

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 679 (Delegates Manno and Feldman)
Economic Matters

State Real Estate Commission - Delegation of Authority to Conduct Contested
Case Hearings

This bill authorizes the State Real Estate Commission to contract with a hearing officer to adjudicate contested cases and exempts the commission from the Administrative Procedure Act. The commission has the authority to enter contracts and adopt regulations to carry out the purposes of the bill.

Fiscal Summary

State Effect: To the extent that the cost of contracting with a hearing officer exceeds the cost of adjudicating contested cases through the Office of Administrative Hearings (OAH), special fund expenditures increase. To the extent that such costs are lower, special fund savings accrue to the commission. No effect on revenues.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: Contested cases under the commission's jurisdiction can be heard by the commission, one of the commission's hearing boards, or an administrative law judge at OAH, if referred by the commission.

OAH may issue proposed or final findings of fact and/or conclusions of law, proposed or final orders, or the final administrative decision in a contested case. After the conclusion of a hearing conducted by OAH in a delegated contested case, OAH has 90 days to

complete the procedure authorized in the agency's delegation. The time limit may be extended with the written approval of the Chief Administrative Law Judge.

Background: State law, through the Administrative Procedure Act of the State Government Article, establishes procedures to resolve contested agency actions through an impartial administrative hearing. In 1990, the legislature created OAH to centralize the administrative hearing process of government agencies in the State. Maryland is one of 27 states to establish a centralized office for the purpose of administrative adjudication.

OAH conducts hearings for approximately 22 State agencies, in over 200 different types of contested cases. OAH received 49,253 hearing requests in fiscal 2008 and held 30,002 hearings. In the majority of cases, the judge issued a bench decision; thus, the procedure was completed at the end of the hearing. However, in 2,976 cases the judge issued a written decision. Cases that result in written decisions are more complicated and take longer to finalize. The Governor's proposed fiscal 2010 budget provides 53 administrative law judge positions including the chief.

Prior to the formation of OAH, the Department of Labor, Licensing, and Regulation (in which the commission is housed), and many other State agencies, contracted hearing officers to adjudicate cases that were too time consuming or complicated for the boards or commissions to hear. After the creation of OAH, this power was removed from most agencies. By consolidating the administrative law cases, OAH was believed to be a more cost-effective way to adjudicate these contested cases.

The following agencies are exempt from the Administrative Procedure Act and have the authority to contract with a hearing officer:

- the Governor;
- the State Department of Assessments and Taxation;
- the Maryland Insurance Administration;
- the Injured Workers' Insurance Fund;
- the Maryland Parole Commission of the Department of Public Safety and Correctional Services;
- the Public Service Commission;
- the Maryland Tax Court;
- the State Workers' Compensation Commission;
- the Maryland Automobile Insurance Fund; and
- the Patuxent Institution Board of Review, when acting on a parole request.

State Fiscal Effect: It is unclear whether contracting with a hearing officer is more cost effective than using OAH. Nevertheless, Legislative Services advises that special fund expenditures for the commission are likely to increase beginning in fiscal 2010, assuming the commission uses its authority to contract with a hearing officer for all cases currently adjudicated through OAH.

OAH assesses fees to agencies for court costs based on the percentage of total court hours the agency used. The commission delegated about 30 cases to OAH in fiscal 2008. These cases – among the most time-consuming handled by OAH – required 720 hours of OAH hearing time, on average 24 hours per case, which was 1.7% of OAH’s total hearing hours for the year. The Governor’s proposed fiscal 2010 budget requires that about \$13 million of OAH operating expenses be paid by fees assessed on agencies. The commission’s share in fiscal 2010 is about \$220,000.

DLLR advises that an analysis has to be done to determine the costs associated with hiring a hearing officer, court reporting, setting up an adequate hearing room, and other operating expenses. According to DLLR, the commission receives an annual appropriation for OAH hearing expenses, which presumably ends under the bill. It is unclear how the bill affects that appropriation, but DLLR advises that the commission has to obtain a specific appropriation to be able to adjudicate administrative hearings outside of OAH.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Office of Administrative Hearings; Department of Legislative Services

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