

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2000 Legislative Session

Bill No. CB-27-2000

Chapter No. 51

Proposed and Presented by Council Member Estep

Introduced by Council Member Estep

Co-Sponsors _____

Date of Introduction June 27, 2000

BILL

1 AN ACT concerning

2 Personnel Law – Adverse Actions

3 For the purpose of amending the provisions pertaining to proposing and taking adverse actions
4 against employees, appeals from adverse actions, hearing procedures of the Personnel Board, the
5 production of evidence and witnesses, and the eligibility and award of attorney's fees.

6 BY repealing and reenacting with amendments:

7 SUBTITLE 16. PERSONNEL.

8 Sections 16-201 and 16-203,

9 The Prince George's County Code

10 (1999 Edition).

11 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
12 Maryland, that Sections 16-201 and 16-203 of the Prince George's County Code be and the same
13 are hereby repealed and reenacted with the following amendments:

14 SUBTITLE 16. PERSONNEL.

15 DIVISION 14. GRIEVANCES, ADVERSE ACTIONS, AND APPEALS.

16 Sec. 16-201. Procedures for taking adverse actions and employee appeals therefrom.

17 (a) Adverse Actions by Appointing Authorities. The following procedures shall apply to
18 the taking of adverse actions, except as provided in Subsection (b), below, against employees by
19 appointing authorities and to the taking of employee appeals therefrom:

20 (1) Whenever an appointing authority intends to take an adverse action[, as defined in
21 Section 16-102(a)(1),] against any employee under the appointing authority's jurisdiction, the

1 appointing authority shall first serve the employee with a written statement of charges with
2 respect to the proposed action no later than five (5) working days prior to the intended effective
3 date of any such action. Any such written statement of charges shall state the specific grounds or
4 other reasons for taking such action, and the fact that the employee shall be entitled to appeal
5 such action to the Personnel Board in accordance with the provisions of [subparagraph (a)(5)]
6 Subsection (e), below.

7 (2) At the same time as the appointing authority serves the statement of charges on
8 the employee as required under subparagraph (a)(1), above, the appointing authority shall
9 forward a copy of said statement to the Personnel Officer in order to afford the Personnel Officer
10 an opportunity to review the proposed action, and to render advisory comments to the appointing
11 authority with respect thereto; provided however, that in any case where the proposed adverse
12 action to be taken against the employee constitutes a demotion[, as defined in Section 16-
13 102(a)(16),] any such adverse action shall be further subject to the approval of the Personnel
14 Officer with respect to the condition set forth in Section 16-148(a)(6)(B)(i).

15 (3) Any such employee shall be entitled to respond, in writing, to any statement of
16 charges served upon the employee under subparagraph (a)(1), above, provided such written
17 response is filed with the appointing authority no later than five (5) working days after the date
18 of receipt of the statement of charges by the employee.

19 (4) Prior to serving any final written notice of adverse action on any such employee,
20 the appointing authority shall consider any advisory comments rendered by the Personnel Officer
21 with respect to the statement of charges, as may have been provided under subparagraph (a)(2),
22 above, and any written response filed by the employee with respect to the statement of charges,
23 as may have been provided under subparagraph (a)(3), above; provided however, that in the case
24 of any adverse action which constitutes a demotion, the appointing authority shall rescind any
25 such proposed action where the Personnel Officer has disapproved such action pursuant to the
26 provisions of Section 16-148(a)(6)(B)(i).

27 (5) Notwithstanding the provisions of subparagraphs (a)(1), (2), (3), and (4), above,
28 an appointing authority shall not be required to file an advance statement of charges with an
29 employee prior to serving a final written notice of adverse action on the employee under any one
30 (1) of the following circumstances:

1 (A) In the case of any immediate suspension taken in accordance with the
2 provisions of Section 16-193(c)(2)(D); or,

3 (B) In the case of any demotion requested solely at the discretion of the
4 employee pursuant to the provisions of Section 16-148(a)(6)(A)(iv).

