

By: Senator(s) Ross

To: Finance

SENATE BILL NO. 2795

1 AN ACT TO CREATE THE "MISSISSIPPI SMALL BUSINESS REGULATORY
 2 FLEXIBILITY ACT"; TO MAKE LEGISLATIVE FINDINGS; TO DEFINE CERTAIN
 3 TERMS AS USED IN THE ACT; TO ESTABLISH A SMALL BUSINESS REGULATORY
 4 REVIEW COMMITTEE; TO IMPROVE STATE RULEMAKING BY CREATING
 5 PROCEDURES TO ANALYZE THE ECONOMIC IMPACT ON AND AVAILABILITY OF
 6 MORE FLEXIBLE APPROACHES FOR SMALL BUSINESS; AND FOR RELATED
 7 PURPOSES.

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

9 **SECTION 1.** The Mississippi Legislature finds that:

10 (a) A vibrant and growing small business sector is
 11 critical to creating jobs in a dynamic economy;

12 (b) Small businesses bear a disproportionate share of
 13 regulatory costs and burdens;

14 (c) Fundamental changes that are needed in the
 15 regulatory and enforcement culture of state agencies to make them
 16 more responsive to small business can be made without compromising
 17 the statutory missions of the agencies;

18 (d) When adopting regulations to protect the health,
 19 safety and economic welfare of Mississippi, state agencies should
 20 seek to achieve statutory goals as effectively and efficiently as
 21 possible without imposing unnecessary burdens on small employers;

22 (e) Uniform regulatory and reporting requirements can
 23 impose unnecessary and disproportionately burdensome demands
 24 including legal, accounting and consulting costs upon small
 25 businesses with limited resources;

26 (f) The failure to recognize differences in the scale
 27 and resources of regulated businesses can adversely affect
 28 competition in the marketplace, discourage innovations and
 29 restrict improvements in productivity;

30 (g) Unnecessary regulations create entry barriers in
31 many industries and discourage potential entrepreneurs from
32 introducing beneficial products and processes;

33 (h) The practice of treating all regulated businesses
34 as equivalent may lead to inefficient use of regulatory agency
35 resources, enforcement problems, and, in some cases, to actions
36 inconsistent with the legislative intent of health, safety,
37 environmental and economic welfare legislation;

38 (i) Alternative regulatory approaches which do not
39 conflict with the stated objective of applicable statutes may be
40 available to minimize the significant economic impact of rules on
41 small businesses; and

42 (j) The process by which state regulations are
43 developed and adopted should be reformed to require agencies to
44 solicit the ideas and comments of small businesses, to examine the
45 impact of proposed and existing rules on such businesses, and to
46 review the continued need for existing rules.

47 **ARTICLE IV**

48 **SMALL BUSINESS REGULATORY FLEXIBILITY.**

49 **SECTION 2.** The following shall be codified as Section
50 25-43-4.101, Mississippi Code of 1972:

51 25-43-4.101. **Title.** This article may be cited as the
52 "Mississippi Small Business Regulatory Flexibility Act".

53 **SECTION 3.** The following shall be codified as Section
54 25-43-4.102, Mississippi Code of 1972:

55 25-43-4.102. **Definitions.** As used in this article:

56 (a) "Agency" is defined in Section 25-43-1.102;

57 (b) "Department" means the Mississippi Development
58 Authority;

59 (c) "Committee" means the Small Business Regulatory
60 Review Committee;

61 (d) "Rule" is defined in Section 25-43-1.102, except
62 that the term "rule" shall not include emergency or preemptive
63 rules; and

64 (e) "Small business" means a for-profit business entity
65 employing fewer than one hundred (100) full-time employees or
66 having gross annual sales or revenues of less than Five Million
67 Dollars (\$5,000,000.00).

68 **SECTION 4.** The following shall be codified as Section
69 25-43-4.103, Mississippi Code of 1972:

70 25-43-4.103. **Small Business Regulatory Review Committee.**

71 (1) (a) There is established a Small Business Regulatory Review
72 Committee.

