

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2010, Legislative Day No. 20

Bill No. 123-10

Mr. John Olszewski, Sr., Chairman
By Request of County Executive

By the County Council, December 6, 2010

A BILL
ENTITLED

Office of Administrative Hearings

FOR the purpose of establishing the Office of Administrative Hearings (“the Office”); providing that the Office consists of two or more Administrative Law Judges; providing for the jurisdiction of the Office to include certain zoning matters, development matters, code enforcement matters, and employee grievances; abolishing the office of Labor Commissioner and transferring certain duties of the Labor Commissioner to the Office and to the Director of Human Resources; abolishing the code enforcement hearing officer and transferring certain duties to the Office; authorizing the county to appeal a certain decision; providing for the rules of practice and procedures of the Office; defining certain terms; providing for the application of this Act; and generally relating the creation of an Office of Administrative Hearings.

By adding

Sections 3-12-101 through 3-12-108
Article 3. Administration
Title 12. Office of Administrative Hearings
Baltimore County Code, 2003

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

1 BY repealing
2 Section 3-1-103
3 Article 3. Administration
4 Title 1. The Executive Branch
5 Subtitle 1. In general
6 Baltimore County Code, 2003

7 BY repealing and reenacting, with amendments

8 Section 3-3-1305(b)
9 Article 3. Administration
10 Title 3. Boards, Commissions, Committees, Panels and Foundations
11 Subtitle 13. Personnel and Salary Advisory Board
12 Baltimore County Code, 2003

13 BY repealing and reenacting, with amendments

14 Sections 3-6-101(h), 3-6-206(g), 3-6-301(a)
15 Article 3. Administration
16 Title 6. Code enforcement
17 Subtitle 1. Definitions
18 Baltimore County Code, 2003

19 BY repealing and reenacting, with amendments

20 Sections 4-5-204(a)(1)(i), 4-5-303, 4-5-304(a), (c), and (d), 4-5-305(b)(a) and (b)(1), (c),
21 and (d), 4-5-306, and 4-5-307(b)
22 Article 4. Human Resources
23 Title 5. Same - Employee Relations Act
24 Baltimore County Code, 2003

25 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE
26 COUNTY, MARYLAND, that Sections 3-12-101 through 3-12-108, are hereby added to Article 3.
27 Administration, Title 12. Office of Administrative Hearings, of the Baltimore County Code, 2003,
28 as amended, to read as follows:

29
30 § 3-12-101.

1 THE PURPOSE OF THIS TITLE IS TO:

2 (1) ENSURE THE RIGHT OF ALL PERSONS TO BE TREATED IN A FAIR AND
3 UNBIASED MANNER IN THEIR EFFORTS TO RESOLVE DISPUTES IN ADMINISTRATIVE
4 PROCEEDINGS GOVERNED BY THIS TITLE; AND

5 (2) PROMOTE PROMPT, EFFECTIVE, AND EFFICIENT GOVERNMENT.

6

7 § 3-12-102.

8 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

9 (B) “CONTESTED CASE” MEANS A MATTER DELEGATED TO THE OFFICE UNDER
10 THIS TITLE.

11 (C) “OFFICE” MEANS THE OFFICE OF ADMINISTRATIVE HEARINGS.

12

13 § 3-12-103.

14 THERE IS AN OFFICE OF ADMINISTRATIVE HEARINGS.

15

16 § 3-12-104.

17 (A) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL CONSIST OF TWO OR
18 MORE ADMINISTRATIVE LAW JUDGES.

19 (B) ANY REFERENCE TO THE ZONING COMMISSIONER, THE DEPUTY ZONING
20 COMMISSIONER OR THE HEARING OFFICER IN THE CHARTER, THE CODE OR THE
21 BALTIMORE COUNTY ZONING REGULATIONS SHALL BE DEEMED TO BE A
22 REFERENCE TO THE OFFICE.

