

# HOUSE BILL 26

P3

(PRE-FILED)

4r0807

CF 4r1104

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By: **Delegates McDermott, Smigiel, Haddaway-Riccio, and Otto**

Requested: November 5, 2013

Introduced and read first time: January 8, 2014

Assigned to: Health and Government Operations

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## A BILL ENTITLED

AN ACT concerning

### **Administrative Procedure Act – Fiscal Impact Statements for Proposed Regulations**

FOR the purpose of altering a certain provision of law to clarify that a promulgating unit is required to submit a certain fiscal impact statement with a proposed regulation to the Joint Committee on Administrative, Executive, and Legislative Review and the Department of Legislative Services; altering a certain provision of law to prohibit a unit from adopting a proposed regulation until after a certain fiscal impact statement is submitted with the proposed regulation to the Committee for preliminary review; making conforming changes; and generally relating to fiscal impact statements for proposed regulations.

BY repealing and reenacting, with amendments,  
Article – State Government  
Section 10–110(c)(1), 10–111, and 10–112  
Annotated Code of Maryland  
(2009 Replacement Volume and 2013 Supplement)

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

#### **Article – State Government**

10–110.

(c) (1) At least 15 days before the date a proposed regulation is submitted to the Maryland Register for publication under § 10–112 of this subtitle, the promulgating unit shall submit the proposed regulation, **TOGETHER WITH THE**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**FISCAL IMPACT STATEMENT REQUIRED UNDER § 10–111(C) OF THIS SUBTITLE,** to the Committee and the Department of Legislative Services.

10–111.

(a) (1) Except as provided in subsection (b) of this section, a unit may not adopt a proposed regulation until:

(i) after submission of the proposed regulation, **TOGETHER WITH THE FISCAL IMPACT STATEMENT REQUIRED UNDER SUBSECTION (C) OF THIS SECTION,** to the Committee for preliminary review under § 10–110 of this subtitle; and

(ii) at least 45 days after its first publication in the Register.

(2) (i) If the Committee determines that an appropriate review cannot reasonably be conducted within 45 days and that an additional period of review is required, it may delay the adoption of the regulation by so notifying the promulgating unit and the Division of State Documents, in writing, prior to the expiration of the 45–day period.

(ii) If notice is provided to the promulgating unit pursuant to subparagraph (i) of this paragraph, the promulgating 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 of the regulation that terminates not earlier than the later of the following:

1. the 30th day following the notice provided by the promulgating unit under this subparagraph; or

2. the 105th day following the initial publication of the regulation in the Register.

(3) The promulgating unit shall permit public comment for at least 30 days of the 45–day period under paragraph (1)(ii) of this subsection.

(b) (1) The unit may adopt a proposed regulation immediately if the unit:

(i) declares that the emergency adoption is necessary;

(ii) submits the proposed regulation to the Committee and the Department of Legislative Services, together with the fiscal impact statement required under subsection (c) of this section; and

(iii) has the approval of the Committee for the emergency adoption.

(2) (i) Subject to subparagraphs (ii), (iii), and (iv) of this paragraph, the approval of the Committee may be given:

1. by a majority of its members who are present and voting at a public hearing or meeting of the Committee; or

2. if staff of the Committee tries but is unable to contact a majority of the members of the Committee in a timely manner and immediate adoption is necessary to protect the public health or safety, by its presiding Chairman or, if its presiding Chairman is unavailable, by its cochair.

(ii) If a member of the Committee requests a public hearing on the emergency adoption of a regulation, the Committee shall hold a public hearing.

(iii) 1. If a public hearing is held on the emergency adoption of a regulation, the Committee may not approve the emergency adoption except by a majority vote of the members present and voting at the hearing or at a meeting of the Committee subsequent to the hearing.

2. If a vote on the emergency regulation is not taken at the public hearing or immediately thereafter, the Committee members shall be provided at least 1 week's notice of the scheduling of any subsequent meeting to vote on the regulation.

