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Achieving Efficient Government and Regulatory Reform in Maryland

by

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Introduction and Summary

Commendably, in July 2015, Maryland Governor Larry Hogan announced that he had established a Regulatory Reform Commission with the goal of streamlining government, stimulating economic activity, and creating jobs.¹ Shortly thereafter, Free State Foundation President Randolph May wrote:

[J]ust as reducing unnecessary spending is important to improving Maryland’s fiscal health, so too is eliminating unnecessary or unduly burdensome regulations. The positive economic effect that results from leaving more productive resources in the realm of the private sector is the same in both instances.²

In December 2015, the Commission released its [first report](#) analyzing ways state government can improve Maryland’s business climate by eliminating unnecessary and burdensome regulations and creating more efficient “customer service” processes.³

¹ “Governor Larry Hogan Establishes Regulatory Reform Commission,” *Maryland.gov*, July 9, 2015, <http://governor.maryland.gov/2015/07/09/governor-larry-hogan-establishes-regulatory-reform-commission/>.

² Randolph May, “Maryland Needs to Improve Its Regulatory Climate,” FSF Blog, (July 13, 2015), <http://freestatefoundation.blogspot.com/2015/07/maryland-needs-to-improve-its.html>.

³ “Initial Report of Governor Hogan’s Regulatory Reform Commission,” 2015 Report (Regulatory Reform Commission, December 2015), <https://governor.maryland.gov/ltgovernor/wp-content/uploads/sites/2/2015/12/Regulatory-Reform-Commission-Report.pdf>.

The Commission held six regional meetings throughout Maryland to learn from local business leaders and interested citizens concerning how the state government can improve Maryland's regulatory environment and, thereby, its overall economy. The Commission traveled to Central Maryland (Baltimore City), the Capital Region (College Park), Northern Maryland (Havre de Grace), Western Maryland (Hagerstown), Southern Maryland (Waldorf), and Eastern Maryland (Cambridge).

The Commission's December 2015 report contains statements from a handful of business leaders and gives examples showing how unnecessary and burdensome regulations have harmed local businesses and Maryland families. The most important part of the report, though, is the section on policy and procedural recommendations that Maryland officials should consider. Surely, some recommendations are easier to implement than others, and some will be subject to more controversy than others. But taken together, or even considered separately, they can have a positive impact on Maryland's entrepreneurs and consumers if they are implemented.

Here are the Report's recommendations:

- Restructure State Government and Implement Regulatory Reform
- Create a One-Stop Shop for Business Licenses and Permits
- Adopt Electronic Documentation and Online Filings
- Streamline the Review Process
- Consolidate Occupational Licenses
- Reduce Fees and Payment Frequency
- Expand Minority and Disadvantaged Business Opportunities
- Review and Revise Vineyard and Food Truck Requirements
- Improve State Procurement Processes

In the body of this paper, we summarize and comment on the recommendations contained in the report. And, in the process of doing so, we also offer some important suggestions of our own, for example, regarding a proposal for restructuring Maryland's state government. All the while, the summary and our own comments will stay within the report's framework.

The Commission's Policy and Procedural Recommendations

Restructure State Government and Implement Regulatory Reform

In its report, the Commission suggests that the Hogan Administration "consider a comprehensive review of Maryland's state government structure and organization, eliminate duplicative

responsibilities and functions, and look for opportunities to re-organize in order to bring Maryland into the 21st century.”⁴ The Commission’s report explains that “since Governor Marvin Mandel’s effort to reorganize and restructure Maryland state government over 45 years ago, state government has expanded to a point where it is causing significant harm to the ability to foster economic growth.”⁵

Restructuring the state government is, of course, a major undertaking. But in our view it is necessary for Maryland, after proper study, to undertake a major reorganization. Having several agencies duplicate functions, and in the process issue overlapping regulations, leads to ineffectiveness and inefficiencies that waste taxpayer money and increase compliance costs for entrepreneurs and citizens. While consolidation in and of itself does not always make processes more efficient, consolidation often helps improve government administration by eliminating overlapping, redundant functions and regulations that exist across multiple agencies and regulators.

