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# **At-will Employment in Maryland**

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**Department of Legislative Services  
Office of Policy Analysis  
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December 1, 2008

The Honorable Thomas V. Mike Miller, Jr., President of the Senate  
The Honorable Michael E. Busch, Speaker of the House of Delegates  
Members of the Maryland General Assembly

Ladies and Gentlemen:

Chapter 592 of 2007 directed the Department of Legislative Services (DLS), with the assistance of the Department of Budget and Management, the Maryland Department of Transportation (MDOT), and labor organizations that represent State employees, to review and report on at-will employment within the State Personnel Management System and MDOT's Human Resources Management System. Chapter 592 also required DLS to recommend appropriate and effective legislative and administrative changes in the State's personnel systems that balance the need to provide flexibility in hiring and terminating employees and maintaining the dignity, worth, and morale of the State's workforce.

This report was developed and written by David Smulski and Joshua Watters. Patrick Frank assisted in data analysis and reviewed the final report. Alicia Rummings prepared the manuscript. The assistance of the various State agencies and labor organizations that provided input on at-will State employment was greatly appreciated.

I am pleased to provide this report to you and trust that it will be useful in your deliberations.

Sincerely,

Warren G. Deschenaux  
Director

WGD/DAS/arr



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## Executive Summary

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Chapter 592 of the Acts of 2007 directed the Department of Legislative Services (DLS), with the assistance of the Department of Budget and Management (DBM), the Maryland Department of Transportation (MDOT), and labor organizations that represent State employees, to review and report on at-will employment within the State Personnel Management System (SPMS) and MDOT's Human Resources Management System.

Chapter 41 of 1920 established the State merit system, and over 70 years later, the State Personnel Management System Reform Act of 1996 was a major restructuring of the laws governing the conduct of most State employees in Maryland. The classified and unclassified services were replaced with the skilled service, professional service, management service, and executive service. Skilled service and the professional service positions have similar merit protections as the former classified service positions. Within each of the classes of regular positions, a category of "special appointment position" was also established.

As of July 2008, there were approximately 82,104 Executive Branch employees, 22,581 employees worked in higher education institutions and over 4,000 employees worked in nonbudgeted agencies. The Executive Branch includes 44,116 SPMS employees and 11,169 MDOT employees, which are the focus of this report. Of the 44,116 SPMS employees, 6,303 were considered to be at-will. Of the at-will employees, 66 percent were nonpolitical special appointments. Of the 37,813 merit positions, 92 percent were in the skilled service and 8 percent were in the

professional service. Of the 11,169 MDOT employees, 867 were considered to be at-will, and of the remaining employees, 10,302 were either in the Career Service or the Maryland Transit Administration Union.

Within the SPMS, there are several groups of at-will positions, which include positions in the executive and management services as well as positions across all services designated as special appointments. These are, however, not the only at-will positions in State government. Throughout the Annotated Code of Maryland, there are whole agencies or units (the Department of Business and Economic Development), groups of positions (local health officers), and individual positions (the Director of Charlotte Hall) which are designated specifically by law as at-will.

The subject of at-will employment continues to be controversial in State government. Organized labor opposes the existence of at-will State employees in principle as well as any attempts to increase the number of at-will State employees. State agency administrators value the existence of at-will State employment as a means to further the agenda of their agencies' policies and to allow for the efficient operation of their agencies. Approximately 90 statutory designations were identified mandating that a State employee's service in a specific position was at-will, encompassing about 3,600 employees. Abolishing all at-will employment in State government is not a realistic or even a reasonable option. Most of the statutory at-will designations involve positions in the higher levels of State government, positions that provide advice on legal matters or positions that work in sensitive subject areas. Nevertheless, there

are some statutory changes the General Assembly may want to consider in light of the DLS analysis of at-will employment or based on some agency suggestions.

**Repeal the provision of law that allows State positions in the executive service and the management service to be designated as special appointments in the SPMS.**

Positions in the executive and management services are by definition at-will. Providing that positions in the executive service and management service are also special appointments is redundant.

**Add additional protections for certain management service positions.**

Some employees in management service positions likely work on developing policy that furthers the agenda of the Governor or the head of the agency, while employees in other management service positions likely work in programs that represent the core functions of an agency or manage employees that provide basic government services. The General Assembly may want to consider two options regarding additional protections for selected management service positions. The first option would be to divide the management service into a group of positions that require “policy managers” and a group of positions that require “program managers,” and then provide program managers with additional protections. A second option would be to expand the definition of professional service to include management positions that do not work in a political or policymaking environment, which would provide full merit system protections to these managers.

**Alter provisions of law requiring that all positions in the Department of Business and Economic Development (DBED), the Health Regulatory Commissions, the Maryland Board of Physicians, the Child Support Enforcement Administration’s Demonstration Sites, and the Maryland Historical Trust be at-will.**

These agencies view their role in State government as unique; and, therefore, they have specific personnel needs that go beyond the lists of eligible employees available through DBM. Every agency or program in State government, however, could argue that what they do is unique in the State government, and most of these programs have a mix of at-will and merit employees. Within DBED, the health regulatory commissions, and the demonstration sites, there are still merit system employees. DBED has 30 merit system employees, the health regulatory commissions have 26 merit system employees, and the majority of the employees in the demonstration sites still remain in the merit system.

Within the Maryland Board of Physicians, it is unlikely that the duties of a skilled service position vary significantly from the duties of a skilled service position in the nurse’s board or any other regulatory board. The Department of Planning supported at-will employment but acknowledged that it may not be necessary for all administrative staff in Maryland Historical Trust to be designated as at-will. Having sets of employees performing similar tasks but with varying employment status may not be a productive way for State government to function.

**Chaplains and other specified positions, in the Department of Public Safety and Correctional Services should be merit system positions.**

Most of the statutorily designated employees in the department are high level program administrators or managers. The Secretary relayed that there was no justification for designating chaplains or social workers, sociologists, physicians, and psychologists employed at the Patuxent Institution as special appointments.

**Eliminate the Grade 31 designation for professional assistants within the Maryland State Department of Education.**

The department suggested that the reference to Grade 31 was obsolete and that it should be deleted from statute and replaced with language specifying that professional assistants in the executive service should serve at the pleasure of the board and superintendent.

**Alter provisions of law relating to the hiring of State employees to conform to the legislature's intent in the State Personnel Management Reform Act of 1996 that hiring should be de-centralized, with most of the responsibility for hiring given to the departments and agencies in the Executive Branch unless they request assistance from DBM.**

One of the common reasons to have an agency with all special appointment positions is that such positions are exempt from the normal hiring and termination provisions of the SPMS. Currently, in order to hire an employee in the skilled service or professional service, the agency generally

must hire from a list of eligible candidates maintained by DBM. In a 2008 *Joint Chairmen's Report* DBM noted the frustrations of some agencies with specific recruitment needs, and the need to use a list of eligible candidates. It is possible that if more flexibility were given to an agency to recruit in a more expeditious fashion, the need to have an entire agency of special appointments may not be necessary.

**The Secretary of DBM, in consultation with the appropriate cabinet secretaries, should reassess all skilled and professional service employee positions designated as special appointments by the Secretary under the SPMS, to determine whether these positions should continue to be special appointments.**

About one-half of special appointment positions are designated by the Secretary of DBM. Many of the designations may actually date back to 1996 when the special appointment classification was established, and may actually have their origins in the unclassified service. Over the years, it is likely that possible inconsistencies in the designation of groups of employees have emerged. DBM should review the relevance of special appointment designations within the SPMS to justify the need to have proportionally almost twice as many at-will positions as MDOT's personnel system.

**The Secretary of DBM should, by December 31 during a gubernatorial election year, submit to the Governor, the President of the Senate, and the Speaker of the House, a list of the position, pay grade, title, and name of each employee designated as a special appointment who is employed with regard to political affiliation, belief, or opinion.**

The “Plum Book” is a list of political appointees located throughout the federal government, which provides valuable information to any incoming presidential administration. Similar information should also be useful in Maryland as well, during transitioning administrations.

# Chapter 1

## The State Merit System

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### Introduction

Chapter 592 of the Acts of 2007 directed the Department of Legislative Services (DLS), with the assistance of the Department of Budget and Management (DBM), the Maryland Department of Transportation (MDOT), and labor organizations that represent State employees, to review the State Personnel Management System law and regulations and other relevant State laws and regulations, including MDOT's Human Resources Management System, to determine:

- the number of at-will employees, special appointments, and management service employees in the Executive Branch agencies of State government;
- the rationale for designating the majority of, or all, employees in an agency as at-will employees; and
- the possibility of providing additional merit system protections to management service employees up to a certain grade level or depending on the job description of the employee.

Chapter 592 of 2007 also requires DLS to recommend appropriate and effective legislative and administrative changes in the State's personnel systems that will strike a better balance between the need to provide flexibility in hiring and terminating employees and maintaining the dignity, worth, and morale of the State's workforce. DLS must report to the President of the Senate and the Speaker of the House of Delegates no later than December 1, 2008.

