

**Department of Legislative Services**  
 Maryland General Assembly  
 2003 Session

**FISCAL AND POLICY NOTE**

Senate Bill 522

(Senator Haines)

Judicial Proceedings

Judiciary

**Administrative Procedure Act - Contested Cases - Time Limit for Making Final Decision**

This bill provides that the final administrative decision by a State agency in a contested case must be made within 90 days after exceptions to the proposed final decision are filed or argument is presented before the final decision maker (or majority of officials making the final decision), whichever is later. The bill's requirements would not apply when other procedures are provided by law or there is an agreement of the parties.

The bill applies to any proposed decision issued in a contested case after the bill's October 1, 2003 effective date.

**Fiscal Summary**

**State Effect:** Special fund expenditures would increase by \$58,600 beginning in FY 2004, with future years reflecting annualization, salary increases, and inflation. Potential increase in special fund revenues.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
SF Revenue	-	-	-	-	-
SF Expenditure	58,600	73,500	77,700	82,200	87,000
Net Effect	(\$58,600)	(\$73,500)	(\$77,700)	(\$82,200)	(\$87,000)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** Minimal.

## Analysis

**Current Law:** Under the Administrative Procedures Act – Contested Cases, a State agency may delegate to the Office of Administrative Hearings (OAH) the authority to issue: proposed or final findings of fact; conclusions of law; findings of fact and conclusions of law; final order or orders related to the Human Relations Commission; or the final administrative decision of the agency in a contested case. OAH has 90 days after the hearing to complete the procedure authorized by the State agency. This time limit can be extended by written approval of the Chief Administrative Law Judge.

If a State agency does not delegate authority to OAH for the final administrative decision and a majority of the officials who are to make the final decision did not preside over the hearing, the officials may not, under current law, make a decision until each party has been provided notice of the proposed decision and is given the opportunity to file exceptions to the decision and present arguments to the majority of officials. The 90-day limit for issuing a final decision does not apply to this type of contested case.

Chapter 564 of 2002 altered the procedures for contested case hearings related to disputes over certain permits issued by the Maryland Department of the Environment (MDE), including those for air quality control, landfill installation or expansion, and operation of a hazardous or low-level nuclear waste facility. State law previously did not impose any deadline on transmitting requests to OAH, completing the hearing, closing the record, or issuing a final decision.

The law requires an administrative law judge (ALJ) to issue a proposed decision within 90 days following the close of the record but gives the ALJ discretion to extend the deadline by 30 days. If no exceptions to the proposed decision are filed with MDE, the proposed decision will automatically become final upon expiration of the time period for filing exceptions. If exceptions are filed with MDE, the agency must issue the final decision no later than 120 days following issuance of the proposed decision.

**State Fiscal Effect:** The bill's requirements are not expected to have a fiscal impact on most State agencies. The Department of Legislative Services advises that because complex cases normally take longer for decisions, there might be an administrative burden for the shifting of resources to meet the new 90-day deadline. OAH advises that the bill would not affect its operations.

However, the Maryland Insurance Administration (MIA) reports that it handles an average of 55 cases a year that would be subject to the deadline and that an additional assistant attorney general is necessary to meet the 90-day deadline. For each case, approximately five days of an assistant attorney general's time is required to perform the necessary legal research, review of materials, and order preparation. Because only 40%

of an assistant attorney general's time is currently devoted to this task, the final decisions in the cases currently take an average of 4.5 months.

As a result, special fund expenditures could increase by \$58,579 in fiscal 2004, which accounts for the bill's October 1, 2003 effective date. This estimate includes the cost of hiring one additional assistant attorney general, and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$53,741
Operating Expenses	<u>4,838</u>
<b>Total FY 2004 State Expenditures</b>	<b>\$58,579</b>

Future year expenditures reflect a full salary with 4.5% annual increases, with 3% employee turnover, and 1% annual increases in ongoing operating expenses.

The MIA budget is supported by special funds from assessments on insurers, as well as licensing and filing fees – any increase in expenditures could potentially increase those assessments.

---

### **Additional Information**

**Prior Introductions:** The Governor vetoed an identical bill in 2002 (SB 31 as amended). His veto letter stated it would not be appropriate to limit the appeals process in the Administrative Procedure Act without proper consideration of the relevant issues and demonstration of a compelling reason to modify the current process.

**Cross File:** None.

**Information Source(s):** Office of Administrative Hearings, Maryland Insurance Administration, Department of Budget and Management, Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2003  
mdf/cer

---

Analysis by: Ann Marie Maloney

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510