Administrative, Executive, and Legislative Review Committee
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Committee Staff

Marie H. Razulis
Susan O. McNamee
The following report of the Joint Committee on Administrative, Executive, and Legislative Review for 2011 is submitted in accordance with § 2-506(b) of the State Government Article.

Functions of the Committee

The committee has several statutory review functions relating to the activities of the Executive Branch. The committee’s primary role is to review regulations issued by State administrative agencies. The specific statutory functions of the committee are as follows:

- review of all regulations proposed by State executive agencies before publication of the regulations in the *Maryland Register*;
- review and approval of all requests from State executive agencies for the immediate adoption, through the emergency process, of proposed regulations;
- discretionary review of the operations of any executive agency;
- discretionary inquiry into any alleged failure of an officer or employee of any branch of State government to comply with the laws of the State;
- review and approval of any executive order promulgated by the Governor pursuant to the Governor’s emergency energy powers under Title 14, Subtitle 3 of the Public Safety Article;
- review of executive agency “work plans” and “evaluation reports” submitted in the course of an agency’s cyclical review of its existing regulations under the Regulatory Review and Evaluation Act, as implemented by Executive Order 01.01.2003.20;
• ongoing supervisory responsibilities under the “State Documents Law” relating to the publication of the Maryland Register and the Code of Maryland Regulations (COMAR); and

• other specific review responsibilities established by statute.

Statistical Overview

The committee held one public hearing and one information session in 2011, the subjects of which are summarized below under Major Regulatory Issues of 2011.

As of December 16, 2011, the committee had received 61 regulations submitted by executive agencies in 2011 for emergency approval and 314 regulations proposed for adoption within normal timeframes, for an overall total of 375 regulations. In 2010, the committee received 51 emergency regulations and 326 proposed regulations for a total of 377 regulations.

The committee has compiled statistics since 1993 on the number of regulations received by the committee from each agency. The Department of Health and Mental Hygiene (DHMH) consistently has been the most prolific in submitting regulations to the committee. In 2011, DHMH submitted 116 regulations to the committee, of which 15 were emergency proposals and 101 were proposed regulations. The regulations submitted by DHMH constituted 30.9% of the total number of regulations the committee received for the year.

The Department of Natural Resources was the second highest source of regulations in 2011, submitting 12 emergency regulations and 37 proposed regulations for a total of 49 regulations. The Department of Labor, Licensing and Regulation, which submitted 37 proposed regulations and 10 emergency regulations, was the third most prolific source of regulations. Other agencies submitting significant numbers of regulations were the State Board of Education (23 regulations), the Department of Human Resources (15 regulations), the Department of the Environment (15 regulations), the Maryland Insurance Administration (9 regulations), the Maryland Department of Transportation (9 regulations), the State Lottery Agency (7 regulations), and the State Board of Elections (7 regulations).
Major Regulatory Issues of 2011

Department of Health and Mental Hygiene

- Dangerous Devices and Substances:
  Controlled Dangerous Substances:
  COMAR 10.19.03.13

On October 13, 2011, the committee held an information session on a regulation proposed by the Department of Health and Mental Hygiene to ban the sale, distribution, and possession of specified substances known as “bath salts”, by adding them to the list of Schedule I controlled dangerous substances.

The substances sought to be banned are synthetic psychoactive stimulants that can produce side effects such as increased blood pressure, agitation, delusions, paranoia, and psychosis. These drugs are sold in powder and tablet form and are chemically similar to compounds found in the khat plant in eastern Africa. They have amphetamine-like qualities, and users often report experiencing effects similar to cocaine, ecstasy, and methamphetamines. The substances are available in convenience stores, gas stations, and online. They are often marketed as “bath salts,” and have street names like “Zoom 2,” “Aura,” “Cloud Nine,” and “meow meow.”

Bath salts have reportedly spurred thousands of calls to poison control centers nationwide in the past few years, and have been connected with at least four deaths. The Maryland Poison Control Center has reported 15 cases of “bath salts” ingestion treated by emergency rooms from January through June 2011. There has been one confirmed death in Maryland due to “bath salts.”

After the information session, the committee members were polled on the emergency regulation. The emergency regulation was approved by the committee and the regulation went into effect on October 18, 2011. The effect of the approval of the regulation is to make the sale, distribution, or possession of “bath salts” a felony punishable by imprisonment for not more than 20 years or a fine of not more than $25,000, or both.

