

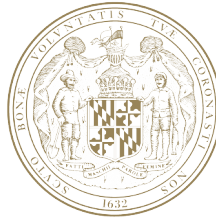
Administrative, Executive, and Legislative Review

2023 Interim

State Government Article, Section 2-506(b)

Joint Committee on Administrative, Executive, and Legislative Review

December 21, 2023



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

December 21, 2023

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 2023 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

The overall number of regulations submitted saw a substantial increase in 2023 versus 2022. As of December 20, 2023, AELR had received 28 regulations submitted by executive agencies in 2023 for emergency approval and 326 regulations proposed for adoption within normal timeframes, for a total of 354 regulations. In 2022, AELR received 19 emergency regulations and 164 proposed regulations for a total of 183 regulations. In 2023, agencies and submitting units were generally more comfortable with the new ELF system than in 2022, and although there are ongoing issues that AELR continues to discuss and work through with the Division of State Documents (DSD), progress has been made with the new system. 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 has historically been the most prolific agency in submitting regulations to AELR, and in 2023 again submitted the most regulations (118 regulations, of which 10 were emergency regulations). In 2023, the Department of Natural Resources submitted 40 regulations, and the Maryland Department of Labor submitted 43 regulations, of which one was an emergency regulation. In 2023, the State Department of Assessments and Taxation submitted 2 regulations, the Maryland Department of Transportation submitted 16 regulations, and the Maryland Higher Education Commission and the State Board of Education submitted a total of 27 regulations.

Major Regulatory Issues of 2023

Maryland Cannabis Administration Emergency Regulation

DLS Control No. 23-121E

Maryland Cannabis Administration:

COMAR 14.17.01.01 through 14.17.22.11

On May 19, 2023, the Maryland Cannabis Administration submitted emergency regulations that implement Chapters 254 and 255 of 2023, which established the adult-use cannabis industry in the State. The extensive regulations cover the independent Office of Social Equity; the Medical Cannabis Program; application for and dispensing of licenses; requirements for products, packaging, and labeling; research and development applications of cannabis; and several related topics. The regulations were approved by a vote of 12-4 and went into effect on July 1, 2023.

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 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 a system upgrade, DSD took the previous ELF system offline in September 2022 and replaced it with a new system, referred to as “ELF 2.0.” Despite efforts by DSD and the Department of Information Technology, issues with the functionality and usability of ELF 2.0 have continued throughout 2023. Chapters 349 and 350 of 2023 were enacted in response to issues raised by the conversion to ELF 2.0. The Acts make various changes to the laws regarding the publishing of the *Maryland Register*, the submission and review of proposed and emergency regulations by State agencies, and the development and functionality of the electronic filing system. The Acts also require DSD to report to AELR by December 31, 2023, on the status of the development and deployment of the electronic filing system.

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, the Department of Legislative Services (DLS). DLS will continue to monitor the situation and may recommend additional legislative actions depending on how the issue evolves.

January 30, 2023
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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,



Mary Washington
Senate Chair



Samuel I. Rosenberg
House Chair (Presiding)

MW:SIR/KPK:GC:KVL/mjp

cc: Sally Robb
Jeremy Baker
Victoria L. Gruber
Ryan Bishop