

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 297 (Senator Hough)
Education, Health, and Environmental Affairs

Administrative Procedure Act - Dispositions and Summary Suspensions - Time Periods

This bill requires an agency or the Office of Administrative Hearings (OAH) to dispose of a contested case within 90 days after any evidentiary hearing held on the case unless otherwise precluded by law. If the agency or OAH does not dispose of a case within this timeframe, a named party to the case may provide written notice to the agency or OAH that the decision is due. If an agency or OAH does not dispose of a case within 30 days after receipt of such notice, the decision must be deemed to be in favor of the named party. In addition, the bill requires a unit that summarily suspends a license under specified provisions to issue a final, appealable order on the summary suspension within 30 days.

Fiscal Summary

State Effect: State expenditures (all funds) for multiple State agencies and reimbursable fund revenues for OAH increase, potentially significantly, beginning in FY 2021, under the assumptions discussed below.

Local Effect: The bill is not expected to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Current Law:

Definitions

“Contested case” means a proceeding before an agency to determine:

- a right, duty, statutory entitlement, or privilege of a person that is required by statute or constitution to be determined only after an opportunity for an agency hearing; or
- the grant, denial, renewal, revocation, suspension, or amendment of a license that is required by statute or constitution to be determined only after an opportunity for an agency hearing.

“Contested case” does not include a proceeding before an agency involving an agency hearing required only by regulation unless the regulation expressly or by clear implication requires the hearing to be held in accordance with specified provisions of Maryland’s Administrative Procedure Act (APA) pertaining to contested cases.

“Agency” means (1) an officer or unit of State government authorized by law to adjudicate contested cases or (2) a unit that is created by general law, operates in at least two counties, and is authorized by law to adjudicate contested cases.

“License” means all or any part of permission that (1) is required by law to be obtained from a unit; (2) is not required only for revenue purposes; and (3) is in any form, including an approval, a certificate, a charter, a permit, or a registration.

Delegation of Hearing Authority

Under APA, an agency may delegate to OAH the authority to issue (1) proposed or final findings of fact; (2) proposed or final conclusions of law; (3) proposed or final findings of fact and conclusions of law; (4) proposed or final orders or orders related to the Maryland Commission on Civil Rights; or (5) the final administrative decision of an agency in a contested case. OAH generally must complete the procedure authorized in the agency’s delegation to OAH within 90 days after completion of the hearing. This time limit may be extended with the written approval of the Chief Administrative Law Judge.

Disposition of a Contested Case

Unless otherwise precluded by law, an agency or OAH may dispose of a contested case by (1) stipulation; (2) settlement; (3) consent order; (4) default; (5) withdrawal; (6) summary disposition; or (7) dismissal.

Revocation or Suspension of a License

Generally, under APA, a unit may not revoke or suspend a license unless the unit first gives the licensee (1) written notice of the facts that warrant suspension or revocation and (2) an opportunity to be heard. A unit may, however, summarily suspend a license if it (1) finds that the public health, safety, or welfare imperatively requires emergency action and (2) promptly gives the licensee written notice of the suspension, finding and reasons that support the finding, and an opportunity to be heard. “Unit,” as it applies to these provisions, means an officer or unit that is authorized to adopt regulations or adjudicate contested cases under APA, as specified.

State Fiscal Effect: State agencies may experience operational impacts and, in some cases, incur additional expenditures to the extent that they must dispose of contested cases and issue final orders on summary license suspensions within a shortened timeframe under the bill. With respect to the 90-day limit for the disposition of contested cases, current law already requires OAH to issue its rulings within 90 days of an evidentiary hearing. In cases where OAH issues the final ruling, therefore, the bill has no effect. In cases where OAH issues proposed rulings, the bill gives agencies 30 days from the time the proposed ruling is delivered to issue their final ruling (following the delivery of a notice from the named party). Some agencies advise that they may have trouble meeting that deadline given the availability of the parties involved to meet.

The bill’s 30-day deadline for issuing a final, appealable order on a summary suspension significantly compresses the timeframe for issuing notice and conducting hearings as required under current law. The State Board of Nursing, for example, expressed concern that it likely is unable to meet the bill’s deadline for issuing a final order on a summary license suspension while meeting other applicable hearing and notice requirements and may require additional resources to do so. The Maryland Insurance Agency similarly advises that additional personnel is required to comply with the bill’s changes. OAH and agencies that refer their contested cases to OAH all express concern that OAH lacks the capacity to process those appeals within the 30-day timeframe, given other due process requirements.

Accordingly, State expenditures (all funds) increase beginning in fiscal 2021 to the extent that State agencies must hire additional personnel and/or obtain other resources to handle affected cases within a shortened timeframe under the bill. To the extent that (1) agencies

choose to delegate additional cases to OAH under the bill and (2) OAH must expedite hearings under the bill, OAH may require additional administrative law judges and/or administrative staff. Accordingly, reimbursable fund expenditures and revenues for OAH potentially increase beginning in fiscal 2021. However, given the broad scope of the bill, any such impact cannot be reliably estimated, but may be significant.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 483 (Delegate Krebs) - Judiciary.

Information Source(s): Maryland Commission on Civil Rights; Maryland State Department of Education; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Maryland Department of Health; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Office of Administrative Hearings; Maryland Insurance Administration; State Retirement Agency; Washington Suburban Sanitary Commission; Department of Legislative Services

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