

SENATE BILL 741

F1, F5

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By: **Senators Jacobs, Brinkley, Colburn, Haines, Harris, Kittleman, Mooney, Pipkin, Reilly, and Stoltzfus**
Introduced and read first time: February 10, 2010
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Charter Schools – Certificated Professional Employees – Exemption from**
3 **Collective Bargaining Agreements**

4 FOR the purpose of exempting certain charter schools and certain employees of certain
5 charter schools from certain provisions of law and regulation; providing certain
6 exceptions to this exemption under certain circumstances; authorizing certain
7 employees to form certain organizations for certain purposes; authorizing
8 certain organizations to serve as certain exclusive representatives under certain
9 circumstances; specifying that certain organizations are considered certain
10 units in certain counties; defining certain terms; and generally relating to
11 employees of public charter schools.

12 BY repealing and reenacting, with amendments,
13 Article – Education
14 Section 6–401(b), 6–404, 6–405, 6–407, 9–102(11), 9–106, and 9–108
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2009 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article – Education
19 Section 6–401(d)(1) and (e), 6–402, 6–403, 6–406, 6–408, 6–409, 6–410, and
20 6–411
21 Annotated Code of Maryland
22 (2008 Replacement Volume and 2009 Supplement)

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

25 **Article – Education**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 6-401.

2 (b) "Employee organization" means an organization that:

3 (1) **(I)** Includes certificated employees of a public school employer
4 or individuals of equivalent status in Baltimore City; **OR**

5 **(II) CONSISTS SOLELY OF CERTIFICATED EMPLOYEES OF A**
6 **PUBLIC CHARTER SCHOOL, AS AUTHORIZED UNDER § 9-108 OF THIS ARTICLE;**
7 and

8 (2) Has as one of its main purposes the representation of the
9 employees in their relations with that public school employer.

10 (d) (1) "Public school employee" means a certificated professional
11 individual who is employed by a public school employer or an individual of equivalent
12 status in Baltimore City, except for a county superintendent or an individual
13 designated by the public school employer to act in a negotiating capacity as provided
14 in § 6-408(b) of this subtitle.

15 (e) "Public school employer" means a county board of education or the
16 Baltimore City Board of School Commissioners.

17 6-402.

18 (a) Public school employees may form, join, and participate in the activities
19 of employee organizations of their own choice for the purpose of being represented on
20 all matters that relate to salaries, wages, hours, and other working conditions.

21 (b) An employee organization may establish reasonable:

22 (1) Restrictions as to who may join; and

23 (2) Provisions for the dismissal of individuals from membership.

24 6-403.

25 A public school employee may refuse to join or participate in the activities of
26 employee organizations.

27 6-404.

28 (a) **(1) [Each] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
29 **SUBSECTION, EACH** public school employer shall designate, as provided in this
30 subtitle, which employee organization, if any, shall be the exclusive representative of
31 all public school employees in a specified unit in the county.

1 **(2) IF THE PUBLIC SCHOOL EMPLOYEES OF A PUBLIC CHARTER**
2 **SCHOOL ELECT TO FORM AN EMPLOYEE ORGANIZATION UNDER § 9-108(B)(3)**
3 **OF THIS ARTICLE, THAT EMPLOYEE ORGANIZATION SHALL BE THE EXCLUSIVE**
4 **REPRESENTATIVE OF ALL PUBLIC SCHOOL EMPLOYEES IN THAT PUBLIC**
5 **CHARTER SCHOOL.**

6 (b) (1) Except as provided in paragraph (2) of this subsection, the public
7 school employer shall determine the composition of the unit in negotiation with any
8 employee organization that requests negotiation concerning the composition of the
9 unit.

10 (2) In Baltimore County, the public school employer may designate a
11 separate unit comprised of all registered nurses employed by the county in elementary
12 schools or special schools.

13 (c) (1) Except as provided in [paragraph (2)] **PARAGRAPHS (2) AND (3)**
14 of this subsection, there may not be more than two units in a county.

15 (2) In Baltimore County, there may not be more than three units,
16 provided that one unit consists of elementary and special school nurses and one unit
17 consists of employees whose position requires an administrative and supervisory
18 certificate and supervisory noncertificated employees as defined under § 6-501(h) of
19 this title.