(iv) Unless the Governor declares that immediate adoption is necessary to protect the public health or safety, the Committee may not approve the emergency adoption of a regulation earlier than 10 business days after receipt of the regulation by the Committee and the Department of Legislative Services.

(3) If there is no request for a public hearing, the staff of the Committee may poll, in person, by telephone, or in writing:

(i) the members of the Committee; or

(ii) if staff of the Committee tries but is unable to contact a majority of the members of the Committee in a timely manner and immediate adoption is necessary to protect the public health or safety, the presiding Chairman or the cochair.

(4) (i) The Committee may impose, as part of its approval, any condition.

(ii) The Committee shall impose, as part of its approval, a time limit not to exceed 180 days on each request for emergency status.

(iii) If the unit does not adopt the regulation finally before the time limit expires, the status of the regulation reverts to its status before the emergency adoption.

(5) The Committee may rescind its approval by a majority of its members present and voting at a public hearing or meeting of the Committee.

(c) (1) The fiscal impact statement, prepared by the unit and submitted under **SUBSECTION (A) OR** subsection (b) of this section, shall state:

(i) an estimate of the impact of the [emergency] regulation on the revenues and expenditures of the State;

(ii) whether the State budget for the fiscal year in which the regulation will become effective contains an appropriation of the funds necessary for the implementation of the [emergency] regulation;

(iii) if an appropriation is not contained in the State budget, the source of the funds necessary for the implementation of the [emergency] regulation; and

(iv) whether the [emergency] regulation imposes a mandate on a local government unit.

(2) If the [emergency] regulation imposes a mandate on a local government unit, the fiscal impact statement shall:

(i) indicate whether the regulation is required to comply with a federal statutory or regulatory mandate;

(ii) [if the information may be practicably obtained given the emergency circumstances of the regulations,] include an estimate of the impact of the [emergency] regulation on the revenues and expenditures of local government units **UNLESS:**

**1. THE REGULATION IS AN EMERGENCY REGULATION; AND**

**2. THE INFORMATION MAY NOT BE PRACTICABLY OBTAINED GIVEN THE EMERGENCY CIRCUMSTANCES OF THE REGULATIONS; and**

(iii) if applicable, and if the required data is available, include the estimated effect on local property tax rates.

(a) (1) This subsection does not apply to the emergency adoption of a regulation.

(2) To have a proposed regulation published in the Register, a unit shall submit to the Administrator:

- (i) the proposed regulation; and
- (ii) a notice of the proposed adoption.

(3) The notice under this subsection shall:

(i) state the estimated economic impact of the proposed regulation on:

1. the revenues and expenditures of units of the State government and of local government units **IN ACCORDANCE WITH § 10–111(C) OF THIS SUBTITLE**; and

2. groups such as consumer, industry, taxpayer, or trade groups;

(ii) include a statement of purpose;

(iii) satisfy the requirements of § 2–1505.2 of this article;

(iv) comply with § 7–113(c) of the Human Services Article; and

(v) give persons an opportunity to comment before adoption of the proposed regulation, by:

1. setting a date, time, and place for a public hearing at which oral or written views and information may be submitted; or

2. giving a telephone number that a person may call to comment and an address to which a person may send comments.

(4) (i) The estimated economic impact statement required under paragraph (3)(i) of this subsection shall state whether the proposed regulation imposes a mandate on a local government unit.

(ii) If the proposed regulation imposes a mandate, the fiscal impact statement shall:

1. indicate whether the regulation is required to comply with a federal statutory or regulatory mandate; and

2. include, in addition to the estimate under paragraph (3)(i)1 of this subsection, the estimated effect on local property tax rates, if applicable, and if the required data is available.

(b) As soon as the Committee approves emergency adoption of a regulation, the Committee shall submit the regulation to the Administrator.

(c) If a regulation under this section amends or repeals an adopted regulation, the text of the regulation under this section shall show the changes with the symbols that the Administrator requires.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.