### Evolution of the State Merit System

Civil service reform was accomplished at the federal level in 1883. Maryland followed suit 37 years later. Chapter 41 of 1920 established the State merit system, making Maryland the ninth state to adopt civil service reform. The guiding principle for the merit system was "to provide candidates for appointment to positions in the classified service after determining by practical tests of the fitness of such candidates for the positions for which they seek, without regard to political or religious opinions or affiliations of such candidates, or any other standard except the business efficiency of the classified service."

## **A Brief History**

The Merit System Bill adopted by the 1920 General Assembly was part of a larger reform movement which swept Maryland in the early 1900s (*i.e.*, executive budget system, child labor laws, work safety, voting fraud, etc.). The original merit system law included provisions relating to the administration of the system and the enforcement of its rules; the establishment of position classes; the conduct of competitive examinations; the preparation of eligible lists; the separation of employees as laid off or suspended; and the allowance of vacation, sick, personal, and accident leave.

After 1920, the merit system law was the subject of piecemeal revision. Over the years sections were added that:

- prohibited discrimination;
- required employee disclosure and confidentiality protection;
- provided for the hiring of contractual employees;
- specified a probation period after promotion and reinstatement qualifications;
- allowed temporary employees to become permanent;
- allowed time off for religious observance and seasonal leaves of absence; and
- specified grievance procedures.

In addition, the executive pay plan was created in 1989 to provide a more rational framework for compensating the management positions in State government.

One major change affecting the merit system law was the establishment of several independent personnel systems. Several State entities, including MDOT and the University System of Maryland, were granted the authority to establish their own policies and practices without regard to the former Secretary of Personnel. Other than providing more flexibility, these systems generally mirrored the merit system law.

During 1993, the merit system law was revised and reorganized through the Code Revision process. Although the revision was enacted as new language without substantive changes, one major change was made for clarification purposes. The name of the personnel system was changed from “Merit System” to “State Personnel Management System” (SPMS). In the former law, the term “Merit System” usually (but not always) referred only to classified

service positions. The new name was intended to refer to a personnel system that encompasses all the positions under the authority of the former Department of Personnel.

## **1996 Reforms**

In response to an early 1990s study of Maryland's State government, a 1995 task force was established by executive order. The task force was charged with creating "a modern human resource system which streamlines and simplifies the State's personnel policies and provides the consistent application of human resources management principles throughout the Executive Branch of State government."

The result was the State Personnel Management System Reform Act of 1996. The Act incorporated many of the task force's recommendations. It was the first time in over 60 years that the personnel system governing State employees was significantly restructured. Except for some equal employment opportunity provisions, the Act largely did not affect agencies with independent personnel systems, and had no effect on the judicial or legislative branches of State government.

Another change that occurred in 1996 was that a separate State personnel agency was abolished and all related functions were moved into DBM. The Secretary of Budget and Management was given all of the powers previously granted to the former Secretary of Personnel. The Secretary of Budget and Management in turn created the Office of Personnel Services and Benefits to oversee the officially designated State Personnel Management System (SPMS), which remains the current arrangement for managing most of the State's workforce.

The Act established a decentralized personnel management system where the unit, or agency, has most of the responsibility for managing its workforce. The classified and unclassified services were replaced with the skilled service, professional service, management service, and executive service. Employees in the skilled service and the professional service are protected in the similar manner as employees in the former classified service. Essentially "protection" means that these employees, who are the most numerous State employees, may be fired only for cause as determined by law. Employees in management service positions have limited protection, while the executive service was unchanged, employees in both of these services may be fired for no cause. Management Service employees, however, may not be dismissed because of political affiliation. Within each of the classes of permanent positions a category of "special appointment positions" was also established. A more detailed explanation of special appointments will follow.

## **The Current System**

Since 1996, there have been minor changes to the actual structure of the SPMS. Nevertheless, significant legislation was enacted affecting State employees. Some employees were granted collective bargaining rights in 1999 and 2001. Also, changes were made to the standard pay plan and the executive pay plan. The current standard pay plan has 26 grades and 19 steps within each grade (base plus steps 1 through 18) and is the pay plan for the majority of State employees. Prior to 1999, for many years the standard pay plan consisted of 22 grades and 6 steps.

Up until the 2000 session, the executive pay plan was structurally similar to the standard salary schedule. In order to compensate for what had become an inadequate standard pay plan, many managers who were not in the executive service were moved into the executive pay plan in order to provide competitive compensation levels. Significant changes in both the structure and coverage of the plan were made in 2000 when it was converted from an eleven-grade, seven-step structure to an eight-grade structure with minimum and maximum rates.

Before conversion to the new pay plan in fiscal 2001, about 570 positions were in the executive plan (including those working in the Department of Transportation); after the fiscal 2001 conversion, about 190 remained. The plan now consists of executive service positions that function above the assistant secretary (or its equivalent) level. Management service positions were moved to the then new 26-grade extended standard salary schedule, which was expanded by 4 grades to accommodate these positions.

## **Merit and At-will Employees in State Service**

Prior to 1996, State positions were essentially grouped into two categories – the classified service and the unclassified service. Most State positions were in the classified service; employees in these positions enjoyed a full range of employee protection laws designed to eliminate abuses associated with political patronage. The unclassified service consisted of generally at-will State positions, which meant that employees in these positions served at the pleasure of the appointing authority.

Prior to 1996, the following groups of positions were in the unclassified service:

- individuals directly appointed by the Governor and by an appointment that is not provided by the Maryland Constitution;
- individuals that are directly appointed by the Board of Public Works;
- a chief administrator of a unit in the Executive Branch;

- any position in the Executive Branch that requires medical, engineering, scientific, educational, or expert training and qualifications;
- any position in the executive pay plan; and
- any position assigned to the Executive Mansion.

In addition, throughout the Maryland Code, specific positions were designated as positions in the unclassified service.

As mentioned above, the classified and unclassified services were replaced with four new services. Most State positions are in the “skilled service,” which are selected on a competitive basis and enjoy full employee protections inherent in a merit system. “Professional service” positions require advanced knowledge in a field of science or learning acquired through special courses and study often requiring a professional license or advanced degree. Professional service positions also enjoy full employee protections. A position is in the “management service” if the position involves direct oversight over personnel and financial resources and is not in the “executive service.” Executive service positions are generally political appointments at the highest levels of State government. The last two categories generally consist of at-will positions.

A special category of position was also established in 1996 that was intended to replace elements of the former unclassified service. “Special appointments” are positions in the skilled, professional, management, or executive services, which are exempted from the selection and termination provisions of that service; basically, these are at-will positions. Since 1996, the following State positions have been considered special appointments:

- individuals appointed by the Governor that are not provided by the Maryland Constitution;
- individuals appointed directly by the Board of Public Works;
- positions that perform significant policy roles or directly support members of the executive service;
- positions in the Government House;
- positions in the Governor’s Office; and
- any positions specified by law as special appointments.

As detailed in the previous two lists, the criteria for designating a special appointment are not significantly different than the criteria for the defunct unclassified service. One of the criteria, “positions that perform significant policy roles or directly support members of the executive service,” is very subjective. While the criteria for special appointments are spelled out in the State Personnel and Pensions Article, the Governor has board authority to determine which positions are special appointments.

## **Designation of Political and Nonpolitical At-will Employees**

In August 2005 the Legislative Policy Committee established the Special Committee on State Employee Rights and Protections. Part of the special committee’s charge was to look at at-will employment in State government and the protections available to these at-will employees.

As a result of the special committee’s work, Chapter 592 of 2007 required the Secretaries of DBM and MDOT to designate at-will positions under their respective jurisdictions that must be filled without regard to political affiliation and at-will positions that may be filled with regard to political affiliation. The criteria for designating a political position, which are based on prevailing case law, are detailed in Section 6-405(b) of the State Personnel and Pensions Article. The preceding information must be reported annually to the Governor and the General Assembly. In addition, Maryland institutions of higher education must also annually identify and report on non-merit or at-will positions in their respective personnel systems.

The Special Committee on Employee Rights and Protections has not met in more than two years, and its work was largely completed well over a year and a half ago. The special committee’s continued existence is awaiting a court ordered deposition of two former appointees of the prior Administration. Once these depositions occur, the final report can be completed and the special committee will terminate.

## **The Study**

This report reviews at-will employment within Maryland State Government. Chapter 1 includes an introduction and provides some background on the topic. Chapter 2 describes the number of at-will positions, special appointments, and management service positions in Executive Branch agencies. Chapter 3 analyzes at-will and special appointment positions to document the legislative intent and history behind the statutory designation for at-will employees. Chapter 4 includes conclusions and findings and recommendations for possible consideration by the State and the General Assembly.

In the preparation of this study, DLS searched Maryland’s Annotated Code in order to identify at-will positions designated in the Code. Basically, at-will positions were identified as either (1) “serving at the pleasure of”; (2) in the “executive service, management service, or are special appointments”; (3) “special appointments”; or in the (4) “management service.” With the identification of agencies or units and positions with at-will designations, DLS surveyed selected State agencies for comments on statutorily designated at-will positions, at-will employment

generally in State government, and additional protections for management service positions. Not all entities were contacted by DLS, some entities such as the Maryland Automobile Insurance Fund and the Injured Workers' Insurance Fund were considered too far removed from traditional State government for the purposes of this study. Nevertheless, with the exception of the State Institutions of Higher Education, most of the largest principal departments of State Government were contacted.