5 (6) Any such employee shall be entitled to file a written notice of appeal with the
6 Personnel Board with respect to any final notice of adverse action taken against any such
7 employee, provided said notice of appeal is filed with the Board no later than five (5) working
8 days after the date of receipt of the final notice of adverse action by the employee; or, in the case
9 of any immediate suspension taken pursuant to Section 16-193(c)(2)(F), no later than five (5)
10 working days after the date such action is taken by the appointing authority. At the same time
11 any such written notice of appeal is filed with the Personnel Board, or no later than ten (10)
12 working days after such notice has been filed, the employee shall additionally file with the
13 Board, a separate written statement setting forth the specific employee allegations with respect to
14 the adverse action and the relief sought by the employee.

15 [(7) The Personnel Board shall hear and decide any such employee appeal of an
16 adverse action in accordance with the provisions of Section 16-203.]

17 (b) Adverse Actions by Appointing Authorities. The following procedures shall apply to
18 the taking of adverse actions concerning a separation, termination, dismissal, demotion, or fines
19 against employees by appointing authorities and to the taking of employee appeals therefrom:

20 (1) Whenever an appointing authority intends to take an adverse action against any
21 employee under the appointing authority's jurisdiction, the appointing authority shall first serve
22 the employee with a written statement of charges with respect to the proposed action no later
23 than ten (10) working days prior to the intended effective date of any such action. Any such
24 written statement of charges shall state the specific grounds or other reasons for taking such
25 action and the fact that the employee shall be entitled to appeal such action to the Personnel
26 Board in accordance with the provisions of Subsection (e), below.

27 (2) At the same time as the appointing authority serves the notice of intent on the
28 employee as required under subparagraph (b)(1), above, the appointing authority shall forward a
29 copy of said statement to the Personnel Officer in order to afford the Personnel Officer an
30 opportunity to review the proposed action, and to render advisory comments to the appointing
31 authority with respect thereto.

1 (3) Any such employee shall be entitled to respond, in writing, to any statement of
 2 charges served upon the employee under subparagraph (b)(1), above, provided such written
 3 response is filed with the appointing authority no later than ten (10) working days after the date
 4 of receipt of the notice by the employee.

5 (4) Prior to serving any final written notice of adverse action on any such employee,
 6 the appointing authority shall consider any advisory comments rendered by the Personnel Officer
 7 with respect to the statement of charges, as may have been provided under subparagraph (b)(2),
 8 above, and any written response filed by the employee with respect to the statement of charges,
 9 as may have been provided under subparagraph (b)(3), above.

10 (5) Any such employee shall be entitled to file a written notice of appeal with the
 11 Personnel Board with respect to any final notice of adverse action taken against any such
 12 employee, provided said notice of appeal is filed with the Board no later than five (5) working
 13 days after the date of receipt of the final notice of adverse action by the employee. At the same
 14 time any such written notice of appeal is filed with the Personnel Board, or no later than ten (10)
 15 working days after such notice has been filed, the employee shall additionally file with the
 16 Board, a separate written statement setting forth the specific details with respect to the adverse
 17 action and the relief sought by the employee.

18 (c) Nothing in this Section shall prevent an appointing authority from ordering the
 19 immediate suspension of an employee who meets the criteria for such action under the Personnel
 20 Law.

21 (d) Adverse Actions by Personnel Officer. The following procedures shall apply to the
 22 taking of employee appeals from adverse actions authorized and taken by the Personnel Officer
 23 against any employee.

24 (1) Whenever any employee receives a final notice of an adverse action, as defined in
 25 Section 16-102(a)(1), authorized and taken against any such employee by the Personnel Officer,
 26 any such employee shall be entitled to file a written notice of appeal with the Personnel Board
 27 with respect to such adverse action, provided said notice of appeal is filed with the Board no later
 28 than five (5) working days after the date the adverse action is to become effective as stipulated in
 29 the final notice of adverse action. At the same time any such written notice of appeal is filed
 30 with the Personnel Board, or no later than ten (10) working days after such notice has been filed,
 31 the employee shall additionally file with the Board, a separate written statement setting forth the

1 specific employee allegations with respect to the adverse action and the relief sought by the
2 employee.

