

HOUSE BILL 305

P3

5lr1124

By: **Delegates W. Miller, Adams, Afzali, Anderton, Arentz, Aumann, Beitzel, Buckel, Carozza, Fisher, Flanagan, Folden, S. Howard, Impallaria, Kipke, Kittleman, Krebs, Long, Mautz, McComas, McConkey, McKay, McMillan, Metzgar, O'Donnell, Parrott, Reilly, Rey, Saab, Shoemaker, Szeliga, Vogt, West, and B. Wilson**

Introduced and read first time: February 4, 2015

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Administrative Procedure Act – Limitation on Adoption of Regulations**

3 FOR the purpose of prohibiting a unit authorized by law to adopt regulations from adopting
4 proposed regulations during a certain time period under certain circumstances; and
5 generally relating to the adoption of proposed regulations under the Administrative
6 Procedure Act.

7 BY repealing and reenacting, without amendments,
8 Article – State Government
9 Section 10–101(a) and (i)
10 Annotated Code of Maryland
11 (2014 Replacement Volume)

12 BY repealing and reenacting, with amendments,
13 Article – State Government
14 Section 10–111
15 Annotated Code of Maryland
16 (2014 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

19 **Article – State Government**

20 10–101.

21 (a) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) “Unit” means an officer or unit authorized by law to adopt regulations.

2 10–111.

3 (a) (1) Except as provided in subsection (b) of this section **AND SUBJECT TO**
4 **SUBSECTION (D) OF THIS SECTION**, a unit may not adopt a proposed regulation until:

5 (i) after submission of the proposed regulation to the Committee for
6 preliminary review under § 10–110 of this subtitle; and

7 (ii) at least 45 days after its first publication in the Register.

8 (2) (i) If the Committee determines that an appropriate review cannot
9 reasonably be conducted within 45 days and that an additional period of review is required,
10 it may delay the adoption of the regulation by so notifying the promulgating unit and the
11 Division of State Documents, in writing, prior to the expiration of the 45–day period.

12 (ii) If notice is provided to the promulgating unit pursuant to
13 subparagraph (i) of this paragraph, the promulgating unit may not adopt the regulation
14 until it notifies the Committee, in writing, of its intention to adopt the regulation and
15 provides the Committee with a further period of review of the regulation that terminates
16 not earlier than the later of the following:

17 1. the 30th day following the notice provided by the
18 promulgating unit under this subparagraph; or

19 2. the 105th day following the initial publication of the
20 regulation in the Register.

21 (3) The promulgating unit shall permit public comment for at least 30 days
22 of the 45–day period under paragraph (1)(ii) of this subsection.

23 (b) (1) The unit may adopt a proposed regulation immediately if the unit:

24 (i) declares that the emergency adoption is necessary;

25 (ii) submits the proposed regulation to the Committee and the
26 Department of Legislative Services, together with the fiscal impact statement required
27 under subsection (c) of this section; and

28 (iii) has the approval of the Committee for the emergency adoption.

29 (2) (i) Subject to subparagraphs (ii), (iii), and (iv) of this paragraph, the
30 approval of the Committee may be given:

1 1. by a majority of its members who are present and voting
2 at a public hearing or meeting of the Committee; or

3 2. if staff of the Committee tries but is unable to contact a
4 majority of the members of the Committee in a timely manner and immediate adoption is
5 necessary to protect the public health or safety, by its presiding Chairman or, if its
6 presiding Chairman is unavailable, by its cochair.

7 (ii) If a member of the Committee requests a public hearing on the
8 emergency adoption of a regulation, the Committee shall hold a public hearing.

9 (iii) 1. If a public hearing is held on the emergency adoption of a
10 regulation, the Committee may not approve the emergency adoption except by a majority
11 vote of the members present and voting at the hearing or at a meeting of the Committee
12 subsequent to the hearing.

13 2. If a vote on the emergency regulation is not taken at the
14 public hearing or immediately thereafter, the Committee members shall be provided at
15 least 1 week's notice of the scheduling of any subsequent meeting to vote on the regulation.

16 (iv) Unless the Governor declares that immediate adoption is
17 necessary to protect the public health or safety, the Committee may not approve the
18 emergency adoption of a regulation earlier than 10 business days after receipt of the
19 regulation by the Committee and the Department of Legislative Services.

20 (3) If there is no request for a public hearing, the staff of the Committee
21 may poll, in person, by telephone, or in writing:

22 (i) the members of the Committee; or

23 (ii) if staff of the Committee tries but is unable to contact a majority
24 of the members of the Committee in a timely manner and immediate adoption is necessary
25 to protect the public health or safety, the presiding Chairman or the cochair.

26 (4) (i) The Committee may impose, as part of its approval, any
27 condition.

28 (ii) The Committee shall impose, as part of its approval, a time limit
29 not to exceed 180 days on each request for emergency status.

30 (iii) If the unit does not adopt the regulation finally before the time
31 limit expires, the status of the regulation reverts to its status before the emergency
32 adoption.

33 (5) The Committee may rescind its approval by a majority of its members
34 present and voting at a public hearing or meeting of the Committee.

1 (c) (1) The fiscal impact statement, prepared by the unit and submitted under
2 subsection (b) of this section, shall state:

3 (i) an estimate of the impact of the emergency regulation on the
4 revenues and expenditures of the State;

5 (ii) whether the State budget for the fiscal year in which the
6 regulation will become effective contains an appropriation of the funds necessary for the
7 implementation of the emergency regulation;

8 (iii) if an appropriation is not contained in the State budget, the
9 source of the funds necessary for the implementation of the emergency regulation; and

10 (iv) whether the emergency regulation imposes a mandate on a local
11 government unit.

12 (2) If the emergency regulation imposes a mandate on a local government
13 unit, the fiscal impact statement shall:

14 (i) indicate whether the regulation is required to comply with a
15 federal statutory or regulatory mandate;

16 (ii) if the information may be practicably obtained given the
17 emergency circumstances of the regulations, include an estimate of the impact of the
18 emergency regulation on the revenues and expenditures of local government units; and

19 (iii) if applicable, and if the required data is available, include the
20 estimated effect on local property tax rates.

21 **(D) A UNIT MAY NOT ADOPT A PROPOSED REGULATION UNDER THIS**
22 **SECTION OR AS OTHERWISE PROVIDED BY LAW DURING THE PERIOD BEGINNING THE**
23 **DAY AFTER A STATEWIDE GENERAL ELECTION FOR GOVERNOR AND ENDING THE**
24 **DAY WHEN THE SUCCEEDING GOVERNOR TAKES OFFICE IF THE GOVERNOR**
25 **SERVING IN OFFICE ON THE DAY OF THE GENERAL ELECTION IS:**

26 **(1) NOT A CANDIDATE FOR THE OFFICE OF GOVERNOR IN THE**
27 **GENERAL ELECTION; OR**

28 **(2) DEFEATED IN THE GENERAL ELECTION.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2015.