

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 720 (Senator Hester, *et al.*)  
Education, Health, and Environmental Affairs

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Regulations Affecting Small Businesses - Certification of Comparable Local  
Regulation

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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 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 submits this certification with the proposed regulation, the unit may also include a statement that compliance with the local regulation will constitute compliance with the proposed regulation.

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Fiscal Summary

**State Effect:** Potential significant increase in State expenditures (multiple fund types) beginning in FY 2021. State revenues are not affected.

**Local Effect:** The bill is not anticipated to materially affect local finances. However, to the extent State agencies rely heavily on local governments for information regarding local regulations, local operations are affected.

**Small Business Effect:** Potential meaningful.

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## 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.

**State Expenditures:** There are 24 counties (including Baltimore City) and more than 150 municipalities in Maryland, each with its own local statutes and regulations, which are not generally available from centralized clearinghouses. As agencies must conduct outreach to all local governments each time they develop a regulation, there is a potential significant increase in State expenditures (multiple fund types) beginning in fiscal 2021 for some agencies, likely including, but not limited to, the Maryland Department of the Environment, the Department of Commerce, the Maryland Department of Labor, the Department of Natural Resources, and the Maryland Department of Transportation, to hire staff to (1) conduct outreach to local governments when promulgating regulations and (2) conduct ongoing monitoring of local regulations to ensure that local standards remain as stringent as State regulations. Affected agencies generally indicate they need one or two full-time positions to perform these functions. To the extent that a central database is developed and shared amongst local and State agencies to track local regulations, costs at the State level could be lower.

The Maryland Department of Health (MDH) submits a large number of regulations annually but advises that the department already works closely with local governments when promulgating regulations. Thus, MDH anticipates that although there is an operational impact, MDH can implement the bill with existing budgeted resources.

**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.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 817 (Delegate C. Watson, *et al.*) - Health and Government Operations.

**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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