

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 241 (Senator Jacobs, *et al.*)
Education, Health, and Environmental Affairs

Administrative Procedure Act - Proposed Regulations - Public Hearings and
Voting

This bill requires the Joint Committee on Administrative, Executive, and Legislative Review (AELR) to hold a public hearing on a regulation if at least five members of the committee request such a hearing. If a public hearing is held, the committee must vote (at either the hearing or a subsequent committee meeting) on whether to oppose the adoption of the regulation. If a vote on the regulation is not taken at the public hearing or immediately thereafter, the committee members must be given at least one week's notice of the scheduling of any subsequent meeting to vote on the regulation.

Fiscal Summary

State Effect: The change is procedural in nature and is not expected to materially affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Administrative Procedure Act sets forth the requirements for the review of regulations adopted by units of government under the jurisdiction of the Act, including requirements for notice, hearing, review, and publication. A "regulation" is a statement, amendment, or repeal of a statement that has general application and future effect. It is a statement adopted by a unit of government to detail or implement a law administered by the unit, or to govern its organization, procedures, and practices. A

regulation may be in any form, including a guideline, rule, standard, or statement of interpretation or policy. A regulation is not effective unless it is authorized by statute; therefore, it must contain a citation of the statutory authority for the regulation.

A unit of the Executive Branch that proposes a regulation must submit it for preliminary review by the AELR Committee at least 15 days before the proposed regulation is submitted for publication in the *Maryland Register*. The AELR Committee consists of 10 senators and 10 delegates and is charged by statute with the review of all regulations proposed by units of the Executive Branch.

A proposed regulation may not be adopted until after it is submitted to the AELR Committee and at least 45 days after its first publication in the *Maryland Register*. The unit must permit public comment on the proposed regulation for at least 30 days of the 45-day period after it is first published in the *Maryland Register*. If the AELR Committee determines that it cannot conduct an appropriate review within the 45-day time period and that additional time is needed, the committee can delay the adoption of the regulation by notifying the promulgating unit and the Division of State Documents before the expiration of the 45-day time period. If the promulgating unit is provided with this notice, the unit may not adopt the regulation until it notifies the committee in writing of its intention to adopt the regulation and provides the committee with a further period of review that terminates 30 days after the notice provided to the committee or 105 days after initial publication of the proposed regulation in the *Maryland Register*, whichever is later.

Failure by the AELR Committee to approve or disapprove the proposed regulation during the 45-day period of review may not be construed to mean that the AELR Committee approves or disapproves the proposed regulation. However, the unit may proceed with adoption of the proposed regulation if the AELR Committee has not taken action to either approve or disapprove it.

An Executive Branch unit may adopt a proposed regulation on an emergency basis if the unit declares that emergency adoption is necessary, the proposed regulation and its fiscal impact are submitted to the AELR Committee, and the AELR Committee approves the emergency adoption. A public hearing must be held on the emergency adoption of the proposed regulation if requested by a member of the AELR Committee. The Administrative Procedure Act also sets forth procedures that must be followed if the AELR Committee opposes adoption of a proposed regulation and for the notice and publication of regulations once they are adopted.

Background: In calendar 2012, the AELR Committee received 43 regulations submitted by executive agencies for emergency approval and 326 regulations for adoption within normal timeframes, for an overall total of 369 regulations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Secretary of State, Department of Legislative Services

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mlm/lgc

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