

By: Representative Coleman (65th)

To: Appropriations

## HOUSE BILL NO. 1153

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 COMMERCE SERVICES THAT DUPLICATE OR COMPETE WITH THOSE PROVIDED BY  
5 THE PRIVATE SECTOR AFTER THE AGENCY TAKES CERTAIN ACTIONS; AND FOR  
6 RELATED PURPOSES.

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

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

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

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

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

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

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



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

(e) "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.

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

(g) "Private enterprise" means as 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.

(h) "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. 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) The initial and total lifecycle costs of the proposed government services, which include, but are not limited to, all technology, infrastructure, services, contracts and direct and indirect personnel costs;

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

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

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

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

(f) A 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



95 services, the head of the agency must sign factual and legal  
96 conclusions enumerating all of the factors described in subsection  
97 (1) of these section.

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

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

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

112 **SECTION 7.** If any agency elects to provide electronic  
113 services in a jurisdiction where a private enterprise delivers the  
114 same electronic service, the agency shall prepare and publish, on  
115 or before an annual report on it electronic services. The report  
116 shall be substantially in accordance with full cost accounting and  
117 shall include disclosure of the amount, source, and cost of  
118 working capital utilized for its electronic services.

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

