

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 649

(Senator Elfreth, *et al.*)

Education, Energy, and the Environment

Health and Government Operations

State Government - Regulation Procedures and the Maryland Register

This bill makes various changes to the processes and procedures for units of State government to submit regulations to the Administrator of the Division of State Documents (DSD), the Joint Committee on Administrative, Executive, and Legislative Review (AELR), and the Department of Legislative Services (DLS). Among other things, DLS must adopt procedures for the required submission of proposed and emergency regulations, work plans, and evaluation reports. The Administrator must consult with DLS to ensure that the notice of the receipt of proposed and emergency regulations is submitted from the Administrator to AELR and DLS in a timely manner. By October 1, 2023, the Administrator must develop and maintain an electronic filing system for use by units of State government, AELR, DLS, and DSD for the submission and tracking of proposed and emergency regulations, as specified. The bill also specifies that DSD must make at least the 15 most recent issues of the *Maryland Register* available on its website. **The provisions related to the electronic filing system takes effect June 1, 2023.**

Fiscal Summary

State Effect: General fund expenditures for DSD increase by \$124,200 in FY 2024 for contractual staff and supplemental funding for lost revenues; out-years reflect ongoing costs, including continued supplemental funding, and termination of contractual support. Special fund revenues for DSD decrease by \$29,300 in FY 2024 and by \$39,000 annually thereafter; special fund expenditures decrease correspondingly. Expenditures for DSD may increase, potentially significantly, as discussed below; any such costs are not reflected in the table below. Any impacts on other State agencies are primarily operational.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	(\$29,300)	(\$39,000)	(\$39,000)	(\$39,000)	(\$39,000)
GF Expenditure	\$124,200	\$122,700	\$39,000	\$39,000	\$39,000
SF Expenditure	(\$29,300)	(\$39,000)	(\$39,000)	\$0(\$38,975)	(\$39,000)
Net Effect	(\$124,200)	(\$122,700)	(\$39,000)	(\$78,000)	(\$39,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None. Local finances are not affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Online Publication of the Maryland Register

Under current law, DSD is required to make the Code of Maryland Regulations (COMAR) and any other material DSD determines to be in the public interest available to the public at no cost with direct online searching. *Under the bill*, DSD must also make at least the 15 most recent issues of the *Maryland Register* available online as well.

Under current law, AELR must adopt guidelines for the Administrator to set the price for a copy of or a subscription to COMAR and the *Maryland Register*. Revenue received from fees for copies and subscriptions to COMAR and the *Maryland Register* are deposited into DSD's special fund, the purpose of which is to pay the costs of publishing and distributing DSD products.

Preliminary Review of Proposed Regulations by the Joint Committee on Administrative, Executive, and Legislative Review

Under current law, a promulgating unit must submit proposed regulations to AELR and DLS at least 15 days before submitting the regulation to the *Maryland Register* for publication. This time period is referred to as the preliminary review.

The bill requires the proposed regulation to be submitted in accordance with new procedures adopted by DLS under the bill and requires that the proposed regulation be submitted to AELR, DLS, and the Administrator.

The bill also establishes a new requirement that, if a unit wants to alter the text of a proposed regulation after it has been submitted to AELR and DLS for initial review and before the proposed regulation is published in the *Maryland Register*, such that any part of the text as submitted for publication differs *substantively* from the text that was previously submitted, the unit must (1) notify AELR, DLS, and the Administrator of the change; (2) withdraw the proposed regulation; and (3) resubmit the proposed regulation with the altered text to AELR, DLS, and the Administrator at least 15 days prior to publication. Further, the bill requires a unit that wishes to make a *nonsubstantive* change to the text of the proposed regulation after submission to AELR and DLS and before publication in the

Maryland Register to (1) notify AELR, DLS, the Office of the General Assembly Counsel, and the Administrator of the change; and (2) include a certificate from the unit that the change is nonsubstantive with the notice, as specified. If the Office of the General Assembly Counsel determines that a change submitted by a unit is not nonsubstantive, the unit must withdraw and resubmit the proposed regulation, as specified.

