

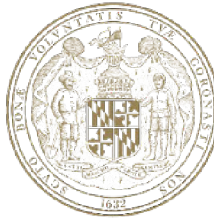
Administrative, Executive, and Legislative Review

2022 Interim

State Government Article, Section 2-506(b)

Joint Committee on Administrative, Executive, and Legislative Review

December 15, 2022



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

December 15, 2022

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

Dear President Ferguson, Speaker Jones, and Members:

The following report of the Joint Committee on Administrative, Executive, and Legislative Review (AELR) for 2022 is submitted in accordance with § 2-506(b) of the State Government Article.

Functions of AELR

AELR has several statutory review functions relating to the activities of the Executive Branch. AELR's primary role is to review regulations issued by State administrative agencies. The specific statutory functions of AELR 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 during 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 13, 2022, AELR had received 19 regulations submitted by executive agencies in 2022 for emergency approval and 164 regulations proposed for adoption within normal timeframes, for an overall total of 183 regulations. In 2021, AELR received 20 emergency regulations and 241 proposed regulations for a total of 261 regulations. The overall number of regulations was substantially lower in 2022. This decrease in regulations is largely due to ongoing regulation submission problems stemming from the Division of State Document’s (DSD) ELF system upgrades. ELF is the online database agencies use to submit and track regulations through the promulgation process. This matter is discussed in more detail below.

AELR has compiled statistics since 1993 on the number of regulations received from each agency. The Maryland Department of Health (MDH) has historically been the most prolific agency in submitting regulations to AELR, and in 2022 again submitted the most regulations. In 2022, MDH submitted 42 regulations, of which five were emergency regulations. The Department of Natural Resources and the Maryland Department of Labor (MDL) both submitted 13 regulations in 2022. Of the 13 regulations submitted by MDL, three were emergency regulations. In 2022, the Maryland Department of Assessments and Taxation submitted 12 regulations, the Maryland Department of Transportation (MDOT) submitted 11, and the Maryland Higher Education Commission and the State Board of Elections (BOE) submitted nine. Four of BOE’s regulations were emergency submissions. As discussed below, regulations submitted by the State Board of Education (SBOE) and the Maryland Department of Public Safety and Correctional Services (DPSCS) all received public hearings in 2022. There was also a public briefing on regulations submitted by BOE and a public vote to oppose one set of regulations submitted by MDOT, as discussed below.

Major Regulatory Issues of 2022 – Public Hearings, Briefings, and Committee Votes

State Board of Education

Emergency Regulation

DLS Control No. 21–237E

State Board of Education:

State School Administration:

Face Coverings in School Facilities: COMAR 13A.01.07.01 through .05

On December 9, 2021, SBOE submitted emergency regulations that would revise face mask policies for each public school in local school systems in the State.

AELR held a virtual public hearing on January 5, 2022, to provide AELR members and the public with an opportunity to learn more about the regulations and ask questions. The public hearing was well attended with time allotted for proponents and opponents to offer testimony. AELR approved the emergency regulations at the public hearing by a vote of 11–5, with three members absent. On February 25, 2022, AELR held a public hearing to consider the request of SBOE to withdraw the emergency regulations. Once again, the public hearing was well attended with time allotted for proponents and opponents to offer testimony. AELR voted to rescind approval of the emergency regulations at the public hearing by a vote of 17–1, with one member absent.

State Board of Elections

AELR held a virtual public briefing on Tuesday, October 11, 2022, regarding the implementation of emergency and proposed regulations submitted by BOE during the spring and summer of 2022 and the effect, if any, of the regulations on the primary election. BOE provided information and took questions from the members of AELR.

