



**BALTIMORE CITY COUNCIL
PUBLIC SAFETY AND
GOVERNMENT OPERATIONS
COMMITTEE**

Mission Statement

On behalf of the Citizens of Baltimore City, the Public Safety and Government Operations will be responsible for matters concerning public safety, including, but not limited to; emergency preparedness, police services, fire/EMS, and the executive, administrative, and operational functions of the city government and libraries.

**The Honorable Mark Conway
Chairman**

PUBLIC HEARING

**Wednesday, September 29, 2021
1:00 PM**

**Council Bill: 21-0155
Administrative Procedure Act - Revisions**

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BILL SYNOPSIS

Committee: Public Safety and Government Operations

Bill 21-0155

Administrative Procedure Act - Revisions

Sponsor: Councilman Ryan Dorsey

Introduced: September 20, 2021

Purpose:

For the purpose of clarifying that an agency may, subject to certain requirements, incorporate certain documents into a regulation by reference; clarifying certain provisions regarding the notice and comment period; clarifying when a regulation is effective; re-numbering certain sections; amending the date that relevant and current regulations must be submitted in digital form to the Director of Legislative Reference for codification into the Code of Baltimore Regulations Annotated; revising uncodified text to allow for an initial adoption of certain existing regulations and the later revision of those regulations to meet style and formatting requirements; and providing for a special effective date.

Effective: Date of Enactment.

Agency Reports

Department of Legislative Reference	
Law Department	Favorable
Department of Finance	Favorable

Analysis

Background

The General Provisions section serves as a guide for defining commonly used terms; providing an interpretation of the rules; and gives guidance on how time shall be calculated in the manner provided in the text. In Title 4 – Subtitle 1 the law authorizes an agency to adopt a regulation to implement or enforce a law even if the authority to adopt the regulation is not expressly stated in that law.

4-203. Incorporation by reference.

a) “Incorporate by reference” defined.

In this section, “incorporate by reference” means the method by which regulation makes provisions of another document part of the regulation by reference to the other document.

Example: This includes regulations that are passed that require the development of Master Plans, other such detailed plans that include large images, International Codes, and other such documents.

Note: 4-401 (b) Any regulation that may be affected by the provisions of this Ordinance and that was current and effective as of January 15, 2021, and not filed with the Director of Legislative Reference by January 15, 2022, shall terminate, and no longer have legal effect.

Fiscal Impact: The Department of Legislative Reference currently has budgeted on part-time contractual position for fiscal year 2022 at \$37,530 to cover work under the previously enacted APA ordinance. The Department of Finance estimates that a consultant for the Department of Legislative Reference would require 550 hours at a rate of \$45 per hour, or a total cost of \$24,750, to review and revise the department’s 73 regulations to a format that meets style and formatting requirements.

Additional Information

Fiscal Note: Not Available

Information Source(s): Agency Reports

Analysis by: Samuel Johnson
Analysis Date: September 27, 2021

Direct Inquiries to: (410) 396-1091

**PUBLIC SAFETY AND
GOVERNMENT OPERATIONS
COMMITTEE**

AGENCY REPORTS

CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW

JAMES L. SHEA
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

September 24, 2021

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 21-0155 - Administrative Procedure Act – Revisions

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0155 for form and legal sufficiency. The bill clarifies that under the Administrative Procedure Act (“APA”) an agency may incorporate certain documents into a regulation by reference. It clarifies the notice and comment period under the APA and when a regulation is effective. It amends the date that relevant and current regulations must be submitted in digital form to the Director of Legislative Reference for codification into the Code of Baltimore Regulations Annotated (“COBRA”) and revises uncodified text to allow for an initial adoption of certain existing regulations and the later revision of those regulations to meet style and formatting requirements. The provides for an immediate effective date.

The APA requires City regulations to be process in a particular manner. If a regulation meets the APA’s definition of a “regulation,” it must be formatted in accordance with the APA style guidelines, reviewed by the Law Department for form and legal sufficiency, and filed with Legislative Reference before it can be deemed legally effective. Regulations that arise after the effective date of the APA, January 15, 2021, must also be published on various websites before they can be deemed effective. Of particular relevance to Council Bill 21-0155 is the fact that regulations that pre-existed the APA’s effective date are required to be processed by November 16, 2021 if they are to retain their legal effectiveness. This burden on City agencies, however, has proven difficult to shoulder, given the quick timeline for processing.

