

Department of Legislative Services  
 Maryland General Assembly  
 2019 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 157 (The Speaker, *et al.*) (By Request - Administration)  
 Health and Government Operations

State Government - Regulations Impacting Small Businesses

This Administration bill requires State agencies to establish an electronic registry, notification system, and compliance guides for proposed regulations that are expected to have a significant small business impact. State agencies must consider specified mitigation options when assessing civil penalties on small businesses. The Department of Budget and Management (DBM) must provide related training at least once every two years. Effective October 1, 2021, specified requirements for proposed regulations with significant small business impacts and the Advisory Council on the Impact of Regulations on Small Businesses are repealed. **The bill generally takes effect July 1, 2019.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$30,000 in FY 2020 and every two years thereafter. General and special fund revenues may decrease minimally beginning in FY 2020. The bill does not otherwise materially affect State finances or operations.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF/SF Rev.	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$30,000	\$0	\$30,000	\$0	\$30,000
Net Effect	(\$30,000)	\$0	(\$30,000)	\$0	(\$30,000)

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

**Local Effect:** The bill does not materially affect local government finances or operations.

**Small Business Effect:** The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

## Analysis

### Bill Summary:

#### *Promulgation Process for Regulations that Affect Small Businesses*

In addition to other existing requirements, when a State agency estimates that a proposed regulation will have a significant small business impact, the agency must:

- establish an electronic registry that allows any small business or other interested party to register to receive an electronic notification when the proposed regulation (or scope of the proposed regulation) is posted on the agency's website, and send the appropriate notifications;
- post the proposed regulation (or the scope of the proposed regulation) on the agency's website within specified timeframes and provide an opportunity for comment; and
- prepare a compliance guide written in clear, plain English to assist small businesses, update the guide as needed until the regulation is final, and post the guide on the unit's website.

The bill also conforms similar, but distinct, definitions of small business.

Effective October 1, 2021, existing requirements for identifying and estimating the effects of proposed regulations on small businesses are repealed, leaving only the new requirements listed above.

#### *Consideration of Business Size When Determining Civil Penalties*

In addition to other considerations required under current law, a unit of State government authorized to impose a civil penalty up to a specific dollar amount must, if the violator is a small business, consider:

- waiving the penalty if the violator corrects the violation within 30 days after the violation is identified;
- depending on the violator's financial capacity, imposing a lesser penalty than would be imposed on a larger business entity in a comparable industry; or
- crediting the costs of correcting the violation against the penalty assessed against the violator.

These considerations do not apply to a violator that has been the subject of multiple enforcement actions by a State or local unit of government that involve willful or criminal conduct or pose serious health, safety, or environmental threats.

#### *Department of Budget and Management Training Program*

DBM must enter into an agreement with an appropriate entity to provide training to Executive Branch agencies that promulgate regulations on the preparation of the accompanying economic analyses. The training must be provided at least once every two years.

#### *Repeal of the Advisory Council on the Impact of Regulations on Small Businesses*

Effective October 1, 2021, the Advisory Council on the Impact of Regulations on Small Businesses and related provisions are repealed.

**Current Law/Background:** Generally, a State agency must submit proposed regulations to the Joint Committee on Administrative, Executive, and Legislative Review (*i.e.*, the AELR Committee) and the Department of Legislative Services (DLS) 15 days prior to publication in the *Maryland Register*. There are specific requirements for proposed regulations with different effects, such as those that will have a significant impact on small businesses.

#### *Promulgation Process for Regulations that Affect Small Businesses*

If a State agency estimates that a proposed regulation will have a significant small business impact, the agency must:

- identify each provision in the proposed regulation that will have a significant small business impact;
- quantify or describe the range of potential costs of the proposed regulation on small businesses in the State;
- identify how many small businesses may be impacted by the proposed regulation;
- identify any alternative provisions the unit considered that may have a less significant impact on small businesses in the State and the reason the alternative was not proposed;
- identify the beneficial impacts of the regulation, including to public health, safety, and welfare, or to the environment; and
- coordinate with the Advisory Council on the Impact of Regulations on Small Businesses, as specified.

These requirements are repealed by the bill, effective October 1, 2021.

Separately, if the appropriate State agency or DLS determines that a proposed regulation will have a meaningful economic impact on small businesses, the agency or DLS must develop a complete written economic impact analysis, as specified, unless the agency or DLS is unable to do so, in which case the agency or DLS must provide a written explanation of why the regulation will have a meaningful economic impact. These requirements are unaffected by the bill.