The Commission’s report does not offer specific recommendations for the restructuring it urges. We think consolidating Maryland’s twenty different departments within the executive branch is an important place to start.⁶ Of course, there are various ways to accomplish such consolidation, and we recognize that the pros and cons of various proposals must be considered. Below is a working proposal for consolidating and reorganizing Maryland’s departments. It takes into account the presumed functions of the departments and the services they are supposed to provide. Under our working proposal shown in the table below, the number of departments would be reduced from twenty to eight.

Old Departments	New Departments
Department of Aging Department of Disabilities Department of Health and Mental Hygiene Department of Human Resources	Department of Social Services
Department of Business and Economic Development Department of Housing and Community Development Department of Planning Department of Transportation	Department of Economic and Community Development
Department of Juvenile Services Department of Public Safety and Correctional Services Department of State Police	Department of Public Safety

⁴ Id., at 21.

⁵ Id., at 21.

⁶ “Maryland Departments,” *Maryland.gov*, accessed December 17, 2015, <http://msa.maryland.gov/msa/mdmanual/09dept/html/00list.html>.

Department of Agriculture Department of Environment Department of Natural Resources	Department of Agriculture and Natural Resources
Department of Budget and Management Department of Information Technology	Department of Budget and Management
Department of Education	Department of Education
Department of Labor, Licensing, and Registration	Department of Labor, Licensing, and Registration
Department of Veterans Affairs	Department of Veterans Affairs

Consolidation along these lines would enable streamlining the bureaucracy and administrative processes and eliminating duplicative responsibilities. But in and of itself, such restructuring would not erase the burdensome regulations that have accumulated over many decades.

In a July 2015 blog, Free State Foundation President Randolph May suggests two very important process reforms that could improve the regulatory environment in Maryland going forward. First, he suggests that the state government create a “sunset” date for all new regulations, requiring the regulations to expire if they are not affirmatively readopted by the sunset date.⁷ Under Maryland’s current statute, each state agency is required to review its regulations every eight years (with a few exceptions).⁸ But, due to market, technological, and other changes, not all regulations continue to serve their intended purpose for eight years, or even much less. For example, recently adopted legislation to regulate ridesharing in Maryland may not be consistent with transportation market developments or technological changes in 2023.⁹

With “sunset” requirements, state agencies would have to prove that the expiring regulation should be renewed. Currently, the state agencies do the exact opposite. They analyze an existing regulation that, in any event, is not set to expire automatically in order to determine if it should be overturned. State agencies have little incentive to jettison existing regulations, even if they no longer serve a purpose. Not only would doing so decrease the agency’s responsibilities, but it also might decrease the agency’s future budget. And although currently the regulatory reviews must be approved by the Joint Committee on Administrative, Executive, and Legislative Review (AELR), there is no mandatory cost/benefit analysis included in either the responsible agency’s review or the AELR’s approval.¹⁰

With that in mind, Mr. May’s second recommendation is to establish a central entity within the executive branch to review regulations before they are promulgated. The primary functions of this executive branch entity would be to determine if a regulation’s projected benefits outweigh

⁷ May, “Maryland Needs to Improve Its Regulatory Climate.”

⁸ *Regulatory Review and Evaluation, Annotated Code of Maryland*, vol. §§10–130—10–139, <http://www.dsd.state.md.us/RRE/RegReview.html>.

⁹ Michael Horney, “Maryland’s Ridesharing Legislation Is Better Than Prohibition,” *FSF Blog*, accessed December 17, 2015, <http://freestatefoundation.blogspot.com/2015/04/marylands-ridesharing-legislation-is.html>.

¹⁰ Randolph May, “Maryland Needs to Improve Its Regulatory Climate - Part II,” *FSF Blog*, accessed December 17, 2015, <http://freestatefoundation.blogspot.com/2015/08/maryland-needs-to-improve-its.html>.

projected costs and to ensure that the proposed rules are consistent with other outstanding regulations.¹¹ Similar to the federal government’s Office of Information and Regulatory Affairs (OIRA), this executive agency would be staffed with economists and lawyers to analyze the economic and legal ramifications of *all* proposed rules.

