

MARYLAND GENERAL ASSEMBLY
JOINT COMMITTEE ON ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE REVIEW

December 15, 2020

The Honorable Bill Ferguson, Co-chair
The Honorable Adrienne A. Jones, Co-chair
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The following report of the Joint Committee on Administrative, Executive, and Legislative Review (AELR) for 2020 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

As of December 11, 2020, the committee had received 33 regulations submitted by executive agencies in 2020 for emergency approval and 157 regulations proposed for adoption within normal timeframes, for an overall total of 190 regulations. In 2019, the committee received 10 emergency regulations and 286 proposed regulations for a total of 296 regulations. The overall number of regulations was significantly lower in 2020, but the number of emergency regulations was also much higher than 2019, largely due to the COVID-19 pandemic and the State’s emergency response.

The committee has compiled statistics since 1993 on the number of regulations received from each agency. Although the Maryland Department of Health (MDH) has historically been the most prolific agency in submitting regulations to the committee, in 2020, the Department of Natural Resources (DNR) submitted the most regulations. In 2020, DNR submitted 31 regulations to the committee, of which one was an emergency regulation and 30 were proposed regulations. The regulations submitted by DNR constituted approximately 16% of the total number of regulations the committee received for the year.

The Department of Labor, which submitted 17 proposed regulations and 6 emergency regulations, for a total of 23 regulations, was the second most prolific source of regulations. The State Board of Elections (SBE) was the third highest source of regulations, and the highest source of emergency regulations, submitting 14 emergency regulations and 3 proposed regulations for a total of 17 regulations. MDH was the fourth highest source of regulations in 2020, and submitted 16 proposed regulations. Other agencies submitting significant numbers of regulations were the Maryland Department of Transportation (12 proposed regulations and 1 emergency regulation), the Department of Education (1 emergency regulation and 10 proposed regulations), and the Department of the Environment (8 proposed regulations).

Major Regulatory Issues of 2020 – State Board of Elections Emergency Regulations

In 2020, the AELR committee did not hold public hearings on any agency submissions concerning emergency or proposed regulations as none were requested.

The AELR committee approved the emergency status of 12 sets of regulations submitted by SBE related to changes in election processes for the special general election for the 7th Congressional district, and the presidential primary and general elections due to the COVID-19 pandemic. Several of the changes that were specific to the special general election and the primary election were subsequently resubmitted for the general election. The regulations mainly related to the logistics of voting during the pandemic, including maintaining social distancing and the potential of a reduced number of election personnel.

Concerning the special general election for the 7th Congressional District and the presidential primary election, the regulations:

- authorized same day registration and address changes during the early voting period before the special general election in the 7th Congressional District (DLS Control No. 20-003);
- repealed the requirement that SBE, before the close of registration for each election, send a certain pre-election mailing to each pre-qualified voter for the primary and special general election (DLS Control No. 20-028);
- repealed a requirement that the local election directors conduct a voting center evaluation program for voting centers established for a special election conducted by mail (DLS Control No. 20-037);
- (1) reduced the number of individuals who must be physically present in the same room during the canvass of absentee votes for an election; and (2) specified that, with a certain exception, all laws, regulations, and procedures that apply to voting during early voting and on election day apply to voting at a voting center on election day (DLS Control No. 20-038);
- (1) required that for the special general election and the primary election, a local election director must stamp an absentee ballot return envelope with the date it was received only if the local board received the return envelope on the day before the election or any day thereafter; and (2) required the election director to store all ballot return envelopes in a container labeled with the date the ballots were received (DLS Control No. 20-043); and

- (1) repealed the requirement for local election directors to conduct a polling place evaluation program; (2) repealed provisions establishing procedures for handling absentee ballots returned at early voting centers and election day polling places; and (3) allowed voters to return a voted ballot at a ballot drop off container outside locations designated by the local board of elections (DLS Control No. 20-048).

Concerning the presidential general election, the regulations:

- modified the timeframe for the pre-election mailing for the general election (DLS Control No. 20-089);
- (1) reduced the number of individuals who must be physically present in the same room during the canvass of absentee votes for an election; (2) specified that, with a certain exception, all laws, regulations, and procedures that apply to voting during early voting and on election day apply to voting at a voting center on election day; and (3) altered provisions relating to election judge training (DLS Control No. 20-096);
- (1) altered the date by which the State Administrator of Elections may allow a local board of elections to establish or change an early voting center; and (2) established a deadline by which SBE is required to vote on the establishment or change (DLS Control No. 20-099);
- (1) waived a requirement that a mail-in ballot application be date stamped under certain circumstances, allowed certain tasks related to processing mail-in ballots to be performed by a single individual instead of a bipartisan team under certain circumstances; (2) allowed the canvass of mail-in votes to begin on October 1, 2020; and (3) provided that when a mail-in ballot and a provisional ballot are both received from the same voter, the provisional ballot is rejected (DLS Control No. 20-103);
- altered the precincts selected by a local board for the purposes of post-election verification and auditing (DLS Control No. 20-111); and
- removed the requirement that a local board of elections ensure that absentee ballots are not received at an early voting center (DLS Control No. 20-128).

Due to the large number of emergency regulations received in anticipation of the general election, on October 2, 2020, the committee held a briefing to give an overview of all emergency regulations relating to the general election. The overview was presented by SBE and included a description of each of the regulations.

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Supervisory Responsibilities under the State Documents Law

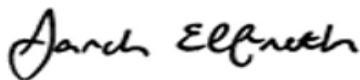
As part of its supervisory responsibilities under the “State Documents Law” (Title 7, Subtitle 2 of the State Government Article), the committee continued to monitor significant developments concerning publications of the Division of State Documents (DSD), a unit within the Office of the Secretary of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

Existing Agency Operations and Regulations

Under § 2-506(b) of the State Government Article, the committee is required to comment 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.

Sincerely,



Senator Sarah H. Elfreth
Senate Chair (Presiding)



Delegate Samuel I. Rosenberg
House Chair

SHE:SIR/KPK:JJJ;GC/cr

cc: Mr. Jake Weissmann
Ms. Alexandra Hughes
Ms. Victoria Gruber
Mr. Ryan Bishop