## **SENATE BILL 265**

P3 8lr1945 SB 47/07 - JPRBy: Senators Stone, Frosh, Gladden, Muse, and Raskin Introduced and read first time: January 24, 2008 Assigned to: Judicial Proceedings Committee Report: Favorable with amendments Senate action: Adopted Read second time: March 24, 2008 CHAPTER \_\_\_\_\_ AN ACT concerning 1 2 State Government - Administrative Procedure Act - Scope of Judicial Review 3 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 to provide staff for the Task Force; 8 prohibiting a member of the Task Force from receiving certain compensation 9 but entitling members to reimbursement for certain expenses; providing for the 10 duties of the Task Force; requiring the Task Force to submit a certain report to the Governor and the General Assembly on or before a certain date; providing 11 for the termination of this Act; and generally relating to the Task Force on the 12 13 Administrative Procedure Act. expanding the circumstances under which a court may reverse or modify a final decision in certain contested cases under the 14 15 Administrative Procedure Act; and generally relating to judicial review of an 16 administrative decision. 17 BY repealing and reenacting, without amendments, Article - State Government 18 Section 10-222(a) 19 **Annotated Code of Maryland** 20 21 (2004 Replacement Volume and 2007 Supplement) 22 BY repealing and reenacting, with amendments, Article - State Government 23 Section 10-222(h) 24

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

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

${1 \atop 2}$	Annotated Code of Maryland (2004 Replacement Volume and 2007 Supplement)	
3 4		BY THE GENERAL ASSEMBLY OF <del>read as follows</del> :
5	(a) There is a Task Force on the A	Administrative Procedure Act.
6	<u>(b)</u> The Task Force consists of the	following members:
7 8		se of Delegates, appointed by the Speaker of
9 10		ate of Maryland, appointed by the President
11	(3) the Attorney General, o	r the Attorney General's designee;
12 13	<u> </u>	re Law Judge of the Office of Administrative Judge's designee;
14 15	<del></del>	ointed by the Chief Judge of the Court of
16 17	<u> </u>	cutive branch department, appointed by the
18 19	<u> </u>	rom a pharmacy, dental, and medical
20 21 22	Maryland State Bar Association who are f	f the Administrative Law section of the amiliar with administrative law but who do the Bar Association;
23 24 25	(9) a representative of the American Federation of State, County, and Municipal Employees, appointed by the officers of the American Federation of State County and Municipal Employees;	
26	<u>(10)</u> a representative of the	Firefighters Union; and
27 28 29	appointed by the Dean of the University	ho specialize in administrative law, one of Maryland and one by the Dean of the
30 31	<u> </u>	cce shall reflect the geographic, ethnic, and

$\begin{array}{c} 1 \\ 2 \end{array}$	(d) The members of the Task Force shall select a Chair of the Task Force from among the members.	
3 4	(e) The Department of Legislative Services shall provide staff for the Task Force.	
5	(f) A member of the Task Force:	
6	(1) may not receive compensation; but	
7 8	(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations as provided in the State budget.	
9 10 11	(g) The Task Force shall study the judicial review procedures of the Administrative Procedure Act to determine whether it is desirable and in the public interest for the judicial review procedures in the Act to be revised and updated.	
12 13 14	(h) The Task Force shall report its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on or before December 31, 2009.	
15	Article - State Government	
16	<del>10-222.</del>	
17 18 19	(a) (1) Except as provided in subsection (b) of this section, a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision as provided in this section.	
20 21 22	(2) An agency, including an agency that has delegated a contested case to the Office, is entitled to judicial review of a decision as provided in this section if the agency was a party before the agency or the Office.	
23	(h) In a proceeding under this section, the court may:	
24	(1) remand the case for further proceedings;	
25	(2) affirm the final decision; or	
26 27	(3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:	
28	(i) is unconstitutional;	
29 30	(ii) exceeds the statutory authority or jurisdiction of the final decision maker;	
31	(iii) results from an unlawful procedure;	

1	(iv) is affected by any other error of law;
$\frac{2}{3}$	(v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; [or]
4 5	(VI) IN A CASE INVOLVING EMPLOYEE DISCIPLINE OR TERMINATION OF EMPLOYMENT:
6	1. IS AN ABUSE OF DISCRETION;
7 8	2. FAILS TO COMPLY WITH THE AGENCY'S ESTABLISHED RULES AND REGULATIONS; OR
9 10	3. FAILS TO STATE REASONABLY THE BASIS FOR THE NATURE AND EXTENT OF A PENALTY OR SANCTION; OR
11	<del>[(vi)] (VII)</del> is arbitrary or capricious.
12 13 14 15	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008. It shall remain effective for a period of 1 year and 6 months and, at the end of March 31, 2010, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.
	Approved:
	Governor.
	President of the Senate.
	Speaker of the House of Delegates.