

SENATE BILL 79

P4, R2, F5

(PRE-FILED)

3lr0913
CF HB 184

By: **Senator Kramer**

Requested: November 18, 2022

Introduced and read first time: January 11, 2023

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 26, 2023

CHAPTER _____

1 AN ACT concerning

2 **State Personnel – Education and Transportation – Grievance Procedures**

3 FOR the purpose of authorizing a certain employee or a certain exclusive representative to
4 initiate a grievance procedure under certain provisions of law; ~~prohibiting the~~
5 ~~dismissal of a grievance concerning wages for a certain reason;~~ requiring certain
6 decision makers in a grievance procedure in certain higher education systems to
7 award certain damages under certain circumstances; requiring certain employee
8 grievance procedures and personnel systems to include certain redress for certain
9 violations; requiring regulations adopted by the Secretary of Transportation to be
10 consistent with certain provisions of law and include certain redress for certain
11 violations; and generally relating to grievance procedures for State personnel and
12 education and transportation employees.

13 BY repealing and reenacting, with amendments,
14 Article – State Personnel and Pensions
15 Section 2–407
16 Annotated Code of Maryland
17 (2015 Replacement Volume and 2022 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Education
20 Section 13–201(c), 13–203(e), 14–408, and 16–510(a)
21 Annotated Code of Maryland
22 (2022 Replacement Volume)

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 BY adding to
 2 Article – Education
 3 Section 14–302(h)
 4 Annotated Code of Maryland
 5 (2022 Replacement Volume)

6 BY repealing and reenacting, with amendments,
 7 Article – Transportation
 8 Section 2–103.4(d)
 9 Annotated Code of Maryland
 10 (2020 Replacement Volume and 2022 Supplement)

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

13 **Article – State Personnel and Pensions**

14 2–407.

15 (a) If an appointing authority does not report payroll information in accordance
 16 with § 2–402 of this subtitle, the employee or the employee’s exclusive representative may
 17 initiate a grievance under the grievance procedure established under:

18 (1) Title 12, Subtitle 2 of this article;

19 (2) **TITLE 13, SUBTITLE 2 OF THE EDUCATION ARTICLE;**

20 (3) **TITLE 14, SUBTITLE 3 OF THE EDUCATION ARTICLE;**

21 (4) **§ 14–408 OF THE EDUCATION ARTICLE;**

22 (5) **§ 16–510(A) OF THE EDUCATION ARTICLE;**

23 (6) **§ 2–103.4 OF THE TRANSPORTATION ARTICLE;**

24 (7) **ANY OTHER APPLICABLE GRIEVANCE PROCEDURE; OR**

25 (8) **ANY OTHER APPLICABLE COLLECTIVE BARGAINING AGREEMENT.**

26 (b) (1) Except as provided in paragraph (2) of this subsection, and
 27 notwithstanding [§ 12–203 of this article] **ANY STATUTORY OR REGULATORY DEADLINE**
 28 **IN ANY GRIEVANCE PROCEDURE LISTED UNDER SUBSECTION (A) OF THIS SECTION,**
 29 a grievance under subsection (a) of this section shall be initiated within 20 days after the
 30 failure to pay occurred.

1 (2) If the failure to pay is not known to, or discovered by, the employee
 2 within 20 days after the failure to pay occurs, a grievance under subsection (a) of this
 3 section may be initiated no later than 6 months after the date on which the failure to pay
 4 occurred.

5 (c) (1) Subject to paragraphs (2) and (3) of this subsection, if a grievance is
 6 initiated in accordance with subsection (a) of this section, an employee is entitled to wages
 7 and damages unless the wage is withheld as a result of a bona fide dispute.

8 (2) If the grievance was filed:

9 (i) in the first 3 business days of a pay period, then damages shall
 10 start in the following regular pay period; or

11 (ii) after the third business day of a pay period, then the damages
 12 shall start in the second regular pay period following the pay period in which the employee
 13 was not paid the employee's full wage.

14 (3) The damages under paragraph (1) of this subsection:

15 (i) may not begin until at least 1 regular pay period has elapsed
 16 since the employee was not paid the employee's full wage due for a pay period;

17 (ii) shall increase per pay period by 30% of the wage that the
 18 appointing authority failed to report;

19 (iii) shall continue until the pay period when the appointing
 20 authority reports the missing wages and damages, if any, to the Central Payroll Bureau;
 21 and

22 (iv) may not exceed 3 times the amount of wage due that the
 23 appointing authority failed to report for a pay period.

