
By: **Delegates Morhaim and Redmer**
Introduced and read first time: January 24, 2001
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Administrative Procedure Act - Contested Cases - Department of the**
3 **Environment**

4 FOR the purpose of requiring the Department of the Environment to refer contested
5 issues to the Office of Administrative Hearings; requiring the Office to conduct
6 certain hearings and issue final findings of fact and final conclusions of law;
7 prohibiting the Office from delegating certain issues back to the Department;
8 providing that a party aggrieved by the final order be entitled to judicial review;
9 repealing the provision requiring the Department to review certain requests;
10 repealing the authority of the Department to dismiss certain hearings; and
11 generally relating to the authority of the Department of the Environment
12 regarding contested cases.

13 BY repealing and reenacting, with amendments,
14 Article - State Government
15 Section 10-205
16 Annotated Code of Maryland
17 (1999 Replacement Volume and 2000 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article -Environment
20 Section 1-606
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 2000 Supplement)

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

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Article - State Government

2 10-205.

3 (a) (1) [A] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
4 board, commission, or agency head authorized to conduct a contested case hearing
5 shall:

6 (i) conduct the hearing; or

7 (ii) delegate the authority to conduct the contested case hearing to:

8 1. the Office; or

9 2. with the prior written approval of the Chief
10 Administrative Law Judge, a person not employed by the Office.

11 (2) With the written approval of the Chief Administrative Law Judge, a
12 class of contested case hearings may be delegated as provided in paragraph (1)(ii)2 of
13 this subsection.

14 (3) This subsection is not intended to restrict the right of an individual,
15 expressly authorized by a statute in effect on October 1, 1993, to conduct a contested
16 case hearing.

17 (b) [An] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN
18 agency may delegate to the Office the authority to issue:

19 (1) proposed or final findings of fact;

20 (2) proposed or final conclusions of law;

21 (3) proposed or final findings of fact and conclusions of law;

22 (4) proposed or final orders or orders under Article 49B of the Code; or

23 (5) the final administrative decision of an agency in a contested case.

24 (c) (1) THE DEPARTMENT OF THE ENVIRONMENT SHALL REFER ALL
25 CONTESTED ISSUES AND DELEGATE THE AUTHORITY TO CONDUCT CONTESTED
26 CASE HEARINGS TO:

27 (I) THE OFFICE; OR

28 (II) AN ADMINISTRATIVE LAW JUDGE APPROVED BY THE CHIEF
29 ADMINISTRATIVE LAW JUDGE.

30 (2) THE OFFICE SHALL ISSUE:

31 (I) FINAL FINDINGS OF FACT; OR

1 (II) FINAL CONCLUSIONS OF LAW.

2 (3) THE OFFICE MAY NOT DELEGATE ANY OF THE ISSUES UNDER
3 PARAGRAPH (2) OF THIS SUBSECTION BACK TO THE DEPARTMENT.

4 (4) A PARTY WHO IS AGGRIEVED BY THE FINAL DECISION OR ORDER IN A
5 CONTESTED CASE SHALL BE ENTITLED TO JUDICIAL REVIEW UNDER § 10-222 OF
6 THIS SUBTITLE.

7 (D) Promptly after receipt of a request for a contested case hearing, an agency
8 shall:

9 (1) notify the parties that the authorized agency head, board, or
10 commission shall conduct the hearing;

11 (2) transmit the request to the Office so that the Office shall conduct the
12 hearing in accordance with the agency's delegation; or

13 (3) request written approval from the Chief Administrative Law Judge
14 to appoint a person not employed by the Office to conduct the hearing.

15 [(d)] (E) (1) Except as provided in paragraph (2) of this subsection, an
16 agency's delegation and transmittal of all or part of a contested case to the Office is
17 final.

