS, INTAKE SPECIALISTS, AND**
5 **INVESTIGATORS IN THE OFFICE OF THE PUBLIC DEFENDER INTO BARGAINING UNIT**
6 **F FOR SOCIAL AND HUMAN SERVICES PROFESSIONALS; AND**

7 **(II) ALL OTHER POSITIONS IN THE OFFICE OF THE PUBLIC**
8 **DEFENDER INTO APPROPRIATE EXISTING BARGAINING UNITS AS DETERMINED BY**
9 **THE BOARD.**

10 12–102.

11 (a) Except as otherwise provided by law, this title applies to all employees in the
12 State Personnel Management System within the Executive Branch and independent
13 personnel systems.

14 (b) This title does not apply to:

15 (1) an employee who is appointed by the Governor whose appointment
16 requires the Governor’s approval;

17 (2) an employee in the executive service of the State Personnel
18 Management System;

19 (3) a temporary employee;

20 (4) an attorney in the Office of the Attorney General [or the Office of the
21 Public Defender];

22 (5) a State Police officer;

23 (6) an employee under § 7–601 of the Transportation Article who is subject
24 to a collective bargaining agreement that contains another grievance procedure;

25 (7) an employee, including a member of a faculty, who is subject to a
26 contract or regulation governing teacher tenure;

27 (8) a member of the faculty, an officer, or an administrative employee of
28 Baltimore City Community College;

29 (9) a student employee;

1 (10) an individual who, as an inmate or patient in an institution, is
2 employed by the State; or

3 (11) an administrative law judge in the Office of Administrative Hearings.

4 SECTION 2. AND BE IT FURTHER ENACTED, That on or before January 1, 2023,
5 the Secretary of Budget and Management shall assign each appointee or employee of the
6 Office of the Public Defender to the appropriate employment category in accordance with
7 Section 1 of this Act.

8 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding any other
9 provision of law, any appointee or employee transferred to the State Personnel
10 Management System or assigned to a bargaining unit in accordance with this Act may not
11 receive a change in pay or benefits in the course of or as a result of the transfer or
12 assignment, except to be placed on a new salary schedule at a grade and step that results
13 in an increase in annual rate of pay or benefits.

14 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2022.