73 (2) The duties of the committee shall be to:

74 (a) Provide agencies with input regarding proposed
75 permanent rules which may have an adverse economic impact upon
76 small business and for which a notice of intended action is
77 published by the Secretary of State on or after July 1, 2005;

78 (b) Review any rule promulgated by a state agency for
79 which notice has been given by the agency to the committee that
80 the proposed rule has or may have an adverse economic effect upon
81 small business and make recommendations to the agency and or the
82 Legislature regarding the need for a rule or legislation;

83 (c) Petition an agency to amend, revise, or revoke an
84 existing regulation based on an adverse economic impact on small
85 business; and

86 (d) Advise and assist agencies in complying with the
87 provisions of and perform any and all acts and duties set forth
88 and authorized in the Mississippi Small Business Regulatory
89 Flexibility Act.

90 (3) The committee is assigned to the Mississippi Development
91 Authority for administrative purposes only. The department shall
92 act as a coordinator for the committee, and shall not be required
93 to provide legal counsel for the committee.

94 (4) The committee shall consist of thirteen (13) members,
95 who shall be appointed as follows:

96 (a) Three (3) members to be appointed by the Governor;

97 (b) Three (3) members to be appointed by the Lieutenant
98 Governor;

99 (c) Three (3) members to be appointed by the Speaker of
100 the House of Representatives; and

101 (d) Four (4) members to include one (1) small business
102 representative member from each of the following business
103 associations, as designated by each respective business
104 association:

105 (i) National Federation of Independent Business;

106 (ii) Mississippi Manufacturer's Association;

107 (iii) Mississippi Retail Association; and

108 (iv) Mississippi Petroleum Marketers and
109 Convenience Stores Association.

110 (5) Appointments to the committee shall be representative of
111 a variety of small businesses in this state. All appointed
112 members shall be either current or former owners or officers of a
113 small business.

114 (6) The initial appointments to the committee shall be made
115 within sixty (60) days from July 1, 2005. The Mississippi
116 Development Authority shall provide the name and address of each
117 appointee to the Governor, Lieutenant Governor, the President Pro
118 Tempore of the Senate, the Speaker of the House of Representatives
119 and the Secretary of State.

120 (7) (a) Members initially appointed to the committee shall
121 serve for terms ending December 31, 2006. Thereafter, appointed
122 members shall serve two-year terms that expire on December 31 of
123 the second year.

124 (b) The Governor shall appoint the initial chair of the
125 committee from the appointed members for a term ending December
126 31, 2006, and shall appoint subsequent chairs of the committee

127 from the appointed members for two-year terms that expire on
128 December 31 of the second year.

129 (8) Members shall not receive any compensation.

130 (9) The committee shall meet as determined by the chair of
131 the committee.

132 (10) A majority of the voting members of the committee shall
133 constitute a quorum to do business. The concurrence of a majority
134 of the members of the committee present and voting shall be
135 necessary to make any action of the committee valid.

136 (11) No appointed committee member shall serve more than
137 three (3) consecutive terms.

138 **SECTION 5.** The following shall be codified as Section
139 25-43-4.104, Mississippi Code of 1972:

140 25-43-4.104. **Proposed permanent rules; determination of**
141 **impact on small business.** (1) Prior to submitting proposed
142 permanent rules for adoption, amendment, revision or revocation
143 pursuant to the Mississippi Administrative Procedures Law, the
144 agency shall comply with Section 25-43-3.105(2)(d) in order to
145 determine whether the proposed rules adversely affect small
146 business by preparing an economic impact statement that includes
147 the following:

148 (a) An identification and estimate of the number of
149 small businesses subject to the proposed regulation;

150 (b) The projected reporting, recordkeeping and other
151 administrative costs required for compliance with the proposed
152 regulation, including the type of professional skills necessary
153 for preparation of the report or record;

154 (c) A statement of the probable effect on impacted
155 small businesses;

156 (d) A description of any less intrusive or less costly
157 alternative methods of achieving the purpose of the proposed
158 regulation.