Maryland Department of Public Safety and Correctional Services

DLS Control No. 22-406

Maryland Department of Public Safety and Correctional Services:

Police Training Commission:

Police Accountability Boards and Administrative Charging Committees:

COMAR 12.04.09.01 through .07

DLS Control No. 22-407

Maryland Department of Public Safety and Correctional Services:

Police Training Commission:

Model Uniform Disciplinary Matrix: COMAR 12.04.10.01 through .05

These sets of regulations followed a June submission of emergency regulations from the Maryland Police Training and Standards Commission (MPTSC) which were drafted to implement certain police discipline reform legislation passed during the 2021 and 2022 legislative sessions. Although AELR voted on September 6, 2022 to adopt the emergency regulations, the Chairs sent a letter to the leadership at MPTSC noting alterations they felt would enable the proposed regulations to better apply the law and promising a hearing when the proposed regulations were submitted.

AELR held a virtual public hearing on December 8, 2022, to provide the members and the public with an opportunity to hear from the leadership at the MPTSC. Following introductory remarks from the Chair of the MPTSC, members of the public had the opportunity to offer testimony in favor or in opposition to the proposed regulations. Several opponents attended the hearing and several more submitted written testimony.

Maryland Department of Transportation

DLS Control No. 22–275

Maryland Department of Transportation:

Motor Vehicle Administration – Vehicle Inspections:

Vehicle Emissions Inspection Program: COMAR 11.14.08.01 through .20

MDOT filed these regulations, which make numerous changes to the Vehicle Emissions Inspection Program (VEIP), with AELR on February 15, 2022 and first published the regulations in the September 9, 2022 issue of the *Maryland Register*. The text of the regulations published in the *Maryland Register* were substantively different from the version submitted to AELR for review. AELR placed an administrative hold on the regulations on October 24, 2022. On November 22, 2022, MDOT sent a letter to the Chairs indicating its intent to final publish and adopt the proposed regulations on December 23, 2022.

During the December 8, 2022 virtual public hearing on the MPTSC regulations, discussed above, AELR also conducted a vote on whether to oppose the adoption of the proposed VEIP regulations. The vote to oppose the regulations passed 9 to 2, with eight members absent. AELR’s stated reason for opposing the adoption of the proposed regulations was primarily due to concerns regarding the regulations’ potential disproportionate burden on low-income and minority motorists due to the expanded exemptions for newer model year vehicles. AELR noted that the decision was not based on any intent to affect agency procurement policy.

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), AELR 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. One item of note is the ongoing update to DSD’s ELF system, which is the online interface that agencies use to electronically file regulations.

Due to the system upgrade, DSD took the old ELF system offline in early September and initially requested that agencies refrain from submitting regulations from September 2 to September 19, 2022. Ultimately the new system, referred to as “ELF 2.0,” was not up and running until November 18, 2022. Department of Legislative Services (DLS) counsel worked with agencies

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Page 5

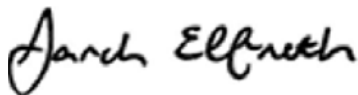
and DSD to create a temporary patchwork system of emailing regulations to continue receiving and processing regulations while ELF was unavailable, but there was significant miscommunication and substantial delays during this time period. Although ELF 2.0 is online, there are continuing issues with useability for both agencies and DLS. As of December 13, 2022, DLS has been unable to successfully download and receive regulations submitted by agencies from ELF 2.0. AELR counsel continues to communicate with DSD and agencies to try to resolve the problem.

Existing Agency Operations and Regulations

Under § 2-506(b) of the State Government Article, AELR is required to comment on any legislative action that is needed to change or reverse a regulation of a unit of the Executive Branch. AELR has generally been satisfied with the continued cooperation it receives from the Executive Branch regarding their regulation submissions. However, as discussed above, there have been ongoing issues regarding the electronic filing system used to submit regulations to DSD and, by extension, DLS. DLS will continue to monitor the situation and may recommend legislative solutions depending on how the problem evolves.

AELR 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 K. Elfleth
Senate Chair (Presiding)



Delegate Samuel I. Rosenberg
House Chair

SHE:SIR/KPK:GC;KVL/cr

cc: Ms. Sally Robb
Mr. Jeremy Baker
Ms. Victoria Gruber
Mr. Ryan Bishop