#### *Determining Civil Penalties*

Unless otherwise provided by statute or regulation, a unit of State government authorized to impose a civil penalty up to a specific dollar amount for the violation of any statute or regulation must consider the severity of the violation, the good faith of the violator, and any history of prior violation when setting the amount of the penalty. There is no requirement to consider whether a violator is a small business.

#### *Advisory Council on the Impact of Regulations on Small Businesses*

Chapter 137 of 2015 established the Advisory Council on the Impact of Regulations on Small Businesses. The bill reflects various recommendations in the advisory council's 2017 annual report. The full report can be found on the DLS [website](#). The 2018 annual report was not available in time for inclusion in this fiscal and policy note.

#### **State Fiscal Effect:**

##### *Department of Budget and Management Training Program*

DBM estimates that the cost to update training guidelines and provide five days of training is \$30,000. Training must be provided at least every two years. Therefore, general fund expenditures increase by \$30,000 in fiscal 2020 and every two years thereafter.

##### *Regulation Promulgation Process*

Agencies can generally handle the additional requirements related to the regulation promulgation process, including preparing compliance guides, with existing budgeted resources. To the extent this is not the case for a particular agency, general and/or special fund expenditures increase for additional staff. Any such impact has not been accounted for in this analysis.

The Department of Information Technology advises that State agencies can use an application known as Page Watch to establish registries and provide electronic notification of proposed regulations at little or no cost, as the application is available under an existing statewide contract. Therefore, initial implementation costs and other ongoing costs associated with deploying the Page Watch application are assumed to be minimal and absorbable within existing budgeted resources.

### *Consideration of Business Size When Determining Civil Penalties*

Many units of State government that regulate small businesses have the authority to issue civil penalties, the revenue from which generally accrues to either the general fund or a special fund maintained by the regulatory unit. Therefore, general and special fund revenues may decrease beginning in fiscal 2020 to the extent that civil penalties imposed on small businesses are less than they otherwise would have been. The amount is anticipated to be minimal.

### *Repealing the Advisory Council*

Repealing the Advisory Council on the Impact of Regulations on Small Businesses effective October 1, 2021, does not materially affect State expenditures. The Department of Commerce advises that nonstaff costs associated with the council are minimal, and council staff will focus on other existing responsibilities.

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## **Additional Information**

**Prior Introductions:** HB 855 of 2018, a similar bill as amended, passed the House with amendments and was referred to the Senate Education, Health, and Environmental Affairs Committee; however, no further action was taken.

**Cross File:** SB 173 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs and Finance.

**Information Source(s):** Department of Commerce; Department of Budget and Management; Department of Information Technology; Maryland State Department of Education; Maryland Higher Education Commission; Maryland Department of Agriculture; Maryland Department of the Environment; Maryland Department of Health; Department of Labor, Licensing, and Regulation; Department of Natural Resources; State Department of Assessments and Taxation; Maryland Insurance Administration; Department of Legislative Services

**Fiscal Note History:** First Reader - January 31, 2019  
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# ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Government - Regulations Impacting Small Businesses

BILL NUMBER: SB 173 / HB 157

PREPARED BY: Malachy Rice and Mikra Krasniqi

## PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

**OR**

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

## PART B. ECONOMIC IMPACT ANALYSIS

This legislation would improve the process of how State agencies estimate the economic impact of proposed regulations and find effective methods to reduce negative impact on small businesses. The legislation would enact changes that include timely input from small businesses, requirement that State agencies provide compliance instructions for regulations with an impact on small firms, remove duplicate regulations, fines and penalties, and provide training for State employees who deal with regulatory impact estimation on small business.

In this manner, this legislation could have a significant benefit to small businesses by: increasing the transparency of the State's regulatory process; making it easier for small business to comply with regulations; reducing regulatory burdens on small businesses as a result of training for State agencies to consider less restrictive alternatives for small businesses, and offering the potential of decreasing the duplication of State and local regulations; and offering relief from regulatory fines and penalties for small business.

It is difficult to quantify the economic impact on small business or specific industries; however, there could be significant positive economic impact. Making it easier for small businesses to comply with regulations will reduce opportunity costs as less time will be required for complying with regulations, which will allow small businesses to spend more time focusing on their business activity. State agencies that adopt less restrictive or burdensome alternatives could potentially reduce the cost of regulatory compliance for small businesses. Finally, providing relief from regulatory fines or penalties will reduce costs for small businesses.