DLS also obtained personnel data from DBM and MDOT to update the tables from a report DLS made to the special committee in 2006. In addition, DLS received comments from the American Federation of State, County, and Municipal Employees (AFSCME) regarding its opinions on at-will State employment. The other major union contacted, the Maryland Classified Employees Association (MCEA), did not respond to the request for information.

The report does not include complete information on political and nonpolitical special appointment designations from DBM. As mentioned above, the Secretaries of DBM and MDOT must designate at-will positions under their respective jurisdictions that are filled without regard to political affiliation and those filled with regard to political affiliation. DBM is required to include that information in its annual report on January 1 covering personnel activities from the preceding fiscal year. Specifically, the report that was submitted late last year covered fiscal 2007, which occurred before Chapter 592 took effect. Some information on political and nonpolitical special appointment designations was available in the data DLS obtained from DBM. MDOT has reported information on political and nonpolitical at-will employee designations.



## Chapter 2

# Number of At-will, Special Appointment, and Management Service Employees in Executive Branch Agencies

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This chapter presents an analysis of the number of at-will, special appointment, and management service employees in Executive Branch agencies. There are two main personnel systems in the Executive Branch – the State Personnel Management System (SPMS) and the Maryland Department of Transportation (MDOT) Human Resources System (HRS). This analysis will concentrate predominantly on the number of employees in these two systems. The primary source of the data used for this analysis was the Department of Budget and Management’s (DBM) State personnel database, compiled on July 1, 2008. A similar database, provided by MDOT was used to obtain personnel data for the Maryland Port Administration (MPA) and the Mass Transit Administration (MTA). Unless otherwise noted, the number of employees shown throughout this chapter represent the number of actual employees in filled positions, not just full-time equivalent (FTE) positions (which may include vacancies).

### State Workforce

As shown in **Exhibit 2.1**, as of July 2008, there were approximately 86,400 regular State employees. Of these, there were 623 employees of the General Assembly and 3,701 Judiciary employees. Of the 82,104 Executive Branch employees, 22,581 employees worked in higher education institutions and over 4,000 employees worked in nonbudgeted agencies. Nonbudgeted agencies, like the Maryland Automobile Insurance Fund and the Maryland Stadium Authority, rely on outside funding to perform their duties and generally fall outside the State’s personnel system laws and regulations. The Maryland Transportation Authority was included so that a full understanding of the MDOT HRS system could be ascertained. For this reason, nonbudgeted agencies (except for the Maryland Transportation Authority) were excluded from this analysis. Therefore, the 44,116 SPMS employees and 11,169 MDOT employees will be the focus of this chapter.

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**Exhibit 2.1**  
**State Workforce by Personnel System**

<u>Personnel System</u>	<u>Employees</u>
<b>Total State Workforce</b>	<b>86,428</b>
Legislative Branch	623
Judiciary	3,701
Executive Branch	82,104
<i>Higher Education*</i>	22,581
<i>Nonbudgeted</i>	4,238
<i>State Personnel Management System (SPMS)</i>	44,116
<i>Transportation (MDOT)</i>	11,169
<b><i>Subtotal SPMS &amp; MDOT</i></b>	<b>55,285</b>

\* FTE Positions

Notes: Nonbudgeted includes the Maryland Stadium Authority, Maryland Food Center Authority, Maryland Automobile Insurance Fund, Community and Public Health Administration, and College Savings Plans of Maryland. Temporary employees and elected officials are excluded.

Source: Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

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### Summary SPMS and MDOT HRS Employees

Of the 44,116 SPMS employees, 14.3 percent or 6,303 were considered to be at-will, as shown in **Exhibit 2.2**. Of the at-will employees, most (65.6 percent) were nonpolitical special appointments, 28.6 percent were in the management service, 3.2 percent were in the executive service, and 2.7 percent were political special appointments. Of the 37,813 merit positions, 91.7 percent (34,683) were in the skilled service and 8.3 percent (3,130) were in the professional service.

Exhibit 2.2 also breaks down the number of MDOT employees into at-will and merit classifications. Of the 11,169 MDOT employees, 867 or 7.8 percent, were considered to be at-will – all but 14 of which were in the MDOT executive service. The other at-will MDOT employees were either commission plan employees working for MPA or assistant attorneys general. Of the remaining employees, 10,302 were either in the Career Service or the MTA Union and are considered to be in a merit system.

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**Exhibit 2.2**
**Summary Executive Branch Personnel Systems**
**State Personnel Management System**

<b><u>Service</u></b>	<b><u>At Will?</u></b>	<b><u>Employees</u></b>	<b><u>% of Total</u></b>
Executive Service	Yes	202	0.5%
Management Service	Yes	1,800	4.1%
Special Appointment	Yes	4,132	9.4%
Designated Political Special Appointment	Yes	169	0.4%
<i>Subtotal</i>		<i>6,303</i>	<i>14.3%</i>
Professional Service	No	3,130	7.1%
Skilled Service	No	34,683	78.6%
<i>Subtotal</i>		<i>37,813</i>	<i>85.7%</i>
<b><i>Total SPMS</i></b>		<b><i>44,116</i></b>	<b><i>100.0%</i></b>

**Maryland Department of Transportation Human Resources System**

Executive Service	Yes	853	7.6%
Commission Plan	Yes	7	0.1%
MDOT Attorneys General	Yes	7	0.1%
<i>Subtotal</i>		<i>867</i>	<i>7.8%</i>
Career Service and MTA Union	No	10,302	92.2%
<b><i>Total MDOT HRS</i></b>		<b><i>11,169</i></b>	<b><i>100.0%</i></b>

**Total SPMS and MDOT HRS** **55,285**

SPMS: State Personnel Management System

MDOT HRS: Maryland Department of Transportation Human Resources System

Source: Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

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## SPMS Executive Service Positions

As stated in Chapter 1, SPMS executive service employees are generally political appointments at the highest levels of State service. As shown in **Exhibit 2.3**, there were 202 SPMS executive service employees distributed throughout every department/service area. In total, the number of these employees comprised less than one percent of SPMS positions. The number of executive service employees in each department/service area ranged from 41 (Executive and Administrative Control) to 2 (Police and Fire Marshal), with most departments/service areas having fewer than 10 executive service employees each. The percentage of executive service employees in each department/service area ranged from 2.9 percent (Business and Economic Development) to 0.1 percent (Police and Fire Marshal).

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### Exhibit 2.3 State Personnel Management System Executive Service Employees By Department or Service Area

<u>Department/Service Area</u>	<u>Executive Service</u>	<u>Total Employees</u>	<u>% of Total Employees</u>
Legal (excluding Judiciary)	15	1,589	0.9%
Executive and Administrative Control	41	1,809	2.3%
Financial and Revenue Administration	24	2,012	1.2%
Budget and Management	6	437	1.4%
Retirement	4	203	2.0%
General Services	7	642	1.1%
Natural Resources	5	1,378	0.4%
Agriculture	6	436	1.4%
Health and Mental Hygiene	21	7,483	0.3%
Human Resources	7	7,017	0.1%
Labor, Licensing, and Regulation	6	1,470	0.4%
Public Safety and Correctional Services	18	11,597	0.2%
MSDE and Other Education	15	1,865	0.8%
Housing and Community Development	5	311	1.6%
Business and Economic Development	8	276	2.9%
Environment	6	932	0.6%
Juvenile Services	6	2,212	0.3%
Police and Fire Marshal	2	2,447	0.1%
<b>Total</b>	<b>202</b>	<b>44,116</b>	<b>0.5%</b>

MSDE: Maryland State Department of Education

Source: Department of Budget and Management, Department of Legislative Services

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As shown in **Exhibit 2.4**, of the 202 executive service employees, 189 were in the “Officials and Administrators” job family, while 12 were in the “Professionals” job family. There was one executive service employee classified as “Administrative Support.”

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**Exhibit 2.4**  
**State Personnel Management System Executive Service Employees**  
**By Job Family**

<b><u>Job Family</u></b>	<b><u>Executive Service</u></b>	<b><u>Total Employees</u></b>	<b><u>% of Total Employees</u></b>
Officials and Administrators	189	3,375	5.6%
Professionals	12	18,963	0.1%
Technicians	0	2,080	0.0%
Protective Services	0	10,705	0.0%
Paraprofessionals	0	2,902	0.0%
Administrative Support	1	4,789	0.0%
Skilled Craft Workers	0	597	0.0%
Service and Maintenance Workers	0	705	0.0%
<b>Total</b>	<b>202</b>	<b>44,116</b>	<b>0.5%</b>

Source: Department of Budget and Management; Department of Legislative Services

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**SPMS Management Service Employees**

Generally, management service employees are those individuals who directly oversee personnel and financial resources and who are not in the executive service. As stated earlier, there were 1,800 SPMS management service employees. As shown in **Exhibit 2.5**, the number of management service employees in each department/service area ranged from 286 (Health and Mental Hygiene) to 10 (Business and Economic Development). Most departments/service areas had fewer than 100 management service employees – the exceptions were Natural Resources (113), Financial and Revenue Administration (139), Executive and Administrative Control (168), Public Safety and Correctional Services (197), Human Resources (212), and Health and Mental Hygiene (286).

