

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 379 (Senator Jacobs)  
Education, Health, and Environmental Affairs

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**Regulations - Prohibition on Proposal and Adoption - Substantially Same Content  
as Failed Bill**

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This bill prohibits a unit in the Executive Branch of State government, notwithstanding any other provision of law, from proposing or adopting a regulation if the regulation has substantially the same content as a bill that failed to pass either house of the General Assembly.

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**Fiscal Summary**

**State Effect:** Potential significant operational impact, as discussed below.

**Local Effect:** The bill does not directly affect local governmental operations or finances.

**Small Business Effect:** No direct effect on small businesses.

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**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 Joint Committee on Administrative, Executive, and Legislative Review (AELR) 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.

In general, the effective date of a regulation is the tenth calendar day after the notice of adoption is published in the *Maryland Register* or a later date that the notice sets. The effective date of a regulation after its emergency adoption is the date that the AELR Committee sets.

**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. The Department of Health and Mental Hygiene (DHMH) has consistently been the most prolific in submitting regulations to the committee. In 2012, DHMH submitted 112 regulations to the committee, which represented 31% of the total regulations received by the committee during the year.

The Department of Natural Resources was the second-highest source of regulations in 2012, submitting 41 regulations during the year. The Department of Labor, Licensing, and Regulation was the third-highest source of regulations with 40 regulations submitted in 2012. Other agencies submitting significant numbers of regulations were the Maryland Department of Transportation (18 regulations) the State Board of Education (17 regulations), the Maryland Department of the Environment (16 regulations), the Maryland Department of Agriculture (14 regulations), the Maryland Insurance Administration (13 regulations), the Department of Human Resources (12 regulations), and the Comptroller of Maryland (12 regulations).

**State Fiscal Effect:** Several agencies advise that the bill may significantly alter their ability to promulgate regulations (and, correspondingly, their ability to alter fees and regulate various programs and industries). Under the bill, a bill that fails for any reason (presumably even a withdrawn bill) may limit an agency’s ability to regulate a particular issue – even if the agency would otherwise have statutory authority to do so.

Some agencies further advise that the bill may result in additional staff time spent on research related to proposed regulations. Because the bill’s prohibition is not limited to any specified timeframe, the Department of Legislative Services (DLS) assumes that the bill applies to failed bills from any prior session – resulting in a potentially significant volume of failed legislation for the agency (as well as the AELR Committee and DLS) to review. Additional staff time may also be necessary to determine what is considered “substantially same content.”

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General; Maryland Department of Agriculture; Department of Business and Economic Development; Department of Natural Resources; Maryland State Department of Education; Department of General Services; Department of Housing and Community Development; Maryland Higher Education Commission; Department of Health and Mental Hygiene; Comptroller's Office; Maryland State Lottery and Gaming Control Agency; Department of Labor, Licensing, and Regulation; Maryland State Retirement Agency; Maryland Department of Transportation; Department of Legislative Services

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