HB 939

Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 939 (The Speaker, *et al.*) (By Request - Maryland Economic Development and Business Climate Commission)

Economic Matters and Health and Government Operations — Finance

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Proposed Regulations - Determination of Impact on Small Businesses

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This bill establishes the Advisory Council on the Impact of Regulations on Small Businesses within the Department of Business and Economic Development (DBED) to review proposed regulations and determine whether they have a significant impact on small businesses. A "significant small business impact" is defined as a likely meaningful effect, as determined by the advisory council, on the revenues or profits of a significant number of small businesses or a significant percentage of small businesses within a single industry in the State; it does not include an impact from a regulation necessary to comply with federal law.

Fiscal Summary

State Effect: General fund expenditures for DBED increase by $76,900 in FY 2016 to staff the council. Future year expenditures reflect annualization and inflation. The Department of Legislative Services (DLS) and other Executive Branch agencies can carry out the bill's requirements with existing budgeted resources. No effect on revenues.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	$0	$0	$0	$0	$0
GF Expenditure	76,900	98,700	103,200	107,900	112,900
Net Effect	($76,900)	($98,700)	($103,200)	($107,900)	($112,900)

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

Local Effect: None.

Small Business Effect: Potential meaningful impact, to the extent that the advisory council's review of proposed regulations results in changes that alleviate the economic impact on small businesses.

Analysis

Bill Summary:

Composition, Staffing, and Meetings

The advisory council consists of specified Executive Branch agency heads or their designees; members of the General Assembly; and small, minority, and female business owners. Except for the Secretary of Business and Economic Development, who serves as chair, members are appointed to staggered two-year terms, except that members continue to serve until a successor is appointed and qualifies. Members may not receive compensation but may be reimbursed for their expenses.

DBED staffs the advisory council. Advisory council staff must (1) review small business impact statements accompanying each proposed regulation, as required by the bill; (2) consult with the General Assembly's Joint Committee on Administrative, Executive, and Legislative Review (AELR Committee); (3) compare proposed regulations with federal law; (4) consult with and train, as necessary, staff of State agencies that promulgate regulations; and (5) testify at advisory council meetings or AELR Committee hearings, as necessary.

The advisory council must meet at least once annually, but may meet as often as necessary to carry out its duties.

Advisory Council Responsibilities

For each proposed regulation it reviews, the advisory council must provide an estimated range of costs for small businesses affected by the proposed regulation. If it cannot quantify the cost, it must describe the estimated impact. If it determines that a proposed regulation poses a significant impact on small businesses, it must identify whether the proposed regulation is necessary to comply with federal law. It must also submit a written statement to the AELR Committee and DLS within 15 days of receiving the proposed regulation.

If a proposed regulation establishes a standard that is more restrictive or stringent than an applicable federal standard, the advisory council must (1) identify the manner in which the proposed regulation is more restrictive or stringent; (2) estimate the net cost associated with the more stringent or restrictive standard; (3) identify less stringent or restrictive alternatives that still comply with federal requirements; and (4) identify potential benefits from adopting the more stringent or restrictive standard.

The advisory council may adopt guidelines to assist each promulgating agency with considering potential small business impacts and with writing small business impact statements. The advisory council must report annually to the Governor and General Assembly.

Agency and DLS Responsibilities

Promulgating units must submit each proposed regulation and small businesses impact statement to the advisory council at least 15 days before it is submitted to the *Maryland Register* for publication. If the unit has determined that the proposed regulation has a significant small business impact, it must (1) identify each provision that has a significant impact; (2) quantify or describe the range of potential costs on small businesses; (3) identify how many small businesses may be affected; (4) identify alternative provisions it considered and why they were not included; (5) identify the beneficial effects of the proposed regulation; and (6) coordinate with the advisory council before the proposed regulation is submitted for review. Promulgating units must also provide the advisory council with the assistance of subject matter experts, as needed, to enable the advisory council's staff to carry out their responsibilities.

DLS and the AELR Committee must review the advisory council's findings. Any member of the AELR Committee may request a hearing on a proposed regulation that has been found to have a significant impact on small businesses. If a hearing is requested, the AELR Committee must hold the hearing and may request that adoption of the proposed regulation be delayed.

The Maryland Economic Development and Business Climate Commission, also known as the Augustine Commission, must examine whether the advisory council should consider whether a proposed regulation poses a potential unreasonable burden on consumers.

Current Law: To have a proposed regulation published in the *Maryland Register*, a unit must submit to the Division of State Documents the proposed regulation and a notice of the proposed adoption. Among other requirements, the notice must state the estimated economic impact of the proposed regulation on the revenues and expenditures on State and local government agencies and groups such as consumer, industry, taxpayer, or trade groups. If a regulation proposes an increase in a license fee, the unit must include a clearly written explanation and justification for the increase or decrease and other specified information.