**Exhibit 2.5**  
**State Personnel Management System Management Service Employees**  
**By Department or Service Area**

<u>Department/Service Area</u>	<u>Management Service</u>	<u>Total Employees</u>	<u>% of Total Employees</u>
Legal (excluding Judiciary)	57	1,589	3.6%
Executive and Administrative Control	168	1,809	9.3%
Financial and Revenue Administration	139	2,012	6.9%
Budget and Management	64	437	14.6%
Retirement	32	203	15.8%
General Services	49	642	7.6%
Natural Resources	113	1,378	8.2%
Agriculture	19	436	4.4%
Health and Mental Hygiene	286	7,483	3.8%
Human Resources	212	7,017	3.0%
Labor, Licensing, and Regulation	85	1,470	5.8%
Public Safety and Correctional Services	197	11,597	1.7%
MSDE and Other Education	97	1,865	5.2%
Housing and Community Development	72	311	23.2%
Business and Economic Development	10	276	3.6%
Environment	78	932	8.4%
Juvenile Services	82	2,212	3.7%
Police and Fire Marshal	40	2,447	1.6%
<b>Total</b>	<b>1,800</b>	<b>44,116</b>	<b>4.1%</b>

MSDE: Maryland State Department of Education

Source: Department of Budget and Management; Department of Legislative Services

The percentage of management service employees in each department/service area ranged from 23.2 percent (Housing and Community Development) to 1.6 percent (Police and Fire Marshal). While most management service employees comprised less than 10 percent of an individual department's/service area's employees, there are two departments/service areas where management service employees comprised between 10 and 20 percent of total employees – Budget and Management (14.6 percent) and Retirement (15.8 percent). There is

only one department/service area, Housing and Community Development, where the percentage of management service employees exceeded 20 percent.

**Exhibit 2.6** shows the job family distribution of management service employees. Of the 1,800 management service employees, almost 90 percent were officials and administrators. Conversely, of the total number of officials and administrators, almost half were management service employees. Of the remaining 192 management service employees, 168 were professionals, and 21 were in protective services; the other 3 were classified as technician, paraprofessional, or administrative support.

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**Exhibit 2.6**  
**State Personnel Management System Management Service Employees**  
**By Job Family**

<b><u>Job Family</u></b>	<b><u>Management Service</u></b>	<b><u>Total Employees</u></b>	<b><u>% of Total Employees</u></b>
Officials and Administrators	1,608	3,375	47.6%
Professionals	168	18,963	0.9%
Technicians	1	2,080	0.0%
Protective Services	21	10,705	0.2%
Paraprofessionals	1	2,902	0.0%
Administrative Support	1	4,789	0.0%
Skilled Craft Workers	0	597	0.0%
Service and Maintenance Workers	0	705	0.0%
<b>Total</b>	<b>1,800</b>	<b>44,116</b>	<b>4.1%</b>

Source: Department of Budget and Management; Department of Legislative Services

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### **Special Appointments and Designated Political Special Appointments**

The remaining SPMS at-will employees are either classified as “Special Appointment” or “Designated Political Special Appointment.” As noted in Chapter 1, special appointments are individuals in the executive, management, professional, and skilled services who are exempted from the selection and termination provisions of that service. Political special appointments are those individuals in special appointment positions that may be filled with regard to political affiliation, belief, or opinion.

There were 4,132 special appointments and 169 political special appointments, as shown in **Exhibit 2.7**. While most departments/service areas had fewer than 100 special appointments each, eight had more than 100 – Budget and Management (146), Business and Economic Development (226), Human Resources (244), Health and Mental Hygiene (260), Public Safety and Correctional Service (373), Executive and Administrative Control (553), Legal (840), and the Maryland State Department of Education (MSDE) and Other Education (1,053). While the issue of statutory designation of special appointment positions will be discussed in greater detail in Chapter 3, it is important to note here that many of the special appointments are designated by statute. For example, all employees of the Department of Business and Economic Development who are not either management and executive service employees are special appointments.

**Exhibit 2.7**  
**State Personnel Management System Special Appointments and Designated Political Special Appointments**  
**By Department or Service Area**

<u>Department/Service Area</u>	<u>Special Appointment</u>	<u>Designated Political Special Appointment</u>	<u>Subtotal</u>	<u>Total Employees</u>	<u>% of Total Employees</u>
Legal (excluding Judiciary)	840	9	849	1,589	53.4%
Executive and Administrative Control	553	102	655	1,809	36.2%
Financial and Revenue Administration	55	1	56	2,012	2.8%
Budget and Management	146	2	148	437	33.9%
Retirement	45	0	45	203	22.2%
General Services	41	0	41	642	6.4%
Natural Resources	49	0	49	1,378	3.6%
Agriculture	17	1	18	436	4.1%
Health and Mental Hygiene	260	8	268	7,483	3.6%
Human Resources	244	0	244	7,017	3.5%
Labor, Licensing, and Regulation	65	17	82	1,470	5.6%
Public Safety and Correctional Services	373	8	381	11,597	3.3%
MSDE and Other Education	1,053	0	1,053	1,865	56.5%
Housing and Community Development	35	5	40	311	12.9%
Business and Economic Development	226	2	228	276	82.6%
Environment	44	0	44	932	4.7%
Juvenile Services	32	9	41	2,212	1.9%
Police and Fire Marshal	54	5	59	2,447	2.4%
<b>Total</b>	<b>4,132</b>	<b>169</b>	<b>4,301</b>	<b>44,116</b>	<b>9.7%</b>

Source: Department of Budget and Management; Department of Legislative Services

Sixty percent (102) of the political special appointments were found in Executive and Administrative Control. Of the remaining political special appointments, no department/service area had more than 20 – one department/service area had more than 10, four department/service areas had between 6 and 10, and six department/service areas had between 1 and 5. The analysis also shows that there are also six department/service areas without any political special appointments – Retirement, General Services, Natural Resources, Human Resources, MSDE and Other Education, and Environment. However, DBM advises that all decisions as to which special appointment positions are political have not yet been completed.

In looking at how special appointments and political special appointments were classified into job families, more than two-thirds of special appointments were considered to be professionals. With most of the remaining classified as officials and administrators, administrative support, and paraprofessionals. Of the political special appointments, almost three-fourths were officials and administrators and almost all of the rest were professionals. The number of special appointments and political special appointments by job family can be found in **Exhibit 2.8**.

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**Exhibit 2.8**  
**State Personnel Management System Special Appointments**  
**and Designated Political Special Appointments**  
**By Job Family**

<u>Job Family</u>	<u>Special Appointment</u>	<u>Designated Political Special Appointment</u>	<u>Subtotal</u>	<u>Total Employees</u>	<u>% of Total Employees</u>
Officials and Administrators	773	125	898	3,375	26.6%
Professionals	2,831	41	2,872	18,963	15.1%
Technicians	46	0	46	2,080	2.2%
Protective Services	46	0	46	10,705	0.4%
Paraprofessionals	118	2	120	2,902	4.1%
Administrative Support	303	1	304	4,789	6.3%
Skilled Craft Workers	14	0	14	597	2.3%
Service and Maintenance Workers	1	0	1	705	0.1%
<b>Total</b>	<b>4,132</b>	<b>169</b>	<b>4,301</b>	<b>44,116</b>	<b>9.7%</b>

Source: Department of Budget and Management; Department of Legislative Services

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Special appointment and political special appointment classifications are over-arching categories that include positions in the four standard job service classifications – executive, management, professional, and skilled services. **Exhibit 2.9** shows how special appointments and political special appointments would otherwise be classified. Of the 4,132 special appointments, most (2,421) would be otherwise considered to be in the skilled service. Of the remaining, 1,522 would be in the professional service, 188 in the management service, and 1 would not be classified into one of the four standard services. Of the political special appointments, 91 would be considered to be in the skilled service, 73 in the management service, and 5 in the professional service.

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**Exhibit 2.9**  
**State Personnel Management System Special Appointments**  
**and Designated Political Special Appointments**  
**By Job Service**

<u>Job Service</u>	<u>Special Appointment</u>	<u>Designated Political Special Appointment</u>	<u>Total Employees</u>	<u>% of Total Employees</u>
Executive Service	0	0	0	0.0%
Management Service	188	73	261	6.1%
Professional Service	1,522	5	1,527	35.5%
Skilled Service	2,421	91	2,512	58.4%
Other	1	0	1	0.0%
<b>Total</b>	<b>4,132</b>	<b>169</b>	<b>4,301</b>	<b>100.0%</b>

Note: One Special Appointment in the Department of Public Safety and Correctional Services was not classified into the four standard employee job service classifications.

