

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 400 (Delegate Smigiel, *et al.*)
Environmental Matters

Public Safety - Building Code Enforcement Officials - Removal for Cause

This bill prohibits anyone who has adopted the Model Performance Code (MPC) for building standards from removing a building code enforcement official without both cause and an opportunity for a hearing by the appointing authority.

Fiscal Summary

State Effect: None. The bill would not substantively change State activities or operations.

Local Effect: None. The MPC has not been adopted by any local jurisdiction.

Small Business Effect: None.

Analysis

Current Law: The MPC covers elements of building construction to ensure safe and sound construction, including plumbing, structure, and electrical systems. The MPC is not binding unless a political subdivision adopts it.

By regulation, a State certified inspector is an individual qualified by reason of experience, training and/or examination, to inspect buildings for compliance with the State MPC, and certified by the Department of Housing and Community Development (DHCD).

By regulation, DHCD adopted the “International Residential Code for One and Two Family Dwellings” under the MPC. As such, building inspectors are appointed by the chief appointing authority of the jurisdiction.

All positions in the Executive Branch of State government that are included in the State Personnel Management System, except as otherwise provided in law, are in the skilled service. An employee in the Executive Branch of State government is a “professional” service employee if, except as otherwise provided by law, the position requires knowledge of an advanced type in a field of science or learning customarily acquired by a course of specialized intellectual instruction and study and normally requires a professional license, advanced degree, or both.

An appointing authority may terminate an employee as a disciplinary action. Employees in the skilled or professional service have the right to appeal except under certain circumstances. The Secretary of the appointing authority must either mediate between the employee and the unit, or refer the appeal to the Office of Administrative Hearings, which will schedule a hearing.

“At will” employees serve at the pleasure of the employee’s appointing authority and may be terminated from employment for any reason, solely at the discretion of the appointing authority. Terminated employees may file a written appeal.

The following actions are grounds for automatic termination of employment for State employees:

- intentional, nonjustified conduct that seriously injures another person, causes substantial damage to property, or seriously threatens the safety of the workplace;
- theft of State property with a value of more than \$300;
- illegal sale, use, or possession of drugs on the job;
- conviction of a controlled dangerous substance offense by an employee in a designated sensitive classification;
- conviction of a felony;
- accepting items or money given to the employee with the hope or expectation of receiving a favor or better treatment in the course of the employee’s job than that accorded other persons;
- violation of the Fair Elections Practices Act or using threatening or attempting to use political influence or the influence of any State employee or officer in securing promotion, transfer, leave of absence, or increased pay; or
- wantonly careless conduct or unwarranted excessive force in the treatment or care on an individual who is a client, patient, prisoner, or in the custody of the State.

Background: Model codes are intended to establish minimum standards to ensure that construction is safe and structurally sound, but the codes are also to establish consistency throughout different regions and jurisdictions. They are often developed by associations of developers, architects, engineers, and safety officials.

The Building Officials and Code Administrators (BOCA) International, Inc. is a nonprofit membership association, dedicated to preserving the public health, safety, and welfare in the built environment through the effective, efficient use and enforcement of Model Codes. DHCD had adopted the BOCA code of 1996 to regulate building construction, but replaced it with the “International Residential Code for One and Two Family Dwellings.” The BOCA code of 1996 stated that “code officials shall be appointed by the chief appointing authority of the jurisdiction; and the code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointed authority.”

State Fiscal Effect: By executive order, the State has adopted the MPC for State buildings. However, the Department of General Services (DGS) advises that building and safety inspectors are skilled or professional service workers. Such workers cannot be fired without cause, and also have appeal rights, including the right to a hearing if a dispute cannot be mediated. Therefore, this bill will have no effect on DGS operations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Prince George’s County, Caroline County, Calvert County, Howard County, Department of Housing and Community Development, Office of Administrative Hearings, Baltimore City, Department of General Services, Department of Legislative Services

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