20 **(3) EACH EMPLOYEE ORGANIZATION THAT CONSISTS SOLELY OF**
21 **CERTIFICATED EMPLOYEES OF A PUBLIC CHARTER SCHOOL SHALL BE A**
22 **SEPARATE UNIT IN A COUNTY.**

23 (d) **[All] EXCEPT AS PROVIDED IN § 9-108 OF THIS ARTICLE, ALL** eligible
24 public school employees shall:

25 (1) Be included in one of these units; and

26 (2) Have the rights granted in this subtitle.

27 6-405.

28 (a) **[The] SUBJECT TO § 9-108 OF THIS ARTICLE AND § 6-404 OF THIS**
29 **SUBTITLE, THE** designation of an employee organization as an exclusive
30 representative shall be made as provided in this section.

31 (b) If an employee organization certifies to the public school employer that it
32 has a membership enrollment of at least 30 percent of the total number of public
33 school employees in a specified unit in a county as of June 1 of the year in which
34 certification is made, this certification is a request for recognition as exclusive
35 representative of all public school employees in the specified unit in the county.

1 (c) If another employee organization certifies that it has a membership
2 enrollment of at least 10 percent of the total number of public school employees in the
3 unit as of the same June 1, an election shall be held in which the public school
4 employees in the unit shall be offered the opportunity to choose:

5 (1) One of the employee organizations as the exclusive representative
6 of all public school employees in the unit; or

7 (2) Not to have exclusive representation.

8 (d) If no other employee organization certifies that it has a membership
9 enrollment of at least 10 percent of the total number of public school employees in the
10 unit, on the request of the employee organization under subsection (b) of this section,
11 an election shall be held and the ballot shall offer a choice between:

12 (1) Exclusive representation by the organization; and

13 (2) Not to have exclusive representation.

14 (e) The public school employer shall designate the employee organization
15 described in subsection (b) of this section as the exclusive representative of all public
16 school employees in the specified unit in a county if:

17 (1) No other employee organization certifies that it has a membership
18 enrollment of at least 10 percent of the total number of public school employees in the
19 unit;

20 (2) The employee organization does not request an election under
21 subsection (d) of this section; and

22 (3) The employee organization certifies that it has a membership
23 enrollment of the majority of the public school employees in the unit in the county.

24 (f) (1) The State Board shall adopt rules and regulations for:

25 (i) Verifying the number of certificated employees of the public
26 school employer or individuals of equivalent status in Baltimore City who are
27 members in good standing of an employee organization on the date of the certification
28 or who have signed a petition under this section; and

29 (ii) Holding elections under this section and the certification of
30 their results.

31 (2) The State Board shall provide for supervision of these elections.

32 (3) The elections shall be held:

1 (i) In each school facility where public employees are assigned
2 on a regularly scheduled school day;

3 (ii) In a manner assuring the secrecy of the ballot; and

4 (iii) On a regular working day for public school employees,
5 between June 1 and June 15, inclusive, except in Baltimore City where the elections
6 shall be held between November 1 and November 15 following the date on which
7 certification of required membership enrollment is made.

8 (4) In any election held under this section, the employee organization
9 that receives the largest number of votes cast in a unit shall be declared to be the
10 exclusive representative of all public school employees in the unit. If the largest
11 number of votes in the election is cast not to have exclusive representation, a
12 representative may not be designated for the unit.

13 (5) The public school employer shall provide any assistance required
14 in holding the elections.

15 6-406.

16 (a) (1) The designation of an exclusive representative shall be for at least
17 2 years.

18 (2) After this initial period, the organization shall be the exclusive
19 representative until another election is held.

20 (b) (1) An election after the initial period of representation may be held:

21 (i) Only after the end of the 2-year period; and

22 (ii) On petition signed by more than 20 percent of the public
23 school employees in the unit of the county.

24 (2) This election shall be held in the same manner as provided in §
25 6-405 of this subtitle.

26 (3) All signatures on a petition requesting an election shall be
27 obtained within 90 days before the election date.

28 6-407.

29 (a) **[An] EXCEPT AS PROVIDED IN § 9-108 OF THIS ARTICLE, AN**
30 employee organization designated as an exclusive representative shall be the
31 negotiating agent of all public school employees in the unit in the county.

1 (b) (1) An employee organization designated as an exclusive
2 representative shall represent all employees in the unit fairly and without
3 discrimination, whether or not the employees are members of the employee
4 organization.

5 (2) In addition, in Montgomery County the exclusive representative
6 shall represent fairly and without discrimination all persons actually employed as
7 substitute teachers without regard to whether they are included in § 6-401(d) of this
8 subtitle as public school employees.

