

SENATOR SARAH ELFRETH
Legislative District 30
Anne Arundel County



James Senate Office Building
11 Bladen Street, Room 104
Annapolis, Maryland 21401
410-841-3578 · 301-858-3578
800-492-7122 Ext. 3578
Fax 410-841-3156 · 301-858-3156
Sarah.Elfreth@senate.state.md.us

Budget and Taxation Committee

Subcommittees

Capital Budget

Pensions

Chair, Public Safety,
Transportation, and Environment

Joint Committee on the Chesapeake and
Atlantic Coastal Bays Critical Area

Chair, Joint Subcommittee on
Program Open Space/Agricultural
Land Preservation

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

March 7, 2023

Testimony in Favor of SB0649
State Government - Regulation Procedures and the Maryland Register

Chairman Feldman, Vice-Chair Kagan, and members of the Energy, Education, and Environment Committee:

I respectfully request a favorable report of Senate Bill 649 to make critical reforms to Maryland's regulatory process to ensure greater efficiency, transparency, and accountability.

I had the privilege of serving as the Senate Chair for the Administrative, Executive, and Legislative Review (AELR) Committee from 2020 until the start of this legislative session. The AELR Committee serves a vital role as it relates to the separation of powers and oversight of the Executive Branch as the Committee reviews all regulations promulgated by the differing units of government (Units) in the Executive Branch¹.

As described below, there were several challenges that we faced during my term as Chair – and it is my hope that this legislation will ensure the success of the Committee by finding solutions for these unique problems faced by the AELR Committee. In 2023, it is imperative that clerical errors and incidents of miscommunication do not stymie the General Assembly's responsibility to provide a thorough check on the Executive Branch.

Problem Number 1

The AELR Committee and Division of State Documents (DSD) use an electronic filing system (ELF) to monitor, communicate, and track all regulatory actions by the Committee and Units of government. Starting in August 21', the DSD, in consultation with DOIT, began the process to

¹ <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/022200/022261/20170629e.pdf>

update this system and move to “ELF 2.0.” However, AELR counsel was provided limited input throughout the development process.

Furthermore, in September 22’ the Committee was alerted that the current ELF system would be down for a migration of data to ELF 2.0 for a period of roughly two weeks - but the launch of ELF 2.0 was pushed back multiple times until it finally went live on November 18, 2022. Even after this launch the AELR Committee experienced multiple challenges - but most notably the inability to regularly login to access critical materials. At the same time, there were critical problems with the system itself – including that there were no processes in place for approval of emergency regulations and that the Committee counsel was being transmitted regulatory actions via email directly from Units of government, leaving key regulatory actions to an informal process. Even when AELR staff was finally able to have full access ELF 2.0 – in January 23’ - there were roughly 50 regulations in the system that had never been seen before.

This lack of communication and effective planning can not be allowed to continue to happen – especially when it comes to our responsibility of oversight on regulatory actions by the Executive branch.

To fix these problems and create a better regulatory process, this legislation will:

1. Require the Administrator of State Documents to develop and maintain an Electronic Filing System by October 1st, 2023 – and specifically list the requirements on such a system - to ensure that we do not ever end up in a situation again like we did in the roll out of ELF 2.0
2. Give DLS the authority to create and implement procedures on the submission of regulations by Units – and require Units to follow those procedures. This will ensure that the Committee and DLS have the ability to set the standard procedures they need to properly and effectively review regulations.
3. Require the resubmission of regulations that have been altered in any way after being received by AELR.
4. Change the 30 day limit to a 60 day limit until a Unit can adopt a regulation after a hold by the AELR Committee.

Problem Number 2

There was an instance under my service as Chair where an Unit issued a letter indicating its intent to override the hold issued by the AELR Committee - and move forward with the adoption of the regulation. However, the Unit of Government mailed the letter rather than transmitting it electronically - and unfortunately, the Committee never received said letter through the mail so we were all taken aback when the Unit continued forward with the adoption of the regulation.

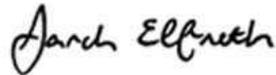
To solve this problem this legislation will ensure that hold override letters are transmitted by mail and e-mail to the Committee.

While we are ensuring that the AELR Committee and staff have the tools they need to effectively do the work required of them – we also must make sure that the public has appropriate access through increased transparency.

This legislation will ensure more transparency by:

1. Requiring the DSD to keep at least the most recent 15 issues of the Maryland Register online for ease of access. This will give the public a better opportunity to access this critical publication on any and all actions of State Government.
2. Ensuring that “30 day letters” – now “60 day letters” via this legislation – which indicate a Unit’s intention to adopt a regulation after an AELR Committee hold are published in the Maryland Register.

Sincerely,

A handwritten signature in black ink that reads "Sarah Elfreth". The signature is written in a cursive, flowing style.

Sarah Elfreth