

# **Models for Success: State Small Business Programs and Policies**

U.S. Small Business Administration  
Office of Advocacy  
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## Foreword

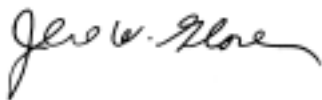
Critical to small businesses' success is government that works for them and with them. As most entrepreneurs know, government comes in many forms at all levels—such as federal taxes, state workers' compensation laws, and county licensing regulations. Under its statutory mandate, the Office of Advocacy has endeavored throughout its 20- year history to “measure the direct costs and other effects of government regulations on small business” at all levels. After considering the effects, we have recommended specific government policy and program solutions for successful small businesses.

These solutions have resulted in major victories at the federal level. Many regulatory burdens have been reduced or eliminated for small business in their day-to-day operations. Congress has passed legislation that gives small businesses' more information about bank lending to entrepreneurs. And programs and policies have been adopted for increasing small businesses' share of federal government procurement dollars. However, as Milton Stewart—the first chief counsel for advocacy—recognized, Advocacy has to confront government at all levels on behalf of small businesses. Then-Chief Counsel Stewart established a tradition of bringing together both state policy makers and small business owners at state conferences to hammer out solutions. We have continued this tradition. In December 1998, Advocacy hosted *Vision 2000: The States and Small Business Conference*. At this event, we realized one overwhelming thing—states and local governments and organizations are making tremendous strides to serve small businesses.

However, in an era of “downsizing,” many federal programs and regulations have been pushed off to state and local governments. It is possibly more critical now more than ever for the Office of Advocacy, working with our small business partners and policy makers, to make proposals for eliminating excessive and unnecessary regulations on small business and bringing valuable resources to entrepreneurs.

While small business policies have come a long way, these successes indicate a beginning—not an end. Building on these successes, the Office of Advocacy crafted a blueprint for a comprehensive approach to small business policies and programs in every state. The *Models for Success* is a roadmap for state and local leaders to serve small businesses and ultimately their community.

The Office of Advocacy's priority is recommending specific measures for “creating an environment in which all businesses will have the opportunity to compete effectively and expand to their full potential.” I take that statutory mandate very seriously, and we are pleased to offer the *Models for Success* towards that goal.



Jere W. Glover  
Chief Counsel for Advocacy



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## Introduction

*Models for Success: Model State Small Business Programs and Policies* has been developed as a template for state policymakers and small business leaders. After years of experience with state policies and programs, the Office of Advocacy at the U.S. Small Business Administration is publishing *Models for Success* as a menu of program and policy options.

Experience has shown that small businesses thrive when state and local governments recognize the importance and characteristics of small businesses. By formulating a plan that supports small business growth, governments build strong foundations for entire communities. This publication was inspired by *Vision 2000: The States and Small Business Conference* held December 4-5, 1998, in Washington, D.C. During the event, successful small business policies and programs at the state and local level were highlighted. Award-winning programs and policies advancing small business are outlined in *Models of Excellence* (Office of Advocacy, U.S. Small Business Administration, 1998). This publication goes one step further and provides a blueprint for state government and small business leaders. Small businesses will lead the economy into a prosperous new millennium, and states should support their contributions. Any state should have at least these five fundamental elements in its small business plan:

- Leadership in Small Business Issues;
- Regulations that Work for Small Business;
- Small Business Development;
- Access to Capital; and
- Government Procurement Opportunities.

Each state will have differing needs, but these five components are necessary for every state's plan. Special demands can be addressed in each area. For instance, rural business development may be an important aspect of a state's economy while urban businesses may be more advanced and looking for venture capital. Strengths among different industries will obviously affect programs' emphases, such as work force training or international trade assistance.

The appendices include examples of many of the models covered in the *Models for Success*, and the Office of Advocacy will gladly provide more information on any policies or programs addressed. States have made tremendous strides to recognize and enhance the value of small business. These initiatives are a beginning—not an end—for successful programs and policies for small business.

Ultimately, the purpose of the *Models for Success* is to give small business leaders and state policymakers a guide to developing small business programs and policies that work.





## **Leadership in Small Business Issues**

The bottom line: small business wants a voice in state government. When policymakers make important business and economic decisions, guidance from large business is common. But historically, small businesses were often surprised by new initiatives, harmed by the long-term impact of policies, and left out of benefits derived from programs. Some states have successfully welcomed entrepreneurs to the table and expanded outreach to small firms.

### **Governor's Advisory Council**

Assure that small businesses have the ear of leadership by forming an official government advisory committee that reports directly to the governor. Formed by executive order, the council may include small businesses and ex-officio members from key state leadership positions (e.g., secretary of commerce and lieutenant governor). Councils should make recommendations to the governor and the legislature for legislation, regulations, programs and other initiatives to boost small business growth. States such as North Carolina and Oregon have used the small business councils to target tax and regulatory reform efforts, increase funding for technology, and creating a clearinghouse for small business. (Appendix A: North Carolina executive order.)

### **Legislative Committee on Small Business**

State legislatures have often focused on the needs of business with the creation of committees on commerce or economic development. However, agendas are often dominated by big business while the impact of legislation on small firms goes unexplored. To address this problem, state legislatures have developed small business committees to spearhead new legislation or serve as a watchdog in the legislature. For example, Oklahoma's Committees on Small Business, in both the House and Senate, drove a small business agenda that resulted in the enactment of the Oklahoma Regulatory Review Act and included small business relief in omnibus tax legislation in 1998. (Appendix B: Oklahoma's Committees on Small Business--Chief Counsel's Special Awards for Small Business Advocacy.)

### **Office of Advocacy/Ombudsman**

To amplify the voice of small business, policymakers should designate a single person or office to speak independently for small firms within the government. The ombudsman or advocate role can take various forms but it should be a high-ranking position that allows direct access to the governor and legislature. For instance, Lieutenant Governor Mary Fallin serves as the small business advocate in Oklahoma. The role played by the advocate will vary from broad policy development to problem solving for state small businesses. Under the Oklahoma model, the lieutenant governor has had a tremendous impact on policy concerns of small business, such as workers' compensation reform. In Maryland, the advocacy office has developed one-on-one assistance for entrepreneurs traveling the maze of government relations. The governor-appointed advocate in Arizona also intermediates in problems between state agencies and small firms. Every state may want to assess what offices or services are now serving small firms, and

determine if they should be consolidated or coordinated by an advocate. Often the independent quality of an advocate will prevent programmatic oversight and allow for a strong investigative or research role. (Appendix C: Arizona Small Business Advocate job description and Arizona Business Connection assistance materials.)

