



Advocacy: the voice of small business in government

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before the

Senate Committee on State Affairs

Texas Senate

April 26, 2007

Chairman Duncan, Vice Chairman Williams, and members of the Senate Committee on State Affairs, my name is Eric Munson, and I am the Regional Advocate for the U.S. Small Business Administration's Office of Advocacy in Region VI (which includes Arkansas, Louisiana, New Mexico, Oklahoma, and Texas). It is an honor for me to speak before you today about an important economic development tool for small businesses in the state of Texas.

As the Regional Advocate for Region VI, my job is to be the direct link between state and local governments, small business groups, small business owners and employees, and the Office of Advocacy, based in Washington, DC. My chief focus is to help identify the regulatory concerns of small business by monitoring the impact of federal and state policies at the local level. It is my goal to see that programs and policies

that encourage fair regulatory treatment of small business are developed and implemented to ensure future growth and prosperity. That is why I am pleased to speak to you today on Senate Bill (SB) 700.

The Office of Advocacy monitors federal agency compliance with the Regulatory Flexibility Act (RFA) in order to reduce the regulatory burden on small business. Excessive regulatory burden is a very, real problem for small business, and it has a negative impact on economic development. More than 93 percent of businesses in every state are small businesses. As Advocacy's research demonstrates, small businesses with less than 20 employees spend \$7,647 each year per employee to comply with federal regulations compared with the \$5,282 spent by firms with 500 or more employees. That is a 45 percent greater burden faced by small businesses than their larger counterparts. And, that is just the cost of compliance with federal regulations. Small business owners also have to shoulder the cost of compliance with state and local regulations.

Under the federal RFA, Advocacy has shown time and again that regulations can be reduced and the economy improved without sacrificing important goals such as environmental quality, travel safety, and workplace safety. In FY 2006, by working with federal agencies to implement the RFA, the Office of Advocacy saved small businesses nationwide over \$7.25 billion in first-year costs and \$117 million in annually recurring savings. These savings can now be used to create jobs, buy equipment, expand access to health care for millions of Americans, or simply maintain competitiveness in the marketplace.

Any small business owner on Main Street will explain that the regulatory burden does not just come from Washington. The regulatory burden also comes from state capitals where state agencies are located. Sensitizing government regulators to how their mandates affect the employer community should not stop at the federal level. Regulatory flexibility is a practice that must also be successful at the state level in order to keep America competitive.

The Office of Advocacy has drafted model legislation for consideration by states that mirrors the federal Regulatory Flexibility Act. Its intent is to foster a climate for entrepreneurial success in the states, so that small businesses will continue to create jobs, produce innovative new products and services, bring more Americans into the economic mainstream, and broaden the tax base. This can be done without sacrificing agency regulatory goals.

Successful state-level regulatory flexibility laws, as in the model legislation, address the following areas: 1) A small business definition that is consistent with state practices and permitting authorities; 2) A requirement that state agencies prepare a small business economic impact analysis before they regulate; 3) A requirement that state agencies consider less burdensome alternatives for small business that still meet the agency objective; 4) Judicial review of agency compliance with the rulemaking procedures; and 5) A provision that forces state governments to periodically review existing regulations.

Since Advocacy's model legislation was introduced in 2002, 37 state legislatures have considered regulatory flexibility legislation, and 19 states have implemented regulatory flexibility via Executive Order (EO) or legislation. In 2007, 11 other states have introduced regulatory flexibility legislation (*Alabama, Arkansas, Connecticut, Hawaii, Illinois, Maine, Massachusetts, Mississippi, Montana, Tennessee, and Washington*) and one bill carries over from last year (*New Jersey*). Governor Beebe signed into law Arkansas' regulatory flexibility bill in February of this year and the Washington legislature recently passed a bill to improve its regulatory flexibility law.

Although the Texas Administrative Procedure Act (APA) does contain some form of regulatory flexibility, it does not contain all of the five critical elements of Advocacy's model legislation. SB 55 would therefore strengthen the current system by filling in the missing key components that give regulatory flexibility its effectiveness. Texas legislators have previously recognized this need by introducing legislation in 2003.¹

There is no question that small business is the backbone of the economy in Texas, just as it is throughout the country. Based on the definition of small business provided in the SB 700 (less than 500 employees or six million dollars in gross annual receipts), over 98 percent of the firms in the state are small according to the latest statistics from the U.S. Census Bureau.

¹ HB 2390 was introduced in the 2003 regular session and sponsored by Representative Robby Cook.

In addition to enhancing the economic impact and regulatory flexibility requirements, SB 700 adds two important provisions: periodic review of existing regulations and judicial review of agency compliance with the statutory requirements. Agency review of existing regulations is important because a rule may no longer serve its purpose, may be duplicated by newer federal or state legislation, or it may have been finalized without consideration of the effects on small businesses. Also, given the length of time that may have passed since the rule was adopted, technology, economic conditions, or other relevant factors may have significantly changed in the area affected by the rules.

SB 700 also adds a judicial review provision. The federal regulatory flexibility law had limited success in curbing excess regulatory burdens for 16 years until judicial review was enacted in 1996. The effect of the 1996 law was to give the RFA some “teeth” and to get heightened attention to small business issues by regulatory officials. Allowing small businesses to challenge state agencies for failure to adequately consider their impact on small business during the regulatory process has provided an incentive for agencies to conduct a thorough and well-reasoned economic and regulatory flexibility analysis thereby avoid litigation.

Many states have recognized that giving small businesses a voice early in the rulemaking process is key to reducing the negative impact of regulations on them, increasing the level of regulatory compliance, and helping state economies grow. Ensuring that the regulatory burden is not excessive and that regulations are straight

forward and easy to understand helps entrepreneurs create businesses, increases competition, and promotes job creation.

One of the many reasons, I believe, regulatory flexibility legislation has been so successful is because policy makers across the country are realizing that it is an important economic development tool. Many times there are alternative ways of implementing a regulation that may be less burdensome to small business without sacrificing important goals such as health, safety, and welfare issues of major importance to state governments.

Thank you for this opportunity to speak before you today on SB 700. The Office of Advocacy stands ready to help level the playing field for small businesses in Texas.