

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 305 (Delegate W. Miller, *et al.*)
Health and Government Operations

Administrative Procedure Act - Limitation on Adoption of Regulations

This bill prohibits a unit from adopting a proposed regulation between the day after a statewide gubernatorial general election and the day when the succeeding Governor takes office, if the Governor at the time of the election either is not a candidate for Governor in the election or is defeated in the election.

Fiscal Summary

State Effect: Potential fiscal and operational impact to State agencies due to delays in regulatory action. The extent of this impact cannot be reliably estimated at this time, as discussed below.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: Potential minimal. Small businesses may be impacted depending on the industry and nature of delayed regulations.

Analysis

Bill Summary: As in current law, a “unit” is defined as an officer or unit authorized by law to adopt regulations.

Current Law: 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 Joint Committee on Administrative, Executive, and Legislative Review (AELR) 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.

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.

Background: As of December 19, 2014, the AELR Committee received 42 regulations submitted by executive agencies in 2014 for emergency approval and 420 regulations for adoption within normal timeframes, for an overall total of 462 regulations. The Department of Health and Mental Hygiene (DHMH) has consistently been the most prolific in submitting regulations to the committee. In 2014, DHMH submitted 108 regulations to the committee, which represented 23% of the total regulations received by the committee during the year.

The Department of Natural Resources (DNR) was the second-highest source of regulations in 2014, submitting 63 regulations during the year. The Department of Labor, Licensing, and Regulation (DLLR) was the third-highest source of regulations with 42 regulations submitted in 2014. Other agencies submitting significant numbers of regulations were the Maryland State Lottery and Gaming Control Agency (30 regulations), the State Board of Education (24 regulations), Maryland Insurance Administration (23 regulations), the Maryland Department of the Environment (MDE, 19 regulations), the Maryland Department of Transportation (12 regulations), the Department of Human Resources (10 regulations), the Maryland Department of Agriculture (8 regulations), and the Comptroller of Maryland (7 regulations).

Article II, Section 2 of the Maryland Constitution requires the gubernatorial general election to occur every four years on the Tuesday after the first Monday in November. Article II, Section 1 of the Maryland Constitution requires the term of a Governor to commence on the third Wednesday of the January following the general election. A Governor's term lasts for four years; a Governor may not serve more than two consecutive terms.

The 2014 gubernatorial general election was held on November 4, 2014. The new Governor was sworn in on January 21, 2015.

State Fiscal Effect: State agencies have identified potential operational impacts of the bill due to potential delays in regulatory action. Specifically, DHMH and DLLR advise that the bill could delay the adoption of regulations that are needed to comply with federal law, some of which may need to be adopted according to federal timelines. DNR additionally advises that certain regulations must be timely adopted in accordance with multi-state commission guidelines and advisory committees. The Department of Housing and Community Development also advises that the bill could delay routine regulations that implement legislation passed during the Maryland General Assembly session.

The Department of Legislative Services notes the above concerns and advises that the bill may impact some State regulatory agencies fiscally and operationally – and is particularly likely to have a fiscal impact on agencies that set fees (such as DHMH, DLLR, and MDE). However, the extent of this impact depends on the content and timing of regulations that are proposed, and it cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Sasika Subramaniam

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