MISSISSIPPI LEGISLATURE

By: Representative Coleman (65th)

To: Appropriations

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1153

AN ACT TO CREATE THE ELECTRONIC GOVERNMENT SERVICES ACT; TO PROHIBIT GOVERNMENT AGENCIES FROM ENGAGING IN ANY ELECTRONIC COMMERCE SERVICE ACTIVITY THAT IS PROVIDED TO THE PUBLIC BY THE PRIVATE SECTOR; TO ALLOW A GOVERNMENT AGENCY TO PROVIDE ELECTRONIC COMMERCE SERVICES THAT DUPLICATE OR COMPETE WITH THOSE PROVIDED BY THE PRIVATE SECTOR AFTER THE AGENCY TAKES CERTAIN ACTIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act may be cited as the Electronic Government Services Act.

SECTION 2. The Legislature finds and declares that the growth of private enterprise is essential to the health, welfare, and prosperity of this state and that government competes with the private sector when it provides goods and services to the public. It is the intent of the Legislature and the purpose of this act to protect economic opportunities for private industry against unfair competition by government agencies and enhance the efficient provision of public goods and services.

SECTION 3. As used in this act:

(a) "Electronic commerce services" means services that are the same, similar to or overlapping those information technology-based services provided by the private sector to the general public, e.g., any transaction completed over a computer network such as the buying of goods and services on the Internet.

(b) "Government agency" means the state, any unit of state government and any local government or other subdivision or district of the state, and shall not be construed to exclude any entity that is not majority owned as private property and that is
established under the Constitution, statutes, ordinances or any
other order or action by any such entity or its officers.

(c) "Private enterprise" means an individual, firm,
partnership, joint venture, corporation, association or any other
legal entity engaging in the manufacturing, processing, sale,
offering for sale, rental, leasing, delivery, dispensing,
distributing or advertising of goods or services for profit.

(d) "Private sector" means two (2) or more competing
privately owned companies.

SECTION 4. If the private sector provides electronic
commerce services to the public, government shall not start or
carry on any activity to provide or offer those services, expand
similar services at government expense or provision. Nothing in
this act prohibits government from providing electronic commerce
services to the public in the absence of the private sector
provision of those services.

SECTION 5. (1) A government agency may provide duplicative
or competing electronic commerce services, provided that the head
of the agency that proposes to provide duplicative or competing
electronic commerce services to the general public provides public
notice and the opportunity of the public to comment on the
agency's proposed services. The public notice must be published
once each week for two (2) consecutive weeks in a newspaper having
general circulation throughout the state. The closing date for
receipt of public comments must be not less than thirty (30) days
after the last published notice. That notice shall include the
agency's proposed findings of fact and conclusions of law
describing the reasons why it believes it is necessary and in the
public interest to provide duplicative or competing electronic
commerce services. The agency must specify:

(a) A description of the agency's reasons for believing
that the cost benefits of providing those services require the
expenditure of public funds;
(b) Identification of unmet needs in the consumer marketplace that the government service offer would fulfill;

(c) A description of how the proposed government service offers would differ from those provided by the private sector; and

(d) An economic impact analysis demonstrating that the offering of proposed electronic commerce services by government will not be anticompetitive in its effect on the existing industry, and will not adversely impact or distort the private sector marketplace for the same or similar electronic commerce services.

(2) After receiving the comments of the public, if the head of the agency wishes to proceed with duplicative or competing electronic commerce services, the head of the agency must sign factual and legal conclusions enumerating all of the factors described in subsection (1) of these section. Those conclusions, along with all public comments related to the proposed electronic commerce services, shall be presented to the governing board of the Mississippi Department of Information Technology Services. The board must give its approval in writing before the agency may provide the duplicative or competing electronic commerce services.

(3) Any provider of electronic commerce services who resides in or does business in the state has standing to judicially challenge the provision of electronic commerce services by the government agency not made in conformance with this act under the state's procedures for hearing and resolving complaints filed under this act.

SECTION 6. Nothing contained in the act may be construed to prohibit a government agency from offering electronic government services to the general public before July 1, 2002.

SECTION 7. If any agency elects to provide electronic commerce services in a jurisdiction where a private enterprise delivers the same electronic commerce services, the agency shall
prepare and publish, on or before September 1, an annual report on its electronic commerce services. The report shall include disclosure of the amount, source, and cost of working capital utilized for its electronic commerce services, and it shall be sent to the Governor, the Lieutenant Governor, the Speaker of the House, and the chairmen of the House and Senate Appropriation Committees.

SECTION 8. This act shall take effect and be in force from and after July 1, 2002.