23 (C) THE OFFICE SHALL HAVE THE PERSONNEL CONSIDERED NECESSARY TO

1 CARRY OUT THE FUNCTIONS AND RESPONSIBILITIES ASSIGNED TO IT.

2
3 § 3-12-105.

4 THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL HAVE JURISDICTION OVER:

5 (1) ANY QUASI-JUDICIAL ZONING COMMISSIONER'S HEARING OR PROCEDURE
6 UNDER THE CODE OR THE BALTIMORE COUNTY ZONING REGULATIONS;

7 (2) ANY QUASI-JUDICIAL HEARING OFFICER'S HEARING OR PROCEDURE
8 UNDER THE CODE OR THE BALTIMORE COUNTY ZONING REGULATIONS;

9 (3) A CODE ENFORCEMENT CITATION ISSUED UNDER TITLE 6 OF THIS
10 ARTICLE;

11 (4) A GRIEVANCE REFERRED TO THE OFFICE BY THE DIRECTOR OF HUMAN
12 RESOURCES OR THE PERSONNEL AND SALARY ADVISORY BOARD UNDER THE
13 EMPLOYEE RELATIONS ACT; AND

14 (5) ANY OTHER MATTER DELEGATED TO THE OFFICE.

15
16 § 3-12-106.

17 (A)(1) THE OFFICE MAY ADOPT REGULATIONS TO GOVERN THE PROCEDURES
18 AND PRACTICES IN ALL CONTESTED CASES.

19 (2) IN THE CASE OF A CONFLICT BETWEEN ANY REGULATIONS
20 ADOPTED UNDER THIS TITLE AND THE PROVISIONS OF THE CODE OR THE
21 BALTIMORE COUNTY ZONING REGULATIONS, THE PROVISIONS OF THE CODE OR
22 THE BALTIMORE COUNTY ZONING REGULATIONS SHALL PREVAIL.

23 (B) TO ASSIST THE PUBLIC IN UNDERSTANDING THE PROCEDURES FOLLOWED

1 BY THE OFFICE IN CONTESTED CASES, THE OFFICE MAY DEVELOP AND DISTRIBUTE
2 SUPPLEMENTAL EXPLANATORY MATERIALS, INCLUDING RELATED FORMS THAT
3 THE OFFICE REQUIRES AND INSTRUCTIONS FOR COMPLETING THE FORMS.

4
5 § 3-12-107.

6 NOTICE OF A CONTESTED CASE HEARING SHALL BE PROVIDED IN ACCORDANCE
7 WITH THE APPLICABLE LAW.

8
9 § 3-12-108.

10 THE STANDARD OF PROOF IN A CONTESTED CASE SHALL BE THE PREPONDERANCE
11 OF EVIDENCE UNLESS THE STANDARD OF CLEAR AND CONVINCING EVIDENCE IS
12 OTHERWISE IMPOSED ON THE OFFICE BY REGULATION, STATUTE, OR
13 CONSTITUTION.

14
15 SECTION 2. AND BE IT FURTHER ENACTED, that Section 3-1-103, of Article 3.
16 Administration, Title 1. The Executive Branch, Subtitle 1. In general, of the Baltimore County Code,
17 2003, as amended, is hereby repealed.

18
19
20 SECTION 3. AND BE IT FURTHER ENACTED, that Section 3-3-1305(b), of Article 3.
21 Administration, Title 3. Boards, Commissions, Committees, Panels and Foundations, Subtitle 13.
22 Personnel and Salary Advisory Board, of the Baltimore County Code, 2003, as amended, is hereby
23 repealed and reenacted, with amendments, to read as follows:

1 § 3-3-1305.

