

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 309

(Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

State Government - Administrative Procedure Act - Proposed Regulations

This bill alters provisions within the Administrative Procedure Act (APA) that govern the process for adopting proposed regulations of Executive Branch agencies.

Fiscal Summary

State Effect: General fund expenditures could increase by \$35,500 in FY 2005. Reimbursable revenues could increase by \$22,500 in FY 2005. Future year expenditures and revenues reflect annualization and inflation.

| (in dollars) | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|----------------|------------|------------|------------|------------|------------|
| ReimB. Rev. | \$22,500 | \$30,300 | \$30,600 | \$30,900 | \$31,200 |
| GF Expenditure | 35,500 | 47,200 | 48,200 | 49,300 | 50,400 |
| Net Effect | (\$13,000) | (\$16,900) | (\$17,600) | (\$18,400) | (\$19,200) |

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Executive Branch agencies must submit a proposed regulation to the Department of Legislative Services (DLS) in addition to the Joint Committee on Administrative, Executive, and Legislative Review (AELR) at least 15 days before the proposed regulation is submitted to the *Maryland Register* for publication. The amount of time an executive agency must wait prior to adopting a proposed regulation,

subsequent to the AELR Committee's request for an additional period of review, is extended by 30 days from the seventy-fifth to the one-hundred and fifth day following the initial publication of the regulation in the *Maryland Register*.

The process by which the AELR Committee approves an emergency regulation is altered by enabling the presiding chairman or co-chairman to approve a proposed emergency regulation only when the committee staff tries but is unable to contact a majority of committee members in a timely manner and immediate adoption is necessary to protect the public health or safety.

The AELR Committee is prohibited from approving the emergency adoption of a regulation earlier than 10 business days after receipt of the regulation by the committee and DLS, unless the Governor declares that immediate adoption is necessary to protect the public health or safety. The AELR Committee must impose, as part of its approval, a time limit of up to 180 days on each request for emergency status.

The web site of the General Assembly must include a list of all emergency regulations the AELR Committee has received but has not approved. A regulation must be added to the list within three business days after the AELR Committee and DLS receive the regulation. DLS must maintain a list of individuals who have requested to receive notice about proposed regulations for which the agency has requested emergency adoption. DLS must provide notice to these individuals within two business days of receipt of a proposed regulation. DLS may impose a reasonable fee for sending notices through the U.S. mail but may not impose a fee for sending notices electronically. An agency must provide copies of the emergency regulations to members of the public.

The AELR Committee may exercise any power it has over regulations over a specific, distinct, and severable portion of an emergency or proposed regulation.

Current Law: APA requires agencies to submit a proposed regulation to the AELR Committee at least 15 days before the proposed regulation is submitted to the *Maryland Register* for publication. Publication of a proposed regulation triggers a 45-day review period. In its review, the AELR Committee determines whether the regulation is within the statutory authority of the agency, whether the regulation meets the legislative intent behind the underlying statute, and whether the regulation is funded in the annual State budget.

The agency may not formally adopt a regulation until the review period expires. If the AELR Committee cannot complete an appropriate review within 45 days, it may extend the review period by notifying the agency in writing that an appropriate review cannot reasonably be conducted within 45 days and that an additional period of review is

required. If the agency subsequently notifies the AELR Committee in writing of its intent to adopt the regulation, the AELR Committee is entitled to a further period of review that terminates on the later of either the thirtieth day after the agency's notice of intent to adopt the regulation or the seventy-fifth day after the initial publication of the regulation in the *Maryland Register*.

The AELR Committee is not required to take any action with respect to proposed regulations. If no action is taken and there is no request for additional review time, the agency may adopt the regulation once 45 days have passed after the regulation is first published in the *Maryland Register*.

The agency may adopt a proposed regulation immediately if the agency: (1) declares that the emergency adoption is necessary; (2) submits the regulation to the AELR Committee; and (3) has the approval of the AELR Committee for the emergency adoption. The approval of the AELR Committee may be given by a majority of its members who are present and voting at a public hearing or meeting, by its presiding chairman, or by its co-chairman, if the chairman is not available.