### **State Small Business Conference**

A small business conference is a critical forum for identifying issues important to entrepreneurs and business growth. Held periodically, the conference may be officially sponsored by the government or hosted by private sector groups with government participation such as the Washington State Governor's Conference. The conferences have resulted in a consolidated agenda, a network of active small business people, and a coordinated effort. For example after the Hawaii Congress on Small Business, the legislature followed the recommendations of the 800-member delegation and enacted the Regulatory Relief Act of 1998, requiring agencies to conduct small business impact analysis of new regulations. Policymakers will benefit the most by keeping in touch with the conference network after the event. (Appendix D: Washington State Governor's Conference on Small Business top 10 recommendations.)

## **Regulations that Work for Small Business**

Small businesses are often faced with regulations that simply do not serve to improve their operations. The reason: rules are usually developed for a big business environment. Generally, small firms do not have personnel with expertise in tax laws, environmental hazards, workplace safety, or other regulated sectors. While businesses want to comply, many times they cannot. In research done by the Office of Advocacy, small businesses identified four major hurdles to compliance: 1) an unclear understanding of what is required to comply; 2) frequent changes in regulations; 3) high true costs (both direct and indirect) to fully comply; and 4) difficulties in obtaining clear answers to questions about compliance. Most states have taken some type of approach to regulatory reform, but policies should be evaluated for the real value they offer to small businesses. An effective approach includes compliance assistance for entrepreneurs and mechanisms to ensure small business participation in rural development. With these factors in mind, policymakers need to implement regulations that work for small business.

### **Compliance Assistance**

Compliance assistance can be provided in a variety of ways, but the important element is access. When new or small firms begin searching for answers, the government should have a system in place that directs them to answers.

#### *One-Stop Assistance*

As discussed in the section under leadership, small businesses may be best served by just one office that acts as their advocate to and liaison with the government. The one-on-one approach is successful in Maryland, where the Office of Business Advocacy helps entrepreneurs through the maze of regulations. However, states must be dedicated to funding an office with resources. In Arizona's One Stop Center, four representatives handle 35,000 calls each year, and software has been designed to allow the office to provide each caller with a custom package of materials in Spanish or English within 72 hours. The best services include online information, toll-free telephone lines, publications, informational software, and professionals who are trained in many aspects of government regulations. In addition, leadership must ensure that other agencies share information and respect the advice from the small business office. (Appendix E: Maryland Office of Business Advocacy Brochure.)

#### *Ombudsman in Every Agency*

Under the coordination of a one-stop small business office, ombudsmen may be positioned in key agencies to assure cooperation. If a one-stop office is not funded, states can benefit from assigning existing personnel within major agencies to be responsible for responding to compliance questions from small businesses. In Pennsylvania, the Small Business Resource Center brought together an interagency team from eight agencies to develop a comprehensive seminar and manual for small businesses. Simple solutions can work too. A special telephone line designated for small business signals that the agency is accessible and willing to assist.

### *Compliance Guidance*

For every rule that is issued, small firms have questions. Government can demonstrate its commitment to compliance by publishing plain language guides. Guides should be published in English and other languages appropriate to the State or region. Software with a simple question-and-answer format can take a small business through the labyrinth of a new rule. Application of a rule will vary and questions arise. Even short-term telephone hotlines to answer questions about new regulations can be helpful. Washington's Department of Ecology uses its Web page to post a summary of environmental permit requirements based on the type of activity or pollution a business expects to conduct (See <http://www.wa.gov/ecology/sea/pac/handbook/low/intro.html>). The online permit handbook allows businesses to view permit requirements at a glance and provides them with links to the agency contact for each type of permit. Initiatives such as this show that an agency is accessible and willing to provide guidance and answer questions. Assistance efforts demonstrate an agency's dedication to compliance. (Appendix F: Excerpt from Washington's online permit handbook.)

### *Training Regulators*

If a state commits to advancing its regulatory assistance programs, government professionals should be given the tools to deliver the best services. In 1991, the Washington legislature established an educational and training component within the state's Department of Trade and Economic Development. In addition to training for economic development practitioners, the program offered training on regulatory reform to state and local regulators. Sessions are held on facilitating regulatory fairness and developing clear and useful rules and guidelines. Successful programs invest in the people, delivering on the promises of better government. (Appendix G: Curriculum of Washington program.)

### **Rule Development and Review**

"Regulatory reform" has been the mantra for many policymakers. States must assure that reform results in a viable, flexible public policy. Just as small businesses want to know how to get information about compliance, entrepreneurs want access to government when policies are developed. If there is an institutional commitment to public involvement, small businesses will be part of the solution to problems that government is trying to resolve. (Appendix H: Compendium of state regulatory flexibility laws.)

### *Small Business Outreach and Participation*

Small business outreach and participation is the key to effective policy development. By using leadership forums, such as governors' small business conferences and chambers of commerce, any agency can gain access to active, thoughtful small business owners. Some states formalize small business oversight. In Utah, the Small Business Advisory Council reviews the impact of new rules. Wisconsin requires hearings for proposed rules that affect small firms. (Appendix I: Utah Code Ann. § 9-2-302.)

### *Economic Analysis and Regulatory Alternatives*

If a rule is proposed, the public deserves to know the impact it will have on the economy, including business. Many states now require some type of economic analysis or a regulatory impact statement for every new rule. These laws are similar to the federal Regulatory Flexibility Act. For instance, Georgia requires an economic impact analysis and regulatory alternatives. By providing options for a regulation, including an assessment of their costs, businesses and the public can make informed recommendations to the government. In states like Kentucky and Delaware, the agencies are required to tier administrative regulations to reduce the burden on smaller companies. Nearly 20 states have some type of “regulatory flexibility” law in place. Hawaii’s statute is probably the most comprehensive of all the state laws. The act establishes: 1) a petition process to an agency for regulatory review; 2) periodic administrative review of rules with small business impacts; and 3) an independent regulatory review board to consider concerns of small businesses and make recommendations to adopt, amend, or repeal rules.

