

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 454

(Senator Pinsky)

Education, Health, and Environmental Affairs

Health and Government Operations

State Licensing Agencies - Justification Statements Required for Fee Increases
Proposed by Regulations

This bill requires that regulatory submissions to the Joint Committee on Administrative, Executive, and Legislative Review (AELR) of the General Assembly that either increase or decrease licensing fees for regulated professions include a written justification for the fee change. This requirement applies to submissions of both regular and emergency regulations.

Fiscal Summary

State Effect: None. Affected State agencies can carry out the bill's requirements with existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: For proposed fee increases, the written justification must include:

- the amount of revenue needed for the unit to operate effectively or to eliminate an operating fund deficit;
- the year of the most recent fee increase;
- whether fee revenue is retained by the unit or passed through to a national organization that administers a uniform licensing exam;

- measures taken to mitigate the need for increased revenue;
- a description of special circumstances that have had an adverse impact on the unit's operating expenses;
- consideration given to the hardship imposed by a fee increase on the regulated profession; and
- efforts to solicit the opinions of licensees regarding the unit's effectiveness and performance.

Current Law: The AELR committee is a statutory committee consisting of 20 members evenly divided between the House of Delegates and the Senate. Among other responsibilities, the committee is charged with reviewing regulations proposed or adopted by Executive Branch agencies, and considering requests for emergency adoption of regulations.

At least 15 days before a proposed regulation is published in the *Maryland Register*, the promulgating agency must submit the proposed regulation to AELR and the Department of Legislative Services (DLS) for analysis and review. The agency may not adopt the regulation until at least 45 days after its publication in the *Maryland Register* (*i.e.*, 60 days from its submission to AELR). The public may comment on the proposed regulation within 30 days after its publication.

AELR does not have the authority to reject a proposed regulation, but may request a delay in the adoption of a proposed regulation to give itself more time for review. If AELR requests a delay, the agency may not adopt the regulation until it submits a notice to the committee of its intent to adopt the regulation and provides the committee with either 30 days from its notice or 105 days after the regulation's initial publication for further review, whichever is later.

An agency may adopt an emergency regulation if it declares that emergency adoption is necessary, submits the proposed regulation to AELR and DLS, and the committee approves the emergency adoption. Unless the Governor declares that immediate adoption is necessary to protect public health and safety, AELR may not approve an emergency regulation earlier than 10 days after its receipt. Emergency regulations are valid for no longer than 180 days.

Background: AELR received a total of 344 proposed regular and emergency regulations in fiscal 2007, 499 in fiscal 2008, and 490 in fiscal 2009. Roughly one-third of proposed regulations are submitted by the Department of Health and Mental Hygiene (DHMH). In 2009, AELR staff report that they received approximately 12 proposed regulations that involved either a fee increase or decrease.

There are currently approximately 70 regulatory boards and commissions throughout State government that license, certify, and regulate health and business occupations. The vast majority of these entities are either in DHMH or the Department of Labor, Licensing, and Regulation (DLLR). Most have statutory authority to set their own licensing fees, but others have their fees set in statute.

State Fiscal Effect: Beginning in 2009, health boards and commissions within DHMH have been submitting the information required by this bill to AELR without any increased cost; for those boards, this bill codifies existing practice. DLS believes, therefore, that other boards and commissions in DLLR and other State agencies can carry out the bill's requirements with existing budgeted resources. To the extent that the additional information submitted by promulgating agencies requires further legal or fiscal analysis by DLS, that analysis can be done with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 459 (Delegate Healey, *et al.*) - Health and Government Operations.

Information Source(s): Maryland State Department of Education; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; Department of Legislative Services

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