159 (2) If the proposed rules may have an adverse economic
160 effect upon small business, the agency shall submit a copy of the
161 proposed rules and the economic impact statement to the committee
162 for its review and comment pursuant to the review and comment
163 provisions of the Mississippi Administrative Procedures Law.
164 During the committee review process, the director or the
165 director's designee of the promulgating agency shall be available
166 at the request of the committee for comment on the proposed
167 regulation.

168 (3) Within the review and comment period, if the committee
169 determines that the proposed rules may have an adverse economic
170 effect upon small business, the committee shall submit to the
171 agency a request to prepare a regulatory flexibility analysis in
172 which the agency, consistent with health, safety and environmental
173 and economic welfare, shall consider utilizing regulatory methods
174 that will accomplish the objectives of applicable statutes while
175 minimizing adverse impact on small businesses. The request shall
176 be made no later than the end of the public comment period that
177 follows the notice of proposed regulation, as provided in Section
178 25-43-3.104; the promulgating agency shall have sixty (60) days
179 from the date of the request to complete a regulatory flexibility
180 analysis and deliver the analysis to the committee. The
181 regulatory flexibility analysis shall consider the availability
182 and practicability of less restrictive alternatives that could be
183 implemented, and creative, innovative or flexible methods of
184 compliance for small businesses. In preparing the analysis, the
185 agency shall consider, without limitation, each of the following
186 methods of reducing the impact of the proposed regulation on small
187 businesses:

188 (a) The establishment of less stringent compliance or
189 reporting requirements for small businesses;

190 (b) The establishment of less stringent schedules or
191 deadlines for compliance or reporting requirements for small
192 businesses;

193 (c) The consolidation or simplification of compliance
194 or reporting requirements for small businesses;

195 (d) The establishment of performance standards for
196 small businesses to replace design or operational standards
197 required in the proposed regulation; and

198 (e) The exemption of small businesses from all or any
199 part of the requirements contained in the proposed regulations.

200 (4) The committee shall, if applicable, submit to the
201 promulgating agency, no later than thirty (30) days after the
202 receipt of the regulatory flexibility analysis prepared by the
203 promulgating agency, a written statement advising the agency that
204 a proposed permanent regulation has significant adverse impact on
205 small business.

206 (5) A small business that is adversely affected or aggrieved
207 by final agency action is entitled to judicial review of agency
208 compliance with the requirements of this article. A small
209 business may seek such review during the period beginning on the
210 date of final agency action.

211 (6) To ensure that any final rule continues to minimize
212 economic impact on small businesses in a manner consistent with
213 the stated objectives of applicable statutes, each agency shall,
214 during any periodic review required by this chapter, consider the
215 following factors:

216 (a) The continued need for the rule;

217 (b) The nature of complaints or comments received
218 concerning the rule from the public;

219 (c) The complexity of the rule;

220 (d) The extent to which the rule overlaps, duplicates,
221 or conflicts with other federal, state and local governmental
222 rules; and

223 (e) The length of time since the rule has been
224 evaluated or the degree to which technology, economic conditions,
225 or other factors have changed in the area affected by the rule.

226 **SECTION 6.** The following shall be codified as Section
227 25-43-4.105, Mississippi Code of 1972:

228 25-43-4.105. **Promulgated rules; petition objecting to**
229 **adverse effect on small business; review of committee decision.**

230 (1) For promulgated regulations, the committee may file a written
231 petition with the agency that has promulgated the regulations
232 opposing all or part of a regulation that has a significant
233 adverse impact on small business.

