

**Department of Legislative Services**  
 Maryland General Assembly  
 2022 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 90  
 Appropriations

(Delegate Henson)

Finance

**State Personnel Management System - Office of the Public Defender - Placement and Collective Bargaining**

This bill establishes that the deputy public defender, district public defenders, and assistant public defenders within the Office of the Public Defender (OPD) are in the executive service, management service, and professional service of the State Personnel Management System (SPMS), respectively; all other employees of OPD are in the executive, management, professional, or skilled service of SPMS. By January 1, 2023, the Secretary of Budget and Management must assign each appointee or employee of OPD to the appropriate employment category in accordance with the bill. Employees in the professional or skilled service may be terminated or otherwise disciplined only for cause. Additionally, the bill makes attorneys in OPD subject to specified State employee grievance procedures and collective bargaining provisions (from which they are excluded in current law).

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$147,400 in FY 2023, as discussed below. Out-year expenditures reflect annualization and elimination of one-time costs. General fund expenditures increase further to the extent that employee grievances are referred to the Office of Administrative Hearings (OAH); reimbursable revenues and expenditures increase accordingly.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
ReimB. Rev.	-	-	-	-	-
GF Expenditure	\$147,400	\$173,100	\$177,900	\$182,600	\$187,500
ReimB. Exp.	-	-	-	-	-
Net Effect	(\$147,400)	(\$173,100)	(\$177,900)	(\$182,600)	(\$187,500)

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

**Local Effect:** None.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill states that, notwithstanding any other provision of law, any appointee or employee transferred to SPMS or assigned to a bargaining unit in accordance with the bill may not receive a change in pay or benefits in the course of or as a result of the transfer or assignment, except to be placed on a new salary schedule at a grade and step that results in an increase in annual rate of pay or benefits.

Additionally, the bill specifies that the State Labor Relations Board (SLRB) must assign assistant public defenders, intake specialists, and investigators in OPD to bargaining Unit F for Social and Human Services Professionals. The board must also assign all other OPD employees to appropriate existing bargaining units.

**Current Law:** With the approval of the Board of Trustees of OPD, the Public Defender appoints a deputy public defender and one district public defender for each district of the District Court. The deputy public defender and district public defenders must have the same qualifications as the Public Defender; thus, they must be attorneys admitted to practice law in the State and have engaged in the practice of law for at least five years before appointment. With the advice of the district public defenders, the Public Defender may appoint assistant public defenders in accordance with the State budget. To qualify for appointment as an assistant public defender, an individual must be an attorney admitted to practice law in the State.

The deputy public defender, district public defenders, and assistant public defenders serve at the pleasure of the Public Defender and may not engage in the private practice of criminal law.

The Public Defender must also appoint investigators, stenographic assistants, clerical assistants, and other personnel as may be required to assist the Public Defender and district public defenders to perform the duties of OPD in accordance with the State budget.

### *Employment Categories in the State Personnel Management System*

SPMS has four major employment categories designated in statute:

- executive service, which consists of chief administrators of principal units or comparable positions, including deputy secretaries or assistant secretaries;
- management service, which consists of positions that involve direct responsibility for the oversight and management of personnel and financial resources and that require the exercise of discretion and independent judgment;

- professional service, which consists of positions that require advanced knowledge in a field of science or learning and that normally require a professional license, advanced degree, or both; and
- skilled service, which consists of all other positions.

Classification of skilled, professional, management, and executive service positions in SPMS is the responsibility of the Secretary of Budget and Management. The Secretary must likewise establish the standards and procedures used to classify positions in the skilled, professional, management, and executive services and provide advice and guidance on their use.

The head of a principal unit may classify positions in the unit, in accordance with the Secretary of Budget and Management's established standards and procedures, if the Secretary chooses to delegate the classification authority. If the Secretary delegates the classification authority to the head of a principal unit, that person must prepare a position classification plan for the Secretary's approval and classify all positions in accordance with the approved plan. The Secretary must conduct a position classification audit at least once every three years but only if the classification activity was delegated to the head of a principal unit. The Secretary may conduct operational audits of classification practices and records in principal units once every three years.