Create a One-Stop Shop for Business Licenses and Permits

According to the Commission’s report, a number of commenters were concerned about requirements that, in effect, mean businesses must acquire multiple operating licenses after submitting applications to different offices in different locations. The Commission’s report recommends that:

The state should consider the following mandate: identify the agency that is in the best position to take the lead on the review for certain permits, designate that agency as the lead. This will eliminate the frequent conflicts between agencies where reviewers make conflicting comments. Moreover, this will facilitate a “one-stop shop” capability, even if it requires elimination of review by some agencies interested in the same issues.¹²

Creating a “one-stop shop” for business licenses and permits would ease the regulatory compliance process for Maryland businesses. It is harmful enough to the entrepreneurial process that the state requires many licenses for essentially the same activity. (See section on Food Truck Requirements.) It certainly does not help that many licensing applications cannot be submitted online. (See section below.) And it makes matters even more difficult for entrepreneurs that generally they must mail their documents to different locations throughout Maryland. If the state regulates a certain occupation, industry, or activity, it should at least make compliance as convenient and efficient as possible.

Adopt Electronic Documentation and Online Filings

The Commission’s report recommends that *all* state agencies, if needed, upgrade their technology in order to facilitate online filing and electronic processing. Currently, the Maryland State Department of Assessments and Taxation charges an “expedited fee” for online filings for business licensing and registration.¹³ This encourages entrepreneurs to submit paper filings. Additionally, there are many state agencies which simply do not accept online filings. The Commission’s report says “there is no reason that electronic submissions, as opposed to paper filings, should not be accepted across the board.”¹⁴

In 2016, Maryland’s government still does not offer all of its services online. Everything from requesting records, to filing tax returns, to looking up state regulations for compliance *should* be Internet accessible. That does not necessarily mean people should not still have the ability to send paper requests through the mail, but all information needed by Maryland’s citizens should be easily accessible online.

¹¹ May, “Maryland Needs to Improve Its Regulatory Climate.”

¹² “Initial Report of Governor Hogan’s Regulatory Reform Commission,” at 21.

¹³ *Id.*, at 21.

¹⁴ *Id.*, at 21.

Implementing electronic documentation and online filings requires some upfront costs. But in the long run – and perhaps even after a fairly short time – the benefits to businesses, consumers, and concerned residents would far outweigh the costs.

Streamline the Review Process

When it comes to a development project which requires approval from multiple state agencies, for example, the Commission’s report suggests implementing concurrent review systems, not seriatim reviews. Similar to creating a “one-stop shop” and eliminating duplicative responsibilities, the Commission recommends that all permit, licensing, and development reviews be performed “under one roof” for “better coordination of reviewers and better communication.”¹⁵

Local governments can often more easily assess the need for regulations in a way that more effectively analyzes costs and benefits, so the Commission suggests eliminating “state reviews for matters that are local in nature and for which adequate local reviews exist.”¹⁶ “For example,” the report states, “wetlands reviews in Montgomery County may include the Federal Government (Corps of Engineers), the State reviews (MDE), and local government reviews (Maryland National Capital Park and Planning Commission and Montgomery County Department of the Environment).”¹⁷ While Maryland may not be able to supplant the federal government’s review, it can coordinate the local and state reviews to reduce duplication.

Generally, but certainly not always, assuming the need for government regulation, local government, closer to the people, is preferred because local officials are cognizant of, and can take account of, local conditions.

It is hard to create a “one-stop shop” and review everything “under one roof” when the rules on the books require multiple reviews by two or more agencies in two or more government jurisdictions. Maryland’s state government must undertake reforms to eliminate requirements that impede entrepreneurs while providing no countervailing benefits to consumers.

Consolidate Occupational Licenses

The Commission’s report recommends that the Hogan administration “undertake a comprehensive review” of Maryland’s 400+ occupational permits and licenses, because “it is apparent that a number of these licenses simply are outdated and have no positive impact.”¹⁸

In a July 2015 blog, FSF Research Associate Michael Horney explains that Maryland’s existing occupational licensing regime harms the poor by creating barriers to entry for entrepreneurs, harming competition, and generating higher prices for consumers. Therefore, occupational

¹⁵ Id., at 22.

¹⁶ Id., at 22.

¹⁷ Id., at 22-23.