Source: Department of Budget and Management; Department of Legislative Services

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## MDOT HRS At-will Positions

As shown in **Exhibit 2.10**, all but two of the transportation modes had between 100 and 200 at-will employees, with the MPA and the Maryland Aviation Administration having fewer than 100 at-will employees. In terms of the distribution of at-will employees, MTA had the most

with 198 while MPA has the fewest with 52. In looking at the composition of each mode, MDOT's Secretary's Office had the greatest percentage of its employees who were at-will (34.6 percent), while the State Highway Administration had the lowest percentage of its employees who were at-will (4.2 percent). On average, 7.8 percent of MDOT employees were considered to be at-will.

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**Exhibit 2.10**  
**MDOT Human Resources System At-will Employees**  
**By Mode**

<u>Mode</u>	<u>MDOT At-will</u>	<u>Total Employees</u>	<u>% of Total Employees</u>
MDOT Secretary's Office	117	338	34.6%
State Highway Administration	134	3,216	4.2%
Maryland Port Administration	52	275	18.9%
Motor Vehicle Administration	160	1,736	9.2%
Mass Transit Administration	198	3,304	6.0%
Maryland Aviation Administration	93	540	17.2%
Maryland Transportation Authority	113	1,760	6.4%
<b>Total</b>	<b>867</b>	<b>11,169</b>	<b>7.8%</b>

Note: MDOT at-will includes employees classified as MDOT Executive Service, Commission Plan, and Attorneys General.

Source: Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

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In terms of how MDOT at-will employees were classified into job families, more than two-thirds of at-will employees were considered to be officials and administrators, with another quarter classified as professionals. The remaining were administrative support, technicians, or paraprofessionals. The number of MDOT at-will employees by job family can be found in **Exhibit 2.11**.

MDOT has identified 13 positions that may be filled with regard to political affiliation, belief, or opinion. Seven of these employees are in the secretary's office; the remaining 6 are the chief administrative officers of the six transportation modes.

**Exhibit 2.11**  
**MDOT Human Resources System At-will Employees**  
**By Job Family**

<b><u>Job Family</u></b>	<b><u>MDOT At-will</u></b>	<b><u>Total Employees</u></b>	<b><u>% of Total Employees</u></b>
Officials and Administrators	608	880	69.1%
Professionals	222	2,530	8.8%
Technicians	5	1,120	0.4%
Protective Services	0	716	0.0%
Paraprofessionals	1	100	1.0%
Administrative Support	31	1,975	1.6%
Skilled Craft Workers	0	1,622	0.0%
Service and Maintenance Workers	0	2,226	0.0%
<b>Total</b>	<b>867</b>	<b>11,169</b>	<b>7.8%</b>

Note: MDOT at-will includes employees classified as MDOT Executive Service, Commission Plan, and Attorney's General.

Source: Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services



## Chapter 3

# Statutory Designations of At-will Positions

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As pointed out in Chapter 1, within the State Personnel Management System (SPMS), there are several groups of at-will positions, which include positions in the Executive and Management Services as well as positions across all services designated as special appointments. These are, however, not the only at-will positions in State government. Throughout the Annotated Code of Maryland there are whole agencies or units, groups of positions, and individual positions which are designated specifically by law as at-will. Some of these designations are consistent with the at-will categories listed in the SPMS. Other positions are listed as serving at the pleasure of a designated appointing authority.

As in Chapter 2, the numbers of at-will positions contained in the exhibits in this chapter are largely derived from personnel data obtained from the Department of Budget and Management. The data is current as of July 1, 2008, and if necessary will be referred to as the SPMS personnel data base. Regarding the survey of State agencies mentioned in Chapter 1, the Department of Legislative Services (DLS) received responses from every State agency surveyed on statutorily designated at-will positions, at-will employment generally in State government, and additional protections for management service positions. The Secretary of Budget and Management, however, did not comment on management service positions in the agency. Agency responses are referenced in this chapter.

### All Positions

In several State agencies or specific units in a State agency, all or most positions are designated by law as at-will. In some cases, the designation goes back decades, but for the most part the General Assembly has granted at-will status to many of these agencies or units within the last 20 years. In addition, statute generally contains no statements of intent regarding the rationale for designating all positions in an agency or unit as at-will. **Exhibit 3.1** shows a list of these entities.

**Exhibit 3.1**  
**All State Positions Designated as At-will**

<u>Department/Agency/State Unit</u>	<u>Status</u>	<u>Number of At-will Positions</u>
Attorney General's Office	All staff at-will since 1916	497*
Department of Business and Economic Development	All staff hired after 1995	276 (30 are still merit employees)
Department of Budget and Management, Central Collection Unit	All staff since 1992	109
Department of Health and Mental Hygiene, Office of the Chief Medical Examiner	All staff	83
Health Care Commission	Executive Director, Deputy Director, section chiefs, and all staff hired after 1999	61
Health Services Cost Review Commission	Executive Director, Deputy Director, Chiefs, and all staff hired after 1999	29
Community Health Resources Commission	Executive Director and all staff hired after 2005	3
Department of Health and Mental Hygiene, Maryland Board of Physicians	All staff hired after 1992	73
Department of Human Resources, Child Support Enforcement Administration Demonstration Sites	Staff hired after designation as a demo site	203**
Department of Public Safety and Correctional Services, Maryland Correctional Enterprises	All staff	200
Department of Planning, Maryland Historical Trust	All staff since 1990	62

\*Does not include the assistant Attorney Generals at the Maryland Department of Transportation.

\*\* Includes staff who remained in the skilled or professional services after the transition to a demonstration site.

Source: Department of Budget and Management; Department of Human Resources; Maryland Department of Planning; Department of Legislative Services

All positions in Exhibit 3.1 are in the SPMS, but only the Attorney General's Office is headed by an elected official. The number of at-will positions varies from the office of the Attorney General, which includes over 500 positions, to the Maryland Community Health Resources Commission with 3 positions. The most common reason given by the agencies for the need to have an entire staff of at-will employees involve comparisons to, or competition with, the private sector. Private sector employers are viewed as having the flexibility to hire and dismiss employees without the "burdens of bureaucracy." All agencies listed in Exhibit 3.1 stressed the importance of having at-will positions. As a result, except for the Maryland Historical Trust, the agencies responded that no changes were necessary regarding the at-will status of their positions.

Most agencies contacted provided DLS with comments specific to the need for at-will positions. The Attorney General responded that no positions in the office should be subject to political consideration, but employees, most of whom are attorneys, should be at-will due to the nature of the work performed by the Attorney General. The Secretary of Business and Economic Development provided that special appointment status allows recruitment and hiring practices that resembles the practices of other economic development entities. Also most of the department's labor pool comes from the private sector and local government. The executive directors of the Health Services Cost Review Commission and the Health Care Commission similarly responded that they need the ability to recruit expeditiously and have compensation flexibility to compete with the private sector, and they have never or rarely used their authority to terminate an at-will employee.

Maryland Correctional Enterprises (MCE) is a special fund entity that is entirely funded through the revenues it collects for its services. The law does give the option for MCE to designate all positions as special appointments, which is the reason for its inclusion in this section of Chapter 3. The Secretary of Public Safety and Correctional Services, however, responded that each position in MCE is a special appointment except for office secretaries and clerks who are in the skilled service.

The Child Support Enforcement Administration Demonstration Sites are the units that collect child support in 22 jurisdictions in the State (child support collections in Baltimore City and Queen Anne's County are privatized). The demonstration sites were established to allow them to compete with the private sector since child support collections are a revenue generator for the State. To allow the demonstration sites to compete, State positions were classified at special appointments. In defense of the classification, the Secretary of Human Resources relayed that to compete with the private sector and to simulate private employment practices these demonstration site positions should be at-will. In addition, the Secretary advised that there have been no experiences with employees being adversely affected by their at-will status.

As with the other entities in this section, the law mandates that all positions in the Maryland Historical Trust (MHT) be at-will. According to the Maryland Department of Planning (MDP), where MHT is located, the special appointment specification allows MHT to hire persons with specialized knowledge, because of the difficulty in determining whether people on the standardized and objective State list are qualified to conduct historic preservation activities. Unlike the other entities in this section, however, MDP responded that, while

desirable, it is not necessary that all administrative staff be at-will, and MDP does not oppose limited job protections.

### **The Special Case of the Central Collection Unit**

Another agency that is entirely special funded through revenues raised from its activities is the Central Collection Unit. The unit is located within the DBM and with certain exceptions is charged with collecting delinquent accounts or debts that are owed to the State. Items that the unit is not responsible for collecting include taxes and child support. In order to best accomplish its mission, positions in the unit are designated in statute as either in the management service or special appointments. Employees in unit positions may also be entitled to performance incentives that could include pay incentives.

Although all of the unit's positions are technically at-will, statute also provides that employees in these positions may only be removed for cause and only after written charges were filed and hearings were conducted. Positions in the unit are also exempt from the normal layoff provisions that apply to SPMS positions. Instead, employees in unit positions may be laid off because of lack of work or appropriation without the bumping or reinstatement rights available to employees in other SPMS positions.

