

**MEMORANDUM**

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst 

SUBJECT: **Action:** Bill 52-15, Administrative Procedures – Summary Decision

**Government Operations and Fiscal Policy Committee recommendation (2-0, Councilmember Riemer absent):** recommended approval of Bill 52-15 with amendments to require:

- 1) a motion for a summary decision 30 days before a hearing; and
- 2) a finding that the moving party is entitled to prevail as a matter of law when a motion is granted.

Background

Bill 52-15, Administrative Procedures – Summary Decision, lead sponsor Council President Floreen at the request of the Hearing Examiner, was introduced on December 8, 2015. A public hearing was held on January 12, 2016. There were no speakers at the hearing. A Government Operations and Fiscal Policy Committee worksession was held on January 21.

Most hearings involve the presentation of facts or opinions that are in dispute. At the conclusion of such proceedings, the presiding officer decides which view is more persuasive. On occasion, only an interpretation of a law or regulation is at issue. In such cases there are agreed upon facts but different opinions on the correct outcome. In these latter cases, courts have the ability to make its decision without an evidentiary hearing when the court sustains a party's motion for summary judgement. Bill 52-15 would revise the Administrative Procedures Act to similarly allow a summary decision. Such a summary decision would save all parties from the time and expense of an otherwise unnecessary evidentiary hearing.

In *Eng'g Mgmt. Servs. V. Md. State Highway Admin*, 375 Md 211(2003), the Court of Appeals found that the Maryland Board of Contract Appeals lacked the authority to grant a motion for summary disposition in the absence of rules of procedure that stated the conditions under which the motion could be granted. After amending the procedural regulations, the court was satisfied that the following regulation satisfied the Court's concern:

- 1) A party may move for summary decision on any appropriate issue in the case.

- 2) The Appeals Board may grant a proposed or final summary decision if the Appeals Board finds that:
  - (a) After resolving all inferences in favor of the party against whom the motion is asserted, there is no genuine issue of material fact: and
  - (b) A party is entitled to prevail as a matter of law.

These provisions included less detail than the Code of Maryland Regulation for the Office of Administrative Hearing (COMAR 28.02.01.12D, which required affidavits as to the admissibility of the evidence that the party might present). Despite its brevity, the Court of Appeals found the revised rules adequate to provide notice to claimants and the ability to contest the motion. *Bramble v. Md. State Highway Admin*, 2015 WL 6090614 (Sept. 25, 2015).

#### Issues

- 1) Is summary decision authority a good idea?

The consensus opinion among those officials who conduct hearings (Office of Zoning and Administrative Hearings, Board of Appeals, Ethics Commission, Merit System Protection Board, Commission on Human Rights, and Commission on Common Ownership Communities) is that having a provision for summary judgement would be helpful. The summary decision process is efficient for the parties and the holder of the hearing.

It is acknowledged that a summary decision would not be available in all cases. When the Charter requires a hearing, then a hearing must be held without regard to the County Code. The Charter trumps the County Code.

**The Committee agreed that a summary decision procedure would be helpful.**

- 2) Is the proposed revision sufficient to provide the court required standards for a summary decision?

The County Attorney's office recommends that the bill be amended to be more in parallel to recent Court of Appeals decision. In that regard, the County Attorney recommends adding the phrase "and the moving party is entitled to prevail as a matter of law" after the requirement for no finding that there is no issue of fact.

**The Committee recommended this amendment.**

- 3) Should a motion for a summary be required 30 days before a hearing?

As introduced, Bill 52-15 requires that a motion for a summary decision be made at least 20 days before a hearing. The Hearing Examiner recommended that it be 30 days before a hearing. With that timing, a hearing could still be held if the motion is not granted.

**The Committee recommended changing when a motion for a summary decision must be granted from 20 days before a hearing to 30 days before a hearing.**

4) Should officiating authority have the right to make the motion for a summary decision?

An early draft of Bill 52-15 included a provision to allow the hearing authority to pursue a summary decision on its own motion. The Bill as introduced does NOT include that authority. The County Attorney's office raised the point that in court proceedings, the judge may not make a summary decision of the court's own motion. The parties may make a motion for summary judgment, but not the judge.

The Hearing Examiner would like the authority to go to a summary motion on the officiating authorities own motion. The Examiner envisioned a situation where the complainant has no legal basis to proceed (e.g., a trustee in bankruptcy, not the Complainant, now owns the claim), but the respondent does not act to bring the matter to closure (e.g., it doesn't want to pay an attorney to file a motion). The Examiner wants a way to bring the matter to completion without going through a hearing or issuing a formal sanction or leaving it on our docket indefinitely.

In the Hearing Examiner's opinion, Courts have alternative procedures to effectively resolve a case. On their own motion, a Court may raise the issue of lack of jurisdiction and some other deficiencies in the complaint.<sup>i</sup>

**The Committee did not recommend revising the Bill to allow the hearing authority to make a motion for summary judgement under its own authority.**

5) Should the Bill be revised to note that a summary decision by a hearing authority who does not have final decision making authority is mere a recommendation?

The Hearing Examiner recommended that the Bill be revised to note that a summary decision by a hearing authority who does not have final decision making authority is mere a recommendation. The Committee did not agree with this recommendation because it is unnecessary. The hearing authority's powers are not changed by Bill 52-15 except to allow a summary decision which then may or may not go to a deciding authority.

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<sup>i</sup> MD Rule 2-324(b) provides

(b) Subject matter jurisdiction. Whenever it appears that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

MD Rule 2-322(e) provides:

(e) Motion to strike. On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any improper, immaterial, impertinent, or scandalous matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.

Bill No. 52-15  
Concerning: Administrative Procedures –  
Summary Decision  
Revised: 1-19-16 Draft No. 4  
Introduced: December 8, 2015  
Expires: June 8, 2017  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the request of the Hearing Examiner

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**AN ACT** to:

- (1) revise the Administrative Procedures Act to allow a summary decision without an evidentiary hearing ; and
- (2) generally amend the law governing administrative procedures.

By amending

Montgomery County Code  
Chapter 2A, Administration  
Section 2A-7

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



## LEGISLATIVE REQUEST REPORT

Bill 52-15

### *Administrative Procedures – Summary Decision*

<b>DESCRIPTION:</b>	The will would amend the Administrative Procedures Act to all a hearing authority to come to conclusion without an evidentiary hearing when there are no facts at issue.
<b>PROBLEM:</b>	Maryland Courts only allow a summary decision to be made when that procedure is allow by law. Currently the authority for summary decisions is not in County Code having for an inefficient hearing process.
<b>GOALS AND OBJECTIVES:</b>	The Bill will make the hearing process more efficient.
<b>COORDINATION:</b>	Merit System Protection Board, Landlord Tenant Affairs Commission, the Commission on Common Ownership, the Human Rights Commission and the Office of Zoning and Administrative Hearings
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Consultations with Boards, Commissions, and offices
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	NA