Given the looming deadline, this bill will make it to easier for existing regulations to remain effective. Specifically, under the proposed legislation, a regulation will remain effective if an agency files with the Department of Legislative Reference by January 15, 2022, an electronic copy of the regulation with its content unchanged. Pursuant to Council Bill 21-0155, the Department will then publish the regulation in a special section of the COBRA. Thereafter, the Department

will be responsible for revising and reformatting the regulation in the style consistent with the remaining sections of the COBRA.

Another proposed change is to allow certain material in City regulations to be adopted into the COBRA by reference. Experience with the APA has shown that some regulatory content includes necessary graphics and designs. If this type of content proves difficult to incorporate into the COBRA given the APA style guidelines, the proposed amendment will allow the material to be adopted by reference, meaning the content will be made part of the COBRA by reference to a document posted on the agency website for public viewing.

A final proposed change relates to the effective date of regulations. Experience with the APA has shown that some ambiguity exists in when a regulation is effective. To eliminate the ambiguity, the bill proposes to amend the APA to provide that a regulation is effective when it is submitted to the Department, unless a later effective date is required by law or by the regulation itself.


The Law Department see no legal obstacles to approving the bill for form and legal sufficiency.

Sincerely,

Victor K. Tervala

Victor K. Tervala
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Nikki Thompson, Director of Legislative Affairs
Matthew Stegman, Director of Fiscal and Legislative Services
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Assistant Solicitor

FROM	NAME & TITLE	Robert Cename, Budget Director <i>Robert Cename</i>	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Bureau of the Budget and Management Research Room 432, City Hall (410) 396-4774		
	SUBJECT	City Council Bill 21-0155 – Administrative Procedure Act - Revisions		

DATE:

TO

The Honorable President and
Members of the City Council
City Hall, Room 400

September 24, 2021

Position: Does not Oppose

The Department of Finance is herein reporting on City Council Bill 21-0155 – Administrative Procedure Act - Revisions, the purpose of which is to clarify that an agency may, subject to certain requirements, incorporate certain documents into a regulation by reference; clarify certain provisions regarding the notice and comment period; clarify when a regulation is effective; amend the date that relevant and current regulations must be submitted in digital form to the Director of Legislative Reference for codification into the Code of Baltimore Regulations Annotated; allow for an initial adoption of certain existing regulations and the later revision of those regulations to meet style and formatting requirements; and providing for a special effective date.

Background

Ordinance 20-431, Baltimore City Administrative Procedure Act (APA), was enacted on November 16, 2020. This established a standard definition of what is considered a regulation and required that all regulations be approved for form and legal sufficiency by the Law Department, submitted to and reviewed by the Department of Legislative Reference (DLR), and posted online in the Code of Baltimore Regulations Annotated (COBRA) in accordance with an adopted style manual. The legislation required that all agencies submit their APA compliant regulations to the Department of Legislative Services by November 16, 2021 for posting to COBRA.

This legislation makes modifications to the previously passed Ordinance by extending the date of agency and department submission through January 15, 2022 and lifting the requirement on regulations having to meet style and formatting requirements before being submitted to COBRA; however, regulations submitted to DLR must be current and effective as of January 1, 2021. For any regulations submitted to DLR by January 15, 2022 in a non-COBRA conforming format, DLR will revise each regulation in accordance with the adopted style manual and recodify the revised regulation in a format consistent with the remaining sections of COBRA.

Fiscal Impact

There will be a fiscal impact from this legislation to support additional resources at DLR to manage the added scope of work this legislation proposes. DLR will need to determine the final scope of work and resources required once an accounting of all regulations requiring revision and recodification is done. Additional resources will be needed after January 1, 2022, and discussions between DLR and the Law Department have determined that obtaining a contractual agreement with an outside vendor is in the best interest of the City due to available resources and the temporary nature of the scope of work, with which the Department of Finance agrees.

DLR currently has one part-time contractual position budgeted in Fiscal Year 2022 for \$37,530 to cover work under the previously enacted APA Ordinance. DLR expects to take on significant additional one-time contract cost to cover the added scope of work from this legislation and any additional cost may need to be funded through supplemental appropriations. The Department of Finance, in our experience, estimated that a consultant for the department would require 550 hours at a rate of \$45 per hour, or a total cost of \$24,750, to review and revise the department's 73 regulations to a format that meets style and formatting requirements.

Conclusion

The Department of Finance does not object to the passage of City Council Bill 21-0155 – Administrative Procedure Act – Revisions. However, we expect this will increase workload and require additional one-time personnel, dependent on the number of regulations submitted, to effectively complete the scope of work this legislation requires.

For the reasons stated above, the Department of Finance does not oppose City Council Bill 21-0155.

cc: Henry Raymond
Matthew Stegman
Nina Themelis