3 (2) The Personnel Board shall hear and decide any such employee appeal of an
4 adverse action authorized and taken by the Personnel Officer in accordance with the provisions
5 of Section 16-203.

6 (e) The Personnel Board shall hear and decide any such employee appeal of an adverse
7 action in accordance with the provisions of Section 16-203.

8 **Sec. 16-203. Hearings before the Personnel Board.**

9 (a) The following provisions shall apply to hearings before the County Personnel Board.

10 (1) General. Pursuant to Section 907 of Article IX of County Charter, the Personnel
11 Board shall be the final administrative appeal authority for Prince George's County, Maryland,
12 relating to any appeal filed with the Board under the provisions of Sections 16-200 through 16-
13 202 of this Subtitle. In the case of any such appeal to the Board, the decisions and orders of the
14 Board shall be final on all parties concerned and may not be appealed to any other administrative
15 board. Any hearing before the Personnel Board shall be public, if so requested by the aggrieved
16 party. After hearing any appeal, the Board may issue such order as it finds proper by the facts
17 presented in the case. Any such order shall be accompanied by a statement of findings of fact
18 and conclusions of law. The Board may, in any such order, sustain, modify, or reverse the action
19 or actions of an appointing authority, supervisor, or the Personnel Officer, as the case may be,
20 which gave rise to the appeal. The Board may order the reinstatement of the employee with
21 partial or full back pay and benefits or without back pay. Any order for back pay and benefits
22 which arises from this Section may not be imposed for claims which arose prior to the effective
23 date of this legislation. This shall not be construed as extinguishing a right or remedy which
24 existed prior to the enactment of the legislation. All data pertinent to any decision of the Board
25 shall be subject to the scrutiny of all parties to the proceedings and/or the attorneys representing
26 said parties.

27 (2) Conduct of Hearings. Except as may be otherwise modified by the provisions of
28 this Section, all procedures governing hearings before the Personnel Board shall be established
29 under the regulations which are required to be proposed by the Board and approved by the
30 County Council pursuant to Section 16-105(a)(1).

1 (A) Within thirty (30) days after receiving an appeal of an adverse action
 2 concerning a separation, termination, dismissal, demotion, or fines, the Personnel Board shall
 3 schedule a hearing within sixty (60) days of the receipt of the appeal and notify the parties of the
 4 hearing date, or shall refer the appeal to a hearing examiner in accordance with subparagraph
 5 (8)(C) of this Section within (ten) 10 days of receipt of the appeal for a hearing to be scheduled
 6 within sixty (60) days. The Board may continue the hearing only under the following conditions:

7 (i) Each party must consent to the continuance;
 8 (ii) Each party may only receive one continuance; and
 9 (iii) If a continuance is granted to either party, the hearing must be
 10 rescheduled to a date not more than sixty (60) days from the scheduled hearing date.

11 (B) Within forty-five (45) days after the close of the hearing record, the
 12 Personnel Board shall issue to the parties a written decision.

13 (3) Right to Representation. Any employee, former employee, or applicant for
 14 employment who has filed an appeal with the Personnel Board pursuant to Sections 16-200, 16-
 15 201, or 16-202 shall be entitled to be represented by legal counsel [or other responsible
 16 representative of the employee's choice] with respect to all proceedings before the Board
 17 regarding said appeal.

18 (4) Consolidation of Appeals. The Personnel Board may consolidate for hearing, all
 19 appeals which, in the determination of the Board, represent a common cause of action.

20 (5) Appeals Held in Abeyance.

21 (A) Whenever an employee files a written notice of appeal with the Board as a
 22 result of a suspension taken against said employee under the provisions of Section 16-
 23 193(c)(2)(D), the Board shall hold any such appeal in abeyance pending a determination of said
 24 employee's guilt or innocence by a trial court.

