

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader - Revised

Senate Bill 599 (Senator Manno)
 Education, Health, and Environmental Affairs

AELR Committee - Renaming and Regulatory Adoption Procedures

This bill renames the Joint Legislative Committee on Administrative, Executive, and Legislative Review (AELR Committee) as the Regulatory Oversight Committee and alters procedures for the adoption of proposed and emergency regulations under the Administrative Procedure Act (APA).

Fiscal Summary

State Effect: General fund expenditures increase by \$186,200 in FY 2017 for staff within the Office of the Secretary of State to manage the searchable online comment tracking system and for contractual services to develop the system. Future year expenditures reflect annualization and inflation. Several agencies may incur additional operational and fiscal impacts, as discussed below. Revenues are not affected.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	186,200	170,300	176,400	182,700	189,300
Net Effect	(\$186,200)	(\$170,300)	(\$176,400)	(\$182,700)	(\$189,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill requires the Division of State Documents (DSD) in the Secretary of State's office to make available online to the public, at no cost, a searchable database of public comments provided to the division by agencies promulgating regulations. Each promulgating unit must provide an electronic copy of each written and verbal comment received during the regulation comment period to DSD *within one day* after it is received.

For emergency regulations, a promulgating unit must submit to the Governor a copy of the proposed regulation and a specific description of the grounds requiring emergency adoption. The Governor must review that information and either concur with the unit's justification for emergency adoption and attest to the necessity for emergency adoption or reject the unit's justification. To adopt a regulation immediately, the bill requires a promulgating unit, when it submits the proposed regulation to the Regulatory Oversight Committee and the Department of Legislative Services, to include the specific description of the grounds requiring the emergency adoption along with the Governor's attestation required under the bill.

Current Law: APA 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 DSD 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. APA 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.

DSD must make available to the public, at no cost, direct online searching of:

- the Code of Maryland Regulations;
- the Maryland Register; and
- any other material the division determines to be in the public interest.

Background: As of December 14, 2015, the AELR Committee received 34 regulations submitted by executive agencies in calendar 2015 for emergency approval and 415 regulations for adoption within normal timeframes, for an overall total of 449 regulations. The Department of Health and Mental Hygiene (DHMH) has consistently been the most prolific in submitting regulations to the committee. In 2015, DHMH submitted 114 regulations to the committee, which represented 25% of the total number of regulations received by the committee during the year.

The Department of Natural Resources (DNR) was the second highest source of regulations in 2015, submitting 64 regulations during the year. The State Board of Elections had the third highest number with 54 regulations submitted in 2015. Other agencies submitting significant numbers of regulations were the Maryland State Lottery and Gaming Control Agency (26 regulations); the Maryland Department of the Environment (MDE) (22 regulations); the Maryland Insurance Administration (21 regulations); the Department of Labor, Licensing, and Regulation (19 regulations); the State Board of Education (18 regulations); the Maryland Higher Education Commission (17 regulations); the Department of Human Resources (14 regulations); the Maryland Department of

Transportation (14 regulations); and the Department of Public Safety and Correctional Services (14 regulations).

State Expenditures:

Secretary of State

DSD is part of the Office of the Secretary of State and is tasked under the bill with developing and administering the searchable online database. Thus, general fund expenditures for the Secretary of State increase by \$186,241 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring two administrative staff to process receipt of comments from promulgating agencies, post the comments online, coordinate with submitting agencies, and manage records in the searchable online comment tracking system. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate includes costs to develop and test the database.

Positions	2
Salaries and Fringe Benefits	\$109,172
Contractual Services	67,440
Additional Equipment	8,726
Other Operating Expenses	<u>903</u>
Total FY 2017 Secretary of State Expenditures	\$186,241

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including ongoing, but reduced, costs for contractual services for additional development and maintenance of the online database.

Other Agencies

Other agencies have identified potential fiscal and operational impacts due to the bill's one-day turnaround requirement for submitting electronic copies of public comments to DSD. Depending on the volume of regulatory action at an agency, some agencies could require additional staffing to process, transcribe (in the case of verbal comments), and send copies of comments daily. In many cases, this is likely difficult to implement. For instance, DNR advises it receives thousands of comments each year and generally has at least some regulations in a comment period all year round. Staff may need to be diverted for a significant amount of time on a daily basis to comply with the bill. MDE likewise advises that some regulations result in more than 500 comments that are usually received in the final few days of the comment period. MDE currently uses a court reporter to transcribe

hearings; even if additional funds were used to expedite a transcript, the department doubts that meeting the one-day turnaround requirement is possible.

Agencies also note that provisions requiring proposed regulations to be sent to the Governor for review could slow down the rulemaking process and/or result in noncompliance with other laws. For example, if there is a delay from the Governor's Office relating to emergency fisheries regulations submitted by DNR, the delay could result in DNR becoming out of compliance with federal fisheries rules.

Additional Information

Prior Introductions: None.

Cross File: HB 1280 (Delegate Rosenberg) - Health and Government Operations.

Information Source(s): Governor's Office; Secretary of State; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2016
min/mcr Revised - Updated Information - March 3, 2016

Analysis by: Michelle Davis

Direct Inquiries to:
(410) 946-5510
(301) 970-5510