### *Oversight*

States have created a plethora of oversight mechanisms for regulatory impact analysis and development of regulatory alternatives. Examples include: a small business advisory council (Utah), a governor’s regulatory review council (Arizona), and a small business defender in the legislature (Hawaii). Oversight may be most effective in an independent agency, the legislature, or the courts. (Appendix J: Arizona review council description.)

### *Periodic Reviews*

Oversight is also appropriate for existing rules. Periodic reviews of rules provide policymakers and small businesses an opportunity to reassess the intent, effectiveness and need for an existing rule. Hawaii’s law includes both an administrative review and review on petition process.

### *Paperwork Reduction*

Paperwork reduction has been the mantra for many government reform efforts. Simplification and consolidation of paperwork, recording, and reporting functions are usually the goal. These efforts may be separate from small business regulatory reform, but their goals can overlap. One-stop compliance assistance shops can be in the best position to see how multiple agencies request similar information from a single company.

California has taken an initiative to limit paperwork burdens through sunset reviews of regulations. In a 1997 executive order, the governor of California required state agencies to review all existing regulations by 1999. This review includes “changes to the regulation to minimize overlap and conflicts with comparable federal and local regulations, unless the differences in state requirements can be shown to provide additional benefits that exceed the additional costs.” (Appendix K: California Executive Order W-144-97.)

### **Equal Access to Justice**

Fighting an administrative decision in court can substantially drain the financial resources of a small company. States can alleviate this burden on small businesses by enacting an equal access to justice act benefiting small businesses that prevail in the courts against administrative agencies. Utah's Small Business Equal Access to Justice Act allows a court to award reasonable litigation expenses to any small business that is named as a party in an appeal of an administrative action brought by the state if the small business prevails, and the court finds that the state action was undertaken without substantial justification. Washington assists small businesses with a similar statute that puts a \$25,000 cap on the award a court may give to the prevailing party. (Appendix L: Utah Code Ann. § 78-27a-4, § 78-27a-5; Rev. Code Wash. (ARCW) § 4.84.350 (1999).)

## **Small Business Development**

States must take inventory. The plan for a state's small business development must entail an assessment of current programs, an understanding of the characteristics of businesses (size, industry, geographic location, etc.), and identification of required resources for and barriers to expanding businesses.

### **Networking Existing Resources**

An inventory of small business resources in the state is a simple first step to helping small business access assistance. By linking small business services and providing a guide, the state can bring enhanced assistance. Services should be identified from sources such as licensing offices, loan programs, university entrepreneur programs, small business development centers, nonprofit organizations, and federal government partners.

#### *Online Services*

A published and Web site listing of small business services can provide tremendous value. Many state home pages are not user-friendly for small business owners, but states such as Utah have developed a sophisticated approach to help small firms on their home page (See <http://www.state.ut.us>). However, many small firms do not have easy access to the Web, so published materials should be provided to trade associations, chambers of commerce, and depository libraries.

#### *Partners*

Going one step further, some states have established a consortium of organizations assisting small firms. Formalizing the relationship among different entities, the Delaware Small Business Resource Partnership was formed in 1996 and is coordinated by the state economic development office. Business counseling, employment training, and micro-lending are a few of the services available after one contact with the partnership.

### **Expanding Business Development**

After a state takes inventory of its current resources for small business, it may identify specific methods and required resources to expand business development assistance.

#### *One-Stop Shops*

With professional personnel and resources, states can institutionalize one-stop shops for small business owners. These sites offer individualized service. Acting as a representative to entrepreneurs, the Maryland Office of Business Advocacy assists small businesses in navigating government regulations and serves as a liaison to state, local, and federal agencies for new businesses. (Appendix E: Maryland Office of Business Advocacy brochure.)

### *Training and Certification of Economic Development Professionals*

To maximize the value of business development programs, the Washington State Business Assistance Center includes training and certification of economic development professionals. Pennsylvania's Department of Community and Economic Development has also initiated the "Train the Trainer" program to teach the staff of business associations, chambers of commerce, local development districts, and service providers (such as bankers and accountants) about regulations and other small business issues, so they can train their members or clients.

### *Resources*

Planning should be made for professional development, networking a small business office with other agencies, centralized physical location(s), travel to remote areas, and sophisticated methods to maximize accessibility to information (online services, toll free telephone, etc.). State-funded development programs can be leveraged with other sources of funding. Examples include the state-federal partnerships that fund the small business development centers, and the University of Washington's Business and Economic Development program that teams school resources and business students with companies in economically depressed areas (See the program's Web site at <http://weber.u.washington.edu/~busdev/report/98/>).

### **Serving Communities**

The needs of any one community will vary, so statewide programs may be tailored to address the needs of specific regions, industries, or businesses of a certain size. Therefore, thoughtful consideration should be given to the characteristics of the state's businesses and the demographics of the state's population.

### *Home-based Businesses and Microenterprises*

Most states have had a boom in home-based businesses and microenterprises. How to approach these burgeoning businesses vary but every successful program seems to address 1) the fundamentals of starting and operating a business; 2) how to comply with laws and regulations; and 3) how to grow and obtain capital. Some states go further. The Southeastern Utah Business and Technical Assistance Center, a nonprofit community corporation sponsored by local governments, offers over 15,000 square feet of space to 20 new businesses. A similar approach was taken by the Bloomington Business Incubator and Small Business Development Center in Indiana. The STAR Center (Start-up Training Assistance Resources) in Indiana provides low-cost office space and an aggressive micro-lending program.

### *Rural and Urban*

States usually have both urban and rural business centers, but business development must be tailored. Coupled with traditional business development components, rural programs may be designed to reach fewer people over a larger geographic area. Businesses may be smaller if customers come from local areas. However, businesses can grow in sparsely-populated areas by marketing beyond the borders of the community. The Mountain Association for Community Development in Berea, Kentucky, provides a Internet-based small business support center that emphasizes the local community and



its resources. In South Dakota, the Northern State University found customers for its local businesses. The business institute did a market feasibility study to target the top 10 foreign markets for locally produced Native American products. Urban youth entrepreneurship was championed by the North Philadelphia Business Chamber of Commerce. The chamber helped urban youth use the Youth Entrepreneurial Training Program operated by the Pennsylvania Department of Community and Economic Development.