An "economic impact analysis rating" and an "economic impact analysis," as appropriate, must be prepared by the appropriate Executive Branch agency for each regulation the agency proposes for adoption. The rating and analysis must include estimates directly relating to several specified factors, including the cost of providing goods and services, the effect on the workforce, and the effect on the cost of housing, among others. An "economic impact analysis rating" means an estimate that a proposed regulation will have minimal or no economic impact on small businesses or a meaningful economic impact on small businesses. An "economic impact analysis" means an estimate of the cost or the economic benefit to small businesses that may be affected by a proposed regulation.

A promulgating unit must submit a copy of the regulation to the AELR Committee and DLS at least 15 days before it is submitted to the *Maryland Register* for publication. A copy of the economic impact analysis rating and economic impact analysis must be submitted to DLS and the AELR Committee no later than the time it submits the regulation to the AELR Committee. DLS must comment on the economic impact analysis rating and economic impact analysis prepared by the promulgating agency and transmit its comment to the AELR Committee.

The AELR Committee has 45 days to review the proposed regulation from the date of its submission, but it is not required to take any action; failure to take action cannot be construed to mean that the joint committee approves or disapproves the proposed regulation. The AELR Committee may also delay its review if it does not believe that it can conduct an appropriate delay within 45 days. Upon notification by the AELR Committee that it is delaying review, the promulgating unit may not adopt the proposed regulation unless it notifies the joint committee that it intends to adopt the proposed regulation, and must give the AELR Committee an additional period of review that ends the later of 30 days following the notice provided by the promulgating unit or 105 days following the initial publication in the *Maryland Register*. Absent a delay, and following 30 days of public comment, the promulgating unit may adopt a proposed regulation after the 45-day review period by the AELR Committee. Different procedures and timelines apply to the adoption of emergency regulations.

Background: In March 2014, the President of the Senate and the Speaker of the House of Delegates established and appointed the Maryland Economic Development and Business Climate Commission to focus on the State's economic development structure and incentive programs in order to make recommendations to the Presiding Officers.

The commission's 21 members come from a broad spectrum of backgrounds and have had business involvement in many states, as well as abroad. In 2014, the commission held eight public meetings, including hearings in seven parts of the State involving over 100 witnesses; reviewed well over 100 relevant documents; and discussed pertinent issues informally with a large number of individuals and organizations from the business, labor, government, academic, and related communities.

A report containing 10 findings and 32 recommendations, which were unanimously endorsed by the members of the commission, was submitted to the Presiding Officers in February 2015. The principal finding of the commission is that Maryland has not nearly reached its potential in growing business and creating jobs. The recommendations in the report address various short- and long-term aspects of this principal finding and related findings. At the request of the Presiding Officers, a subsequent report is anticipated later in 2015 that will investigate in further depth certain tax issues affecting economic development and the State's business climate. The report can be found here.

Recommendation 15 of the commission's report was to authorize a member of the AELR Committee to hold a hearing on a proposed regulation if the State's analysis of the proposed regulation notes a meaningful adverse impact on small businesses. As the committee wrote in its report:

> Requiring a hearing, when requested by a member of the AELR Committee, will give businesses a venue to raise issues with regulations and recommend changes to remedy potential adverse impacts. In addition, a hearing would provide the AELR Committee additional information on which to decide whether to place a hold on a proposed regulation. The additional dialogue regarding potential regulations should help limit the adoption of regulations that inappropriately harm the State's business climate.

State Expenditures: Although the bill requires the advisory council to meet just once a year, its responsibility for reviewing all proposed regulations as an ongoing function means that it likely has to meet at least monthly, and sometimes more often, to handle the volume of proposed regulations submitted by State agencies. The bill also assigns extensive responsibilities to the advisory council's staff, which likely means that it requires at least one full-time position to manage the advisory council's work and schedule.

Therefore, general fund expenditures by DBED increase by $76,900 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of hiring one full-time advisory council director. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Additional staff support can be provided by existing DBED personnel.

Position	1
Salary and Fringe Benefits	$70,526
Operating Expenses	6,374
Total FY 2016 State Expenditures	**$76,900**

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

DLS can implement the bill with existing budgeted resources. It is assumed that other State agencies can handle the bill's changes with existing resources, especially since they can receive assistance from DBED in writing small business impact statements.

Additional Information

Prior Introductions: None.

Cross File: SB 775 (The President, *et al.*) (By Request - Maryland Economic Development and Business Climate Commission) - Finance.

Information Source(s): Maryland Department of Agriculture, Department of Business and Economic Development, Department of Budget and Management, Department of Natural Resources, Maryland State Department of Education, Maryland Department of the Environment, Department of Health and Mental Hygiene, Maryland Department of Transportation, Department of Legislative Services

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