25 [(B) Whenever an appeal pending before the Personnel Board alleges
 26 discrimination, as defined in Section 16-102(a)(18), and the aggrieved party, prior to the
 27 rendering of a final decision and order by the Board on such appeal, files any other action,
 28 complaint or petition with any other County, State or Federal court, board or commission which
 29 alleges discrimination based on facts the same as the facts set forth in the written notice of appeal
 30 and separate written statement giving rise to the appeal pending before the Personnel Board,
 31 upon notice of such by the County Attorney, the Board shall hold any such appeal in abeyance

1 pending final determination of such other action, complaint or petition by such other County,
2 State or Federal court, board or commission.]

3 (6) Dismissal of Appeals. Whenever any employee, former employee, or applicant
4 for employment files a written notice of appeal and separate petition with the Personnel Board,
5 the Board shall issue an order dismissing the appeal without further proceedings where:

6 (A) All parties to any such appeal before the Board have filed a written request
7 with the Board to dismiss the appeal; or

8 (B) Any such notice of appeal and/or separate written statement associated with
9 such notice of appeal were not filed with the Board within the time limits or periods specified for
10 such filings under Sections 16-200, 16-201, or 16-202, as the case may be, unless cause to the
11 contrary has been shown to the Board by the person filing the appeal.

12 (7) Referral of Appeals to County Attorney. Whenever an employee, former
13 employee, or applicant for employment files a written notice of appeal and a separate written
14 statement with the Personnel Board, as required under the provisions of Sections 16-200, 16-201,
15 or 16-202, as the case may be, the Personnel Board shall transmit a copy of any such notice of
16 appeal and written statement to the County Attorney so that the interests of the County can be
17 represented with respect to any such appeal. Whenever any such petition alleges discrimination,
18 as defined in Section 16-102(a)(18), the County's Equal Employment Officer, acting as an agent
19 of the County Attorney, shall conduct an investigation of the merits of the allegations set forth in
20 any such written statement. The EEO Officer shall issue a confidential written report to the
21 County Attorney setting forth the results of any such investigation. The County Attorney shall
22 proceed, upon the receipt of the EEO Officer's report regarding the allegations of discrimination
23 and on the basis of such other investigations as the County Attorney may deem appropriate, to
24 present the County's position in the proceedings before the Personnel Board with respect to any
25 such appeal and/or shall conduct such conciliations or negotiations with respect to a potential
26 settlement or resolution of such appeal as deemed appropriate by the County Attorney.

27 (8) Consideration of Appeals. The following general criteria shall apply to the
28 Personnel Board's consideration of appeals:

29 (A) Whenever an employee, a former employee or an applicant for employment
30 files an appeal in accordance with this Subtitle, the Board shall not substitute its judgment for
31 that of the official who had taken the action, but shall attempt to ascertain, based on the

1 preponderance of the evidence presented to the Board, whether there is any reasonable basis to
2 support the action taken by the official.

3 (B) Whenever any employee, former employee, or applicant for employment
4 files an appeal in accordance with Sections 16-200, 16-201, or 16-202, as the case may be, with
5 respect to any action of an appointing authority, supervisor, or the Personnel Officer, except for
6 those appeals described in subparagraph (a)(8)(C), below, any such aggrieved party shall have
7 the burden of going forward with the evidence before the Board.

8 (C) Whenever any permanent status employee files an appeal in accordance with
9 Section 16-201(a) with respect to any disciplinary action taken by the employee's appointing
10 authority which would constitute an adverse action, the employee's appointing authority shall
11 have the burden of going forward with the evidence before the Board. In each such case, the
12 Board shall review the authority in law for the taking of the action, and shall sustain the action of
13 the appointing authority where the law and the facts, as proved by a preponderance of the
14 evidence, justify the action taken by the appointing authority. Conversely, where the law and/or
15 facts, as proved by a preponderance of the evidence, do not justify the action of the appointing
16 authority, the Board shall rule in favor of the party who filed the appeal.