Department of Labor, Licensing and Regulation

- State Board of Individual Tax Preparers:
  General Regulations:
  COMAR 09.38.01.01-.04

Chapter 623 of 2008 created the State Board of Individual Tax Preparers in the
Department of Labor, Licensing, and Regulation. The function of this board is to register and oversee qualified individuals who provide individual tax preparation services. Implementation of Chapter 623 was delayed due to a lack of funding. Funds became available in October 2010 and the board submitted emergency/proposed regulations soon thereafter. The board stated that it expects to license approximately 4,000 individuals over the next two years. The board is special funded and if adequate funds are not raised by the board, the Governor is required to make a general fund appropriation in the State budget to cover the difference. The board set fees at amounts sufficient to generate enough revenue to cover the costs of the board’s activity. The proposal set the registration fee at $100; the renewal fee was also set at $100; and the fee for reinstatement of an expired registration was set at $120.

The Committee held a public hearing on these emergency regulations on February 24, 2011. The emergency regulations were approved by the committee and the regulations went into effect on February 25, 2011.

Department of Public Safety and Correctional Services

• **Sex Offender Registration:** COMAR 12.06.01.01-.12
  **Administration of Juvenile Sex Offender Listing:** COMAR 12.06.02.01-.04

In December 2009, an 11-year old girl was assaulted and murdered on the Eastern Shore by a registered sex offender. The offender pled guilty and is now serving a life sentence. In the 2010 session, legislators introduced a total of 84 bills regarding sexual offenses. One significant topic, lifetime supervision of certain sexual offenders, was addressed by Chapters 174 and 175 of 2010. The Acts also made changes to notification and registration provisions of Maryland’s sexual offender laws to conform to the federal Sex Offender Registration and Notification Act (SORNA). State compliance with SORNA is overseen by the federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office).

With regard to juveniles, the Acts further required a person to be included in a newly created listing of juvenile sex offenders maintained by the Department of Public Safety and Correctional Services separately from the sex offender registry if the person had been adjudicated delinquent for an act that, if committed by an adult, would constitute: (1) first or second degree rape; (2) first or second degree sexual offense; (3) or a certain nonconsensual third or fourth degree sexual offense and the person was a minor who was at least 13 years old at the time the delinquent act was committed. The Acts required the adoption of regulations implementing the juvenile sex offender listing.

The department proposed the regulatory changes in the January 3, 2011 issue of the *Maryland Register*. In the same time frame, legislation was introduced in the 2011 session refining the juvenile sex offender listing law and making other changes to put Maryland’s law in
compliance with the federal SORNA guidelines. With the statutory changes of 2010 and Chapter 374 of 2011, the department advises that the federal SMART Office informed the State that it is substantially compliant with the SORNA guidelines and not in danger of losing federal Byrne Justice Assistance Grant funding.

The committee held a public hearing on February 24, 2011 but did not vote on the proposed regulations. The regulations were withdrawn by the department on August 12, 2011. The department is rewriting the regulations and will submit them in 2012.

Supervisory Responsibilities under the State Documents Law

As part of its supervisory responsibilities under the “State Documents Law” (Title 7, Subtitle 2 of the State Government Article), the committee continued to monitor significant developments concerning publications of the Division of State Documents (DSD), a unit within the Office of the Secretary of State. DSD publishes the Maryland Register and the Code of Maryland Regulations (COMAR).

Existing Agency Operations and Regulations

Under § 2-506(b) of the State Government Article, the committee is required to comment on any recommendations to bring about the more efficient operation of the branches of the State Government and on any legislative action that is needed to change or reverse a regulation of a unit of the Executive Branch. The committee has been satisfied with the continued cooperation it receives from the Executive Branch and is pleased to report that no recommendations for change are required at this time.

The committee wishes to note its appreciation for the continued cooperation of the Executive Branch and its various agencies in making the process of legislative review of regulations successful.

Respectfully submitted,

Anne Healey
Delegate Anne Healey
House Chairman

Paul G. Pinsky
Senator Paul G. Pinsky
Senate Chairman

cc: Karl S. Aro
Warren G. Deschenaux
Lynne B. Porter