A temporary employee is not classified in the skilled, professional, management, or executive service in SPMS.

### *Special Appointments*

Special appointments within SPMS are employees who:

- are appointed directly by the Governor to a position that is not provided for in the State Constitution;
- are appointed directly by the Board of Public Works;
- as determined by the Secretary of Budget and Management, perform a significant policy role or provide direct support to a member of the executive service;
- are assigned to the Government House (the Governor's residence);
- are assigned to the Governor's office; or
- are in positions specified by law to be special appointments.

Special appointments are the only positions in the Executive Branch that may be filled with regard to political affiliation, but most are not. Positions that may be filled with regard to political affiliation must be so designated and disclosed to the appointee.

### *State Employee Grievance Procedures*

Title 12 of the State Personnel and Pensions Article establishes grievance procedures that apply to State employees in SPMS within the Executive Branch and independent personnel systems, subject to specified exemptions. Title 12 does not apply to attorneys in OPD.

Any employee covered by Title 12 may file a grievance. A grievance is a dispute between an employee and the employee's employer about the interpretation of and application to the employee of (1) a personnel policy or regulation adopted by the Secretary of Budget and Management; (2) any other policy or regulation over which management has control; or (3) any term or condition of a memorandum of understanding between the State and the exclusive representative. A grievance is not a dispute about a pay grade or range for a class, the amount or effective date of statewide pay increase, the establishment of a class or assignment of a class to a service category, the establishment of classification standards, a mid-year performance appraisal, or an oral reprimand or counseling.

Resolution of a grievance is a three-step process consisting of (1) initiation of the grievance; (2) an appeal to the head of the principal unit; and (3) an appeal to the Secretary of Budget and Management. If the Secretary does not resolve the grievance, it is referred to OAH for a final administrative decision. Any costs incurred by OAH for the appeal of a grievance to OAH must be paid by the principal unit that employs the grievant.

### *State Employees and Collective Bargaining*

Title 3 of the State Personnel and Pensions Article establishes statutory collective bargaining rights for a large number of State employees. Maryland's collective bargaining law generally applies to employees of the Executive Branch departments, the Maryland Insurance Administration, the State Department of Assessments and Taxation, the State Lottery and Gaming Control Agency, the University System of Maryland (USM), the Office of the Comptroller, the Maryland Transportation Authority ((MDTA) for those who are not police officers), the State Retirement Agency, the Maryland State Department of Education, the Maryland Environmental Service, the Maryland School for the Deaf, Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC), along with specified firefighters for the Martin State Airport and all full-time MDTA police officers at the rank of first sergeant and below.

The State's collective bargaining law does not apply to:

- Maryland Transit Administration employees;
- Legislative and Judicial Branch personnel;
- elected and appointed officials;

- the Governor's and Lieutenant Governor's staff;
- an employee assigned to, or with access to records of, SLRB;
- special appointees and executive service personnel in SPMS;
- senior administrators, faculty members, student employees, and other designated employees of USM, MSU, SMCM, or BCCC;
- the chief, deputy, or assistant administrator of a unit with an independent personnel system;
- temporary or contractual employees in SPMS;
- an employee who is entitled to participate in collective bargaining under another law;
- an employee whose participation in a labor organization is contrary to the State's ethics laws; and
- any supervisory, managerial, or confidential employee as defined by regulation.

Parties to the collective bargaining process must make every reasonable effort to conclude their negotiations by January 1 for any item requiring appropriation for the fiscal year that begins the following July 1. The Governor must include in the annual budget bill submitted to the General Assembly any amounts in the budgets of the principal units required to accommodate any additional cost resulting from the negotiations for the fiscal year beginning the following July 1, if the legislative changes have been negotiated to become effective in that fiscal year.

