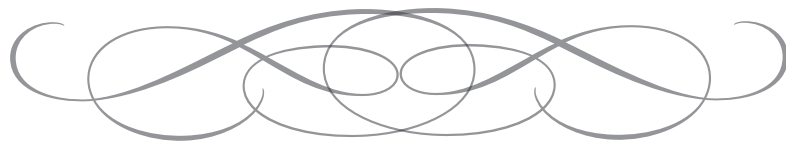


Maryland General Assembly
Joint Committee on Administrative,
Executive, and Legislative Review



Annapolis, Maryland
September 2011

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Joint Committee on Administrative,
Executive, and Legislative Review
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This pamphlet is intended to highlight some of the provisions of law relating to regulatory review and is not to be read as a substitute for the law itself.

The law relating to the legislative review of administrative regulations is found in Title 10, Subtitle 1 of the State Government Article of the Annotated Code.

The law establishing the Joint Committee on Administrative, Executive, and Legislative Review is found in Title 2, Subtitle 5 of the State Government Article of the Annotated Code.

History and Duties of the Committee

Establishment

The Joint Committee on Administrative, Executive, and Legislative Review (AELR) was originally created in 1964 as a joint standing committee known as the Committee on Legislative Review. It was reconstituted as a statutory committee and renamed in Chapters 400 and 699 of 1972.

Membership

The AELR Committee is composed of 20 members – 10 senators appointed by the President of the Senate and 10 delegates appointed by the Speaker of the House. Each political party is represented in approximately the same proportion as its membership in each house, and each major standing committee of the General Assembly is represented on the committee. There is a House chair and a Senate chair of the committee who alternate each calendar year as the presiding chair.

Principal Function – Generally

The AELR Committee functions as the watchdog of the General Assembly in overseeing the activities of State agencies as they relate to regulations. The committee's primary function is to review any regulations that are proposed for adoption by a unit of the Executive Branch of State government to determine whether the regulations conform both with the statutory authority of the unit and the legislative intent of the statute under which the regulations are proposed.

To assist in this task, each regulation, after submission to the committee and prior to publication in the *Maryland Register*, is analyzed for legal sufficiency by legislative staff of the Department of Legislative Services. Fiscal analysts with the department evaluate the Executive Branch agency's assessment of the economic impact of a proposed regulation.

The committee also ensures that the regulations are proposed and adopted in compliance with the State Administrative Procedure Act. In addition, the committee may consider policy issues relating to specific regulations, respond to inquiries made by members of the General Assembly or the public, and request additional information from the promulgating unit regarding proposed regulations.

Proposed Regulations

All proposed regulations are submitted to the AELR Committee for review at least 15 days before they are submitted to the *Maryland Register* for publication. Often changes are negotiated between the committee and the unit before publication. The committee is not required to give its explicit approval in order for a proposed regulation to become effective. In the usual course, the unit may adopt a proposed regulation 45 days after the date the regulation was published. Thirty of the 45 days must be reserved as a public comment period.

If the committee cannot complete its review of the proposed regulation within the 45-day period, it may delay, or “hold,” the adoption of the regulation. During this time, the committee may suggest to the unit that certain changes be made. If no agreement is reached, the unit may subsequently notify the committee of its intent to adopt the regulation despite the committee’s hold. The hold period ends on the later of the thirteenth day after the unit’s notice to the committee or the one hundred and fifth day after the initial publication of the regulation in the *Maryland Register*.

At any time, the committee may formally vote to oppose the adoption of the regulation. In this case, notice of the opposition is sent to the Governor and the unit, and further negotiations ensue. The Governor may instruct the unit to withdraw or modify the regulation. However, once the committee has opposed the adoption of the regulation, it may not be adopted unless approved by the Governor.

Emergency Regulations

Emergency regulations, which bypass the normal public notice and comment period, remain in effect for a limited period of time – not to exceed 180 days – to meet exigent circumstances. Although emergency regulations are not published in the *Maryland Register* before adoption, notice of the committee’s receipt of the regulation is posted on the Maryland General Assembly’s website (www.mlis.state.md.us).

If a member of the committee requests a public hearing on the emergency adoption of a regulation, the committee must hold the hearing. If no public hearing is requested, staff to the committee may poll on the emergency regulation as soon as 10 business days after receipt of the regulation. Approval by the committee is required for an emergency regulation to take effect.

Other Committee Duties

- *Monitoring Executive Branch Actions:* The General Assembly may specially designate the AELR Committee to monitor the actions of a unit of the Executive Branch in implementing specific legislation.

- *Monitoring Existing Regulations:* The AELR Committee also monitors the periodic review by each unit of the Executive Branch of the unit's existing body of regulations. This program of review and evaluation is performed by each unit every eight years on a schedule set out by executive order from the Governor.
- *Executive Orders:* The committee also is required to receive and review emergency executive orders related to energy management issued by the Governor in an energy crisis.
- *Executive Officers and Employees:* The AELR Committee may also inquire into the alleged failure of an officer or employee of the Executive Branch of State government to comply with the laws of the State and may review the operations of any unit of the Executive Branch of State government.
- *Legislative Advisory Board:* Finally, the committee sits as a legislative advisory board for the Division of State Documents on issues relating to the publication of the *Code of Maryland Regulations* (COMAR) and the *Maryland Register*.

Report

The AELR Committee is required by law to report annually to the Legislative Policy Committee and the General Assembly.

What Are Regulations?

Administrative agencies owe their existence and their regulatory powers to laws passed by the legislature. The Maryland General Assembly passes approximately 650 bills each year that are signed into law by the Governor. In many of these bills, the legislature grants State agencies, boards, commissions, and departments the authority to adopt regulations. Regulations commonly have the force and effect of law. This delegation of legislative authority from the General Assembly to administrative agencies is often necessary to provide needed flexibility in implementing statutes or to establish highly detailed technical or procedural provisions that are needed to supplement the statutes.

The relevant statutory provision defines as a “regulation” any statement, or amendment, or repeal of a statement that:

- (i) has general application;
- (ii) has future effect;
- (iii) is adopted by a unit (administrative agency) to:
 - 1. detail or carry out a law that the unit administers;
 - 2. govern organization of the unit;
 - 3. govern the procedure of the unit; or
 - 4. govern practice before the unit; and
- (iv) is in any form, including:
 - 1. a guideline;
 - 2. a rule;
 - 3. a standard;
 - 4. a statement of interpretation; or
 - 5. a statement of policy.

The law excludes from the definition of “regulation” any statement that concerns only internal management of a unit and that does not directly affect the rights of the public or procedures available to the public (§ 10-101 of the State Government Article, Annotated Code of Maryland).