

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 398

(Delegate Nathan-Pulliam, *et al.*)

Health and Government Operations

Judicial Proceedings

Task Force on the Administrative Procedure Act

This bill establishes a Task Force on the Administrative Procedure Act to determine whether it is in the public interest to revise the judicial review procedures in the Act as they pertain to employee discipline. The task force, staffed by the Office of the Attorney General, must report its findings and recommendations by December 31, 2008.

The bill takes effect July 1, 2008 and terminates June 30, 2009.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and OAG staffing costs are assumed to be minimal and could be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: In general, a party aggrieved by the final decision in a contested case is entitled to judicial review of the decision. State agencies, including those that delegate contested cases to the Office of Administrative Hearings, are entitled to judicial review of a decision if the agency was a party before the agency or OAH. In a judicial review proceeding the court may remand the case for further proceedings, affirm the final decision, or reverse or modify the decision. The court may reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision • is unconstitutional; • exceeds the statutory authority or

jurisdiction of the final decision maker; • results from an unlawful procedure; • is affected by any other error of law; • is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or • is arbitrary or capricious.

Unless otherwise provided in statute, a petition for judicial review must be filed with the circuit court in the county where the party resides or has a principal place of business.

In a 2005 decision, *Maryland Aviation Administration v. Noland*, 386 Md. 556, the Court of Appeals reiterated its holding in an earlier decision *MTA v. King*, 369 Md. 274 (2002), that “the grounds set forth in § 10-222(h) for reversing or modifying an adjudicatory administrative decision do not include disproportionality or abuse of discretion.” In employment disciplinary cases, the court decided that “[a]s long as an administrative sanction or decision does not exceed the agency’s authority, is not unlawful, and is supported by competent, material and substantial evidence, there can be no judicial reversal or modification of the decision based on disproportionality or abuse of discretion unless, under the facts of a particular case, the disproportionality or abuse of discretion was so extreme and egregious that the reviewing court can properly deem the decision to be ‘arbitrary or capricious.’”

Additional Information

Prior Introductions: Bills pertaining to the Administrative Procedure Act were introduced in the 2006 and 2007 sessions. SB 516 of 2006 was passed by both houses but differences were not reconciled. SB 47 of 2007 was passed by the Senate Judicial Proceedings Committee but the House Health and Government Operations did not take action on the bill or its cross file, HB 237.

Cross File: None designated, though SB 265 is similar.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Budget and Management, Office of the Attorney General, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2008
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