### *Minority-owned Businesses*

In addition to geographic distinctions, entrepreneurs are often cultivated in their local ethnic community. Minority-owned and women-owned businesses are growing faster than other small businesses. Minority-focused small business programs have become very successful in many states. In New York, the Native American Jump-Start Program has become successful by linking tribal leadership and the Small Business Development Center in Albany. In Seattle, Washington, the Black Dollar Days Task Force has focused on promoting self-sufficiency for inner city African Americans and supported a community endowment fund.

### *Women-owned Businesses*

Programs targeting women entrepreneurs are booming. The U.S. Small Business Administration (SBA) has provided matching funds for women business centers throughout the United States. Women-owned businesses are hitting a new glass ceiling—insufficient capital to expand. So funding women-owned businesses has become the emphasis of many public and private efforts. The State-operated Colorado Credit Reserve Program has been especially helpful to this under-served market with loans under \$150,000.

### *Industries and the Work Force*

Any initiative to help small businesses will inevitably lead to a focus on the prominent or fledgling industries and the ability of the work force to serve those industries. States may find that industries need new customers or better trained workers.

The New York State Industrial Retention Network was launched as an initiative to strengthen New York's manufacturing sector, to save well-paying jobs, and to build the capacity of network participants to engage in economic development. The network consists of over 80 local development corporations, government agencies, financial institutions, unions, and other interested parties. Participating members use their organizations' specific skills to help shared clients. The Illinois Focused Industrial Retention Support Team is a similar program that identifies and assists small manufacturers going through a major transition who may need technical, technological, relocation, or work force training assistance to remain competitive in a global economy. The Governor of Pennsylvania formed a network of leaders in technology-based industries. The result was the Technology 21 Initiative, a final report produced by the network that outlined specific recommendations for the state to implement in order to strengthen technology-based industries within the state.

Another state network, the Minnesota Jobs Skills Partnership, was formed to assist businesses and the communities in which they operate to become more competitive through the development of their work force. The partnership consists of the Minnesota Department of Trade and Economic Development, Minnesota businesses, and Minnesota educational institutions. Businesses within the program identify a specialized training need and are matched with an educational institution. Up to 50 percent of the costs of the proposed training can be funded by the Partnership.

## **Access to Capital**

Small firms encounter difficulty obtaining financing from traditional sources such as banks because a small or young firm may lack a revenue history. By developing and sponsoring new sources of capital to fund small businesses, state and local governments can enjoy the rewards of generated jobs, exports, and tax revenue that small firms will bring to the state.

### **Micro-lending**

Micro-lending programs can fill voids in the lending community and provide critical financing to small businesses that are not quite bankable. State legislators can develop micro-lending programs to encourage micro-enterprise development within their states. One such program managed by the Montana Department of Commerce offers loans and operational and training grants to regional microbusiness development corporations within the state. These corporations then provide training, technical assistance in business planning, and loans of up to \$35,000 to small businesses that employ less than 10 people and generate less than \$500,000 in gross revenues. Montana's MicroBusiness Finance Program is completely self-sustained, and the services rendered by the state-administered intermediaries are available at low cost.

### **Incubator**

By sponsoring small business incubators in their state, state governments can encourage local economic growth through job creation and job retention, the revitalization of under-utilized property and the establishment of public-private partnerships. A small business incubator can provide shared services and equipment to new businesses at affordable rents. These services and equipment may include telephone service with voice mail, facsimile machines, computers, business libraries, copy machines and conference rooms. Clients of incubators are in an environment where small businesses can share experiences and conduct business with one another. They share costs and building maintenance responsibilities. Program sponsors can also identify buyers for the clients' own products and services. The Southeastern Utah Business and Technical Center in Price, Utah, is an example of a small business incubator sponsored by city and county governments. It is located in a restored building and now accommodates up to 20 small businesses. Since its establishment, the Utah incubator has assisted in the development of 16 new businesses that have provided more than 300 jobs in Southeastern Utah.

### **Seed and Patient Capital**

Often a small business idea is too big to develop on personal savings, and too small to attract venture capitalists. Seed and patient capital programs can fill this gap in small business financing. Through public-private partnerships, states can develop venture funds that make equity investments in seed-stage companies seeking financing. An example of such a fund is the Technology Bridge Program of the Illinois Development Finance Authority. It is a \$5 million venture fund that makes equity investments in

early and seed-stage Illinois technology companies that are seeking financing for the development, testing or initial marketing of a new technological product, process or invention. The Illinois partnership provides a steady source of funds and expertise in reviewing all applications. An important feature of the Technology Bridge Program is that one or more investors, such as a venture capital firm or experienced “angel” investor, must match the investment sought from the program fund on at least a one-to-one basis. The matching requirement leverages limited public resources and ensures significant due diligence by applicant companies. All proceeds from program investments are used to provide financing to additional qualified applicants.

### **Small Business Loan Guarantees**

Through tax revenue returns states may be able to double their investment in small business loan guarantees. To accomplish this, a state agency could manage a trust fund that would back loan guarantees extended by non-profit small business financial development corporations (SBFDCs) to lenders on loans that are not bankable for a variety of reasons, but that experience has shown are sound business risks. To further leverage public resources, the SBFDCs in California can collectively lend up to four times the reserves held in the trust fund managed by the California Trade and Commerce Agency. The California Loan Guarantee Program includes term loans, lines of credit, and farm loans. It complements SBA loan programs in making loans to some types of businesses ineligible at SBA, such as agricultural enterprises. It also provides bridge loans to disaster victims waiting for approval of federal disaster assistance.

### **Venture Capital**

State legislators can facilitate entrepreneurial development within their state by forming a committee that will develop a new legislative agenda aimed at increasing the accessibility and availability of equity capital to help fast-growing small businesses. The committee may include highly experienced professionals from both the public and private sectors, including the legal and investment communities. The new legislation could permit the creation of regulated “capital access companies” that could easily become publicly held small business capital funds through new federal regulatory exemptions. These new funds can attract venture capital from accredited investors for reinvestment in potentially high-growth small firms, which now have very little access to such capital. California’s Capital Formation and Business Investment Committee helped develop the legislative agenda that resulted in the approval of that state’s Capital Access Company Law in 1998 (see Cal. Corp. Code §28000 (1999)). The committee continues to work on other venture capital-friendly legislative initiatives.