¹⁸ Id., at 23.

licensing disproportionately harms poor consumers and poor entrepreneurs the most.¹⁹ Some occupational licensing might be necessary for public safety or consumer protection reasons, but Maryland requires licensing for many occupations that market-oriented mechanisms, like price signals and reputational feedback, can more efficiently inform consumers regarding any potential harms. As the June 2015 blog states:

Under the Division of Occupational and Professional Licensing, Maryland has 22 licensing boards, commissions, and programs appointed by the governor regulating 24 different occupations. Granted, in order for professionals to prevent consumer harm, many occupations require strong training, experience, and attention to detail. But such qualifications for an occupation should not always necessarily require government regulations. Here are some occupations that require licensing in Maryland where the need for licenses is not self-evident: Professional Boxers, Athlete Agents, Barbers, Cosmetologists, Interior Designers, Foresters, Locksmiths, Plumbers, Real Estate Agents, Stationary Equipment Mechanics, and Pawnbrokers.²⁰

The Commission recognizes that eliminating some occupational licenses might disadvantage those who have already obtained them vis-a-vis those who haven't: "On the other hand, members of the cosmetology industry, who have spent significant time training and obtaining their licenses, objected to the failure to enforce violations by persons who are not so licensed."²¹ This is what the late Gordon Tullock referred to as the "transitional gains trap." Some industries, companies, or entrepreneurs can capture the benefits of entry-inhibiting regulations because there are fewer competitors. This sometimes discourages public officials from eliminating such regulations.²² However, consumers will be much better off in the long run if they have more choices in the cosmetology industry, for example, by virtue of a more competitive marketplace offering better service quality and/or lower prices.

We commend the Commission for recognizing the costs imposed by occupational licensing requirements that are not necessary to protect consumers. The Commission cited the July 2015 White House report which states: "[T]he practice of licensing can impose substantial costs on job seekers, consumers, and the economy more generally. This is particularly true when licensing regulations are poorly aligned toward consumer protection and when they are not updated to reflect a changing economy."²³ As we said in an August 2015 blog, this particular White House report makes an important contribution which Governor Hogan and the legislature should consider.²⁴

¹⁹ Michael Horney, "Maryland's Occupational Licensing Regime Hurts the Poor," *FSF Blog*, July 31, 2015, <http://freestatefoundation.blogspot.com/2015/07/marylands-occupational-licensing-regime.html>.

²⁰ Id.

²¹ "Initial Report of Governor Hogan's Regulatory Reform Commission," at 23.

²² Tullock, Gordon. 1975. "The Transitional Gains Trap". *The Bell Journal of Economics* 6 (2). [RAND Corporation, Wiley]: 671-78.

²³ "Occupational Licensing: A Framework for Policymakers" (The White House, July 2015), at 56, https://www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

²⁴ Michael Horney, "White House Report on Occupational Licensing Hits the Mark," August 7, 2015, <http://freestatefoundation.blogspot.com/2015/08/white-house-report-on-occupational.html>.

Reduce Fees and Payment Frequency

In the report, the Commission suggests eliminating some of the regulatory and licensing fees that are insignificant, stating: “For example, some licenses cost \$15, \$20 or \$25. It costs more money to process the fee and ‘check the box’ than the revenue being received.”²⁵ Reducing minor regulatory and licensing fees should be a relatively easy task to accomplish. Not only is the state losing money in the short run by charging less than the cost of processing, but it is also losing money in the long run. Licensing fees of \$15 may seem small to some, but they are high enough to keep others from entering certain businesses or engaging in certain activities. Barriers to entry, even small ones, harm competition, and this leads to higher prices for consumers. This has a negative income effect because consumers cannot buy as many goods and services as they otherwise would if marketplace competition was not depressed by barriers to entry. This negative income effect slows the rate of economic growth because consumers have less money to spend than they otherwise would. So reducing regulatory and licensing fees can increase the tax base and actually generate more government revenue for Maryland.

Expand Minority and Disadvantaged Business Opportunities

The Commission’s report states that Maryland’s government could do more to aid minority-owned and disadvantaged businesses. It recommends involving minority-owned businesses in state-level contracts and projects. This is not necessarily a bad idea if a program is carefully crafted to adhere to constitutional requirements and rule of law norms. But the preferred way to create opportunities for minority-owned businesses and those owned by low-income persons would be to remove *all* regulations, licenses, fees, and taxes that have a disproportionately harmful effect on them.

We have already explained that occupational licensing disproportionately harms the poor. Regressive taxes are also harmful in stifling upward mobility and prosperity for minority and disadvantaged entrepreneurs.²⁶ Maryland currently ranks 41st on the Tax Foundation’s “2016 State Business Tax Climate Index.”²⁷ Maryland’s poor business tax climate harms all entrepreneurs and consumers in the state, but it disproportionately harms low-income entrepreneurs, because the marginal negative impact of taxation increases as a person’s income goes down. Although taxation is not a subject addressed by the Regulatory Reform Commission, eliminating or reducing regressive taxation should be considered in connection with expanding business opportunities for minority and low-income persons.