To justify the special status of the unit's positions, the Secretary of Budget and Management reported that hiring flexibility is needed to adjust employee resources up or down to meet the volume of work since the unit is self-funded. Therefore, the special appointment status of unit positions relates more to the ability of the Secretary to hire quickly and to terminate employees through layoffs to meet workload demands. Otherwise, unit positions have a fair amount of merit system protections for a management service or special appointment position.

### **Groups of Positions**

In many State agencies or specific units in a State agency, groups of positions are designated by law as at-will. **Exhibit 3.2** shows a list of these groups of positions and their agencies and designated units. Much of the information regarding the date when these designations were made and the rationale for the designations has been lost to history; however, in some cases the agencies were able to provide dates and some history regarding the designations. In some cases the designation dates could also be determined by reviewing Maryland's Annotated Code. Nevertheless, unlike the blanket designation of an entire agency or unit as "at-will," the rationale for designating a group of positions may be easier to discern simply by noting the description of the groups of positions.

**Exhibit 3.2**  
**Groups of State Positions Designated as At-will**

<u>Agency</u>	<u>State Unit</u>	<u>Employees</u>	<u>At-will Since</u>	<u>Number of At-will Employees</u>
Commission on Human Relations		General and Assistant Counsel		4
Department of Health and Mental Hygiene		All Program or Admin Staff Grade 18+		*
	Local Health Departments	Local Health Officers		24
	Mental Hygiene Facilities	Superintendent, Scientific or Technical Positions		*
Department of Human Resources	Local Departments of Social Services	Local Directors and Deputy and Assistant Directors		24 (At least)
Department of Juvenile Services	State Institutions	Uncertificated Teachers	2003	12
Department of Labor, Licensing, and Regulation	Racing Commission	Stewards and Harness Judges	1985	6
Department of Public Safety and Correctional Services	Division of Correction	Wardens, Assistant Wardens, Facility Administrator, and Chaplains		46 (At least)
	Patuxent Institution	Associate Directors, Social Workers, Sociologists, Physicians, and Psychologists		29 (At least)
	Baltimore City Pretrial Release	Assistant Warders		4
Maryland State Police		Majors and Captains		103**
Maryland Public Broadcasting Commission		All Staff, except those in the Skilled Service		182
Maryland State Department of Education		Professional Assistants at Grade 31+		1,066 out of 1651**
Office of Administrative Hearings		Administrative Law Judges	1989	54
Office of People's Counsel		Deputy People's Counsel, and Attorneys	2000	9

**Exhibit 3.2 (Continued)**

<u>Agency</u>	<u>State Unit</u>	<u>Employees</u>	<u>At-will Since</u>	<u>Number of At-will Employees</u>
Office of the Public Defender	Deputy, District, Assistant Public Defenders		1971	551
Public Service Commission	Assistant General Counsels, Personal Staff Members, Chief Hearing Examiner, and License Hearing Officers			13**
State Retirement Agency	Professional, Technical			66
Supplemental Retirement Plans	Professional, Technical			11

\* Due to the nature of the statutory description and the reported position classifications in the DBM database, it is difficult to determine which positions meet the statutory requirement or are designated as special appointments by the Secretary of Budget and Management.

\*\* The statutory language describing the at-will positions is obsolete; therefore, the reported number of at-will positions comes from the relevant agencies rather than the DBM database.

Source: Department of Budget and Management; Maryland State Police; Maryland State Department of Education; Public Service Commission; Department of Legislative Services

Similar to Exhibit 3.1, all positions in Exhibit 3.2 are in the SPMS. The number of at-will positions varies, from as few as 4 in the Commission on Human Relations to 551 in the Office of the Public Defender. There are essentially three common groups of positions designated by law as at-will in the Maryland Code. The categories include attorneys or counsel, technical or professional positions, or program or facility administrators or managers.

Most agencies responded that the statutory designations for these groups of positions were appropriate and no changes are necessary, particularly when the groups designated included attorneys. Several agencies also provided DLS with comments specific to the need for having these at-will positions. Despite the overall consensus, however, several agencies did question the necessity of designating some of these positions as at-will.

The Commission on Human Relations reported that the designation gave the commission the same authority over its attorneys that the Attorney General has over his attorneys, and that persons in these positions must have specific knowledge to be effective. The Secretary of Health and Mental Hygiene noted that most at-will positions in the department are designated by statute, but some management service positions could be moved to the skilled or professional services. In the Department of Juvenile Services, certificated teachers have merit system protections, while uncertificated teachers do not. In response, the Secretary of Juvenile Services provided that uncertificated teachers who do not complete the steps necessary to become certificated should be terminated from employment.

Most groups of positions designated as at-will in the Department of Public Safety and Correctional Services are high level administrators or program managers. The Secretary of Public Safety and Correctional Services, however, questioned the need to have chaplains designated by law as at-will positions, rather chaplains should be in the skilled service. In addition, the Secretary questioned the statutory designation of several position classifications at the Patuxent Institution. The Secretary agreed that top management at Patuxent Institution, including wardens and associate directors, should be at-will, but with the determination of the Secretary of Budget and Management and a change in statute the rest of the positions, including social workers, sociologists, physicians, and psychologists, could be in a protected classification.

Another statutory change was suggested by the Superintendent of State Police. The Superintendent reaffirmed that the at-will designation allows reasonable control and flexibility over senior staff members, but statute should be modified to correctly list lieutenant colonels and majors as serving at the pleasure of the superintendent rather than majors and captains. The Insurance Commissioner also suggested a statutory change. The Commissioner reiterated the importance of having at-will positions – particularly actuaries, examiners, and market conduct examiners. Without that flexibility it could affect the commission’s accreditation by the National Association of Insurance Commissioners. To provide ultimate personnel flexibility the Commissioner suggested that statute be change to provide that all commission positions be at-will.

The Maryland Public Broadcasting Commission reported that no positions are political appointments. The commission claimed that it does not hire "traditional" State employees, so it needs independence from traditional hiring practices of the State. The Office of Administrative Hearings (OAH) responded that the administrative law judges should remain at-will because at-will status ensures the independence of the judicial process. OAH has no objection to providing limited job protections to the four administrative law judges with management responsibilities.

Both the People’s Counsel and the Public Defender responded that their attorneys should be at-will because the attorneys are specialists in utility regulation, and to assure effective representation in court, respectively. The Public Service Commission’s list of statutorily designated at-will positions is appropriate according to the commission, but there have been no "personal staff members" at the commission for many years. The executive directors of the State Retirement Agency and the Supplemental Retirement Plans agree that professional and technical positions should be designated in statute as at-will. The executive director of the State Retirement Agency did not object to placing certain managers into a separate class with limited job protections.

### **The Special Case of the Maryland State Department of Education**

The Maryland State Department of Education (MSDE) has a personnel category that appears to be outside of the SPMS classifications. The majority of MSDE positions are considered to be “professional assistants,” which is a statutory designation that may predate the classified/unclassified designations in the old State merit system. Statute specifies that

professional assistants are appointed by the State Board of Education but shall be in the executive or management services or special appointments in the SPMS. Only special assistants, grade 31 and above, serve at the pleasure of the superintendent and the State Board of Education. The board is responsible for setting personnel guidelines governing professional assistants.

Within the professional assistant designation, MSDE established three categories of positions. Category I is equivalent to the executive service, category II is equivalent to the management service, and category III is equivalent to the professional and skilled services. The meaning of “equivalent” is that the board in its personnel guidelines granted similar rights to the positions in each category that apply to positions in each service in the SPMS. MSDE, however, reported that the “Grade 31” designation is obsolete because of changes made to the standard pay plan in the mid 1990s and changes made to the executive pay plan in 2000. MSDE suggested that the reference to Grade 31 be deleted from statute and to add language specifying that professional assistants in the executive service should serve at the pleasure of the board and superintendent.

The rationale for having professional assistants in MSDE appears to be that the designation is required because the State Board has been granted the authority to set personnel guidelines for most MSDE positions. Although MSDE positions appear to be separate from positions in the SPMS, they still must be in either the executive or management services, or a special appointment. In fact, the SPMS database has all MSDE positions listed under the various services, including the skilled and professional services. In addition, the board’s personnel policies regarding the termination of professional assistants are similar to the SPMS termination policies.

There are some differences, however, between the SPMS and the board’s termination policies. One difference is that professional assistants in categories I and II must be given at least two-weeks notice prior to the termination date. Another difference is that if a category II professional assistant appeals the termination, an administrative law judge hears the appeal and makes a recommendation to the board. Concerning the professional assistant at-will positions, only category II positions may appeal the termination, while all SPMS at-will positions have limited appeal rights; in all cases, though, the appointing authorities make the final decision on appealed terminations of at-will positions.