24 ~~(D) NOTWITHSTANDING THE DEFINITION OF GRIEVANCE UNDER §~~
 25 ~~13-201(C)(2) OF THE EDUCATION ARTICLE, A GRIEVANCE CONCERNING WAGES AS~~
 26 ~~DEFINED BY § 2-402(C)(1) OF THIS SUBTITLE, MAY NOT BE DENIED OR DISMISSED~~
 27 ~~BECAUSE THE GRIEVANCE RELATES TO:~~

28 ~~(1) GENERAL LEVELS OF WAGES;~~

29 ~~(2) WAGE PATTERNS;~~

30 ~~(3) FRINGE BENEFITS; OR~~

31 ~~(4) OTHER BROAD AREAS OF FINANCIAL MANAGEMENT AND~~
 32 ~~STAFFING.~~

1 **Article – Education**

2 13–201.

3 (c) (1) “Grievance” means any cause of complaint arising between a regular
 4 full-time or part-time employee and the University on a matter concerning discipline,
 5 alleged discrimination, promotion, assignment, or interpretation or application of
 6 University rules or departmental procedures over which the University management has
 7 control.

8 (2) **“GRIEVANCE” INCLUDES, NOTWITHSTANDING ANY OTHER**
 9 **PROVISION OF THIS SUBSECTION, A CAUSE OF COMPLAINT ARISING UNDER §§ 2–402**
 10 **AND 2–407 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

11 **[(2)] (3)** “Grievance” does not include:

12 (i) Complaints on the general level of wages, wage patterns, fringe
 13 benefits, or other broad areas of financial management and staffing; or

14 (ii) Any cause of complaint by any employee who is not represented
 15 by an exclusive representative under Title 3 of the State Personnel and Pensions Article.

16 13–203.

17 (e) (1) The Chancellor or administrative law judge, as appropriate, shall have
 18 the power to award back pay in any grievance and the president of the constituent
 19 institution shall enforce such order. In any reclassification case in which the Chancellor or
 20 administrative law judge, as appropriate, or his designated representative, determines that
 21 an employee has been misclassified, the Chancellor or administrative law judge, as
 22 appropriate, may, in his discretion, award back pay to the employee for a period not to
 23 exceed one year prior to the initial filing of the grievance.

24 (2) **AFTER A FINDING THAT WAGES WERE WITHHELD IN VIOLATION OF**
 25 **§§ 2–402 AND 2–407 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, THE**
 26 **DECISION MAKER IN A GRIEVANCE PROCEDURE SHALL AWARD THE PAYMENT OF**
 27 **DAMAGES IN ACCORDANCE WITH § 2–407 OF THE STATE PERSONNEL AND PENSIONS**
 28 **ARTICLE.**

29 14–302.

30 (H) **AFTER A FINDING THAT WAGES WERE WITHHELD IN VIOLATION OF §§**
 31 **2–402 AND 2–407 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, THE**
 32 **DECISION MAKER IN A GRIEVANCE PROCEDURE SHALL AWARD THE PAYMENT OF**
 33 **DAMAGES IN ACCORDANCE WITH § 2–407 OF THE STATE PERSONNEL AND PENSIONS**
 34 **ARTICLE.**

1 14-408.

2 (a) (1) (i) On the recommendation of the President, and in accordance with
3 the requirements of Title 3 of the State Personnel and Pensions Article, the Board of
4 Trustees of St. Mary's College of Maryland shall establish a personnel system.

5 (ii) The personnel system established under subparagraph (i) of this
6 paragraph shall include provisions for consideration of hiring a contractual employee to fill
7 a vacant position in the same or similar classification in which the contractual employee is
8 employed.

9 (2) To carry out the requirements of this section, the Board:

10 (i) May establish and abolish positions;

11 (ii) May determine employee qualifications;

12 (iii) May establish terms of employment, including compensation,
13 benefits, holiday schedules, and leave policies;

14 (iv) May determine any other matters concerning employees; and

15 (v) Shall designate one or more representatives to participate as a
16 party in collective bargaining on behalf of the College in accordance with Title 3 of the State
17 Personnel and Pensions Article.

18 (b) The personnel system shall provide fair and equitable procedures for:

19 (1) The redress of employee grievances; and

20 (2) The hiring, promotion, and termination of employees in accordance
21 with law.

22 (c) **THE EMPLOYEE GRIEVANCE PROCEDURES SHALL INCLUDE REDRESS OF**
23 **ANY VIOLATION OF TITLE 2, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS**
24 **ARTICLE, INCLUDING THE AWARD AND PAYMENT OF DAMAGES.**

25 (D) (1) Except as provided in paragraph (2) of this subsection, an employee of
26 the College qualifies for and shall participate in the Employees' Pension System of the State
27 of Maryland or the Teachers' Pension System of the State of Maryland.