9 (c) (1) In Montgomery County, Prince George's County, Baltimore
10 County, Baltimore City, and Howard County, the public school employer may
11 negotiate with the employee organization designated as the exclusive representative
12 for the public school employees in a unit, a reasonable service or representation fee, to
13 be charged nonmembers for representing them in negotiations, contract
14 administration, including grievances, and other activities as are required under
15 subsection (b) of this section.

16 (2) The service or representation fee may not exceed the annual dues
17 of the members of the organization.

18 (3) An employee who is a substitute teacher and who works on a
19 short-term day-to-day basis is not required to pay a service or representation fee.

20 (4) An employee whose religious beliefs are opposed to joining or
21 financially supporting any collective bargaining organization is:

22 (i) Not required to pay a service or representation fee; and

23 (ii) Required to pay an amount of money as determined in
24 paragraph (2) of this subsection to a nonreligious, nonunion charity or to such other
25 charitable organization as may be mutually agreed upon by the employee and the
26 exclusive representative, and who furnishes to the public school employer and the
27 exclusive representative written proof of such payment.

28 (5) (i) In Baltimore County, the provisions of this subsection shall
29 apply only to employees who are hired on or after July 1, 1997.

30 (ii) The provisions of this paragraph apply if an agency or
31 representation fee is negotiated in Baltimore County.

32 (iii) 1. Subject to the provisions of subparagraph 2 of this
33 subparagraph, the employee organization designated as the exclusive representative
34 for the public school employees shall indemnify and hold harmless the Board of
35 Education of Baltimore County against any and all claims, demands, suits, or any
36 other forms of liability that may arise out of, or by reason of, action taken by the board
37 for the purpose of complying with any of the agency or representation fee provisions of
38 the negotiated agreement.

1 2. The board shall retain without charge to the board the
2 services of counsel that are designated by the exclusive representative with regard to
3 any claim, demand, suit, or any other liability that may arise out of, or by reason of,
4 action taken by the board for the purpose of complying with any of the agency or
5 representation fee provisions of the negotiated agreement.

6 (iv) The employee organization designated as the exclusive
7 representative shall submit to the board an annual audit from an external auditor
8 that reflects the operational expenses of the employee organization and explains how
9 the representation fee is calculated based on the audit.

10 (v) 1. The agency or representation fee shall be based only
11 on the expenses incurred by the employee organization in its representation in
12 negotiations, contract administration, including the handling of grievances, and other
13 activities, as required under this section.

14 2. Any political activities of the employee organization
15 designated as the exclusive representative may not be financed by the funds collected
16 from the agency or representation fee.

17 (6) In Montgomery County, an employee who is a home or hospital
18 teacher and who works on a short-term day-to-day basis is not required to pay a
19 service or representation fee.

20 (d) (1) In Allegany County, Calvert County, Charles County, Garrett
21 County, and Washington County, the public school employer may negotiate with the
22 employee organization designated as the exclusive representative for the public school
23 employees in a unit, a reasonable service or representation fee, to be charged
24 nonmembers for representing them in negotiation, contract administration, including
25 grievances, and other activities specified under subsection (b) of this section.

26 (2) In Charles County, the provisions of this subsection shall apply
27 only to employees who are hired on or after July 1, 2005.

28 (e) In Garrett County:

29 (1) A public school employee who is not a member of the employee
30 organization designated as the exclusive representative for the public school
31 employees in a unit at the time that a negotiated service or representation fee is
32 initiated is exempt from the fee provided under subsection (d) of this section; and

33 (2) An individual who becomes a public school employee after the time
34 that a negotiated service or representation fee is initiated and does not join the
35 employee organization designated as the exclusive representative is liable for the fee
36 provided under subsection (d) of this section.

37 (f) In Anne Arundel County:

1 (1) The public school employer may negotiate with the employee
2 organization designated as the exclusive representative for the public school
3 employees in a unit, a reasonable service or representation fee to be charged
4 nonmembers for representing them in negotiations, contract administration, including
5 grievances, and other activities as are required under subsection (b) of this section.

6 (2) (i) Subject to the provisions of subparagraph (ii) of this
7 paragraph, the employee organization designated as the exclusive representative for
8 the public school employees shall indemnify and hold harmless the Anne Arundel
9 County Board of Education against any and all claims, demands, suits, or any other
10 forms of liability that may arise out of, or by reason of, action taken by the board for
11 the purpose of complying with any of the agency or representation fee provisions of the
12 negotiated agreement.

