

HOUSE BILL 1495

D3, P3, P4

6lr2108
CF SB 942

By: **Delegates Cullison, Haynes, Healey, Kelly, Pena-Melnyk, Reznik, Sample-Hughes, and Vallario**

Introduced and read first time: February 12, 2016

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Administrative Procedure Act – Contested Cases**
3 **– Judicial Review**

4 FOR the purpose of altering the circumstances under which a court may reverse or modify
5 the decision of an agency on judicial review under the Administrative Procedure Act
6 in a case in which an employee is disciplined, suspended, or terminated from
7 employment; and generally relating to judicial review of contested cases under the
8 Administrative Procedure Act.

9 BY repealing and reenacting, with amendments,
10 Article – State Government
11 Section 10–222
12 Annotated Code of Maryland
13 (2014 Replacement Volume and 2015 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
15 That the Laws of Maryland read as follows:

16 **Article – State Government**

17 10–222.

18 (a) (1) Except as provided in subsection (b) of this section, a party who is
19 aggrieved by the final decision in a contested case is entitled to judicial review of the
20 decision as provided in this section.

21 (2) An agency, including an agency that has delegated a contested case to
22 the Office, is entitled to judicial review of a decision as provided in this section if the agency
23 was a party before the agency or the Office.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) Where the presiding officer has final decision-making authority, a person in
2 a contested case who is aggrieved by an interlocutory order is entitled to judicial review if:

3 (1) the party would qualify under this section for judicial review of any
4 related final decision;

5 (2) the interlocutory order:

6 (i) determines rights and liabilities; and

7 (ii) has immediate legal consequences; and

8 (3) postponement of judicial review would result in irreparable harm.

9 (c) Unless otherwise required by statute, a petition for judicial review shall be
10 filed with the circuit court for the county where any party resides or has a principal place
11 of business.

12 (d) (1) The court may permit any other interested person to intervene in a
13 proceeding under this section.

14 (2) If the agency has delegated to the Office the authority to issue the final
15 administrative decision pursuant to § 10-205(a)(3) of this subtitle, and there are 2 or more
16 other parties with adverse interests remaining in the case, the agency may decline to
17 participate in the judicial review. An agency that declines to participate shall inform the
18 court in its initial response.

19 (e) (1) The filing of a petition for judicial review does not automatically stay
20 the enforcement of the final decision.

21 (2) Except as otherwise provided by law, the final decision maker may
22 grant or the reviewing court may order a stay of the enforcement of the final decision on
23 terms that the final decision maker or court considers proper.

24 (f) (1) Judicial review of disputed issues of fact shall be confined to the record
25 for judicial review supplemented by additional evidence taken pursuant to this section.

26 (2) The court may order the presiding officer to take additional evidence on
27 terms that the court considers proper if:

28 (i) before the hearing date in court, a party applies for leave to offer
29 additional evidence; and

30 (ii) the court is satisfied that:

31 1. the evidence is material; and

1 2. there were good reasons for the failure to offer the
2 evidence in the proceeding before the presiding officer.

3 (3) On the basis of the additional evidence, the final decision maker may
4 modify the findings and decision.

5 (4) The final decision maker shall file with the reviewing court, as part of
6 the record:

7 (i) the additional evidence; and

8 (ii) any modifications of the findings or decision.

9 (g) (1) The court shall conduct a proceeding under this section without a jury.

10 (2) A party may offer testimony on alleged irregularities in procedure
11 before the presiding officer that do not appear on the record.

12 (3) On request, the court shall:

13 (i) hear oral argument; and

14 (ii) receive written briefs.

15 (h) In a proceeding under this section, the court may:

16 (1) remand the case for further proceedings;

17 (2) affirm the final decision; or

18 (3) reverse or modify the decision if any substantial right of the petitioner
19 may have been prejudiced:

20 (I) because a finding, conclusion, or decision:

21 [(i)] 1. is unconstitutional;

22 [(ii)] 2. exceeds the statutory authority or jurisdiction of the
23 final decision maker;

24 [(iii)] 3. results from an unlawful procedure;

25 [(iv)] 4. is affected by any other error of law;

26 [(v)] 5. is unsupported by competent, material, and
27 substantial evidence in light of the entire record as submitted; or

1 [(vi)] 6. is arbitrary or capricious; AND

2 (II) IN A CASE INVOLVING A FINAL DECISION BY WHICH AN
3 EMPLOYEE OF AN AGENCY IS DISCIPLINED, SUSPENDED, OR TERMINATED FROM
4 EMPLOYMENT, BECAUSE THE DECISION:

5 1. FAILS TO REASONABLY STATE THE BASIS FOR THE
6 AGENCY'S DETERMINATION OF EMPLOYEE MISCONDUCT;

7 2. IS NOT CONSISTENT WITH THE AGENCY'S PAST
8 PRACTICES, RULES, OR REGULATIONS;

9 3. FAILS TO INCLUDE FINDINGS OF FACT OR TO EXPLAIN
10 THE RATIONALE FOR THE SANCTION ADOPTED; OR

11 4. PROVIDES FOR A SANCTION THAT IS NOT CONSISTENT
12 OR IN PROPORTION WITH THE EMPLOYEE MISCONDUCT FOUND OR WITH PENALTIES
13 IMPOSED BY THE AGENCY PREVIOUSLY FOR SIMILAR EMPLOYEE MISCONDUCT.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2016.