

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 737 (Delegate Ready, *et al.*)
Rules and Executive Nominations

State Government - Legislative and Regulatory Procedures - Efficacy Analyses

This bill requires Executive Branch agencies and the Department of Legislative Services (DLS) to prepare efficacy analyses for bills that add to or amend the following articles of the Annotated Code: (1) the Agriculture Article; (2) the Environment Article; (3) the Land Use Article; or (4) the Natural Resources Article. An agency is required to prepare an analysis for each bill that is introduced at the request of the Administration or a department, an agency, or a commission of the Executive Branch of State government and adds to or amends the aforementioned articles. DLS must prepare an analysis for each bill that is introduced by a member of the General Assembly and adds to or amends the aforementioned articles.

The bill likewise requires the following Executive Branch agencies to prepare efficacy analyses for each proposed regulation by those agencies: the Maryland Department of Agriculture (MDA); the Maryland Department of the Environment (MDE); the Department of Natural Resources (DNR); and the Maryland Department of Planning (MDP).

The bill establishes that the validity of the enactment of a bill or regulation is not affected by the presence, absence, or content of an efficacy analysis.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: Significant general fund expenditure increase beginning in FY 2015 for affected agencies to conduct efficacy analyses and to provide information necessary to conduct analyses. The exact impact depends on the number of bills and regulations for which an analysis is required and the amount of information required to adequately

conduct analyses. Generally, such analysis is not feasible during the constraints of the legislative session. Assuming, however, it could be completed as envisioned, under a minimum staffing scenario, as discussed below, general fund expenditures increase by at least \$951,300 in FY 2015, including \$366,400 for DLS, \$81,400 for MDA, \$262,100 for MDE, and \$241,500 for DNR. Revenues are not affected.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	951,300	947,000	987,500	1,029,900	1,074,400
Net Effect	(\$951,300)	(\$947,000)	(\$987,500)	(\$1,029,900)	(\$1,074,400)

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

Local Effect: Potentially significant impact on local government expenditures to provide information necessary to conduct analyses. The exact impact depends on the number of bills and regulations for which an analysis is required and the amount of information required to adequately conduct the analyses. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “efficacy analysis” as an assessment of the efficiency and effectiveness of a proposed bill or regulation.

Minimum Efficacy Analysis Requirement: The efficacy analysis must include at least (1) an assessment of the likelihood that the proposed bill/regulation will achieve the desired outcome; (2) a cost-benefit analysis of the proposed bill/regulation; and (3) an evaluation of the efficiency and effectiveness of the proposed bill/regulation compared to other alternatives for achieving the desired outcome.

Consultation with Other Entities: As appropriate, DLS or the Executive Branch agency preparing the required analysis must consult with other units of State government; units of local government; and business, trade, consumer, labor, and other groups impacted by or having an interest in the legislation/regulation. On the request of the Executive Director of DLS, a unit of State or local government must provide DLS with assistance or information in the preparation of an analysis.

Submission Requirements: For analyses of bills, a copy of an agency analysis must be submitted by the Governor’s Office to (1) DLS before the hearing on the bill to allow DLS to comment on the analysis and (2) the committee to which the bill is referred before the hearing on the bill. A copy of a DLS analysis must be submitted by the

department to (1) the primary sponsor of the bill and (2) the committee to which the bill is referred before the hearing on the bill.

For analyses of proposed regulations, the appropriate agency must submit a copy of the analysis to (1) DLS (no later than the time the agency submits the regulation to the Joint Committee on Administrative, Executive, and Legislative Review (AELR Committee)) to allow DLS to comment on the analysis and (2) the AELR Committee at the same time the agency submits the regulation to the committee.

DLS Comments: For analyses of bills prepared by agencies, DLS *may* comment on the analysis. However, for analyses of regulations prepared by agencies, DLS *must* comment on the analysis and transmit its comments to the AELR Committee.

Publication: For analyses of bills, DLS may include an analysis prepared by the department or the Executive Branch agency as part of a fiscal and policy note for a bill. DLS must maintain a copy of each analysis on the website of the General Assembly, but analyses do not need to be published in the Senate Journal or House Journal.

Analyses of regulations must be published in the *Maryland Register* at the same time as (1) a notice of proposed adoption of a regulation is published in the *Maryland Register* or (2) a notice of emergency adoption of a regulation is published in the *Maryland Register*.

Revisions: For analyses of bills, either prepared by the department or an agency, DLS may revise an efficacy analysis consistent with an amended version of a bill. For analyses of regulations, the applicable agency must revise an analysis consistent with an amended version of a regulation.

Current Law/Background:

Department of Legislative Services Fiscal and Policy Notes

For each bill that is introduced, DLS staff, as required by law, prepares a fiscal and policy note. Upon request of DLS, a unit of State or local government must promptly provide any information requested for preparing a fiscal and policy note.

A fiscal and policy note contains an estimate of the fiscal impact of the bill on the revenues and expenditures of State and local governments during the year in which the bill is to become effective and for the next four years following that year. If a bill imposes a mandate on a local government unit, the fiscal and policy note also must contain a statement that identifies the imposition of the mandate, an estimate of the fiscal impact of the mandate, and, if applicable and if the data is available, the effect on local property tax rates.