13 (ii) The board shall retain without charge to the board the
14 services of counsel that are designated by the exclusive representative with regard to
15 any claim, demand, suit, or any other liability that may arise out of, or by reason of,
16 action taken by the board for the purpose of complying with any of the agency or
17 representation fee provisions of the negotiated agreement.

18 (3) The employee organization designated as the exclusive
19 representative shall submit to the Anne Arundel County Board of Education an
20 annual audit from an external auditor that reflects the operational expenses of the
21 employee organization and explains how the service or representation fee is calculated
22 based on the audit.

23 (4) (i) The service or representation fee shall be based only on the
24 expenses incurred by the employee organization in its representation in negotiations,
25 contract administration, including grievances, and other activities under this section.

26 (ii) Political activities of the employee organization designated
27 as the exclusive representative may not be financed with the funds collected from the
28 service or representation fee.

29 (5) An employee whose religious beliefs are opposed to joining or
30 financially supporting any collective bargaining organization is:

31 (i) Not required to pay a service or representation fee; and

32 (ii) Required to pay an amount of money as determined under
33 paragraph (1) of this subsection to a nonreligious, nonunion charity or to another
34 charitable organization that is mutually agreed upon by the employee and the
35 exclusive representative, and who furnishes to the public school employer and the
36 exclusive representative written proof of the payment.

37 (6) Any negotiated agreement that includes a representation fee also
38 shall contain a provision that requires that an amount of revenue equal to 25% of the

1 annual representation fees collected and maintained by the local bargaining
2 representative be designated for professional development for represented educators.

3 (7) This subsection shall apply only to employees who are hired on or
4 after October 1, 2004.

5 6-408.

6 (a) (1) In this section, "negotiate" includes the duty to:

7 (i) Confer in good faith, at all reasonable times; and

8 (ii) Reduce to writing the matters agreed on as a result of the
9 negotiations.

10 (2) The agreements may provide for binding arbitration of the
11 grievances arising under the agreement that the parties have agreed to be subject to
12 arbitration.

13 (b) (1) On request a public school employer or at least two of its
14 designated representatives shall meet and negotiate with at least two representatives
15 of the employee organization that is designated as the exclusive negotiating agent for
16 the public school employees in a unit of the county on all matters that relate to
17 salaries, wages, hours, and other working conditions.

18 (2) Except as provided in paragraph (3) of this subsection, a public
19 school employer or at least two of its designated representatives may negotiate with at
20 least two representatives of the employee organization that is designated as the
21 exclusive negotiating agent for the public school employees in a unit of the county on
22 other matters that are mutually agreed to by the employer and the employee
23 organization.

24 (3) A public school employer may not negotiate the school calendar,
25 the maximum number of students assigned to a class, or any matter that is precluded
26 by applicable statutory law.

27 (4) A matter that is not subject to negotiation under paragraph (2) of
28 this subsection because it has not been mutually agreed to by the employer and the
29 employee organization may not be raised in any action taken to resolve an impasse
30 under subsection (d) of this section.

31 (5) In Montgomery County, the exclusive negotiating agent for the
32 public school employees in a unit and the public school employer shall meet and
33 negotiate under this section the salaries, wages, hours, and other working conditions
34 of all persons actually employed as substitute teachers or home and hospital teachers.

1 (c) The designation of representatives by the employer under this section
2 does not prevent the designated employee organization from appearing before or
3 making proposals to the public school employer at a public meeting or hearing.

4 (d) (1) If, on the request of either party, the State Superintendent
5 determines from the facts that an impasse is reached in negotiations between a public
6 school employer and an employee organization that is designated as an exclusive
7 negotiating agent, the assistance and advice of the State Board may be requested,
8 with the consent of both parties.

9 (2) If consent is not given and at the request of either party, a panel
10 shall be named to aid in resolving the differences.

11 (3) The panel shall contain three individuals chosen as follows:

12 (i) One member is to be named by each party within 3 days;
13 and

14 (ii) The third member is to be chosen by the other two members
15 within 10 days after the request.

16 (4) The State Board or the panel selected shall meet with the parties
17 to aid in resolving the differences, and, if the matter is not resolved, shall make a
18 written report and recommendation within 30 days after the request.

19 (5) A copy of the report shall be sent to the representatives of the
20 public school employer and the employee organization.

21 (6) All costs of mediation shall be shared by the public school employer
22 and the employee organization.