In addition to capital-friendly legislation, states can facilitate entrepreneurial development by joining *ACE-Net*, the Access to Capital Electronic Network, as network operators. *Ace-Net* is an Internet-based securities listing service for entrepreneurs seeking equity financing in the range typically too low to attract most venture capitalists—\$25,000 to \$3 million. The system allows accredited investors to search for companies from around the country that are listed on the system without giving up their own privacy. The program is a public-private partnership between not-for-profit local network operators (typically university- or state-based entrepreneurial development

centers) and the SBA Office of Advocacy. There are currently 38 states participating in the *Ace-Net* partnership. (Appendix M: *Ace-Net* brochure.)



## **Government Procurement Opportunities**

States can demonstrate their commitment to small business and efficient government with an aggressive campaign to advance government procurement opportunities. States will enjoy a larger pool of competitors if contractors—including small businesses—are provided with the information, tools, and opportunity to win government contracts.

### **Marketing Development**

Exchanging information about contract opportunities is probably the best way to encourage small business bidding on government contracts. This exchange is a two way street. Government should solicit bids in a easy-to-access forum and provide sufficient time for smaller contractors to develop proposals. The most common form is a printed, subscription based compilation of requests for proposals. However, using an on-line, email-based service could be a less expensive, more efficient option for many small businesses. A small business listing service should be provided that allows businesses to profile their services or products. Small business can be responsible for keeping the profiles updated. By providing a listing, government contract officials (and prime contractors) are encouraged to tap into the listing, and solicit contractors directly. It is an inexpensive but simple tool. Governments may use the Pro-Net, the on-line listing service offered by the SBA. Encourage small businesses to place their profile on *Pro-Net* for exposure to state, federal, and private prime contracts. (Appendix N: *Pro-Net* information.)

Some states require small business certification to assure contractors qualify for any small business preferences offered in government procurement. Certification may be a formalized, thorough state program, a self-certification process, or recognition of a private certification program. Whatever approach, the state should have clear definitions of small business that fit different types of industries. Some states follow the definitions provided by the SBA (See Title 13 of the Code of Federal Regulations, Part 121).

### **Agency Goals and Strategies for Small Business Contracting**

To develop awareness of small business contractors and provide enhancements for soliciting them, agencies often establish small business contracting goals. A certain goal, either in terms of number of contract actions or dollars, can be set to ensure contracting officials are encouraging and considering the small business contractor. Sometimes institutional problems have discouraged small businesses from bidding or created impossible thresholds that make it impossible for small businesses to receive contracts.

A state should take several steps to ensure small businesses have the opportunity to win contracts. Prohibit bundling contracts into mega-projects that result in prohibitively large contracts that small firms cannot serve. Small businesses aren't the only ones harmed by this practice—the government limits its field of competitors. States should allow small businesses to partner on larger contracts to obtain and fulfill a prime contract.

State and local governments should also encourage prime contractors to use techniques that advance small business subcontracting. To complement agency small business procurement goals, prime contracts should be required, at the time of solicitation, to provide a list of subcontractors, their size, and their portion of the contract. Bid listing encourages prime contracts to seek small businesses early in the process and assures prime contractors do not “bid shop” after the award of a contract and drop subcontractors. In addition, prime contractors should not be allowed to force subcontractors to sign hold harmless clauses that indemnify prime contracts from loss or injury. This type of strong arming weakens small businesses’ position and ultimately hurt government contracting practices. (Appendix O: Arizona’s contractors’ bill of rights.)

### **Prompt Payment**

Small contractors will thrive and provide the best service and products to government if safeguards are in place to ensure prompt payment. Cash flow is one of greatest hurdles to operating a small business, especially a firm that is growing fast. States have used effective methods for assuring prompt payment. The state of Maryland requires prompt payment of the state to prime contractors and prime contractors to subcontractors. Beyond contractual promises of prompt payment, states may issue direct disbursement to subcontractors or use escrow accounts. Finally, the use of payment bonds, usually used in construction, is a effective protection for subcontractors and suppliers on public contracts. It provides guarantees of payment and completion of the job for the government. (Appendix P: Maryland Real Property Code Ann. § 9-302 (1998).)



## **Appendices**

**Appendix A: North Carolina executive order**

**Appendix B: Oklahoma's Committees on Small Business--Chief Counsel's Special Awards for Small Business Advocacy**

**Appendix C: Arizona Small Business Advocate job description and Arizona Business Connection assistance materials**

**Appendix D: Washington State Governor's Conference on Small Business top 10 recommendations**

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**Appendix F: Excerpt from Washington's online permit handbook**

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**Appendix H: Compendium of state regulatory flexibility laws**

**Appendix I: Utah Code Ann. § 9-2-302**

**Appendix J: Arizona Governor's regulatory review council**

**Appendix K: California Executive order W-144-97**

**Appendix L: Utah Code Ann. § 78-27a-4, § 78-27a-5; Rev. Code Wash. (ARCW) § 4.84.350 (1999)**

**Appendix M: ACE-Net brochure**

**Appendix N: Pro-Net information**

**Appendix O: Arizona contractors' bill of rights**

**Appendix P: Maryland Real Property Code Ann. § 9-302 (1998)**



## **Appendix A: North Carolina executive order**

9 N.C.A.C. 2B, Exec. Ord. No. 10

### **EXECUTIVE ORDER NUMBER 10. NORTH CAROLINA SMALL BUSINESS COUNCIL**

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby establish the North Carolina Small Business Council. The Council shall be composed of at least 20 members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as Chairman.

Section 2. The Council shall meet at least once in each quarter and may hold special meetings at any time at the call of the Chairman, the Governor or the Secretary of Commerce.

Section 3. The members of the Council shall not receive any compensation, per diem, or reimbursement for travel and subsistence expenses for their services.

Section 4. Purposes of the Council. The purposes of the North Carolina Small Business Council are as follows:

(A) To prepare and present recommendations to the Governor and General Assembly for changes in statutes, rules and regulations, including the state tax structure, which affect small businesses in North Carolina.

(B) To make recommendations to the Governor and General Assembly for new legislation, agency programs and other actions needed to assist small business growth and development.

(C) To assist the Small Business Development Section of the Business Assistance Division of the Department of Commerce in determining the need for programs for small businesses in education, training, marketing, funding resources, technological assistance and related areas.

(D) The Council is authorized to conduct interviews and solicit non-confidential information to carry out the provisions of (A), (B) and (C) above.

