

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 253

(Senators Jacobs and Ferguson)

Education, Health, and Environmental Affairs

Health and Government Operations

State Government - Administrative Procedure Act - Regulations

This bill requires a unit in the Executive Branch of State government to publish on the unit's website a proposed regulation published in the *Maryland Register* or a regulation submitted to the Joint Committee on Administrative, Executive, and Legislative Review (AELR Committee) for approval as an emergency adoption. The unit must publish the regulation on its website within a specified number of days.

The failure of a unit to publish the text of a regulation in a timely manner under the bill does not invalidate or otherwise affect the adoption of the regulation. The Division of State Documents must report to the General Assembly by December 1, 2012, on the compliance of units with the bill's requirements.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing State resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires that, whenever a unit in the Executive Branch of State government publishes a proposed regulation in the *Maryland Register*, the unit must also publish the text of the proposed regulation on the unit's website no later than three business days after the date the proposed regulation will be published in the

Maryland Register. A unit that submits a regulation to the AELR Committee for approval as an emergency adoption must publish the regulation on the unit's website no later than three business days after the date the regulation is submitted to the AELR Committee for approval of emergency adoption. Publication on the unit's website can be accomplished through (1) publication of the text on the unit's home page on its website; or (2) providing a link on the unit's home page to the text of the regulation if the text of the regulation is available elsewhere on the unit's website.

Current Law: The requirements of the Administrative Procedure Act apply to each unit in the Executive Branch of State government, and each unit that is created by public general law and operates in at least two counties. The Administrative Procedure Act does not apply to a unit in the Legislative or Judicial branches, the Injured Workers' Insurance Fund, a board of license commissioners, or the Rural Maryland Council.

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 2011, the AELR Committee received 61 regulations submitted by executive agencies for emergency approval and 314 regulations for adoption within normal timeframes, for an overall total of 375 regulations. DHMH has consistently been the most prolific in submitting regulations to the committee. In 2010, DHMH submitted 116 regulations to the committee, which represented 30.9% of the total regulations received by the committee during the year.

The Department of Natural Resources was the second highest source of regulations in 2011, submitting 49 regulations during the year. The Department of Labor, Licensing, and Regulation was the third highest source of regulations with 47 regulations submitted in 2011. Other agencies submitting significant numbers of regulations were the State Board of Education (23 regulations), the Department of Human Resources (15 regulations), the Maryland Insurance Administration (9 regulations), the Maryland Department of Transportation (9 regulations), the State Lottery Agency (7 regulations), and the State Board of Elections (7 regulations).

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 7, 2012
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