

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

1997 Legislative Session

Bill No. _____ CB-74-1997

Chapter No.

Proposed and Presented by Council Member Estepp

Introduced by

Co-Sponsors

Date of Introduction

BILL

AN ACT concerning

Personnel Law - Employees Bill of Rights

For the purpose of providing procedural and substantive rights to employees for the protection of an employee's rights to privacy, free speech, and free association and to provide for sanctions for violations of such rights.

BY renumbering and repealing and reenacting with amendments:

SUBTITLE 16. PERSONNEL.

Sections 16-110, 16-110.01, and 16-110.02,

The Prince George's County Code

(1995 Edition, 1996 Supplement).

BY adding:

SUBTITLE 16. PERSONNEL.

Sections 16-237, 16-238, 16-239, 16-240,

16-241, 16-242 and 16-243,

The Prince George's County Code

(1995 Edition, 1996 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 16-110, 16-110.01, and 16-110.02 of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 16. PERSONNEL.

[DIVISION 1. GENERAL PROVISIONS.]

DIVISION 20. COUNTY EMPLOYEES' BILL OF RIGHTS.

Sec. [16-110] 16-234. Political activity.

Pursuant to Section 909 of Article IX of County Charter, all employees may participate or refrain from participating in partisan political activity, except where otherwise prohibited by Federal or State statute. Employees shall not engage in partisan political activity during their hours of employment.

Sec. [16-110.01] 16-235. Prohibited personnel practices.

(a) It shall be wrongful and illegal and a prohibited personnel practice for any employee who has authority to take, direct others to take, recommend, or approve any personnel action, to take or fail to take a personnel action with respect to any employee or applicant for employment solely, as a reprisal for a disclosure of information by an employee or applicant as to action taken by another employee or applicant which the employee or applicant reasonably believes evidences:

- (1) A violation of any law, rule or regulation; or
- (2) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety if such disclosure is not specifically prohibited by law.

(b) The Director of Personnel and the head of each department or agency shall be responsible for the prevention of prohibited personnel practices. Any individual to whom a department delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation. Nothing in this Subsection shall be construed to create a civil or criminal liability on the part of the Director of Personnel, department head, or any other individual who did not directly engage in a prohibited personnel practice.

(c) A prohibited personnel practice as defined in Subsection (a) shall constitute a basis for the initiation of a grievance as defined in Section 16-102(a)(28).

(d) A prohibited personnel practice as defined in Subsection (a) shall constitute a defense against an adverse action as defined in Section 16-102(a)(1) taken solely as a reprisal

for a disclosure of information as set forth in Section 16-110.01(a), above.

Sec. [16-110.02] 16-236. Testimony before County Council.

(a) After authorization by a majority vote of the full Council and upon the receipt of a written request by the Chairman of the County Council, or chairman of a Council committee, setting forth the time, place, and subject matter of a hearing, an employee or officer of the County shall be required to be present and to testify to matters relative to the subject matter of the hearing. When so requested, an employee shall produce documents or papers in his possession or custody. An employee or officer shall not be required to testify on any matter that is protected by Executive privilege as defined under Maryland law [(generally policy discussion with the Executive)].

(b) An employee testifying at the request of the Council or committee chairman shall be deemed on authorized County business and shall be granted compensatory time for time spent outside of duty hours for the purpose of such testimony, as is consistent with existing salary plans.

(c) It shall be a prohibited personnel practice for any employee or official of the County to interfere with, threaten with disciplinary action, or otherwise attempt to restrain an employee from testifying when so requested by the Council or committee chairman.

(d) A prohibited personnel practice as defined in Subsection (c) shall be a basis for the initiation of a grievance [as defined in Section 16-102(a)(28)] and shall constitute a defense against an adverse action [as defined in Section 16-102(a)(1)] taken [solely] as a reprisal for testifying under this Section.

(1) Where an adverse action is taken within six months after the employee has appeared before the Council, or a committee of the Council, it shall be presumed that such adverse action is a prohibited personnel practice. Such presumption shall only be rebutted by clear and convincing evidence to the contrary.

SECTION 2. BE IT FURTHER ENACTED that Sections 16-237, 16-238, 16-239, 16-240, 16-241, 16-242 and 16-243 of the Prince George's County Code be and the same are

hereby added:

SUBTITLE 16. PERSONNEL.

DIVISION 20. COUNTY EMPLOYEES' BILL OF RIGHTS.

Sec. 16-237. Abridging the freedom of speech.

