

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 26 (Delegate McDermott, *et al.*)
Health and Government Operations

Administrative Procedure Act - Fiscal Impact Statements for Proposed
Regulations

This bill alters a provision of the Administrative Procedure Act by requiring a promulgating unit to submit a fiscal impact statement concurrently with a proposed regulation to the Joint Committee on Administrative, Executive, and Legislative Review (AELR) and the Department of Legislative Services (DLS). A unit is prohibited from adopting a proposed regulation until after the fiscal impact statement is submitted with the proposed regulation to the AELR Committee for preliminary review.

Fiscal Summary

State Effect: None. The change is procedural in nature. The bill codifies current practice for most executive agencies by applying most requirements for submission of fiscal impact statements related to regulations proposed on an emergency basis to all proposed regulations. To the extent that the bill alters current practice for an agency, additional time may be required for the regulation proposal process. The bill does not directly affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The fiscal impact statement must state (1) an estimate of the impact of the regulation on the revenues and expenditures of the State; (2) whether the State budget for the fiscal year in which the regulation will become effective contains an appropriation

of the funds necessary for the implementation of the regulation; (3) the source of funds necessary for the implementation of the regulation if an appropriation is not contained in the State budget; and (4) whether the regulation imposes a mandate on a local government unit.

If the regulation imposes a mandate on a local government unit, the fiscal impact statement must (1) indicate whether the regulation is required to comply with a federal statutory or regulatory mandate; (2) include an estimate of the impact of the regulation on the revenue and expenditures of local government units, unless the regulation is an emergency regulation and the information may not be practicably obtained given the emergency circumstances of the regulations; and (3) include the estimated effect on local property taxes if applicable and the required data is available.

The bill clarifies that, in order to have a proposed nonemergency regulation published in the *Maryland Register*, a unit must submit to the Administrator of the Division of State Documents the proposed regulation and a notice of the proposed adoption that includes, among other things, the fiscal impact statement.

Current Law:

Administrative Procedure Act

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 AELR Committee 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.

Adoption of Proposed Regulations on an Emergency Basis

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 DLS, and the AELR Committee approves the emergency adoption. The information required for the fiscal impact statement of the emergency regulation prepared by the unit must provide the same information as specified in this bill and be submitted concurrently.

Procedures for Publication of Proposed Nonemergency Regulations

To have a proposed nonemergency regulation published in the *Maryland Register*, a unit must submit to the Administrator of the Division of State Documents the proposed regulation and a notice of the proposed adoption. The notice of the proposed adoption must, among other things, state the estimated economic impact of the proposed regulation on the revenues and expenditures of units of the State government and of local government units and groups such as consumer, industry, taxpayer, or trade groups.

Background: Despite only being required for emergency regulations, Executive Branch agencies have typically submitted a fiscal impact statement concurrently with both proposed and emergency regulations.

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 Department of Health and Mental Hygiene (DHMH) has consistently been the most prolific in submitting regulations to the

committee. In 2013, DHMH submitted 130 regulations to the committee, which represented 28% of the total regulations received by the committee during the year.

The Department of Natural Resources was the second-highest source of regulations in 2013, submitting 58 regulations during the year. The Department of Labor, Licensing, and Regulation was the third-highest source of regulations with 53 regulations submitted in 2013. Other agencies submitting significant numbers of regulations were the Maryland Insurance Administration (23 regulations), the Maryland Department of the Environment (19 regulations), the Maryland Department of Transportation (17 regulations), the State Board of Education (17 regulations), the Department of Human Resources (15 regulations), the Comptroller of Maryland (9 regulations), and the Maryland Department of Agriculture (8 regulations).

Additional Information

Prior Introductions: None.

Cross File: SB 151 (Senator Colburn) - Education, Health, and Environmental Affairs.

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

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