

# HOUSE BILL 398

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By: **Delegates Nathan-Pulliam, Benson, G. Clagett, Elliott, Manno,  
Montgomery, Oaks, Riley, Tarrant, and V. Turner**

Introduced and read first time: January 28, 2008

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 21, 2008

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 ~~State Government Administrative Procedure Act Scope of Judicial~~  
3 ~~Review~~  
4 Task Force on the Administrative Procedure Act

5 FOR the purpose of establishing the Task Force on the Administrative Procedure Act;  
6 providing for the membership and chair of the Task Force; requiring the  
7 Department of Legislative Services Office of the Attorney General to provide  
8 staff for the Task Force; prohibiting a member of the Task Force from receiving  
9 certain compensation but entitling members to reimbursement for certain  
10 expenses; providing for the duties of the Task Force; requiring the Task Force to  
11 submit a certain report to the Governor and the General Assembly on or before  
12 a certain date; providing for the termination of this Act; and generally relating  
13 to the Task Force on the Administrative Procedure Act. ~~expanding the~~  
14 circumstances under which a court may reverse or modify a final decision in  
15 certain contested cases under the Administrative Procedure Act; and generally  
16 relating to judicial review of an administrative decision.

17 ~~BY repealing and reenacting, without amendments,~~  
18 ~~Article State Government~~  
19 ~~Section 10-222(a)~~  
20 ~~Annotated Code of Maryland~~  
21 ~~(2004 Replacement Volume and 2007 Supplement)~~

22 ~~BY repealing and reenacting, with amendments,~~  
23 ~~Article State Government~~

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~Section 10-222(h)~~  
2 ~~Annotated Code of Maryland~~  
3 ~~(2004 Replacement Volume and 2007 Supplement)~~

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

6 (a) There is a Task Force on the Administrative Procedure Act.

7 (b) The Task Force consists of the following members:

8 (1) one member of the House of Delegates, appointed by the Speaker of  
9 the House;

10 (2) one member of the Senate of Maryland, appointed by the President  
11 of the Senate;

12 (3) the Attorney General, or the Attorney General's designee;

13 (4) the Chief Administrative Law Judge of the Office of Administrative  
14 Hearings, or the Chief Administrative Law Judge's designee;

15 (5) a Maryland judge, appointed by the Chief Judge of the Court of  
16 Appeals;

17 (6) ~~the secretary of an executive branch department~~ two secretaries of  
18 principal departments of the executive branch, appointed by the Governor, or the each  
19 secretary's designee;

20 (7) ~~one member each from a pharmacy, dental, and medical~~  
21 ~~professional organization~~ of the public, appointed by the Governor;

22 (8) ~~two representatives of the Administrative Law section of the~~  
23 Maryland State Bar Association who are familiar with administrative law but who do  
24 not work for the government, appointed by the Bar Association; and

25 (9) a representative of the American Federation of State, County, and  
26 Municipal Employees, appointed by the officers of the American Federation of State,  
27 County and Municipal Employees; Employees.

28 ~~(10) a representative of the Firefighters Union; and~~

29 ~~(11) two law professors who specialize in administrative law, one~~  
30 ~~appointed by the Dean of the University of Maryland and one by the Dean of the~~  
31 ~~University of Baltimore Law Schools.~~

32 (c) The members of the Task Force shall represent geographic, ethnic, and  
33 cultural differences throughout the State.

1           (d) The members of the Task Force shall select a Chair of the Task Force  
2 from among the members.

3           (e) The ~~Department of Legislative Services~~ Office of the Attorney General  
4 shall provide staff for the Task Force.

5           (f) A member of the Task Force:

6                   (1) may not receive compensation; but

7                   (2) is entitled to reimbursement for expenses under the Standard  
8 State Travel Regulations as provided in the State budget.

9           (g) The Task Force shall study the judicial review procedures of the  
10 Administrative Procedure Act to determine whether it is desirable and in the public  
11 interest for the judicial review procedures concerning employee discipline in the Act to  
12 be revised and updated.

13           (h) The Task Force shall report its findings and recommendations to the  
14 Governor and, in accordance with § 2-1246 of the State Government Article, the  
15 General Assembly, on or before December 31, ~~2009~~ 2008.

16                                   **~~Article — State Government~~**

17 ~~10-222.~~

18           ~~(a) (1) Except as provided in subsection (b) of this section, a party who is~~  
19 ~~aggrieved by the final decision in a contested case is entitled to judicial review of the~~  
20 ~~decision as provided in this section.~~

21           ~~(2) An agency, including an agency that has delegated a contested case~~  
22 ~~to the Office, is entitled to judicial review of a decision as provided in this section if the~~  
23 ~~agency was a party before the agency or the Office.~~

24           ~~(h) In a proceeding under this section, the court may:~~

25                   ~~(1) remand the case for further proceedings;~~

26                   ~~(2) affirm the final decision; or~~

27                   ~~(3) reverse or modify the decision if any substantial right of the~~  
28 ~~petitioner may have been prejudiced because a finding, conclusion, or decision:~~

29                           ~~(i) is unconstitutional;~~

30                           ~~(ii) exceeds the statutory authority or jurisdiction of the final~~  
31 ~~decision maker;~~

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- 1                    (iii) ~~results from an unlawful procedure;~~
- 2                    (iv) ~~is affected by any other error of law;~~
- 3                    (v) ~~is unsupported by competent, material, and substantial~~  
4 ~~evidence in light of the entire record as submitted; [or]~~
- 5                    ~~(VI) IN A CASE INVOLVING EMPLOYEE DISCIPLINE OR~~  
6 ~~TERMINATION OF EMPLOYMENT:~~
- 7                    ~~1. IS AN ABUSE OF DISCRETION;~~
- 8                    ~~2. FAILS TO COMPLY WITH THE AGENCY'S~~  
9 ~~ESTABLISHED RULES AND REGULATIONS; OR~~
- 10                    ~~3. FAILS TO REASONABLY STATE THE BASIS FOR THE~~  
11 ~~NATURE AND EXTENT OF A PENALTY OR SANCTION; OR~~
- 12                    ~~[(vi)] (VII) is arbitrary or capricious.~~

13                    SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 ~~October~~ July 1, 2008. It shall remain effective for a period of 1 year and 6 months and,  
15 at the end of March 31, 2010 June 30, 2009, with no further action required by the  
16 General Assembly, this Act shall be abrogated and of no further force and effect.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.