(a) No appointing authority shall take or threaten to take an adverse action against an employee or otherwise discriminate against an employee with respect to the employee's working conditions, pay or status by reason of the employee's free exercise of speech.

(b) An employee may publicly or privately comment upon any matter of public policy and upon any subject that is not prohibited from disclosure by the Maryland Public Information Act.

Sec. 16-238. Use of employee's Social Security Account Number.

(a) An employee's Social Security Account Number may not be used for any purpose except to report payroll withholding information as may be required by Federal and State law.

(b) Access to public records which contain the Social Security Account Number of an employee shall be restricted to persons who are responsible for recording, processing, and reporting payroll withholding information to the agencies of the State and Federal governments entitled to receive such information.

(c) Social Security Account Numbers shall not be recorded in or affixed to any employee record except as required by Federal and State law.

Sec. 16-239. Disclosure of personal financial information.

(a) An employee may not be required to disclose any item of property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of the employee's immediate family, unless that information is necessary to investigate an alleged conflict of interest with respect to the performance of the employee's official duties or unless such disclosure is required by Federal or State law.

Sec. 16-240. Retaliation for exercising rights.

(a) An employee may not be discharged, disciplined, demoted, transferred, or otherwise subjected to an adverse action, or denied promotion, transfer or reassignment, or otherwise

discriminated against with respect to the employee's working conditions, pay or status or be threatened with any such action by reason of the employee's exercise of or demand for the rights granted in this Division, or by reason of the lawful exercise of rights granted by the Constitution of the United States, the Maryland Declaration of Rights, the Constitution of Maryland or the Charter.

(b) Where an adverse action has been taken against an employee within six months after the employee has exercised or demanded the rights granted by this Division, it shall be presumed that such adverse action is in retaliation for the exercise of such rights and is a prohibited personnel practice. This presumption shall be rebutted only by clear and convincing evidence to the contrary.

Sec. 16-241. Investigation of employee for conduct related disciplinary action.

(a) Whenever an employee is subject to investigation or interrogation for any reason which could lead to the imposition of conduct related disciplinary action pursuant to Section 16-193, the investigation or interrogation shall be conducted under the following conditions:

(1) The interrogation shall be conducted during the employee's normal working hours.

(2) The employee subject to investigation shall be informed in writing of the nature of the investigation or interrogation prior to any interrogation.

(3) The employee shall have the right to be represented by legal counsel or by any other representative of the employee's choice who may be present and available for consultation at all times during the interrogation. The interrogation shall be suspended for a period of time, not to exceed ten days, to allow the employee to obtain legal or union representation. Interrogation sessions shall be for reasonable period and shall allow for personal necessities and rest periods as are reasonably necessary.

(4) An employee under interrogation may not be threatened with transfer, dismissal, or any other disciplinary action.

(5) A complete record of the interrogation, either written, electronically recorded or transcribed, shall be kept. Upon completion of the investigation, the employee shall be

provided with a copy of the record of interrogation, the investigatory file, and any exculpatory information, but excluding any recommendations to the appointing authority as to proposed charges or recommended disciplinary action.

(b) In the event that a disciplinary action is not initiated against the employee or is not sustained by the Personnel Board pursuant to Division 13, all copies of the record of investigation shall be expunged from all records and files and destroyed

Sec. 16-242. Waiver of Rights.

(a) An employee may waive in writing any of the rights provided in this Division, provided, however, that such a waiver be specific and that no waiver shall be requested or demanded by any person as a condition of employment or continued employment.

(b) The rights provided in this Division are personal rights of an employee. No collective bargaining agreement may provide for the exclusion or waiver of any of the rights provided in this Division.

Sec. 16-243. Sanctions.

(a) Any employee who alleges that any of the rights provided by this Division have been violated by an appointing authority or a person acting on behalf of the appointing authority may initiate a grievance. If the employee's grievance is sustained by the Personnel Board, the person who violated the employee's rights shall be subject to discipline for the violation and shall, in addition to whatever discipline may be imposed, pay to the employee \$500.00 for each violation sustained by the Personnel Board.

(b) Any employee who is denied any right afforded by this Division may apply at any time prior to the commencement of a hearing conducted pursuant to Division 14 to the circuit court for an order directing the appointing authority to show cause why the right should not be afforded.

SECTION 3. BE IT FURTHER ENACTED that, within 90 days of the effective date of this Act, each appointing authority shall purge or redact the Social Security Account Number of any employee from each and every record maintained by the appointing authority for which the Social Security Account Number is not specifically authorized by law to be maintained.

SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law.

Adopted this _____ day of _____, 1997.

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.