Section 5. The Small Business Development Section of the Business Assistance Division of the Department of Commerce shall provide staff and support services for the Council.

Section 6. It shall be the responsibility of each Cabinet Department Secretary to make every reasonable effort for his or her department to cooperate with the North Carolina Small Business Council to carry out the provisions of this Order.

Section 7. The elected heads of the Council of State Departments are encouraged and invited to join in the provisions of this Order. All services of the Council available to the Governor and his Cabinet under this Order shall be available to each of the heads of the Council of State Departments electing to participate.

Section 8. Executive Order Number 51, dated May 16, 1980, is hereby rescinded. All records of the North Carolina Small Business Advocacy Council created pursuant to said executive order, are transferred to the Council created herein. The Council herein shall be the successor to the North Carolina Small Business Advocacy Council.

Section 9. This Order shall be effectively immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this twenty-eighth day of June, 1985.

#### AMENDMENT TO EXECUTIVE ORDER NUMBER 10 NORTH CAROLINA SMALL BUSINESS COUNCIL

By The authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. Lines 1 and 2 of Subparagraph (C) of Section 4 of Executive Order Number 10 are amended by deleting the words "Small Business Development Section of the Business Assistance Division" and inserting in lieu thereof "Small Business Development Division" and lines 1 and 2 of Section 5 of Executive Order Number 10 are amended by deleting the words "Small Business Development Section of the Business Assistance Division" and inserting in lieu thereof "Small Business Development Division."

Section 2. This amendment is made because the Business Assistance Division previously described has been replaced by the Small Business Development Division.

This action effective the 25th day of July, 1985.

## **Appendix B: Oklahoma's Committees on Small Business--Chief Counsel's Special Awards for Small Business Advocacy**

- ✪ The Committees on Small Business of the Oklahoma Senate and the Oklahoma House of Representatives

Senator Jim Maddox  
Chairman  
Committee on Small Business  
Oklahoma Senate  
State Capitol  
2300 North Lincoln Blvd.  
Oklahoma City, OK 73105

Phone (405) 521-5779

Representative Jack Bonny  
Chairman  
Committee on Small Business  
Oklahoma House of Representatives  
State Capitol  
2300 North Lincoln Boulevard  
Oklahoma City, OK 73105  
Phone (405) 521-2711

In 1997, recognizing the importance of the state's small business community and the issues which concerns it, Oklahoma's speaker of the House of Representatives and the president pro-tempore of the Senate created a Committee on Small Business in each respective body. With the organization of these committees, Oklahoma small businesses now have a direct link to the legislative process.

Responding immediately to one of the greatest problems facing small business everywhere, government regulation, the Small Business Committees secured the enactment, by unanimous vote in both chambers, of the Oklahoma Regulatory Review Act. The Act requires all state agencies to review all regulations under their purview and rescind or amend any redundant or unnecessary rules already in place. On or before July 1, 1999, each agency is required to report their findings and actions to implement the act.

Tax reform has also been a major focus of the Small Business Committees. Specifically, they were successful in passing small business provisions in an omnibus tax reform legislation. The bill included estate tax relief and a provision allowing a tax credit for Oklahoma businesses to offset the federally-mandated fee charged by the SBA on its small business loan guarantees. They also secured approval of legislation harmonizing tax filing dates for both corporate and franchise taxes.

Another notable achievement was Governor Keating's approval of the committees' request to name a cabinet-level Oklahoma Small Business Advocate. Lieutenant Governor Mary Fallin was appointed, and her work has already had a major impact. The Oklahoma Small Business Committees were nominated by L. Matt Robison, Director of the Small Business Division of the Oklahoma State Chamber.

## Appendix C: Arizona Small Business Advocate job description and Arizona Business Connection assistance materials

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### Arizona Small Business Advocate

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**The Arizona Small Business Advocate** reports to the Governor and is responsible for keeping an open line of communication between the Governor and small businesses. The advocate works with chambers of commerce and other advocacy groups to develop policies and programs that will address fundamental statewide issues of concern to all small businesses. In addition, the advocate interacts with state regulatory agencies to improve their responsiveness to small businesses and assists entrepreneurs in resolving matters involving state government offices. Governor Jane Dee Hull has designated the advocate as Arizona's point person for information on Y2K small business issues. To receive a free brochure with a checklist to take your business into the Year 2000, please call (602) 280-1480 or (800) 542-5684.

Joe Dean, Director  
Arizona Small Business Advocate  
(602) 280-1480 or 1-800-542-5684  
FAX: (602) 280-1339

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Web site: <http://www.azcommerce.com/ABC.htm>

### The Arizona Business Connection

**The Arizona Business Connection** meets the needs of businesses in every stage of development. Whether you have just begun to think about starting a company—or you are already well-established—or you are relocating your business to Arizona—the Business Connection is here for you. The Business Connection is a resource for information, referrals assistance and advice.

**Call for:**

- Information on licenses, applications, permits and any other requirements (most state documents may be obtained directly from the ABC office) .
- A customized packet containing the forms you need for starting your business
- Information on applicable taxes
- Clarification of government regulations
- Help in communicating and resolving problems with government agencies
- Information on financing
- Referral to local, state and federal agencies
- Referral to professional associations in your field

- Assistance and referral for minority and women owned business entrepreneurs, including certification and procurement
- Information regarding our Minority/Women Owned Business Data Base
- Information on employee training programs
- Referral to resources for:
  - Formulating business plans
  - Designing marketing strategies
  - Importing and exporting
- Answers to other questions you might have

**Since each packet of information is customized for the type of business, community, applicable regulations etc., our courteous staff needs to briefly discuss your business plans.**

**To obtain your free custom packet of information including the booklet "Guide To Establishing and Operating a Business In Arizona," call the Arizona Business Assistance Center toll free, at the number listed below.**

Arizona Business Assistance Center  
(602) 280-1480 or 1-800-542-5684  
FAX: (602) 280-1339

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## **Appendix D: Washington State Governor's Conference on Small Business top 10 recommendations**

### **1998 Governor's Conference on Small Business Top 10 Issue Results April 22, 1998**

1. Raise B&O exemption to \$500,000.
2. Legislature should pass a bill (like SB6699), so employers can give and get honest employees reference without penalty.
3. Government agencies need to:
  - Talk more with small businesses affected by the agencies' actions.
  - Establish a "micro business" definition for firms with 10 or fewer employees and where the business is the primary source of income for the owner, and establish programs for these businesses.
  - Become more small business friendly.
  - Recognize the differences between big businesses and small businesses
4. Clarify tax laws and waive penalties if business is trying to comply.
5. Agencies should not exceed legislative authority (i.e.; child labor laws) and agencies should notify businesses affected by a new regulation about the regulation.
6. Involve business in a process, which will prioritize the allocation of resources for infrastructure.
7. Increase the emphasis on basic education (K-12) in math & science.
8. Base B&O tax on profits, rather than gross income.
9. Provide more community colleges/vocational college technical training opportunities.
10. State Growth Management Act left too much to rule-making and agency decision. The GMA environmental review should be combined with SEPA environmental review. The state panel of non-elected officials has too much power over local growth management plans.