As a part of each fiscal and policy note, staff prepares an economic impact analysis for each bill on the cost or economic benefit to small businesses; this is done by providing a qualitative rating (meaningful, minimal, or none) of the likely economic impact on small businesses; and including discussion of meaningful impacts. Analyses and ratings must include estimates related to the following factors, as appropriate: cost of providing goods and services; effect on the workforce; effect on the cost of housing; efficiency in production and marketing; capital investment, taxation, competition, and economic development; and consumer choice.

Prior to the hearing on a bill, copies of the fiscal and policy note are furnished to the sponsor of the bill and to the standing committee assigned the bill. Subsequently, if an amendment modifies the original estimate, a revised fiscal and policy note is issued. Copies of fiscal and policy notes are available from DLS and on the Maryland General Assembly website. Fiscal and policy notes are not required to be published in the Senate journal or House journal. The validity of an enactment is not affected by the presence, absence, or content of the fiscal and policy note.

Economic Impact Analysis by Agency

By law, an Executive Branch agency must prepare an economic impact analysis for each bill and regulation that is prepared and introduced at the request of the Administration or a department, agency, or commission of the Executive Branch of State government. The required information in the Executive Branch economic impact analysis is identical to that required of DLS-prepared economic impact analyses (discussed above). Other requirements for economic impact analyses are substantially similar to those required for efficacy analyses under this bill.

Administrative Procedure Act

The Administrative Procedure Act (APA) sets forth the requirements for the review of regulations adopted by units of government under the jurisdiction of APA, 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 and DLS 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. DLS provides staff support to the committee. Moreover, among other tasks, DLS analysts review the promulgating agency's assessment of the fiscal and economic impact of regulations and provide analyses of proposed regulations.

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. 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.

In general, the effective date of a regulation is the tenth calendar day after the notice of adoption is published in the *Maryland Register* or a later date that the notice sets. The effective date of a regulation after its emergency adoption is the date that the AELR Committee sets.

Bill and Regulation Statistics

During the 2013 legislative session, 1,538 bills were introduced in the House of Delegates and 1,080 bills were introduced in the Senate. DLS estimates that roughly 100 bills primarily affected statutes in the Natural Resources Article; 80 to 90 bills affected the Environment Article; 20 affected the Agriculture Article; and 20 affected the Land Use Article. Notably, some of the bills were identical cross files.

During the 2013 session, 87 departmental bills and 30 Administration bills were introduced. The following provides details on the volume of departmental bills introduced by select agencies:

- MDA – 2; both affected the Agriculture Article.
- MDE – 5; 4 affected the Environment Article, 1 affected the Natural Resources Article.
- DNR – 3 introduced; all 3 affected the Natural Resources Article; 1 also affected the Land Use Article.
- MDP – 1; the bill did not affect any of the articles affected by this bill.

In calendar 2013, the AELR Committee received 62 regulations submitted by Executive Branch agencies for emergency approval and 400 regulations for adoption within normal timeframes, for an overall total of 462 regulations. The bill requires MDA, MDE, DNR, and MDP to provide efficacy analyses for all regulations they submit to the AELR Committee. The following provides the amount of regulations submitted by those affected agencies in 2013:

- MDA – 8;
- MDE – 19;
- DNR – 58; and
- MDP – 0.

State Expenditures: General fund expenditures increase by at least \$951,300 in fiscal 2015 and by \$1.1 million in fiscal 2019. This increase includes the costs for 11 additional positions at four State agencies: DLS, MDA, MDE, and DNR. This estimate assumes that the efficacy analysis required by the bill can be completed as envisioned, with the assessments on bills submitted to committees prior to hearings. However, several practical concerns make such analyses during the legislative session infeasible:

Timing: An efficacy analysis on affected legislation has to be submitted to the committee of jurisdiction *before* the bill hearing. This requirement aligns with the *current practice*

of distributing fiscal and policy notes in advance of the hearing on a bill; however, the notes only have to be available before the vote on a bill. Based on experience with completing fiscal and policy notes, DLS advises that access to the necessary information in time to undertake the analysis would be significantly hampered due to three factors generally outside the control of the agency. First, although a bill may be drafted before session, it is confidential until introduced. Once a bill is in his or her possession, the sponsor controls when – or whether – to introduce it. Second, committees generally schedule bills so to accommodate the heavy volume of legislation within their jurisdiction; bills with similar subject matter are typically heard on the same day. Thus, a bill can be introduced and heard very quickly with limited notice (even on the same day); alternatively, a bill may be heard after a relatively long notice period (two to three weeks). Third, the agencies that would be called upon to provide information for the efficacy analyses are usually providing information to assist in the production of fiscal and policy notes on a just-in-time basis. They prioritize requests for information based on the hearing schedule in order to be able to meet the already high demand. Thus, much of the information necessary to undertake the analysis will likely not be available in time to meet the deadline imposed in the bill.

