



Larry Hogan | Governor
Boyd Rutherford | Lt. Governor
Kelly M. Schulz | Secretary of Commerce
Benjamin H. Wu | Deputy Secretary of Commerce

January 25, 2019

The Honorable Thomas V. Mike Miller, Jr.
President, Maryland Senate
State House, H-107
Annapolis, Maryland 21401-1991

The Honorable Michael E. Busch
Speaker, Maryland House of Delegates
State House, H-101
Annapolis, Maryland 21401-1991

**RE: The Advisory Council on the Impact of Regulations on Small Businesses –
Annual Report**

Dear President Miller and Speaker Busch:

Pursuant to Economic Development Article § 3-508, I am pleased to submit the 2018 Annual Report of the Advisory Council on the Impact of Regulations on Small Businesses.

I look forward to your review of this information and will be available to furnish any additional information that is needed. If my staff or I can be of further assistance, or if you have any questions regarding this report, please contact me at 410-767-6301.

Sincerely,

Kelly M. Schulz
Secretary

Enclosure

cc: Sarah Albert, Maryland General Assembly Library (5)

2018 ANNUAL REPORT
OF THE
ADVISORY COUNCIL ON THE IMPACT OF
REGULATIONS ON SMALL BUSINESSES
As required by the Maryland Code of Laws, Economic Development Article,
Section 3-508

Respectfully submitted to the General Assembly of Maryland by

Secretary Kelly M. Schulz, Chairman

401 East Pratt Street

Baltimore, MD 21202

January 2019



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OPEN *for* **Business**

The Advisory Council on the Impact of Regulations on Small Businesses

Membership Roster

Kelly M. Schulz, Chair

Secretary of the Maryland Department of Commerce

Ellington Churchill

Secretary of the Maryland Department of General Services

Senator James DeGrange

Delegate Benjamin Brooks

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Tri-County Abstracts

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Claudia Towles

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Leslie Goodwyn

SpeedPro Imaging

Staff

Malachy Rice

Regulations Analyst, Maryland Department of Commerce

Background

The Advisory Council on the Impact of Regulations on Small Businesses (Advisory Council) was created as a result of the work of the Maryland Economic Development and Business Climate Commission, or more commonly known as the Augustine Commission. The General Assembly created the Augustine Commission in 2014 to examine Maryland's economic development structure and incentive programs, and to make recommendations to keep Maryland economically competitive.

To accomplish its charge, the Augustine Commission held a series of public forums across the State to solicit input and suggestions from the public and business community on ways to improve Maryland's economic competitiveness. A repeated concern heard by the Augustine Commission was that not enough focus or attention is paid to the economic impact statements that are required to be prepared for proposed regulations, particularly for proposed regulations determined to affect small businesses. To address this concern, the Augustine Commission made a recommendation to authorize a member of the Joint Committee on Administrative, Executive, and Legislative Review (AELR) to hold a hearing on a proposed regulation if the State's analysis of the proposed regulation notes a meaningful adverse, small business impact.

In 2015, the General Assembly built upon this recommendation and created the Advisory Council essentially to: (1) review all proposed State regulations and advise AELR if the Advisory Council determined that a proposed regulation affects small businesses; (2) adopt guidelines to assist State agencies with considering the economic impact of regulations on small businesses; and (3) make recommendations to the Governor and General Assembly for improving the State's regulatory process for the benefit of small businesses.

The Advisory Council was fully appointed in 2017 and began its work by focusing on addressing the concern that led to its creation: that not enough focus or attention is paid to the economic impact analyses of proposed regulations determined to affect small businesses. To address this concern, the Advisory Council examined ways to improve the quality of small business economic impact analyses conducted by State agencies that will allow agencies to consider more flexible alternatives and less burdensome regulations for small businesses.

The Advisory Council's 2017 Annual Report submitted to the Governor and General Assembly included a series of recommendations for improving the State's regulatory process to make it less restrictive and burdensome for small businesses. As a result of its report, the Governor issued Executive Order 01.01.2017.33 that requires agencies to use the *Guidelines for Estimating and Minimizing the Economic Impact of Regulations on Small Businesses* adopted by the Advisory Council. The legislative members of the Advisory Council sponsored legislation (SB1082/HB855) to implement its remaining recommendations. This legislation passed the House unanimously but was not voted on in Committee in the Senate.

In 2018, the Advisory Council's staff continued to work on the adoption and implementation of its recommendations. This included working with staff from the Governor's legislative office and the Lieutenant Governor's office to determine if any of the Advisory Council's recommendations could be implemented through Executive action. It was decided that the best

course of action is to reintroduce legislation that contains the most effective recommendations for improving how State agencies develop regulations in order to consider less restrictive and burdensome regulations for small businesses. A summary of the recommendations included in the legislation that will be introduced during the 2019 Legislative Session is below.

2019 Legislation

1. Amend the Administrative Procedures Act (APA) to require State agencies to post proposed regulations determined to affect small businesses to their websites for at least 15-days prior to submitting regulations to the Joint Committee on Administrative, Executive and Legislative Review (AELR). When agencies post regulations to their websites, they should also be required to provide a text or email notification to any interested party that registers to receive such notifications, and allow for the electronic submission of comments to the proposed regulations.

Currently, State agencies are required to solicit public comment on proposed regulations after AELR review and right before they are adopted. Requiring agencies to solicit input earlier in the regulatory process increases the likelihood concerns raised by small businesses will be addressed. It also provides the opportunity for State agencies to learn from interested parties if a regulation may duplicate existing State requirements, and the opportunity to request data for estimating the economic impact of a proposed regulation if necessary.

2. Provide training to State employees who draft regulations and estimate their small business economic impact. State agencies hire personnel with skillsets that support the mission of an agency, which means employees often do not have the quantitative and qualitative skillsets necessary to estimate economic impact. For example, the Maryland Department of the Environment relies on employees with expertise in earth science, biology, and other scientific disciplines to write regulations. While these employees have the expertise to draft regulations, they do not necessarily have the expertise to estimate their economic impact.

Currently, no training is provided on how to conduct an economic impact analysis, although the analysis is statutorily required. All agency employees interviewed for the Advisory Council's 2017 Annual Report expressed a desire for training to learn how to complete legally required analyses.

3. Require State agencies to provide a compliance guide, written in plain language, to assist small businesses with complying with any regulation that is determined to impact small businesses. Providing clear direction on how to comply with regulations will help to reduce the amount of time small businesses spend on regulatory compliance.

4. Amend the Administrative Procedures Act (APA) to allow all State agencies greater flexibility in assessing regulatory fines on small businesses. Greater flexibility includes: reducing or waiving fines, considering the ability of a small business to pay when assessing a fine; providing a small business 30 days to correct a violation before assessing a fine; and crediting any costs incurred by a small business to correct a violation towards the amount of a fine or penalty. The ability of agencies to use discretion when assessing a fine is currently contingent on specific statutes that authorize the imposition of a fine. This proposed amendment to the APA will

universally ensure State agencies have the discretion to assess less onerous fines on small businesses.

Conclusion

The most important improvement offered by the Advisory Council's recommendations is creating a link between quality economic impact estimates and considering less burdensome and more flexible regulatory alternatives for small businesses. If successful, this improvement will result in a cultural shift in the State's regulatory process centered on the purpose of small business economic impact estimates. These estimates need to be viewed by agencies as more than an academic exercise, or "checking a box" for promulgating a regulation. They need to be seen as a valuable analytical tool, and the first step in a two-step process. The purpose of the estimate is to identify regulations that may negatively affect small businesses, and the all-important second step is to actively consider ways to minimize any negative effects on small businesses.