2 (b) The Board may:

3 (1) Except for its duty to hear and decide appeals taken under subsection (a)(4)
4 of this section, delegate to the Director of Human Resources any of its duties;

5 (2) Request that the [Labor Commissioner] OFFICE OF ADMINISTRATIVE
6 HEARINGS:

7 (i) Conduct a preliminary hearing regarding an appeal brought by a merit
8 system status employee under subsection (a)(4) of this section; and

9 (ii) Provide to the Board, in writing, recommended findings of fact and
10 conclusions of law with respect to the appeal; and

11 (3) In conducting investigations or inquiries authorized under subsection (a)(3)
12 of this section:

13 (i) Administer oaths;

14 (ii) Compel the attendance of witnesses; and

15 (iii) Require the production of records and other materials.

16

17

18 SECTION 4. AND BE IT FURTHER ENACTED, that Sections 3-6-101(h), 3-6-206(g), and
19 3-6-301(a) of Article 3. Administration, Title 6. Code enforcement, Subtitle 1. Definitions, of the
20 Baltimore County Code, 2003, as amended, are hereby repealed and reenacted, with amendments,
21 to read as follows:

22

23 § 3-6-101.

1 (h) "Hearing Officer" means [the individual designated by the Code Official or the
2 Director to conduct code enforcement hearings under this title] THE OFFICE OF
3 ADMINISTRATIVE HEARINGS.

4
5 § 3-6-206.

6 (g) [(1) At the conclusion of a code enforcement hearing, the] THE Hearing Officer shall
7 issue a final order with written findings.

8 [(2) If the violator makes written application to the Code Official or the Director
9 within 10 days after the final order is issued, the Code Official or the Director may modify or amend
10 the final order.]

11
12 § 3-6-301.

13 (a) Within 15 days after a final order is issued under § 3-6-206(g) of this title at the
14 conclusion of a code enforcement hearing, a violator OR THE COUNTY may appeal the final order
15 to the Board of Appeals.

16
17 SECTION 5. AND BE IT FURTHER ENACTED, that Sections 4-5-204(a)(1)(i), 4-5-303,
18 4-5-304(a), (c), and (d), 4-5-305(b), (c), and (d), 4-5-306(a) and (b)(1), and 4-5-307(b) of Article
19 4. Human Resources, Title 5. Same - Employee Relations Act, of the Baltimore County Code, 2003,
20 as amended, are hereby repealed and reenacted, with amendments, to read as follows:

21
22 § 4-5-204.

23 (a) (1) (i) The county administration or an employee organization may file a

1 verified complaint with an independent third party agency designated by the [Labor Commissioner]
2 DIRECTOR OF HUMAN RESOURCES that the other party has committed an unfair labor practice.

3
4 § 4-5-303.

5 (a) (1) If a representation unit is not represented by an exclusive representative, an
6 employee organization may file a petition with the [Labor Commissioner] DIRECTOR OF HUMAN
7 RESOURCES seeking certification as the exclusive representative for the representation unit.

8 (2) If a representation unit is represented by an exclusive representative, an
9 employee organization may file a petition with the [Labor Commissioner] DIRECTOR OF HUMAN
10 RESOURCES:

11 (i) Asserting that the majority of the employees in a representation unit
12 no longer wish to be represented by the current exclusive representative; and

13 (ii) Seeking certification as the exclusive representative for the
14 representation unit.

15 (b) If a representation unit is represented by an exclusive representative, a petition may
16 be filed with the [Labor Commissioner] DIRECTOR OF HUMAN RESOURCES by:

17 (1) An employee organization asserting that the majority of the employees in a
18 representation unit no longer wish to be represented by the current exclusive representative; or

19 (2) An employee or employees in a representation unit asserting that they no
20 longer wish to be represented by the current exclusive representative.

21
22 § 4-5-304.

23 (a) The [Labor Commissioner] DIRECTOR OF HUMAN RESOURCES may accept a

1 petition only during the month of September.