18 (2) If an agency has adopted regulations specifying the criteria and
19 procedures for the revocation of a delegation of a contested case, delegation of
20 authority to hear all or part of a contested case may be revoked, by the agency head,
21 board, or commission, in accordance with the agency's regulations, at any time prior
22 to the earlier of:

23 (i) the issuance of a ruling on a substantive issue; or

24 (ii) the taking of oral testimony from the first witness.

25 [(e)] (F) (1) The Office shall:

26 (i) conduct the hearing; and

27 (ii) except as provided in paragraph (2) of this subsection or as
28 otherwise required by law, within 90 days after the completion of the hearing,
29 complete the procedure authorized in the agency's delegation to the Office.

30 (2) The time limit specified in paragraph (1)(ii) of this subsection may be
31 extended with the written approval of the Chief Administrative Law Judge.

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Article - Environment

2 1-606.

3 (a) (1) If a request for a hearing is so vague or ambiguous that the
4 Department or the official conducting the hearing cannot reasonably determine
5 whether specific allegations on any issue have been made in compliance with § 1-605
6 of this subtitle, [the Department or]the official may require the person making the
7 request to file a more definite statement with specific allegations within 15 days.

8 (2) If a more definite statement is not made within 15 days, [the
9 Department or]the official conducting the hearing may strike the request or any part
10 of the request.

11 (b) [(1) The request for adjudication shall be reviewed by the Department,
12 and a determination shall be made whether the person making the request is entitled
13 to a contested case hearing under applicable law on all or any part of the allegations
14 made in the request.

15 (2) The Department shall dismiss all or any part of a request for a
16 contested case hearing if the Department determines that the person is not entitled to
17 a contested case hearing under applicable law on all or part of the allegations made in
18 the request.

19 (c) In addition to the provisions set forth in subsection (b) of this section and
20 at the request of any party, including the Department, the] THE administrative law
21 judge shall dismiss all or any part of a request for a contested case hearing if the
22 administrative law judge determines that the person making the request has failed to
23 make the demonstration required by § 1-605 of this subtitle, including the failure to
24 make factual allegations with sufficient particularity to demonstrate that the person
25 is aggrieved by the final determination.

26 [(d)] (C) (1) Any party to a contested case hearing, including the
27 Department, may file at any time a motion for a summary decision on all or part of an
28 action on the ground that there is no genuine dispute as to any material fact and that
29 the party is entitled to a decision as a matter of law.

30 (2) The motion, any response and the decision of the administrative law
31 judge or other official conducting the hearing shall comply with the requirements of
32 Maryland Rule 2-501.

33 [(e)] (D) (1) When a summary disposition under any of the provisions of this
34 section does not dispose of the entire action and a contested case hearing is necessary,
35 the [Department] official or administrative law judge issuing the summary
36 disposition, on the basis of the request and any other pleadings and, if necessary,
37 after interrogating counsel on the record, may enter an order specifying the issues or
38 facts that are not in genuine dispute.

1 (2) The order controls the subsequent course of the action but may be
2 modified by the [Department] official or the administrative law judge to prevent
3 manifest injustice.

4 [(f)] (E) Except as provided in subsection [(g)](F) of this section, an order or
5 other form of summary disposition under this section, however designated, that
6 adjudicates fewer than all of the issues in an action, or that adjudicates issues
7 concerning fewer than all of the parties to the action:

8 (1) Is not a final decision of the [Department or the] administrative law
9 judge; AND

10 (2) Does not terminate the action as to any issues or any of the parties[;
11 and].

12 [(3) Is subject to revision at any time before the entry of a final decision
13 by the Department that adjudicates all of the issues raised by or against all of the
14 parties.]

15 [(g)] (F) (1) If the official making a summary disposition under this section
16 determines in a written order that there is no just reason for delay, he may direct in
17 the order the entry of a decision as to one or more but fewer than all of the issues or
18 parties.

19 (2) A decision entered pursuant to this subsection shall be appealable in
20 the same manner as a decision by the [Department] official or administrative law
21 judge after a contested case hearing.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2001.