## **Appendix E: Maryland Office of Business Advocacy brochure**

The Office of Business Advocacy was created in August 1995 as part of the Maryland Department of Business and Economic Development. Simply put, the mission of the Office of Business Advocacy is to assist Maryland businesses in navigating through the processes and regulations of local, state, and federal government.

Small businesses in Maryland, as well as in other states, must obtain a variety of permits and licenses from the federal, state, and local levels in order to operate. In fact, there are over 400 different permits issued by the State of Maryland, in addition to permits issued by the federal and local governments. The process of understanding the requirements and obtaining all the permits needed can be very confusing, time-consuming, and frustrating, especially for a small business with limited resources.

In looking at ways to improve the business climate in Maryland, one major criticism heard from the business community was the difficulty businesses had in obtaining the permits necessary to operate. Another problem frequently cited was a lack of responsiveness from government agencies in getting answers regarding pending permit applications and other regulatory issues. In an effort to address these concerns, the Office of Business Advocacy was created.

The Office of Business Advocacy does not seek to supplant the regulatory or licensing authority of any government agency. Rather, the goal is to provide Maryland businesses with a liaison to all federal, state, and local government authorities to facilitate the process of opening and operating a business in Maryland. In addition to providing this ombudsman service, the Office also acts as an information source and central point of contact on behalf of the business community, in efforts to establish a more seamless regulatory process. The Office also works to identify duplicative, excessive, and cumbersome regulations at all levels of government, and provides analysis of proposed legislation's impact on small business and economic development as a whole.

A small business either operating or intending to operate in Maryland may contact the Office of Business Advocacy directly for assistance. An ombudsman trained in regulatory issues will assist that businesses in securing the necessary licenses and permits needed from any regulatory agency. The ombudsman handling the matter will be the point person charged with ensuring that the business understands all of the regulatory requirements, and that the government agencies are granting the permits in a timely manner.

In order to accomplish the goals set forth by the Office of Business Advocacy, common sense solutions are sought. Often, problems can be resolved for businesses by asking simple questions as to why a particular permit or regulation is needed, what is required of the business, and how long it will take for a permit to be issued. This is a "customer service" approach, and an attempt to make it easier to start, operate, and expand a business in Maryland, while ensuring that all regulatory requirements are met.

The Office of Business Advocacy measures success by the number of businesses it assists in dealing with the bureaucracy. To date, more than 500 businesses in Maryland have benefited from the services of the Office of Business Advocacy. Although it is difficult to quantify success in terms of “return on investment,” one example of how the Office of Business Advocacy helps businesses is that of a financial services business that requested assistance. The company was constructing several new, two-story parking garages. The Americans with Disabilities Act (ADA) required a certain number of handicapped parking spaces on each floor of the garages and an elevator to provide handicapped access to each floor of the respective garages. The Office of Business Advocacy was able to assist the company in obtaining a variance from the ADA regulations. Rather than having handicapped spaces scattered throughout the floors, the company would simply put all of the handicapped spaces on the ground level of the garages. This approach allowed the company to avoid the cost of installing and operating elevators in these garages, and yet maintained compliance with ADA regulations. This simple solution resulted in a savings to the company of nearly \$500,000.

In another matter, a small ice cream store chain, which made its own ice cream, was considered a manufacturer by every taxing authority except the one in which it was a benefit to be classified as such. At the request of the business, the Office of Business Advocacy got involved in an attempt to rectify the matter. After tough discussions with the appropriate taxing bodies, the law was changed to classify the business as a manufacturer across the board. The cost to the company of the incorrect classification was over \$35,000. Thus, the efforts of the Office of Business Advocacy yielded a considerable savings to the company and allowed the business to continue operations at a higher profit margin.

*Prior to the establishment of the Office of Business Advocacy, small businesses were on their own to work their way through the regulatory maze. The Office of Business Advocacy gives small businesses an ally on the inside of government. The Office hopes to assist many more businesses in the near future, and will continue efforts to make the regulatory environment more accountable, predictable and thereby more business friendly. The intended end result of all these efforts is make it easier for small business to operate in Maryland.*

## **Appendix F: Excerpt from Washington's online permit handbook**

<http://www.wa.gov/ecology/sea/pac/handbook/low/intro.html>

This Web site is the electronic version of **Permit Handbook: Commonly Required Environmental Permits for Washington State** (Publication No. 90-29, Revised October 1998). This site provides information about the most commonly required state environmental permits. The site also includes limited information on federal and local permits. [Table 1](#) is a summary of permit requirements.

Please refer to Ecology's [On-line Permit Assistance](#) page for more detailed information, or consult the resource agencies listed on the "[Contacts](#)" page for more project-specific permit information. These agencies will work with project proponents to help them determine what permits are needed for a specific project. It is important to keep in mind that the person conducting an activity is responsible for ensuring that all necessary permits are obtained.

The type of impacts that a project may generate and the location of a project will determine which federal, state and/or local permits are required. For example, certain permits will be required if your proposal involves discharges only to the air, discharges to water, or if it is located in or near water.

Projects often involve a variety of natural resources requiring review by an assortment of specialists. Traditionally, separate applications and permits have been developed to address each of these special project features and natural resource functions. Agencies are working to streamline some of these processes without jeopardizing Washington's natural resources. Agencies will work with all applicants to ensure that this process runs as smoothly as possible.



## Appendix G: Curriculum of Washington program

# Education & Training

## Washington State Community, Trade and Economic Development (CTED)

\*Examples below are overhead slide excerpts from class presentations on “Developing Clear and Usable Regulations”

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### Clear and usable regulations help everyone

The Federal Communications Commission had five people answering calls about regulations for citizens' band radios.