17 (D) Whenever any employee files an appeal of an unresolved grievance in
18 accordance with Section 16-200 and the Board finds that the relief sought by the employee is not
19 within the ability of the appointing authority, supervisor, or the Personnel Officer to provide, the
20 Board shall transmit its findings of fact and conclusions with respect thereto to both the County
21 Executive and the County Council for appropriate action if deemed necessary.

22 (9) Hearing Examiners.

23 (A) The Personnel Board shall be authorized to recommend, in writing, to the
24 County Executive, the appointment of one (1) or more hearing examiners to assist the Board by
25 conducting hearings on any appeal before the Board. The Personnel Officer may recommend to
26 the Personnel Board the need for such hearing examiners.

27 (B) Upon the written recommendation of the Personnel Board, as provided in
28 subparagraph (a)(9)(A), above, and subject to budgetary and classification actions, the County
29 Executive shall appoint such hearing examiners as the Board has recommended in writing. Any
30 such hearing examiner, so appointed by the County Executive, shall, as a condition to
31 appointment, be an attorney admitted to practice before the highest court of a state or the District

1 of Columbia.

2 (C) In accordance with such procedural requirements as the Personnel Board
3 may propose and the County Council may approve pursuant to Section 16-105(a)(1) and
4 Subparagraph (a)(2) of this Section, any hearing examiner, so appointed, shall conduct hearings
5 on appeals filed with the Board and shall make written findings of fact, conclusions, and
6 recommendations to the Personnel Board with respect to any such appeal.

7 (10) Referral of Orders to Personnel Officer or County Executive.

8 (A) In any case where the Personnel Board, after hearing an appeal, issues a final
9 decision and order which requires remedial action to be taken by an appointing authority or
10 supervisor, the Board shall transmit a copy of any such order to the Personnel Officer. The
11 Personnel Officer shall be responsible for advising the Board, in writing, if the appointing
12 authority or supervisor, as the case may be, fails to comply with such order of the Board no later
13 than thirty-five (35) calendar days after the date of the receipt of any such order from the Board.
14 Any such written reply by the Personnel Officer shall state the reason or reasons for such
15 noncompliance by the appointing authority or supervisor, as the case may be.

16 (B) In any case where the Personnel Board, after hearing an appeal, issues a final
17 decision and order which requires remedial action to be taken by the Personnel Officer, the
18 Board shall transmit a copy of said order to the County Executive. The County Executive shall
19 be responsible for responding, in writing, to the Board under the same circumstances and
20 procedures as are set forth in subparagraph (a)(10)(A), above, with respect to responses by the
21 Personnel Officer to the Board.

22 (11) Transcripts of Hearings. The Personnel Board shall make available a transcript of
23 any hearing before the Board to any party to the proceedings of an appeal before the Board upon
24 the payment of such reasonable costs for such transcript as determined by the Board.

25 (12) Pay status of Terminated Employee. In the event of an appeal of an adverse
26 action concerning a separation, termination, dismissal, demotion, or fines if the Personnel Board
27 orders the reinstatement of the employee, the employee shall be placed in a pay status as of the
28 date of the Personnel Board's order provided the order is not appealed. If the adverse action is
29 upheld by the Personnel Board and is appealed to a Court which determines that the employee
30 shall be reinstated, the employee shall be placed in a pay status as of the date of the Court's order
31 provided the order is not appealed.

(13) Production of Documents. If requested by the employee at least ten (10) working days prior to the hearing, the appointing authority shall provide without charge or cost copies of all documents used by the employer for preparation of the case. The parties shall exchange any lists of proposed witnesses to be called at the hearing no later than five (5) working days prior to the hearing. The appointing authority shall not introduce any additional documents at the hearing unless a copy was provided to the employee at least five (5) days prior to the hearing or except to rebut testimony or documentary evidence submitted by the employee.

SECTION 2. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law.

Adopted this 25th day of July, 2000.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Dorothy F. Bailey
Chair

ATTEST:

Joyce T. Sweeney
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Wayne K. Curry
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.