



Larry Hogan | Governor
Boyd Rutherford | Lt. Governor
R. Michael Gill | Secretary of Commerce
Benjamin H. Wu | Deputy Secretary of Commerce

The Advisory Council on the Impact of Regulations on Small Businesses

Meeting Minutes

Thursday
May 25, 2017
3:00 p.m.

Neall Conference Room – James Senate Office Building
Annapolis, MD

Advisory Council Members in Attendance

Rhonda Ray (Representing Secretary Gill)
Director of Office of Policy, Research and Government Affairs, Department of Commerce
Delegate Benjamin Brooks
Leslie Goodwyn, SpeedPro

Department of Commerce Staff

Malachy Rice, Regulations Analyst

I. Opening Remarks

Ms. Ray opened the meeting and explained that she was representing Secretary Gill because he had been called to a meeting with the Governor. She then introduced Delegate Brooks, who was appointed to the Advisory Council since its last meeting.

II. Approval of Minutes

Ms. Ray said that since there was not a quorum the minutes from the February meeting could not be approved. Although there could not be a vote on the minutes, she asked if there were any mistakes or concerns with the minutes, and members in attendance indicated there were no concerns.

III. Staff Report: Options for Reducing Regulatory Burdens on Small Businesses & Discussion of Staff Report

Ms. Ray stated that she had not been at the previous meeting, but in reading the minutes understood that the Advisory Council had decided to take a step back and look at the

State's regulatory process to see if there are ways to improve it for small businesses before starting the daunting task of reviewing all regulations. She then introduced Mr. Rice to present a staff report on regulatory reforms for reducing the burden of regulations on small businesses.

Mr. Rice gave a brief overview of the comparative analysis staff conducted, and then presented the staff's recommendations. Although the staff report included a recommendation for the Advisory Council to consider recommending revising State law to require a Regulatory Flexibility Analysis, Mr. Rice said that the recommendation was made out of due diligence. That is, the recommendation was made because it was a practice recently adopted by other states. Mr. Rice explained that State agencies do adopt different regulations, usually based on a threshold, and that after meeting with the federal Small Business Administration's Office of Advocacy earlier in the week he did not feel strongly about the recommendation. He felt that there could be greater benefit for small businesses if the Advisory Council focused on other recommendations, and ways to ensure State agencies are meeting their existing statutorily required responsibilities.

The recommendation to amend the Administrative Procedures Act (APA) to allow State agencies greater flexibility in assessing regulatory fines for small businesses generated considerable discussion. Delegate Brooks offered including a provision to allow the amount of a fine to go towards curing a violation. Ms. Goodwyn asked how agencies are currently handling fines. Mr. Rice answered by saying some agencies have discretion in assessing fines; however, provisions authorizing that discretion vary throughout the different articles of State law. George Butler, from the Department of Legislative Services and staff to the Joint Committee on Administrative, Executive, and Legislative Review (AELR), said he knew of anecdotal examples of State agencies allowing for violations to be cured before assessing a fine. However, he did not know if that was a universal practice. Mr. Rice explained that amending the APA to allow flexibility in assessing regulatory fines for small businesses would provide all State agencies with the ability to reduce or waive fines for small businesses.

Delegate Brooks raised the issue of some agencies perhaps seeing fines as a revenue source. In response, Mr. Rice said that it is in the State's best interest to help small businesses succeed, and that in the long run the State will get more revenue from a successful small business than from a fine. He then asked the Advisory Council for possible ways to change this attitude. A brief discussion on changing agency culture then ensued.

Mr. Rice then presented a recommendation to require State agencies to post changes to regulations on their websites prior to submitting them to AELR, and that agencies would also be required to allow interested parties to sign up for an email or text notification when regulatory changes are posted. He then cited the benefits of this recommendation: it would make the regulatory process more transparent and allow small businesses to self-identify as a stakeholder, and; it would allow State agencies a means to request data if necessary for estimating the economic impact of a regulation, and to get input from

stakeholders as to whether a regulation is duplicative or conflicts with an existing regulation.

Ms. Goodwyn said she was surprised that the State did not have IT solution for determining whether a regulations was duplicative. It was her understanding that the federal government had a program that allowed proposed legislation to be checked against all existing federal law to see if it was duplicative. She offered to provide Mr. Rice with additional information in response to his request to learn more about this system.

Members of the Advisory Council discussed the importance of engaging Chambers of Commerce, and making sure they are notified when an agency posts changes to regulation on its website. Ms. Goodwyn said she also liked the recommendation to identify and reach out to trade groups. The Advisory Council reached a general consensus that Chambers of Commerce and trade groups should be engaged in reviewing proposed regulations.

Mr. Rice concluded the presentation by reviewing a recommendation to allow State agencies to exempt small businesses from a regulation in a local jurisdiction that has a local regulation at least as stringent as the State regulation, and to study the possibility of requiring State agencies to allow for the electronic submission of all documentation necessary to comply with a regulation.

V. Closing Remarks & Adjournment

Ms. Goodwyn asked, what is the end goal of the work the Advisory Council is doing? Ms. Ray answered by saying to develop a series of proposals aimed at improving the regulatory process for small businesses. Ms. Ray then said the next meeting of the Advisory Council will be in September, and closed the meeting.