23 (7) Notwithstanding any other provision of this subtitle, the public
24 school employer shall make the final determination as to matters that have been the
25 subject of negotiation, but this final determination is subject to the other provisions of
26 this article concerning the fiscal relationship between the public school employer and
27 the county commissioners, county council, and Mayor and City Council of Baltimore
28 City.

29 6-409.

30 A public school employer and employee organization may not interfere with,
31 intimidate, restrain, coerce, or discriminate against any public school employee
32 because of the exercise of his rights under §§ 6-402 and 6-403 of this subtitle.

33 6-410.

34 (a) An employee organization may not call or direct a strike.

1 (b) (1) Any employee organization designated as an exclusive
2 representative that violates any provision of this section shall have its designation as
3 exclusive representative revoked by the public school employer and the employee
4 organization and any other employee organization that violates any provision of this
5 section is ineligible to be designated as exclusive representative for a period of 2 years
6 after the violation.

7 (2) If an employee organization violates any provision of this section,
8 the public school employer shall stop making payroll deductions for dues of the
9 organization for 1 year after the violation.

10 6-411.

11 (a) This subtitle does not supersede any other provision of the Code or the
12 rules and regulations of public school employers that establish and regulate tenure.

13 (b) This subtitle does not make the State labor laws in Titles 3 and 7 of the
14 Labor and Employment Article apply to public school employment.

15 9-102.

16 In this title, “public charter school” means a public school that:

17 (11) Operates under the supervision of the public chartering authority
18 from which its charter is granted and in accordance with its charter and, except as
19 provided in [§ 9-106] **§§ 9-106 AND 9-108** of this title, the provisions of law and
20 regulation governing other public schools;

21 9-106.

22 (a) **[Subject] EXCEPT AS PROVIDED IN § 9-108 OF THIS SUBTITLE, AND**
23 **SUBJECT** to subsection (b) of this section, a public charter school shall comply with
24 the provisions of law and regulation governing other public schools.

25 (b) Subject to subsection (c) of this section, a waiver of the requirements
26 under subsection (a) of this section may be sought through an appeal to the State
27 Board.

28 (c) A waiver may not be granted from provisions of law or regulation relating
29 to:

30 (1) Audit requirements;

31 (2) The measurement of student academic achievement, including all
32 assessments required for other public schools and other assessments mutually agreed
33 upon by the public chartering authority and the school; or

1 (3) The health, safety, or civil rights of a student or an employee of the
2 charter school.

3 9–108.

4 (a) [Employees] **SUBJECT TO SUBSECTION (B) OF THIS SECTION,**
5 **EMPLOYEES** of a public charter school:

6 (1) Are public school employees, as defined in §§ 6–401(d) and 6–501(f)
7 of this article;

8 (2) Are employees of a public school employer, as defined in §§
9 6–401(e) and 6–501(g) of this article, in the county in which the public charter school
10 is located; and

11 (3) Shall have the rights granted under Title 6, Subtitles 4 and 5 of
12 this article.

13 (b) **(1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS**
14 **SUBSECTION, CERTIFICATED PROFESSIONAL EMPLOYEES OF A PUBLIC**
15 **CHARTER SCHOOL ARE NOT SUBJECT TO THE PROVISIONS OF A COLLECTIVE**
16 **BARGAINING AGREEMENT AUTHORIZED UNDER § 6–408 OF THIS ARTICLE.**

17 **(2) (I) CERTIFICATED PROFESSIONAL EMPLOYEES OF A**
18 **PUBLIC CHARTER SCHOOL MAY BE SUBJECT TO THE PROVISIONS OF A**
19 **COLLECTIVE BARGAINING AGREEMENT AUTHORIZED UNDER § 6–408 OF THIS**
20 **ARTICLE IF A MAJORITY OF THE EMPLOYEES ELECT TO BE REPRESENTED BY**
21 **THE EMPLOYEE ORGANIZATION.**

22 **(II)** If a collective bargaining agreement under Title 6, Subtitle 4
23 or Subtitle 5 of this article is already in existence in the county where a public charter
24 school is located, the employee organization and the public charter school may
25 mutually agree to negotiate amendments to the existing agreement to address the
26 needs of the particular public charter school.

27 **(3) CERTIFICATED PROFESSIONAL EMPLOYEES OF A PUBLIC**
28 **CHARTER SCHOOL MAY FORM AN INDEPENDENT EMPLOYEE ORGANIZATION FOR**
29 **THE PURPOSE OF EXERCISING THEIR RIGHTS UNDER TITLE 6, SUBTITLE 4 OF**
30 **THIS ARTICLE.**

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2010.