28 (2) An employee in a position determined by the Board to be a professional
29 or faculty position may join the optional retirement program under Title 30 of the State
30 Personnel and Pensions Article.

31 16-510.

- 1 (a) (1) All employees of the College are in an independent personnel system.
- 2 (2) The personnel system established under this subsection shall include
3 provisions for [consideration]:
- 4 (I) **CONSIDERATION** of hiring a contractual employee to fill a
5 vacant position in the same or similar classification in which the contractual employee is
6 employed; **AND**
- 7 (II) **REDRESS OF ANY VIOLATION OF TITLE 2, SUBTITLE 4 OF**
8 **THE STATE PERSONNEL AND PENSIONS ARTICLE, INCLUDING THE AWARD AND**
9 **PAYMENT OF DAMAGES.**

10 **Article – Transportation**

11 2–103.4.

- 12 (d) (1) The Secretary shall adopt regulations to govern the human resources
13 management system established under this section.
- 14 (2) The regulations shall address procedures for leave, appointment,
15 hiring, promotion, layoff, removal, termination, redress of grievances, as defined in §
16 12–101 of the State Personnel and Pensions Article **AND CONSISTENT WITH § 2–407 OF**
17 **THE STATE PERSONNEL AND PENSIONS ARTICLE**, and reinstatement of employees and
18 shall be presented to the Joint Committee on Administrative, Executive, and Legislative
19 Review under Title 10, Subtitle 1 of the State Government Article.
- 20 (3) The regulations shall provide that before taking any disciplinary action
21 related to employee misconduct, an appointing authority or designated representative
22 shall:
- 23 (i) Investigate the alleged misconduct;
- 24 (ii) Meet with the employee;
- 25 (iii) Consider any mitigating circumstances;
- 26 (iv) Determine the appropriate disciplinary action, if any, to be
27 imposed; and
- 28 (v) Give the employee a written notice of the disciplinary action to
29 be taken and the employee’s appeal rights.

1 (4) (i) The regulations shall provide that the appointing authority or
2 designated representative may suspend an employee, with or without pay, pending the
3 filing of charges for termination.

4 (ii) If an employee is suspended without pay, the appointing
5 authority or designated representative shall provide to the Secretary the charges for
6 termination within 30 calendar days after the first day of the suspension period.

7 (iii) If the appointing authority or designated representative files the
8 charges for termination after the 30-day period described in subparagraph (ii) of this
9 paragraph, the employee shall be placed on leave with pay until the Secretary receives the
10 charges.

11 (5) The regulations shall provide that an appointing authority or a
12 designated representative and an employee may agree to the holding in abeyance of a
13 disciplinary action for a period not to exceed 18 months in order to permit an employee to
14 improve conduct or performance.

15 (6) The employee grievance procedures shall include, at a minimum, the
16 following sequence of levels of appeal:

17 (i) Initially an aggrieved employee shall present any grievance to
18 the appointing authority or a designated representative, who shall render a written
19 decision;

20 (ii) Any appeal shall be presented to the Secretary or a designated
21 representative, who shall render a written decision; and

22 (iii) If the dispute is still unresolved, the aggrieved employee may
23 appeal to the Office of Administrative Hearings or a mutually agreed upon third party
24 arbiter that may not hear grievances relating to classification, salary, or fiscal matters.

25 **(7) THE EMPLOYEE GRIEVANCE PROCEDURES SHALL INCLUDE**
26 **REDRESS OF ANY VIOLATION OF TITLE 2, SUBTITLE 4 OF THE STATE PERSONNEL**
27 **AND PENSIONS ARTICLE, INCLUDING THE AWARD AND PAYMENT OF DAMAGES.**

28 **(8)** The Secretary shall establish appeal procedures for disciplinary actions
29 through regulations and policy.

30 **[(8)] (9)** (i) During any stage of a complaint, grievance, or other
31 administrative or legal action that concerns State employment by a full-time or part-time
32 executive service, career service, or commission plan employee of the Department, or by a
33 temporary or contractual employee of the Department, the employee may not be subjected
34 to coercion, discrimination, interference, reprisal, or restraint by or initiated on behalf of
35 the Department solely as a result of that employee's pursuit of a grievance, complaint, or
36 other administrative or legal action that concerns State employment.

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

5 (iii) An employee who violates the provisions of this paragraph is
6 subject to disciplinary action, including termination of employment.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2023.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.