Bills Affecting Multiple Subjects and Articles: Many bills cross subject matter jurisdiction and amend more than one article of the Maryland Code. Some omnibus bills (for example, the Budget Reconciliation and Financing Act of 2013 – HB 102, enacted as Chapter 425) extend across numerous articles. The bill would require an efficacy analysis for the entirety of the bill if it modifies any of the covered articles. This requirement significantly expands the scope of the analysis to be undertaken and the number of bills likely affected.

Desired Outcomes: The efficacy analysis requirement specifies that it include *at a minimum* an assessment of the likelihood the bill would achieve the desired outcome as well as an evaluation of the efficiency and effectiveness of the bill compared to other alternatives for achieving the desired outcome – which would presumably require some consultation with the sponsor. The bill allows the analysis to be incorporated into a fiscal and policy note or provided separately. Fiscal and policy notes are written based on the language of the bill as introduced – not on the desired outcome of the bill. Regardless, the analyst undertaking the efficacy analysis would have to have a similar understanding of what the bill does and how it changes current law as the analyst completing the fiscal and policy note – given the volume of bills during session, this work is generally not completed until a couple of days before the bill hearing. The analyst undertaking the efficacy analysis would then also have to assess alternatives – something that task forces often spend months or years doing – within a couple of days.

Assessments on regulations are likely less problematic – except those submitted during the legislative session – as the promulgating agency has more control over the timing of

submission and can knowingly incorporate the analysis into its submission. DLS is only required to comment on these assessments.

Nevertheless, the concerns raised above highlight difficulties for DLS, the four primary agencies affected, as well as other agencies (both State and local) that may be required to provide information to complete the efficacy analyses. The estimate below is provided for illustrative purposes and reflects the minimum staffing necessary to implement the bill.

Department of Legislative Services

Based on 2013 statistics, DLS estimates that the bill requires the department to prepare more than 200 efficacy analyses each legislative session, review and comment on between 80 to 90 agency-prepared efficacy analyses for regulations, and review and comment on more than 10 agency-prepared efficacy analyses for bills.

Assuming that DLS is able to conduct the analysis as required by the bill, with the assistance of expert consultants, general fund expenditures increase by at least \$366,351 in fiscal 2015, which accounts for the July 1 enactment date. This estimate reflects the cost of hiring three analysts to prepare efficacy analyses and comment on analyses as required by the bill, as well as hiring consultants to assist with analyses. A consultant would likely not be required until closer to the beginning of the first legislation session following the enactment of the bill. Thus, the estimate assumes a 90-day delay in the hiring of a consultant. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3
Salaries and Fringe Benefits	\$269,501
Consultants	75,000
Operating Expenses	<u>21,850</u>
Total FY 2015 State Expenditures	\$366,351

Future year expenditures reflect full salaries with annual increases and employee turnover, the elimination of one-time expenses, and annual increases in ongoing operating expenses.

Executive Agencies

The bill affects agencies in three ways: (1) preparation of efficacy analyses for bills as required; (2) preparation of efficacy analyses for regulations; and (3) providing input on efficacy analyses prepared by DLS. While the fiscal impact on agencies varies by agency, the most heavily burdened agencies are MDA, MDE, DNR, and MDP.

Maryland Department of Agriculture: General fund expenditures increase by \$81,361 in fiscal 2015, which accounts for the July 1 enactment date. This estimate reflects the cost of hiring one administrator to provide support for the department due to the additional workload associated with efficacy analyses required by the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses

Positions	1
Salaries and Fringe Benefits	\$76,411
Operating Expenses	<u>4,950</u>
Total FY 2015 State Expenditures	\$81,361

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Maryland Department of the Environment: General fund expenditures increase by \$262,123 in fiscal 2015, which accounts for the July 1 enactment date. This estimate reflects the cost of hiring two administrative officers, one administrator, and an office secretary to provide support for the department due to the additional workload associated with efficacy analyses required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	4
Salaries and Fringe Benefits	\$243,183
Operating Expenses	<u>18,940</u>
Total FY 2015 State Expenditures	\$262,123

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Department of Natural Resources: General fund expenditures increase by \$241,462 in fiscal 2015, which accounts for the July 1 enactment date. This estimate reflects the cost of hiring one administrative program manager, one administrator, and one budget analyst to provide support for the department due to the additional workload associated with efficacy analyses required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3
Salaries and Fringe Benefits	\$226,612
Operating Expenses	<u>14,850</u>
Total FY 2015 State Expenditures	\$241,462

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

In addition to the above expenditures, DNR advises that the cost-benefit analysis would require additional costs for surveys for some of the regulations the department currently proposes. For example, DNR notes that estimating costs associated with “total allowable catches” would require surveys and analyses by experts in order to estimate how a change in a fishery would affect various stakeholders.

Maryland Department of Planning: While the exact impact of the bill cannot be reliably quantified, it is likely that MDP will be able to handle the bill’s requirements with existing resources. To the extent that the workload exceeds that which can be handled with existing resources, general fund expenditures will increase to hire additional staff.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of Planning, Maryland Department of the Environment, Governor’s Office, Maryland Association of Counties, Maryland Municipal League, Department of Legislative Services

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ncs/hlb

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