## **Individual Positions**

Throughout State government individual positions are designated in the Maryland Annotated Code as at-will. **Exhibit 3.3** shows a list of these individual positions and the agencies and designated units where the positions are located. For the most part, these positions represent the highest levels of management or responsibility in a State agency or unit or were attorneys. If an agency was able to provide a date or the date could be determined from the Annotated Code, it was included in the exhibit. Nevertheless, the exhibit shows that some of these positions have been at-will for a long time.

**Exhibit 3.3**  
**Individual Positions Designated as At-will**

<u>Department/Agency</u>	<u>State Unit</u>	<u>Employees</u>	<u>At-will Since</u>
State Department of Assessments and Taxation		State Supervisor of Assessments	
Attorney General's Office		Securities Commissioner	
Board of Public Works		Secretary	
		General Counsel	
Department of Business and Economic Development	Maryland State Arts Council	Executive Director	
	Maryland Industrial Development Fund	Executive Director	
Department of Veterans' Affairs	Charlotte Hall	Director	
Department of Housing and Community Development	Community Development Administration	Director	
	Maryland Building Rehabilitation Code	Director	
Department of Health and Mental Hygiene	Alcohol and Drug Abuse Administration	Director	
	Mental Hygiene Administration	Director	
	Nursing Home Administrators Board	Executive Director	
	Occupational Therapists Board	Executive Director	
	Physical Therapists Board	Executive Director	
	Social Workers Board	Executive Director	
	Child Care Administrators Board	Executive Director	
Department of Human Resources	Commission on Indian Affairs	Administrator	
Department of Labor, Licensing, and Regulation	State Board of Appraisers and Home Inspector	Executive Director	2006
	Real Estate Commission	Executive Director	1930

**Exhibit 3.3 (Continued)**

<u>Department/Agency</u>	<u>State Unit</u>	<u>Employees</u>	<u>At-will Since</u>
	Office of Cemetery Oversight	Director	1994
	Home Improvement Commission	Executive Director	Early 1960s
	Racing Commission	Executive Director	1957
	Division of Financial Regulation	Deputy Commissioner	1910
	Labor and Industry	Deputy and Assistant Commissioner	
	Labor and Industry	Deputy Commissioner	
	Mediation and Conciliation	Chief Mediator	
Department of Public Safety and Correctional Services	Patuxent Institution	Director	
	Pretrial Release	Commissioner	
	Pretrial Release	Deputy Commissioner	
	Pretrial Release		
	Baltimore City Pretrial Release	Assistant Warders	
	Inmate Grievance Office	Executive Director	
Maryland Department of the Environment	Maryland Water Quality Financing Administration	Director	
	Mine Bureau	Director	1957
Maryland Department of Transportation	Bicycle and Pedestrian Access	Director	2000
	Mass Transit Administration	General Counsel	1971
Maryland State Department of Education		Credentialing Secretary and Statistician	

**Exhibit 3.3 (Continued)**

<u>Department/Agency</u>	<u>State Unit</u>	<u>Employees</u>	<u>At-will Since</u>
Public Service Commission		Executive Secretary, Executive Director, General Counsel	1910, 1980, and 1910, respectively
	Driving Services	Licensed Hearing Officer	1966
The State Labor Relations and the Higher Education Labor Relations Boards		Executive Director	2006

Source: Department of Legislative Services

Unlike Exhibits 3.1 and 3.2, most of these positions are in the SPMS. Some positions, however, fall under the Maryland Department of Transportation's Human Resources System. Almost all agencies responded that the statutory designations for these positions were appropriate, and no changes are necessary. In some cases the positions no longer exist or the statutory designation was considered unnecessary; therefore, changes were suggested.

As noted above, several agencies provided DLS with comments specific to the need for at-will employment for the designated positions. The positions at the Board of Public Works were reported as dealing with complex issues, advising elected officials, and are policymaking positions. The Director of Charlotte Hall, a nursing facility for veterans, is responsible for the nursing home patients, the facility, and its grounds. The Secretary of Housing and Community Development responded that the Community Development Administration Director is in an extremely sensitive position overseeing financial assistance for projects and facilities. The Director of the Maryland Building Rehabilitation Code, however, is currently not a full-time position, and various department employees have handled the position's duties. Therefore, the Secretary suggested that there is no need to have this position designated as a special appointment.

The Secretary of Labor, Licensing, and Regulation reported that the Chief Mediator position was abolished several years ago and suggested that there was no reason to designate the position as at-will. The Secretary, however, did not suggest eliminating the position from the Annotated Code. Concerning the Maryland Water Financing Administration Director and the Mine Bureau Director, the Secretary of the Environment responded that there was no need to statutorily designate these positions as at-will but preferred that the positions remain at-will regardless. Within MSDE, statute calls for a Credentialing Secretary and a Statistician who are designated as special appointments in the SPMS; MSDE reported that the law is obsolete and that the classifications no longer exist.



## **Chapter 4**

# **Observations and Conclusions**

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The State Personnel Management System Reform Act of 1996 was a major restructuring of the laws governing the conduct of most State positions in Maryland. The changes were intended to modernize the State Personnel Management System (SPMS). One of the reasons for the reform was to stem the trend in State government towards independent personnel systems. Although there was debate regarding the new special appointment designation and the establishment of a management service, data collected by the Department of Legislative Services (DLS) indicated that the total number of at-will State employees before and after 1996 has not significantly changed.

### **What Was Learned**

In the conduct of this study, it is apparent that the subject of at-will employment continues to be controversial in State government. Organized labor continues to oppose the existence of at-will State positions in principle as well as any attempts to increase the number of at-will State positions. State agency administrators value the existence of at-will State employment as a means to further the agenda of their agencies' policies and to allow for the efficient operation of their agencies.

At the conclusion of the review of the Annotated Code of Maryland to identify designated at-will positions, approximately 90 statutory designations were identified mandating that a State employee's service in a specific position is at-will, encompassing about 3,600 readily identifiable positions. By far the positions targeted most often for at-will status were attorney positions. Almost 60 percent of designated at-will positions can be found in 3 agencies: the Office of the Attorney General, the Office of the Public Defender, and the Maryland State Department of Education.

There were no surprises when the agency responses were reviewed by DLS. All of the agencies saw value in at-will employment and felt no changes were necessary regarding the statutory designations. Most agencies, however, were not opposed to additional protections for certain management service positions. Some agencies did question the need for some special appointment designations, which were determined by the Department of Budget and Management (DBM). Most of the agencies with all, or predominantly all, at-will positions viewed their role in State government as unique; and therefore, they have unique employment requirements, which are not served well by the bureaucracy inherent with hiring employees in merit system positions.

In 2007, the General Assembly provided some clarification to the laws governing special appointments in the SPMS and at-will positions in the Maryland Department of Transportation (MDOT) relating to political appointments. Chapter 592 of the Laws of 2007 required the

designation of at-will positions in the SPMS and MDOT that must be filled with and without regard to political affiliation, belief, or opinion. The law is also now clear that employees in at-will State positions cannot be terminated for any reason that is illegal or unconstitutional. Additionally, an employee in a management service position or nonpolitical special appointment may not be terminated to create a position for an individual because of that individual's political affiliation, belief, or opinion. Finally, SPMS and MDOT employees must be notified of their position classification and associated rights (including classification changes) every six months. The purpose of these changes was to insulate some employees in at-will State positions from the vagaries of the political system.

As mentioned in Chapter 1, Chapter 592 of the Laws of 2007 also required that the Chancellor of the University System of Maryland and the Presidents of Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College (BCCC) identify all nonmerit and at-will positions in their respective personnel systems, and to annually report the information to the General Assembly. To date, reports have been received from the University System, Morgan State University, St. Mary's, and BCCC. The universities generally classify their positions as either exempt or non-exempt from the Federal Fair Labor Standard Act. Individuals who hold exempt positions receive an annual salary, while the non-exempt employees are paid an hourly wage. In their reports, the universities have generally designated their exempt positions as at-will.

## **What Can Be Changed**

Abolishing all at-will employment in State government is not a realistic or even a reasonable option. Most of the statutory at-will designations involve positions in the higher levels of State government, positions that provide advice on legal matters, or positions that work in sensitive subject areas. Many of these positions are also subject to the "political wind" and who is sitting in the Governor's Office at any given time. Therefore, it is not necessary to alter the statutory designations of the positions listed in Exhibit 3.3 and most of the positions listed in Exhibit 3.2. Nevertheless, there are some statutory changes the General Assembly may want to consider in light of the DLS analysis of at-will employment or based on some agency suggestions.

### **Repeal the provision of law that allows State positions in the executive service and the management service to be designated as special appointments in the SPMS.**

Positions in the executive and management services are by definition at-will. Particularly with the executive service, by providing that a position in the executive service is also a special appointment is redundant. Determining an exact count of at-will positions in State has been a problem in the past. By removing the special appointment designation for executive and management service positions, it may make it easier to construct a database where the total number of State at-will positions can be easily determined.

