

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1014  
Ways and Means

(Delegate Gutierrez, *et al.*)

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State Department of Education - Regulation Adoption Process - Public Input

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This bill requires the Maryland State Department of Education (MSDE) to comply with the following requirements for any proposed regulation that contains a funding mandate for a local school system or that will have a significant impact on a local school system: (1) hold a public hearing on the proposed regulation; (2) make available to the public all written comments MSDE receives on a proposed regulation; and (3) address and respond in writing to all written comments MSDE receives on a proposed regulation. MSDE must provide the State Board of Education with all of the public comments and departmental responses to the comments at least one month before MSDE presents the proposed regulations to the State Board of Education for final adoption.

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Fiscal Summary

**State Effect:** Minimal increase in general fund expenditures and potential significant operational delays for MSDE to comply with the bill's requirements. Revenues are not affected.

**Local Effect:** The bill does not materially affect local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** The Joint Committee on Administrative, Executive, and Legislative Review (AELR) of the General Assembly is a statutory committee consisting of 20 members evenly divided between the House of Delegates and the Senate. Among other responsibilities, the committee is charged with reviewing regulations proposed or

adopted by Executive Branch agencies and considering requests for emergency adoption of regulations.

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*. 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 (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.

**Background:** MSDE, like other units of State government, proposes and adopts regulations in accordance with the statutory requirements under the APA. Currently, MSDE receives written and verbal comments during the 30-day public comment under the APA and the State Board of Education exercises its judgment in determining whether a public hearing should be held in addition to the submission of public comments. MSDE reviews and analyzes the comments, and makes a chart with MSDE's responses to the comments based on issue/topic. The analysis and responses are provided to the State

Board of Education approximately 1-2 weeks prior to the meeting at which the regulation will be considered for adoption.

The chart and analysis is posted on MSDE's website after the minutes from the relevant meeting are approved by the State board. MSDE advises that while the comments are not posted on MSDE's website, the public can access submitted public comments at MSDE headquarters.

**State Expenditures:** The bill's imposition of additional requirements for the adoption of regulations by the State Board of Education may result in minimal increases in general fund expenditures and potential significant operational delays for MSDE.

MSDE advises that it is asked to take action on 10-15 regulatory changes each year and that regulatory action takes approximately four months to complete. The State Board of Education meets 11 times per year (every month except November), with each meeting taking approximately 1.5 days. As previously noted, MSDE provides the State Board of Education with an analysis of the public comments and MSDE's responses to the comments 1-2 weeks before the board meeting at which adoption of the regulation is to be considered. By requiring MSDE to provide public comments and responses/analysis to the State board at least one month before MSDE presents the proposed regulations to the State Board of Education, the bill could delay the adoption of regulations by the State Board of Education by one meeting (one month).

As previously noted, the State Board of Education, in accordance with APA, exercises its judgment in determining whether a public hearing should be held on a proposed regulation in addition to the submission of written or verbal public comments. Given the ambiguity over whether a proposed regulation contains a funding mandate for a local school system or significantly impacts a local school system, MSDE advises that the bill could result in an additional five to six public hearings each year. These hearings will extend the current duration of State Board of Education meetings and will result in increased expenditures for the preparation of transcripts. MSDE estimates that it costs at least \$300 to \$400 for a contractor to prepare a transcript of one meeting of the State Board of Education. The fee is partially determined by the length of the proceedings. Increasing the duration of meetings to include a public hearing will result in increased expenditures for transcripts.

Currently, MSDE reviews and analyzes submitted comments, but does not address and respond to each comment individually. Analysis and review of the comments is currently conducted by the unit or subject matter expert at MSDE that is relevant to the topic of the regulation. Since responses to public comments will require subject matter expertise, the increased responsibilities cannot be transferred to other employees or units and may consume an extensive amount of time and effort, depending on the volume of comments

received. MSDE advises that it cannot determine at this time if additional employees will be required, since the units affected by the bill will depend on the subject matter of regulations that generate a high volume of public comments, which varies from year to year.

Responses to individual comments may also result in increase postage expenditures if some of the comments cannot be responded to electronically.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 13, 2012  
ncs/hlb

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