2 (c) An employee organization that seeks certification as an exclusive representative for
3 a representation unit shall file with the [Labor Commissioner] DIRECTOR OF HUMAN
4 RESOURCES the following information and documents:

5 (1) A statement that the employee organization is one in which employees
6 participate and that has as one of its purposes the representation of public employees in matters of
7 wages, hours, and other terms and conditions of employment; and

8 (2) A statement that the employee organization has no terms or conditions of
9 membership which discriminate with regard to race, color, creed, gender, age, political affiliation,
10 national origin, religion, marital status, or disability.

11 (d) A petition filed with the [Labor Commissioner] DIRECTOR OF HUMAN
12 RESOURCES by an employee or employees in a representation unit or an employee organization
13 seeking to decertify the current exclusive representative shall be accompanied by substantive
14 documentary proof, dated not more than 6 months before the day on which the petition is filed, that
15 at least 30% of the employees within the representation unit approve of the decertification of the
16 exclusive representative.

17
18 § 4-5-305.

19 (b) When an employee organization or employees file a petition with the [Labor
20 Commissioner] DIRECTOR OF HUMAN RESOURCES, the employee organization or employees
21 shall submit to an impartial third party agency written authorization cards signed and dated by at
22 least 30% of the employees in the representation unit not more than 6 months before the day the
23 petition is filed indicating, as appropriate, that the employees:

1 (1) Have designated the employee organization to represent them in their
2 employment relations with the county administration; or

3 (2) Wish to decertify the current exclusive representative.

4 (c) (1) Not more than 14 calender days after the day the [Labor Commissioner]
5 DIRECTOR OF HUMAN RESOURCES receives a petition, the [Labor Commissioner] DIRECTOR
6 shall submit to the impartial third party agency a list of employees in the representation unit.

7 (2) If, with respect to a petition filed by an employee organization seeking to
8 represent employees in a representation unit, the [Labor Commissioner] DIRECTOR OF HUMAN
9 RESOURCES fails to submit the list of employees to the impartial third party agency within the
10 required time, it shall be conclusively deemed that at least 30% of the employees in the
11 representation unit have indicated a desire to be represented by an employee organization.

12 (d) (1) The impartial third party agency shall check the written authorization cards
13 submitted by the employee organization or the employees against the list of employees submitted
14 by the [Labor Commissioner] DIRECTOR OF HUMAN RESOURCES.

15 (2) If the impartial third party agency determines that at least 30% of the
16 employees on the list have indicated a desire to be represented by the employee organization or to
17 decertify an exclusive representative, it shall notify the [Labor Commissioner] DIRECTOR OF
18 HUMAN RESOURCES of its determination.

19
20 § 4-5-306.

21 (a) When the [Labor Commissioner] DIRECTOR OF HUMAN RESOURCES receives
22 a petition, the [Labor Commissioner] DIRECTOR shall provide notification of the petition to:

23 (1) The exclusive representative, if any, in the representation unit in which the

1 petition is filed; and

2 (2) An employee organization that has notified the [labor commissioner]
3 DIRECTOR in writing that it has an interest in the representation unit in which the petition is filed.

4 (b) (1) If the [Labor Commissioner] DIRECTOR OF HUMAN RESOURCES
5 disagrees with the petitioning employee organization or the petitioning employees as to the inclusion
6 or exclusion of certain employees in the representation unit, they shall refer the issue immediately
7 to a mutually acceptable impartial third party agency for its determination.

8
9 § 4-5-307.

10 (b) After a decision on disputed employee inclusions or exclusions, if required, if the
11 [Labor Commissioner] DIRECTOR OF HUMAN RESOURCES determines that a question of
12 representation exists in the representation unit, the [Labor Commissioner] DIRECTOR shall:

13 (1) Notify all employees within the representation unit that an election will be
14 held; and

15 (2) Request an impartial third party agency to conduct an election by secret ballot.

16
17 SECTION 6. AND BE IT FURTHER ENACTED, that this Act, having passed by the
18 affirmative vote of five members of the County Council, shall take effect January 16, 2011.