

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 67

(Senator Young, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

State Government - Administrative Procedure Act - Effective Date of Adopted
Regulations

This bill alters the effective date of nonemergency regulations adopted under the Administrative Procedure Act (APA). Specifically, the bill establishes quarterly effective dates according to when the *notice of adoption* is published in the *Maryland Register*.

Fiscal Summary

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

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

Small Business Effect: Minimal, as discussed below.

Analysis

Bill Summary: The bill specifies that, in general and except as otherwise specified in law, the effective date of a nonemergency regulation is (1) January 1 if the notice of adoption is published in the *Maryland Register* from September 1 through November 30; (2) April 1 if the notice of adoption is published from December 1 through February 29; (3) July 1 if the notice of adoption is published from March 1 through May 31; or (4) October 1 if the notice of adoption is published from June 1 through August 31.

In addition, the bill specifies that the effective date of a nonemergency regulation is the tenth calendar day after the notice of adoption is published if (1) the unit is required to adopt the proposed regulation by federal law; (2) the regulation relates to air pollution; (3) the Department of Health and Mental Hygiene (DHMH) or the Department of Labor,

Licensing, and Regulation (DLLR) is required by State law to adopt the regulation by a specified date within 12 months after the law's effective date; (4) the regulation relates to either the Maryland Medical Assistance Program or the implementation of federal health care reform; (5) DHMH finds that an earlier effective date is necessary to protect the health or safety of State residents; (6) the regulation is adopted by the Department of Natural Resources (DNR); (7) the regulation is adopted by the Department of Budget and Management; or (8) the regulation is adopted by the State Board of Education or the Maryland State Department of Education.

Current Law: APA 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. 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.

Background: As of December 14, 2015, the AELR Committee received 34 regulations submitted by executive agencies in 2015 for emergency approval and 415 regulations for adoption within normal timeframes, for an overall total of 449 regulations. DHMH has consistently been the most prolific in submitting regulations to the committee. In 2015, DHMH submitted 114 regulations to the committee, which represented 25% of the total number of regulations received by the committee during the year.

DNR was the second highest source of regulations in 2015, submitting 64 regulations during the year. The State Board of Elections was the third highest source of regulations with 54 regulations submitted in 2015. Other agencies submitting significant numbers of regulations were the Maryland State Lottery and Gaming Control Agency (26 regulations); the Maryland Department of the Environment (MDE) (22 regulations); the Maryland Insurance Administration (21 regulations); DLLR (19 regulations); the State Board of Education (18 regulations); the Maryland Higher Education Commission (17 regulations); the Department of Human Resources (14 regulations); the Maryland Department of Transportation (14 regulations); and the Department of Public Safety and Correctional Services (14 regulations).

California established quarterly effective dates for state regulations filed on or after January 1, 2013.

State Fiscal Effect: Some agencies have identified potential fiscal and operational impacts of the bill due to potential delays in regulatory action. For example, MDE cites a potential loss of revenues due to delayed implementation of regulations that impose or increase fees.

The Department of Legislative Services (DLS) 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.

DLS notes that the ability of agencies to submit emergency regulations is unchanged by the bill. This may allow agencies to minimize fiscal impacts of the bill by proposing more regulations on an emergency basis. Similarly, DHMH advises that the bill’s establishment of quarterly effective dates may result in an increase in the number of requests for emergency status for proposed regulations, specifically those relating to fees, submitted to the AELR Committee. As noted, proposed regulations that are granted emergency status are not subject to the same public comment and other APA procedures as nonemergency regulations, but they must be approved by a vote of the committee. DHMH further advises that, to the extent that the committee denies a requested effective date in a proposed emergency regulation, the bill would likely have a fiscal impact on the agency. Any such impact cannot be reliably estimated at this time, however.

Small Business Effect: DLLR advises that the bill’s quarterly effective dates may make it easier for small businesses to keep track of regulations that affect them. However, DLS notes that small businesses may be subject to more emergency regulations as a result of the bill, which also have less public oversight.

Additional Information

Prior Introductions: Similar bills have been introduced in prior sessions. SB 854 of 2015 passed the Senate with amendments and was referred to the House Rules and Executive Nominations Committee, but no further action was taken. SB 449 of 2014 passed both the Senate and the House with amendments, but no further action was taken. Its cross file, HB 166, was amended in the House and referred to the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. HB 16 of 2013, a similar bill, passed the House with amendments and was referred to the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, SB 261, passed the Senate with amendments and received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Cross File: HB 1193 (Delegate Platt, *et. al.*) – Health and Government Operations.

Information Source(s): Department of Commerce; Secretary of State; Maryland State Department of Education; Maryland Higher Education Commission; Maryland Department of Agriculture; Department of Budget and Management; Maryland

Department of the Environment; Department of Health and Mental Hygiene; Department of Housing and Community Development; Department of Human Resources; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Maryland Department of Transportation; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - January 19, 2016
md/lgc Revised - Senate Third Reader/Updated Information - March 21, 2016
Revised - Clarification - March 31, 2016

Analysis by: Michelle Davis

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