New Procedures on Submission Requirements Adopted by the Department of Legislative Services

Under the bill, DLS must adopt procedures for the submission of proposed and emergency regulations, work plans, and evaluation reports to AELR by a unit. Each promulgating unit is required to follow these procedures and must also include the text of the proposed regulation and the notice of proposed adoption when submitting a proposed regulation to AELR. The Administrator must consult with DLS to ensure that notice of the receipt of proposed and emergency regulations is transmitted to and received by AELR and DLS in a timely manner. Further, when the Administrator transmits a proposed or emergency regulation to AELR and DLS, the Administrator must also provide receipt of the transmittal to the promulgating unit.

The bill specifies that the submission of a regulation, work plan, or an evaluation report to AELR under these provisions does not satisfy any requirement for a unit to submit a regulation, work plan, or an evaluation report to the Administrator for publication in the *Maryland Register*. Additionally, any requirement under Title 10, Subtitle 11 of the State Government Article (which governs the regulatory promulgation process) for a unit to submit a regulation to AELR may not be satisfied by submitting the regulation to DSD.

Administrative Hold Override Notices

Under current law, a unit may not adopt a proposed regulation until (1) the proposed regulation has been submitted to AELR for preliminary review and (2) at least 45 days after first published in the *Maryland Register*. If AELR determines that an appropriate review cannot be reasonably conducted within the standard 45 days, and that additional review time is necessary, AELR may delay the final adoption of the regulation by notifying the promulgating unit and DSD, in writing, before the expiration of the 45-day period. This delay is referred to as an administrative hold.

Under current law, if a proposed regulation is placed under an administrative hold (and appropriate notice has been provided), the promulgating unit may not adopt the regulation until it notifies AELR, in writing (referred to as the hold override notice) of its intention to adopt the regulation. *Under the bill*, the hold override notice must be sent to AELR by *U.S. Mail and electronic mail*. Further, *under current law*, in addition to the hold override notice, the promulgating unit must provide AELR with a further period of review of the

regulation that terminates not earlier than the later of the following: (1) the 30th day following the hold override notice being provided by the promulgating unit; or (2) the 105th day following the first publication of the regulation in the *Maryland Register*. Under the bill, the timeframe for the additional review period is increased to (1) the 60th day following the hold overnight notice being provided by the promulgating unit or (2) the 105th day following the first publish of the regulation in the *Maryland Register*. The bill further requires that the hold override notice be published in the *Maryland Register* within 30 days of receipt by AELR.

Development and Maintenance of an Electronic Filing System and Required Report

The bill requires the Administrator to develop and maintain an electronic filing system for use by units of State government, AELR, DLS, and DSD for the submission and tracking of proposed and emergency regulations from the time of submission to AELR through publication in the *Maryland Register* and final approval by the unit, or in the case of an emergency regulation, approval by AELR. The Administrator must consult with DLS on the functionality and security of the electronic filing system.

The electronic filing system must (1) allow a unit to upload the text of proposed and emergency regulations in a format approved by the Administrator and DLS, along with all statutorily required information; (2) contain a tracking function and an automated notification system that sends notice of new or updated regulations to AELR and DLS; (3) prohibit anyone other than DSD employees from modifying the text of regulations or any other required submittals; (4) allow AELR and DLS to access and download all information that is submitted by a unit relating to a regulation in a format required by DLS; (5) allow AELR and DLS to approve emergency regulations (including providing for the timeframe during which the emergency status is approved); (6) allow a unit to view all related information for a regulation that is submitted by a unit, including all tracking information; (7) allow for the tracking of regulatory holds; and (8) include the functionalities necessary for DSD to publish the *Maryland Register*.

The Administrator must report to AELR on the status of the development and deployment of the required electronic system by December 31, 2023.

