

By: Senator(s) Hewes

To: Business and Financial
Institutions

SENATE BILL NO. 2881

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 encourage 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) 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) Five (5) members to be appointed by the Governor;

97 (b) Four (4) members to be appointed by the Lieutenant
98 Governor; and

99 (c) Four (4) members to be appointed by the Speaker of
100 the House of Representatives.

101 Members of the committee shall be appointed from lists of
102 nominees submitted by the following business organizations:

103 (i) National Federation of Independent Business;

104 (ii) Mississippi Manufacturer's Association;

105 (iii) Mississippi Retail Association;

106 (iv) Mississippi Petroleum Marketers and
107 Convenience Stores Association.

108 (v) Mississippi Economic Council; and

109 (vi) Any local chamber of commerce.

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, 2006. 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, 2008. 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, 2008, 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; regulatory flexibility analysis.** (1)
142 Prior to submitting proposed permanent rules for adoption,
143 amendment, revision or revocation pursuant to the Mississippi
144 Administrative Procedures Law, the agency shall comply with
145 Section 25-43-3.105(2)(d) in order to determine whether the
146 proposed rules adversely affect small business by preparing an
147 economic impact statement that includes 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, including the following regulatory flexibility
159 analysis:

160 (i) The establishment of less stringent compliance
161 or reporting requirements for small businesses;

162 (ii) The establishment of less stringent schedules
163 or deadlines for compliance or reporting requirements for small
164 businesses;

165 (iii) The consolidation or simplification of
166 compliance or reporting requirements for small businesses;

167 (iv) The establishment of performance standards
168 for small businesses to replace design or operational standards
169 required in the proposed regulation; and

170 (v) The exemption of some or all small businesses
171 from all or any part of the requirements contained in the proposed
172 regulations.

173 (2) If the economic impact statement reflects that a
174 proposed rule may have an adverse economic effect upon small
175 business, the agency shall submit a copy of the proposed rules and
176 the economic impact statement to the committee for its review and
177 comment pursuant to the review and comment provisions of the
178 Mississippi Administrative Procedures Law. During the committee
179 review process, the director or the director's designee of the
180 promulgating agency shall be available at the request of the
181 committee for comment on the proposed regulation.

182 (3) Within the review and comment period, if the committee
183 determines that the proposed rules may have an adverse economic
184 effect upon small business, the committee may submit to the agency
185 its comments concerning the proposed regulation including its
186 specific recommendations.

187 (4) A small business that is adversely affected or aggrieved
188 by final agency action to enforce a rule or regulation is entitled
189 to review of agency compliance with the requirements of this
190 article in addition to other remedies allowed by law.

191 (5) To ensure that any final rule continues to minimize
192 economic impact on small businesses in a manner consistent with

193 the stated objectives of applicable statutes, each agency shall,
194 during any periodic review required by this chapter, consider the
195 following factors:

196 (a) The continued need for the rule;

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

199 (c) The complexity of the rule;

200 (d) The extent to which the rule overlaps, duplicates
201 or conflicts with other federal, state and local governmental
202 rules; and

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

206 **SECTION 6.** The following shall be codified as Section
207 25-43-4.105, Mississippi Code of 1972:

208 25-43-4.105. **Promulgated rules; petition objecting to**
209 **adverse effect on small business.** For promulgated regulations,
210 the committee may file a written petition with the agency that has
211 promulgated the regulations opposing all or part of a regulation
212 that has a significant adverse impact on small business. In
213 addition to distinctly setting forth how the regulation has had a
214 significant adverse impact on small business, the committee's
215 petition shall address the 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 The petition may also renew any earlier comments made by the
227 committee when the regulation was first promulgated, as provided
228 by Section 25-43-4.104(3). Furthermore, the committee's petition
229 shall make a specific recommendation concerning the regulation,
230 including, but not limited to, whether the regulation should be
231 amended, revised or revoked.

232 The agency shall submit a written response of its
233 determination to the committee within sixty (60) days after
234 receipt of the petition. If the agency determines that the
235 petition merits the amendment, revision or revocation of a
236 regulation, the agency may initiate proceedings in accordance with
237 the applicable requirements of the Mississippi Administrative
238 Procedures Law. If the agency determines that the petition is
239 without merit, the committee may submit within thirty (30) days
240 additional data in support of its petition.

241 **SECTION 7.** The following shall be codified as Section
242 25-43-4.106, Mississippi Code of 1972:

243 25-43-4.106. **Annual report.** The committee shall make an
244 annual report by January 15 of each year to the Governor, the
245 Lieutenant Governor and the Speaker of the House, and provide
246 detailed information on the committee's activities during the
247 previous calendar year.

248 **SECTION 8.** The following shall be codified as Section
249 25-43-4.107, Mississippi Code of 1972:

250 25-43-4.107. **Waiver of administrative penalties or fines.**

251 (1) Notwithstanding any other law of this state, any agency
252 authorized to assess administrative penalties or administrative
253 fines upon a business may waive or reduce any administrative
254 penalty or administrative fine for a violation of any statute,
255 ordinance or rules by a small business under the following
256 conditions:

257 (a) The small business corrects the violation within
258 thirty (30) days or less after receipt of a notice of violation or
259 citation; or

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

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

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

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

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

270 (d) A violation results in serious health, safety or
271 environmental impact; or

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

275 **SECTION 9.** The following shall be codified as Section
276 25-43-4.108, Mississippi Code of 1972:

277 25-43-4.108. **Applicability.** The Mississippi Small Business
278 Regulatory Flexibility Act shall not apply to:

279 (a) Proposed permanent rules by an agency to implement
280 a statute or ordinance that does not require an agency to
281 interpret or describe the requirements of the statute or
282 ordinance, such as state legislative or federally mandated
283 provisions which afford the agency no discretion to consider less
284 restrictive alternatives.

285 (b) Any rule required by the federal government
286 pursuant to a state/federal program delegation agreement or
287 contract.

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

289 (d) A temporary rule adopted pursuant to Section
290 25-43-3.108.

291 **SECTION 10.** This act shall take effect and be in force from
292 and after July 1, 2006.