An emergency regulation is not published in advance in the *Maryland Register* but must be affirmatively approved by the committee. The AELR Committee may impose, as part of its approval, any condition, including a time limit. If any member of the AELR Committee requests a hearing on the emergency adoption of a regulation, the committee must hold a hearing. If no hearing is requested, committee staff may poll the committee in person, by telephone, or in writing. If a majority of committee members is unavailable, the committee staff may poll the presiding chairman or co-chairman. By majority vote at a public meeting, the committee may rescind approval of an emergency regulation. APA does not provide a process for an agency to appeal the committee's denial of emergency status for a regulation.

Background: Many Executive Branch agencies are authorized to adopt regulations to carry out the laws they administer. Maryland's APA establishes the process for adopting proposed regulations. The Act provides the legislature, through the AELR Committee, a means for overseeing the issuance of regulations and encourages cooperation and discussion between the Legislative and Executive Branches.

The AELR Committee received 89 regulations submitted by Executive Branch agencies in 2003 for emergency approval and 340 regulations proposed for adoption within normal time frames, for an overall total of 429. The Department of Health and Mental Hygiene (DHMH) submitted 137 regulations to the committee in 2003, of which 35 were emergency proposals and 102 were nonemergency proposals. The regulations submitted by DHMH constituted approximately one-third of the total number of regulations the

committee received for the year. The next leading source of regulations for the committee in 2003 was the Department of Labor, Licensing, and Regulation, which submitted 57 regulations to the committee, of which 17 were emergency proposals and 40 were nonemergency proposals. The Department of Natural Resources was the third highest source, submitting nine emergency proposals and 20 nonemergency proposals for a total of 29. **Exhibit 1** shows the number of regulations received by the AELR Committee annually since 1993.

Exhibit 1
Number of Regulations Received by the AELR Committee
1993-2003

| <u>Year</u> | <u>Proposed Regulations</u> | <u>Emergency Regulations</u> | <u>Total</u> |
|-------------|-----------------------------|------------------------------|--------------|
| 1993 | 356 | 69 | 425 |
| 1994 | 541 | 84 | 625 |
| 1995 | 492 | 101 | 593 |
| 1996 | 423 | 122 | 545 |
| 1997 | 408 | 88 | 496 |
| 1998 | 415 | 75 | 490 |
| 1999 | 326 | 77 | 403 |
| 2000 | 367 | 85 | 452 |
| 2001 | 486 | 60 | 546 |
| 2002 | 442 | 87 | 529 |
| 2003 | 340 | 89 | 429 |

The Division of State Documents estimates that it cost approximately \$60 per page to publish regulations in the *Maryland Register*, with the average regulation encompassing 85 pages. Individuals and entities may subscribe to the *Maryland Register* at a cost of \$190 per year for first-class mailing and \$110 per year for second-class mailing. Annual subscription fees cover a portion of the cost to publish the *Maryland Register*.

State Fiscal Effect: General fund expenditures within DLS could increase by an estimated \$35,500 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one part-time contractual legislative assistant to support the enhanced regulatory review process for the AELR Committee. It includes salaries, fringe benefits, public notification costs, and ongoing operating expenses as illustrated below.

| | |
|------------------------------|-----------------|
| Salaries and Fringe Benefits | \$12,300 |
| Public Notices | 22,500 |
| Ongoing Operating Expenses | <u>700</u> |
| Total Expenditures | \$35,500 |
| Minus Fee Amount | <u>22,500</u> |
| Net Cost to DLS | \$13,000 |

It is estimated that 600 individuals or entities would request annual notification of proposed emergency regulations. With the submission of 100 emergency regulations annually and a \$0.50 cost per notification, expenses for issuing public notices could total \$22,500 in fiscal 2005 and \$30,000 on an annual basis. Any notification costs within the department would be offset through fees.

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 6.8% employee turnover; and (2) 1% annual increases in ongoing operating and public notification expenses.

Additional Information

Prior Introductions: None.

Cross File: HB 429 (Delegate Morhaim, *et al.*) – Health and Government Operations.

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

Fiscal Note History: First Reader - February 18, 2004
mll/ljm Revised - Updated Information - March 16, 2004
Revised - Senate Third Reader - April 1, 2004

Analysis by: Hiram L. Burch Jr.

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