

**Department of Legislative Services**  
Maryland General Assembly  
2016 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 1168 (Senator Manno)  
Education, Health, and Environmental Affairs

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**Administrative Procedure Act - Proposed Regulation - Explanatory Reasons  
Justifying Adoption**

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This bill requires a promulgating unit to include a clearly written justification for the adoption of a proposed regulation if either in whole or in part, the regulation (1) amends a previously adopted regulation; (2) is not submitted to implement a recent statutory change; and (3) is not based on recent peer-reviewed research relevant to the proposed revision.

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**Fiscal Summary**

**State Effect:** The bill's requirements can be handled with existing budgeted resources. Some State agencies advise that the bill's requirements are already being met.

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

**Small Business Effect:** None.

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**Analysis**

**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.

If the proposed regulation, either in whole or in part, includes an increase or decrease in a fee for a license to practice any business activity, business, or health occupation licensed or regulated under State law, the promulgating unit shall include clearly written explanatory reasons that justify the increase or decrease in the fee. If the fee is for a license, the written justification also shall include information about:

- the amount of money needed by the promulgating unit to operate effectively or to eliminate an imbalance between the revenues and expenditures of the unit;
- the most recent year in which the promulgating unit last increased its fees;
- the structure of the promulgating unit as to whether it is one that retains the license fees it receives or passes them through to a national organization or association that creates and administers a uniform licensing examination;
- measures taken by the promulgating unit to avoid or mitigate the necessity of a fee increase and the results of those measures;
- special circumstances about the activities and responsibilities of the promulgating unit, including investigations of individuals licensed by the unit, that have had an adverse impact on the unit's operating expenses;
- consideration given by the promulgating unit to the hardship a license fee increase may have on individuals and trainees licensed or regulated by the unit; and
- actions taken by the promulgating unit to elicit the opinions of the individuals who are licensed by the promulgating unit and the members of the public as to the effectiveness and performance of the promulgating unit.

**Background:** The Maryland Court of Special Appeals has recognized a general obligation on a State agency that proposes regulations that “change course” to provide a reasoned analysis as justification. *Montgomery County v. Anastasi*, 77 Md. App. 126, 137 (1988).

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1631 (Delegate Rosenberg) - Rules and Executive Nominations.

**Information Source(s):** Maryland Department of Agriculture; Department of Health and Mental Hygiene; Secretary of State; Maryland Department of Transportation; Maryland Department of the Environment; Department of Natural Resources; Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 28, 2016  
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