

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 817

(Delegate C. Watson, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Regulations Affecting Small Businesses - Certification of Comparable Local
Regulation

This bill requires an Executive Branch agency, when submitting regulations to the Joint Committee on Administrative, Executive and Legislative Review, to include, in its economic impact analysis relating to small businesses, a certification stating (after posting the regulation or scope of the regulation on its website) whether the agency has received notice of whether any existing regulation of a comparable nature that is at least as stringent as the proposed regulation has been adopted by a unit of local government. If the promulgating unit certifies that the unit has received notice of and determined that an existing local regulation is at least as stringent as the proposed regulation, the unit may also include a statement that compliance with the local regulation will constitute compliance with the proposed regulation.

Fiscal Summary

State Effect: Most State agencies can likely implement the bill with existing resources. However, some agencies, particularly those that promulgate a high volume of regulations, may incur costs or at least operational impacts to review comparable local regulations and make determinations on their stringency. State revenues are not affected.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Joint Committee on Administrative, Executive, and Legislative Review

The Joint Committee on Administrative, Executive, and Legislative Review (also known as the AELR Committee) is a joint statutory committee composed of 10 senators and 10 delegates. The committee has both a Senate chair and a House chair, with the chair of the chamber that is presiding alternating each calendar year. In providing oversight of the regulatory activities of State agencies for the General Assembly, the primary function of the AELR Committee is to review any regulations that are proposed for adoption by a unit of the Executive Branch of State government to determine whether the regulations conform to the statutory authority of the unit and the legislative intent of the statute under which the regulations are proposed.

Proposed Regulation Submission – Economic Impact Analyses and Ratings

Among other requirements, an agency must prepare and submit an “economic impact analysis rating” and an “economic impact analysis,” as appropriate, to the AELR Committee for each regulation that the agency proposes for adoption. When preparing the economic impact analysis and the economic impact analysis rating, the agency must consult with (1) other units of State government; (2) units of local government; and (3) business, trade, consumer, labor and other affected or interested groups, as appropriate.

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. The economic impact analysis must include estimates directly relating to the following factors, as appropriate (1) the cost of providing goods and services; (2) the effect on the workforce; (3) the effect on the cost of housing; (4) the efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

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. If the agency determines that the regulation will have a meaningful economic impact on small businesses, the agency must develop a complete written economic impact analysis. If there is minimal or no economic impact on small businesses, this must be indicated by a brief written statement.

Proposed Regulation – Review

To assist the AELR Committee in its oversight responsibility, each regulation, after submission to the AELR Committee and prior to publication in the [Maryland Register](#), is analyzed for legal sufficiency by legislative staff of the Department of Legislative Services (DLS). Fiscal analysts with DLS evaluate the Executive Branch agency's assessment of the economic impact of a proposed regulation, as it pertains to the fiscal impact on State and local agencies, the State budget, and small businesses in the State.

All proposed regulations are submitted to the AELR Committee for review at least 15 days before they are submitted to the [Maryland Register](#) for publication. Often changes are negotiated between the committee and the unit before publication. The committee is not required to give its explicit approval in order for a proposed regulation to become effective. In the usual course, the unit may adopt a proposed regulation 45 days after the regulation was published in the [Maryland Register](#). Thirty of the 45 days must be reserved as a public comment period.

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. In its [2017 annual report](#), the council made several recommendations to the Governor and the General Assembly intended to reduce or minimize the economic and administrative burden regulations have on small businesses. One of those recommendations was to allow State agencies to exempt small businesses from a regulation if the agency certifies that the local jurisdiction in which a small business is located has a comparable regulation at least as stringent as the proposed State regulations. The [2018](#) and [2019](#) annual reports provide follow-up on the recommendations from the 2017 report.

Small Business Effect: To the extent that the bill results in less overlapping or duplicative regulation on businesses and makes compliance easier, small businesses benefit.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 720 (Senator Hester, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; Department of Commerce; Maryland Department of Agriculture; Maryland

Department of the Environment; Maryland Department of Health; Department of Housing and Community Development; Maryland Department of Labor; Department of Natural Resources; Maryland Department of Transportation; Department of Legislative Services

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