Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 449 (Delegate Hough, *et al.*)
Health and Government Operations

State Government - Regulations Affecting Small Businesses and Economic Impact Analysis

This bill requires that, if either an agency proposing a regulation or the Department of Legislative Services (DLS) determines that the regulation will have a meaningful economic impact on small businesses, then either the agency or DLS, in its complete written economic impact analysis, include (1) a description of any less intrusive or less costly alternative method that would achieve the purpose of the regulation; and (2) an assessment of the effect and practicality of exempting small businesses from all or part of the regulation's requirements.

Fiscal Summary

State Effect: General fund expenditures increase by $572,600 in FY 2012 for DLS to establish a new unit within the department to conduct the required small business impact analyses. Out-year costs reflect annualization and inflation.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	$0	$0	$0	$0	$0
GF Expenditure	572,600	730,900	766,800	804,700	844,600
Net Effect	($572,600)	($730,900)	($766,800)	($804,700)	($844,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The Joint Committee on Administrative, Executive, and Legislative Review (AELR) of the General Assembly 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 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.

Any regulation submitted to AELR must have, among other requirements, an economic impact analysis conducted by the agency proposing the regulation that assesses the cost or economic benefit of the proposed regulation on small businesses. The analysis must include an economic impact analysis rating that establishes whether the proposed regulation will have minimal or no economic impact on small businesses or a meaningful impact on small businesses. As part of the AELR review process, DLS must review and comment on the agency's determination of small business impact and submit its comments to AELR. If either the agency or DLS determines that a regulation will have a meaningful economic impact on small businesses, the agency or DLS must develop a complete economic impact analysis that includes estimates directly related to the:

- cost of providing goods and services;
- effect on the workforce;
- effect on the cost of housing;
- efficiency in production and marketing;
- capital investment, taxation, competition, and economic development; and
- consumer choice.

Background: AELR received a total of 477 regular and emergency regulations in fiscal 2008, 470 in fiscal 2009, and 420 in fiscal 2010, or an average of 456 for the last three fiscal years.

State Fiscal Effect: The type of economic impact analysis required by the bill represents not only a significant increase in workload for agencies and DLS, but also a more sophisticated and complex type of analysis than is required by current law. Whereas the analysis mandated by current law requires an assessment of whether a regulation will likely have minimal or no impact or a meaningful impact on small businesses, the analysis required by the bill involves extensive research on alternative strategies, cost-benefit analyses of each of those alternatives, and fiscal and economic analyses of the impact of exempting small businesses from proposed regulations. Such analyses require advanced skills in economics, statistics, and finance. Most Executive Branch agencies and DLS do not currently have the staff or expertise to conduct that level of analysis. DLS reviews more than 400 proposed regulations annually that are submitted to AELR; although it does not track the number that have a meaningful impact on small businesses, the number is significant. The level of analysis required by the bill for each proposed regulation with a meaningful impact is extensive, so the increase in workload could be substantial.

For the purpose of this analysis, DLS assumes that Executive Branch agencies do not change their small business impact analyses due to their lack of resources and expertise, leaving responsibility for implementing the bill's requirements to DLS. To the extent that this assumption is inaccurate, the costs of implementing the bill may increase to provide additional staff with appropriate expertise to Executive Branch agencies. Assigning responsibility for implementing the bill to a single agency (DLS) enables a certain amount of economic efficiency as many agencies do not propose enough regulations to warrant new staff for this purpose.

Therefore, general fund expenditures by DLS increase by $572,608 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate reflects the cost of establishing a new unit within the department that includes six senior policy analysts, one support staff, and a unit manager to conduct the small business economic impact analyses required by the bill. Two analysts would be devoted to business regulations, one to health, two to environment and natural resources, and one to all other areas. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	8
Salaries and Fringe Benefits	$528,143
One-time Start Up Costs	34,205
Ongoing Operating Costs	10,260
Total FY 2012 State Expenditures	**$572,608**

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

Small Business Effect: Although the bill does not directly affect small businesses, the analyses required by the bill may result in either small businesses being exempt from some regulations or in proposed regulations being modified to be less burdensome for small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture; Board of Public Works; Department of Budget and Management; Department of Human Resources; Maryland Department of Planning; Maryland State Department of Education; Governor's Office; Department of General Services; Department of Housing and Community Development; Department of Disabilities; Department of Health and Mental Hygiene; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of State Police; Department of Public Safety and Correctional Services; Public School Construction Program; Maryland Department of Transportation; Maryland Insurance Administration; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader **-** February 21, 2011
ncs/lgc

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