**Add additional protections for certain management service positions.**

Many of the agencies that responded to the DLS survey supported some additional merit system protections for management service positions. The questions are, however, which management service positions warrant additional protections and what kind of protections should be added. Some employees likely work in management service positions developing policy that furthers the agenda of the Governor or the head of the agency. Employment in these positions is often subject to who is in leadership at that point in time. Other employees in management service positions likely work in programs that represent the core functions of an agency or manage positions that provide basic government services. These managers may not necessarily be involved with policymaking and would continue working at an agency regardless of leadership changes.

There are at least two options the General Assembly may want to consider regarding additional protections for selected management service positions. Similar to the requirement for political and nonpolitical designations for special appointments, DBM should be required to identify management service positions that fall into the categories mentioned above. The exercise could be similar to the requirement for designating political and nonpolitical special appointment positions, with the purpose of identifying managers who are subject to changes in Executive Branch leadership and managers who are needed for the continuity of State government regardless of who is in charge.

The first option would be to divide the management service into two groups: positions that require “policy managers” and positions that require “program managers.” In fact, some of these policy managers may actually already be designated as political appointees under Chapter 597 of the Laws of 2007. The program managers could be given some additional protections, possibly similar to the protections offered to the Maryland State Department of Education’s (MSDE) professional assistants by the State Board of Education. As detailed in Chapter 3, although similar to SPMS management service termination and appeal rights, the board requires that written notification be given two-weeks prior to termination of employees in at-will positions, and employees in management positions may appeal their termination to Office of Administrative Hearings, rather than appealing to the appointing authority, which is the case for at-will positions in the SPMS.

A second option would be to expand the definition of professional service to include management positions that do not work in a political or policymaking environment. A person in that management position would be a merit employee and would have all of the protections available to positions in the professional and skilled services. This option, however, could result in some managers losing their at-will status.

**Alter provisions of law requiring that all positions in the Department of Business and Economic Development, the Health Regulatory Commissions, the Maryland Board of Physicians, the Child Support Enforcement Administration's Demonstration Sites, and the Maryland Historical Trust be at-will.**

As mentioned in Chapter 3, the most common reason given by the agencies for the need to have an entire staff of at-will positions involve comparisons to the private sector. These agencies view their role in State government as unique; and, therefore, they contend that they have specific personnel needs that go beyond the lists of eligible employees available through DBM. In addition, these agencies must often respond quickly when vacancies occur and they claim that the time it takes hire someone through DBM is not timely. Every agency or program in State government, however, could argue that what they do is unique in the State government, and most of these programs have a mix of at-will and merit positions.

The Department of Business and Economic Development (DBED) is the only principal department of State Government that has a workforce that is entirely designated as at-will. While executives and managers in DBED conduct activities that may well be unique in State government and specific to the agency, should the same argument apply to positions in the skilled service that are required to be special appointments? It is unlikely that an administrative/secretarial function varies much among State agencies, yet the status of some of these positions does vary across State government.

It is interesting to note that within DBED, the health regulatory commissions, and the demonstration sites, there are still merit system positions. The laws that established the at-will employment requirements all mandated an "as of" date, which can be seen in Exhibit 3.1. According to the SPMS personnel database, DBED still has 30 merit system employees, the health regulatory commissions still have 26 merit system employees, and the majority of the employees in the demonstration sites still remain in the merit system. All of these entities most likely have employees performing the same tasks, but their employment status may vary. Unless these agencies can demonstrate that the performance of merit system employees varies from the performance of at-will employees, particularly for those employees in the skilled service or professional service positions, seeking at-will status for all of these agency positions was not entirely justified.

A similar argument presents itself regarding positions in the Maryland Board of Physicians. It is unlikely that the duties of skilled service positions in the physician's board varies significantly from the duties of skilled service positions in the Board of Nurses or any other regulatory board, yet all positions in the Maryland Board of Physicians are designated as at-will. Employees in physician board positions are appointed by Secretary of Health and Mental Hygiene, but the Secretary did not provide any insight regarding the need for the special status for these positions. Regarding the positions in the Maryland Historical Trust, as noted in Chapter 3, the Department of Planning supported at-will employment but acknowledged that it may not be necessary for all administrative staff to be designated as at-will.

It is important to note that even if the at-will designations were removed from the Maryland Code, there will still be at-will positions within these agencies. Executive and management service positions are at-will, and the Secretary of DBM could also designate specific positions who “perform a significant policy role or provides direct support to a member of the executive service” as a special appointment. Having sets of employees in positions performing similar tasks but with varying employment status may not be productive, in those cases the General Assembly may want to err on the side of the merit system.

**Chaplains and other specified positions in the Department of Public Safety and Correctional Services should be merit system positions.**

As pointed out in Chapter 3, most of the statutorily designated positions in the department are high level program administrators or managers. The Secretary relayed that there was no justification for designating chaplains as special appointments or designating social workers, sociologists, physicians, and psychologists employed at the Patuxent Institution as special appointments.

**Eliminate the Grade 31 designation for professional assistants within the Maryland State Department of Education.**

Also included in Chapter 3 was a discussion of professional assistants within the Maryland State Department of Education. MSDE suggested that the reference to Grade 31 was obsolete and that it should be deleted from the law and replaced with language specifying that professional assistants in the executive service should serve at the pleasure of the board and superintendent.

**Alter provisions of law relating to the hiring of State employees to conform to the legislature’s intent in the State Personnel Management Reform Act of 1996 that hiring should be de-centralized, with most of the responsibility for hiring given to the departments and agencies in the Executive Branch unless they request assistance from DBM.**

One of the common reasons to have an agency with all special appointment positions is that such positions are exempt from the normal hiring and termination provisions of the SPMS. Currently, in order to hire an employee in a skilled service or professional service position, the agency generally must hire from a list of eligible candidates maintained by DBM and may only terminate an employee for cause. As shown above and in Chapter 3, agencies argued that they require the ability to recruit employees expeditiously, which the current practice of going through DBM does not allow. In contrast, no agency directly advocated for the need for expeditious employee terminations. In the 2008 *Joint Chairmen’s Report (JCR)*, DBM was asked to report on the statutory and regulatory requirements affecting recruitment and how to streamline the process.

In response to the JCR, DBM provided a report detailing the recruitment process and how to improve the process. DBM also noted the frustrations of some agencies with specific

recruitment needs and the need to use a list of eligible candidates. Access to, and the development of, a list of eligible candidates seems to be crux of agency frustrations with the recruitment process. Section 7-203 of the State Personnel and Pensions Article requires that a candidate for a position in the skilled or professional service may be selected:

- “from an existing list of eligible candidates;
- if no existing list of eligible candidates exists or if the appointing authority decides to recruit for the position, by recruitment; or
- from a special list of eligible candidates from the Division of Rehabilitation Services....”

DBM believes that the language mandates that a list of eligible candidates must be used in order to recruit for the relevant position. There may be some confusion regarding the second bullet in the above list. One of the reasons for the 1996 reforms was to establish a decentralized personnel management system where the State unit, or agency, has most of the responsibility for managing its workforce. It is possible that if more flexibility was given to an agency to recruit in a more expeditious fashion, the need to have an entire agency of special appointments may not be necessary. Clarifying the language in the second bullet above to allow agencies or units to recruit without developing a list of eligible candidates may alleviate agency frustrations when recruiting for a specialized position.

**The Secretary of DBM, in consultation with the appropriate cabinet secretaries, should reassess all skilled and professional service employee positions designated as special appointments by the Secretary under the SPMS, to determine whether these positions should continue to be special appointments.**

There are approximately 6,300 at-will positions in the SPMS; about one-half of these positions are designated by the Secretary of DBM. Many of the designations may actually date back to 1996 when the special appointment classification was established and may actually have their origins in the unclassified service. Also, over the years it is likely that possible inconsistencies in the designation of groups of positions have emerged. For example, certificated teachers in the Department of Juvenile Services, by law, are merit positions, but certificated teachers at the Maryland School for the Deaf are reportedly special appointments designated by the Secretary.

As reported in Chapter 2, 14.3 percent of SPMS positions are at-will, whereas 7.7 percent of MDOT employees are at-will. Chapter 592 of the Laws of 2007 mandated that the Secretary of DBM designate special appointment positions that may be filled with regard to political affiliation and special appointment positions that may not be filled with regard to political affiliation. The process is meant to be ongoing, and each year the information has to be reported to the General Assembly. The next step should be for DBM to review the relevance of these special appointment designations and to justify the need to have proportionally almost twice as

many at-will positions as MDOT. Now that the data exists, particularly regarding nonpolitical special appointments, reviewing whether a skilled service or professional service position should remain as a special appointment should not be particularly burdensome.

**The Secretary of DBM should, by December 31 during a gubernatorial election year, submit to the Governor, the President of the Senate, and the Speaker of the House, a list of the position, pay grade, title, and name of each employee designated as a special appointment who is employed with regard to political affiliation, belief, or opinion.**

During every Presidential election year, the federal government publishes the “Plum Book,” which is a list of political appointees located throughout the federal government. It is a resource that provides valuable information to any incoming presidential administration, and similar information should also be useful in Maryland as well, during transitioning administrations. As with the previous recommendation, the data should already exist to develop a State “plum book” every four years and would give a new administration a readily accessible guide in which to place political appointments.