Review and Revise Vineyard and Food Truck Requirements

The Commission’s report recommends that restrictions on food establishments, including vineyards and food trucks, should be reviewed and revised. While this is a fairly sector-specific policy recommendation from the Commission, it is a worthy one. In an October 2015 blog, FSF

²⁵ “Initial Report of Governor Hogan’s Regulatory Reform Commission,” at 24.

²⁶ Steven Horwitz, “Breaking Down the Barriers: Three Ways State and Local Governments Can Improve the Lives of the Poor” (Mercatus Center at George Mason University, July 2015).

²⁷ Randolph May, “Maryland Needs to Improve Its Business Tax Climate Ranking,” *FSF Blog*, accessed December 18, 2015, <http://freestatefoundation.blogspot.com/2015/11/maryland-needs-to-improve-its-business.html>.

President Randolph May discussed the need for Maryland to reform its business licensing regime. He pointed out that there are over 1000 state licenses that must be obtained to start various types of businesses in Maryland. Opening a restaurant can require up to nine different licenses and opening a lemonade and baked goods stand can require up to three different licenses.²⁸

Food trucks, on the other hand, come with specific zoning and food quality regulations. The Commission's report explains the following:

A number of attendees at the Commission meetings commented on the regulations affecting food vending trucks as being unreasonably burdensome. The trucks are being held to standards by which even restaurants are not required to comply. Moreover certain requirements (such as built-in fire suppression systems) simply make no sense and should be eliminated. In addition, the license costs, the inspection costs and the certification costs for the trucks can be significant. The cost and burden of multiple agency reviews are excessive. Finally, current state regulations prohibit the sale of food on state roads, but contain exclusions that allow for certain foods and certain other commodities to be sold, such as seafood and flowers. These restrictions should be reviewed and revised.²⁹

Additionally, food trucks and restaurants are a good way for poor immigrants to be entrepreneurs and to introduce their foreign culture to Americans.³⁰ Lessening the burden of regulations on food trucks and restaurants is also a simple way for the Hogan administration to "expand minority business opportunities."

Improve State Procurement Processes

Finally, the report states that "[m]any agencies have their own individual procurement departments; this phenomenon is replicated in multiple agencies across the state."³¹ The Commission's report suggests consolidating procedural functions such as procurement, information technology, housekeeping, facilities management, accounts payable, accounts receivable, and other services.³²

When many agencies are performing the same functions, it would be more efficient for one agency to specialize in performing the financial and administrative tasks of all the other agencies. However, if there are different ways of performing the same function, proper analysis should demonstrate which way is most efficient and effective and that way should be standardized to the extent feasible.

²⁸ Randolph May, "Reforming Maryland Business Licensing Regime," *FSF Blog*, October 5, 2015, <http://freestatefoundation.blogspot.com/2015/10/reforming-maryland-business-licensing.html>.

²⁹ "Initial Report of Governor Hogan's Regulatory Reform Commission," at 25.

³⁰ Horwitz, "Breaking Down the Barriers: Three Ways State and Local Governments Can Improve the Lives of the Poor."

³¹ "Initial Report of Governor Hogan's Regulatory Reform Commission," at 25.

³² *Id.*, at 25.

Conclusion

We commend Governor Hogan for initiating efforts to reduce or eliminate overly burdensome or outdated regulations in Maryland. Establishment of the Governor's Regulatory Reform Commission is a good start. We also commend the Commission for a solid report offering some initial recommendations for improving the regulatory environment in the Free State. It is possible to get rid of legacy regulations that no longer, if ever, serve their intended purpose, or to reduce their burdens, while still protecting public health and safety and consumers. Likewise, it is possible to streamline government processes and administration without compromising those objectives. To be sure, implementing sensible regulatory reform and making government operate more efficiently should not be a partisan issue. Rather, this is simply a matter of working hard to achieve "good government."

We hope these policy and procedural recommendations of the Governor's Commission, along with our own suggestions presented here, will be carefully considered in what should be a concerted and widely accepted effort to create a more attractive business climate, promote more entrepreneurial activity, and increase economic growth in Maryland.

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