State Expenditures:

Costs to Develop and Maintain the Electronic Filing System

DSD has been working with DoIT and a third-party contractor to update its electronic filing system (ELF) to a newer version, referred to as “ELF 2.0.” The intention was for ELF 2.0 to have equivalent functionality and operate off an upgraded server for security purposes. Although ELF 2.0 went online for use in fall 2022, there are a number of nonfunctioning

elements that need to be fixed and finalized before the system is useable for all units of State government, AELR, DLS, and DSD. DSD and DoIT are currently working to address these problems with the contractor. The bill's requirements essentially codify prior functionality of the original ELF system, but DLS was unable to obtain a clear estimate from DoIT as to whether the bill's requirements exceed the current plan and/or contract for ELF 2.0. Although the bill requires the Administrator to develop and maintain the electronic filing system, it is unclear which party – DSD, DoIT, or the contractor – is ultimately responsible for costs to fix and finalize ELF 2.0. According to a preliminary estimate from DoIT, these costs could be significant, perhaps several million dollars. Without additional information about how the bill's requirements differ from the current plans for ELF 2.0 (if at all), and which party is responsible for final costs, DLS is unable to independently verify these potential costs.

Thus, depending on the outcome of current negotiations and the current status of ELF 2.0, general fund expenditures may increase for the Administrator in fiscal 2024. As responsibility has not yet been determined, a reliable estimate is not feasible, so any fiscal effect on the Administrator is not reflected in the fiscal summary database above.

Administrative Costs for the Division of State Documents

The lack of full functionality of ELF 2.0 has created major disruptions with units of State government that promulgate regulations and for DSD staff. DSD requires administrative help to manage the regulation submission process in the absence of a functional system, and to assist units involved in the process.

Therefore, general fund expenditures for DSD increase by \$124,172 in fiscal 2024, which accounts for the bill's varying effective dates. This estimate reflects the cost of hiring one contractual employee with legal expertise and programming skills to (1) act as a liaison to facilitate the repair and completion of ELF 2.0; (2) consult with DLS as necessary to establish updated procedures for the receipt of proposed and emergency regulations; (3) perform additional administrative work necessary while ELF 2.0 is under construction; (4) generally update internal notice and regulatory procedures to implement the bill; and (5) communicate updates about the new system and help units of State government make the transition when it is fully operational. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, including additional general funds to supplement operating expenditures due to the loss of special fund revenues, as discussed below. The information and assumptions used in calculating the estimate are stated below:

- DSD needs to hire a contractual employee for two years who has contract and programming expertise to act as a liaison between DSD and DoIT staff and the contractors working on ELF 2.0 in order to ensure that the final product is fully useable;

- the costs to publish and distribute products published by DSD (including COMAR and the *Maryland Register*) are funded from fees collected for copies and subscriptions for these products and maintaining additional issues of the *Maryland Register* online results in a decrease in special fund revenues of \$29,250 in fiscal 2024 (as discussed below) and a corresponding decrease in special fund expenditures; and
- these lost special fund revenues must be back-filled with general funds because DSD must continue publishing these documents even absent print or electronic subscribers, thus general fund expenditures increase correspondingly (reflected below).

Contractual Position	1
Salary and Fringe Benefits	\$87,248
Supplemental General Funding	29,250
Operating Expenses	<u>7,674</u>
Total FY 2024 DSD Administrative Costs	\$124,172

Future years reflect termination of the contractual employee at the end of fiscal 2025.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

State Revenues: DSD charges the following fees for subscriptions to the *Maryland Register*: (1) \$225 for a single year of the *Maryland Register* that is printed and mailed to the subscriber; and (2) \$190 for a single-user annual e-subscription, which provides a searchable PDF text file of each issue and is emailed directly to each recipient’s email address. DSD anticipates that maintaining the 15 most recent issues of the *Maryland Register* online will result in a significant decrease in subscriptions. Thus, special fund revenues for DSD decrease by \$29,250 in fiscal 2024 (which accounts for three-quarters of a year of lost revenues) and by approximately \$39,000 annually thereafter. These estimates reflect the loss of 55 print subscribers and 140 electronic subscribers on an annualized basis.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 817 (Delegate Rosenberg, *et al.*) - Health and Government Operations.

Information Source(s): Department of Information Technology; Department of Commerce; Maryland Department of Emergency Management; Secretary of State; Maryland State Department of Education; Maryland Department of Agriculture; Maryland Department of the Environment; Maryland Department of Health; Department of Housing and Community Development; Maryland Department of Labor; Department of Natural Resources; Maryland Department of Transportation; Public Service Commission; Legislative Services; Department of Legislative Services

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