

By: Representative Coleman (65th)

To: Appropriations

HOUSE BILL NO. 1150

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

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

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

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

19 **SECTION 3.** As used in this act:

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

25 (b) "Commercial activity" means performing services or
26 providing goods that can normally be obtained from private
27 enterprise.



28 (c) "Direct cost" means all costs, whether capital
29 costs, operating costs, or otherwise, that would be eliminated if
30 the service or function to which they relate were discontinued.

31 (d) "Full cost accounting" means, in accordance with
32 applicable generally accepted accounting principles, accounting
33 for all direct and indirect costs, including capital costs, that
34 are incurred in the ownership, management or operation of an
35 electronic service.

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

42 (f) "Indirect costs accounting" means, all costs,
43 whether capital costs, operating costs, or otherwise, that are not
44 direct costs. Indirect costs that support multiple services or
45 functions shall be allocated among those services and functions in
46 proportion to the relative burden each service or function places
47 on the cost category and by any reasonable method consistent with
48 applicable generally accepted accounting principles.

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

54 (h) "Private sector" means two (2) or more competing
55 privately owned companies.

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



61 services to the public in the absence of the private sector
62 provision of those services.

63 **SECTION 5.** (1) A government agency may provide duplicative
64 or competing electronic commerce services, provided that the head
65 of the agency that proposes to provide duplicative or competing
66 electronic commerce services to the general public provides public
67 notice and the opportunity of the public to comment on the
68 agency's proposed services. That notice shall include the
69 agency's proposed findings of fact and conclusions of law
70 describing the reasons why it believes it is necessary and in the
71 public interest to provide duplicative or competing electronic
72 commerce services. The agency must specify:

73 (a) The initial and total lifecycle costs of the
74 proposed government services, which include, but are not limited
75 to, all technology, infrastructure, services, contracts and direct
76 and indirect personnel costs;

77 (b) The individual per taxpayer cost of those services
78 on an annualized basis, and the cost of those services per user
79 on an annualized basis;

80 (c) A description of the agency's reasons for believing
81 that the cost benefits of providing those services require the
82 expenditure of public funds;

83 (d) Identification of unmet needs in the consumer
84 marketplace that the government service offer would fulfill;

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

88 (f) A economic impact analysis demonstrating that the
89 offering of proposed electronic commerce services by government
90 will not be anticompetitive in its effect on the existing
91 industry, and will not adversely impact or distort the private
92 sector marketplace for the same or similar electronic commerce
93 services.



94 (2) After receiving the comments of the public, if the head
95 of the agency wishes to proceed with duplicative or competing
96 services, the head of the agency must sign factual and legal
97 conclusions enumerating all of the factors described in subsection
98 (1) of these section.

99 (3) Any provider of electronic commerce services who resides
100 within or does business in the state has standing to judicially
101 challenge the factual and legal sufficiency of the findings in
102 subsection (2) of this section under the state's procedures for
103 hearing and resolving complaints filed under this act.

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

110 **SECTION 6.** Nothing contained in the act may be construed to
111 prohibit a government agency from offering electronic government
112 services to the general public services before July 1, 2003.

113 **SECTION 7.** If any agency elects to provide electronic
114 services in a jurisdiction where a private enterprise delivers the
115 same electronic commerce services, the agency shall prepare and
116 publish, on or before September 1, an annual report on its
117 electronic commerce services. The report shall be substantially
118 in accordance with full cost accounting and shall include
119 disclosure of the amount, source, and cost of working capital
120 utilized for its electronic services, and it shall be sent to the
121 Governor, the Lieutenant Governor, the Speaker of the House, and
122 the chairmen of the House and Senate Appropriations Committees.

123 **SECTION 8.** This act shall take effect and be in force from
124 and after July 1, 2003.