#### *State Labor Relations Board*

SLRB is a five-member independent unit of State government responsible for administering and enforcing the State's collective bargaining law, particularly the establishment of new collective bargaining units and the certification of exclusive employee representatives for those units. In that capacity, the board holds elections for exclusive employee representatives when petitioned to do so, and also adjudicates dispute resolution cases related to the collective bargaining process.

#### **State Fiscal Effect:**

##### *Office of the Public Defender*

OPD advises that the deputy public defender position and district public defender positions are classified in the executive and management services, respectively. Thus, the bill codifies existing practice with respect to these positions.

Assistant public defender positions are currently appointed positions in the professional service but are designated as special appointments, which makes them at-will positions. In

addition, the Department of Budget and Management (DBM) has previously advised that certain other OPD positions in the professional and skilled services are also designated as special appointments. Thus, these positions are subject to reclassification under the bill.

It is assumed that employee relations activities will increase based on the change in employee status for assistant public defenders and other affected positions. For example, these employees can only be dismissed for cause and will have more rights to appeal a disciplinary action, including dismissals. Thus, additional human resources personnel are needed to assist with the reclassification process, investigate employee grievances, and oversee appeals.

Accordingly, general fund expenditures for OPD increase by \$145,765 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring two additional human resources staff to manage the increased workload described above. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$131,079
Operating Expenses	<u>14,686</u>
<b>Total FY 2023 OPD Expenditures</b>	<b>\$145,765</b>

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

OPD advises that additional supervisory and human resources personnel, beyond the positions included in the estimate above, are needed in order to manage increased employee relations activities and any collective bargaining agreements resulting from the bill. The Department of Legislative Services (DLS) notes, however, that the extent to which the workloads of OPD supervisory and human resources functions increase as a result of the bill cannot be reliably predicted, as it depends on, for example, the number of grievance proceedings that arise as a result of the bill and whether employees of OPD elect to participate in collective bargaining, among other factors. To the extent that additional personnel are needed to manage increased responsibilities under the bill, general fund expenditures for OPD increase further.

*Office of the Public Defender Referrals to the Office of Administrative Hearings*

General fund expenditures for OPD also increase further to the extent that employee grievances are referred to OAH. Reimbursable revenues and expenditures for OAH increase accordingly. Agencies pay OAH on a per-case basis to cover the costs associated with adjudication; in fiscal 2021, the fee was approximately \$3,500 per case. The number

of cases referred to OAH annually as a result of the bill cannot be reliably estimated but is not expected to be significant.

*State Labor Relations Board*

SLRB advises that, under the bill, it is responsible for coordinating accretion elections for bargaining Unit F and any additional bargaining units to which other OPD employees are accreted. SLRB estimates that general fund expenditures increase by approximately \$1,650 in fiscal 2023 for mail and postage costs related to conducting mail elections.

**Additional Comments:** The bill requires current personnel at OPD to be reclassified by January 1, 2023. However, DBM has previously advised DLS that current at-will employees, which include all current assistant public defenders, cannot be converted to professional service positions in SPMS if they were not hired in a merit-protected position through a competitive process specified in statute. Thus, it is unclear if OPD can reclassify positions held by existing employees. If not, those positions can only be reclassified when they become vacant. If current employees are not eligible for transfer, the bill's fiscal effect may be delayed until a critical mass of new assistant public defenders are hired into merit-protected positions.

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**Additional Information**

**Prior Introductions:** HB 1277 of 2021, a similar bill, passed the House as amended and was referred to the Senate Finance Committee, but no further action was taken. Its cross file, SB 757, received an unfavorable report from the Senate Finance Committee.

**Designated Cross File:** SB 255 (Senator Beidle, *et al.*) - Finance.

**Information Source(s):** Office of the Public Defender; Office of Administrative Hearings; State Labor Relations Board; Department of Budget and Management; Department of Legislative Services

**Fiscal Note History:** First Reader - January 17, 2022  
fnu2/mcr Third Reader - March 19, 2022  
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