

Department of Legislative Services  
Maryland General Assembly  
2007 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 47

(Senator Stone, *et al.*)

Judicial Proceedings

Health and Government Operations

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**State Government - Administrative Procedure Act - Scope of Judicial Review**

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This bill expands the circumstances under which a court may reverse or modify a final decision in a contested case involving employee discipline or termination of employment under the Administrative Procedure Act. Under the bill, 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: (1) is an abuse of discretion; (2) fails to comply with the agency's established rules and regulations; or (3) in the case of a penalty or sanction, fails to reasonably state the basis for the nature and extent of the penalty or sanction.

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**Fiscal Summary**

**State Effect:** Potential operational impact on the circuit and appellate courts. Potential substantial increase in State expenditures from an increase in administrative and litigation costs, including the potential need for additional Assistant Attorneys General and affiliated staff to handle an increased case load. Revenues would not be affected.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law/Background:** Generally, a party aggrieved by the final decision in a contested case is entitled to judicial review of the decision. An agency, including an agency that has delegated a contested case to the Office of Administrative Hearings (OAH), is 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 for the county where any 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.’”

**State Fiscal Effect:** The operational and fiscal impacts of the bill on the courts and State agencies depend on the extent to which the number of cases resulting from the bill increase.

### *Effect on the Courts*

To the extent that expanding the circumstances under which a court may reverse or modify a final decision in a contested case increases the number of cases for which judicial review is filed, there could be an operational impact on the circuit courts as well as the appellate courts. According to the Administrative Office of the Courts (AOC), it is unknown how often appeals are taken from administrative decisions; however, the number of cases resulting from the bill may increase substantially. If so, the operational impact on the circuit and appellate courts could be substantial.

### *Effect on State Agencies*

The Attorney General's Office advises that the bill provides added incentive to appeal adverse administrative decisions, thereby increasing the number of appeals filed to both the circuit and appellate courts. As a result, the bill could have a substantial fiscal impact on all State agencies due to an increase in administrative and litigation costs. If the case load were to increase significantly, it may create the need for some State agencies to hire additional Assistant Attorneys General and affiliated staff positions.

**Additional Comments:** AOC advises that courts would be put in the position of being asked to substitute their judgment for the executive agency's decision, notwithstanding the court's expressed concerns in *Noland* about respecting separation of powers.

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### **Additional Information**

**Prior Introductions:** This bill is identical to SB 516 of 2006, as amended and passed by the Senate. The bill was further amended by the House by striking the language of the bill and substituting language creating a Task Force on the Administrative Procedure Act. This amended version then passed the House; however, it was not returned to the Senate before the General Assembly adjourned *sine die*.

**Cross File:** HB 237 (Delegate Nathan-Pulliam, *et al.*) – Health and Government Operations.

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

**Fiscal Note History:** First Reader - January 29, 2007  
mll/ljm Revised - Senate Third Reader - March 26, 2007

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