234 (a) Within sixty (60) days after the receipt of the
235 petition, the agency shall determine whether the impact statement
236 or the public hearing addressed the actual and significant impact
237 on small business or if conditions justifying the regulation have
238 changed. The agency shall submit a written response of its
239 determination to the committee within sixty (60) days after
240 receipt of the petition. If the agency determines that the
241 petition merits the amendment, revision, or revocation of a
242 regulation, the agency may initiate proceedings in accordance with
243 the applicable requirements of the Mississippi Administrative
244 Procedures Law.

245 (b) If the agency determines that the petition does not
246 merit the amendment or repeal of a regulation, the committee
247 promptly shall convene a meeting for the purpose of determining
248 whether to recommend that the agency initiate proceedings to amend
249 or repeal the regulation in accordance with the Mississippi
250 Administrative Procedures Law. The review must be based upon the
251 actual record presented to the agency. The committee shall base
252 its recommendation on any of the following reasons:

253 (i) The actual impact on small business was not
254 reflected in, or significantly exceeded, the economic impact

255 statement formulated by the promulgating agency, pursuant to
256 Section 25-43-3.105 or 25-43-4.104; or

257 (ii) The actual impact was not previously
258 considered by the agency in its economic impact statement
259 formulated pursuant to Section 25-43-3.105 or 25-43-4.104 or its
260 regulatory flexibility analysis formulated pursuant to Section
261 25-43-4.104; or

262 (iii) The technology, economic conditions or other
263 relevant factors justifying the purpose for the regulations have
264 changed or no longer exist.

265 (2) If the committee recommends that any agency initiate
266 regulation proceedings for a reason enumerated in this section,
267 the committee shall submit to the Speaker of the House of
268 Representatives and the President Pro Tempore of the Senate an
269 evaluation report and the agency's response as required by this
270 section. The Legislature may take later action in response to the
271 evaluation report and the agency's response as the Legislature
272 finds appropriate.

273 **SECTION 7.** The following shall be codified as Section
274 25-43-4.106, Mississippi Code of 1972:

275 25-43-4.106. **Waiver of administrative penalties or fines.**

276 (1) Notwithstanding any other law of this state, any agency
277 authorized to assess administrative penalties or administrative
278 fines upon a business may waive or reduce any administrative
279 penalty or administrative fine for a violation of any statute,
280 ordinance, or rules by a small business under the following
281 conditions:

282 (a) The small business corrects the violation within
283 thirty (30) days or less after receipt of a notice of violation or
284 citation; or

285 (b) The violation was the result of an excusable
286 misunderstanding of an agency's interpretation of a rule.

287 (2) Subsection (1) of this section shall not apply when:

288 (a) A small business has been notified of the violation
289 of a statute, ordinance, or rule by the agency pursuant to this
290 section and has been given an opportunity to correct the violation
291 on a prior occasion;

292 (b) A small business fails to exercise good faith in
293 complying with the statute, ordinance or rule;

294 (c) A violation involves willful or criminal conduct;

295 (d) A violation results in serious health, safety or
296 environmental impact; or

297 (e) The penalty or fine is assessed pursuant to a
298 federal law or regulation and for which no waiver or reduction is
299 authorized by the federal law or regulation.

300 **SECTION 8.** The following shall be codified as Section
301 25-43-4.107, Mississippi Code of 1972:

302 25-43-4.107. **Applicability.** The Mississippi Small Business
303 Regulatory Flexibility Act shall not apply to:

304 (a) Proposed permanent rules by an agency to implement
305 a statute or ordinance that does not require an agency to
306 interpret or describe the requirements of the statute or
307 ordinance, such as state legislative or federally mandated
308 provisions which afford the agency no discretion to consider less
309 restrictive alternatives.

310 (b) Any rule required by the federal government
311 pursuant to a state/federal program delegation agreement or
312 contract.

313 (c) Any rule expressly required by state law;

314 (d) A temporary rule adopted pursuant to Section
315 25-43-3.108.

316 **SECTION 9.** This act shall take effect and be in force from
317 and after July 1, 2005.