The telephone company told them that only 10% of callers were getting through. The other 90% called later or gave up.

They could have added more telephones and more staff.

Instead they rewrote the regulations.

The phone calls dropped so much that the five people were assigned to other jobs.

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### An example of clear and usable regulations

Here are the original and revised versions of one paragraph from the regulations for citizens' band radios:

*Original rule:*

95.419 **Mailing address furnished by licensee**

Except for applications submitted by Canadian citizens pursuant to agreement between the United States and Canada (TIAS No. 6913), each

application shall set forth and each licensee shall furnish the Commission with an address in the United States to be used by the Commission in serving documents or directing correspondence to that licensee. Unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission for these purposes.

*Revised rule:*

**95.423 What address do I put on my application?**

(a) You must include your current complete mailing address and station address in the United States on your CB license application.

(b) A Canadian General Radio Service licensee may supply a Canadian address if he or she is applying for permission to operate under TIAS No. 6931.

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## **A process for developing clear and usable regulations**

### **Planning the Documents**

Get agreement on:

- purposes
- audiences
- users' tasks
- scope

### **Planning the Project**

Get agreement on:

- schedule
- staffing
- budget
- style standards
- other issues

### **Organizing**

- gather information
- select the content
- organize the text

### **Drafting and Testing the Process**

- write

### **Producing the Final Copy**

- copyedit again

### **D Continuing**

- 0** - distribute



- include tables feedback
- edit to-date
- review for accuracy
- review for usability
- revise
- test!!
- repeat the process

- proofread again
- print

- C - gather
- U - keep it up-
- M
- E
- N
- T

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### **Agreeing on the purposes**

All regulations serve several purposes.

Think about a specific regulation from your agency.

Write down the name of the regulation:

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What does the agency want to achieve through this regulation?

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### **Use gender-neutral words**

Here are several techniques for writing gender-neutral regulations:

- Use an article, "a," "an," or "the,"

instead of a pronoun.

*Gender-specific:*

The Secretary shall in the course of his day...

*Gender-neutral:*

The Secretary shall in the course of the day...

- Use the plural.

*Gender-specific:*

This section does not apply to a physician unless he practices dentistry as a specialty.

*Gender-neutral:*

This section does not apply to physicians unless they practice dentistry.

*Even better:*

This section applies to dentists. It does not apply to other physicians.

- Turn a noun phrase into a verb.

*Gender-specific:*

Any person who shall import or have in his possession any...

*Gender-neutral:*

Any person who shall import or possess...

- Change the verb so you do not need a pronoun.

*Gender-specific:*

... the public official shall inform himself concerning the conditions...

*Gender-neutral:*

... the public official shall ascertain the conditions...

- Change the sentence structure to put the noun in a different place.

*Gender-specific:*

If the Commissioner finds that..., he may...

*Gender-neutral:*  
Upon finding that..., the Commissioner may...

Adapted from Maryanne Corbett,  
"Making state laws gender neutral,"  
*Simply Stated* 75, 1987.

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**Be careful with "shall."**  
**Consider using "must" for "shall"**

The *Bill Drafting Guide* has an excellent discussion of "shall," "may," and "must" on pages 50 - 51.

Very few Americans use "shall" correctly.

Ordinary people will not understand the distinction between "shall" and "must."

Consider using "must" for "shall" consistently in regulations.

*Department of Revenue*  
WAC 458-20-166(4):  
Persons providing lodging and other services generally must collect retail sales tax on...They must pay retail sales or use tax on...

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**Getting useful information from reviews**

When a draft is almost ready,

- talk to the reviewers
- remind them it is coming
- deliver the draft with a cover memo

- that says
- what stage the draft is at
  - what specific help you need
  - when you must have the draft back

When the review is ready,

- be open to the reviewers' comments
- do not just blindly accept the changes
- do not ignore comments, communicate back to reviewers about changes you question
- negotiate to make sure the information will be clear and usable for the users

---

### **Testing regulations for clarity and usability**

When writing, you may be trying to put yourself in the users' places.

However, you are *not* the users.

- You know more about regulations than many users.
- You know the agency's language better than many users.
- You already know the details of this regulation better than many users.

To really know if the regulation is clear and usable, you must have representative users try to work with it.



## Appendix H: Compendium of state regulatory flexibility laws

<u>Arizona</u>	Governor's Regulatory Review Council, considers among other things, small business impact statements	A.R.S. § 41-1052 (1998)
<u>California</u>	Regulatory impact statement and plain English rules	Cal Gov. Code § 11346.5 (1997)
<u>Connecticut</u>	Regulatory flexibility analysis	Conn. Gen. Stat. § 4-168a (1997)
<u>Delaware</u>	Consider feasibility of exempting small businesses	29 Del C. § 10404 (1997)
<u>Florida</u>	Regulatory impact and alternatives; small business ombudsman	Fla. Stat. § 120.54 (1998)
<u>Georgia</u>	Economic impact analysis and alternatives	O.C.G.A. § 50-13-4 (1998)
<u>Hawaii</u>	Small Business Regulatory Flexibility Act; analysis, regulatory alternatives, small business regulatory review board, and small business defender (within the legislature)	1998 Hi, ALS 168
<u>Illinois</u>	Regulatory flexibility analysis, effects on economic growth of small businesses, and alternatives	5 ILCS 100/5-30 (1998) 415 ILCS 5/27 (1998)
<u>Iowa</u>	Regulatory flexibility analysis, alternatives and small business review	Iowa Code § 17A.31 (1997)
<u>Kentucky KY Revised Statutes</u>	<u>Tiering administrative regulations to reduce burden</u> (PDF File) <u>Regulatory impact analysis</u> (PDF File)	KRS § 13A.210 KRS § 13A.240
<u>Michigan</u>	Regulatory impact statement and small firm involvement	MSA § 3.560(145) (1998)
<u>New Jersey</u>	Regulatory flexibility analysis and alternatives	N.J. Stat. § 52: 14B-17 (1998)
<u>New York</u>	Regulatory flexibility analysis	NY CLS St. Admin. Act §§ 202-202a
<u>Pennsylvania</u>	1. Regulatory analysis and small business provisions 2. Small Business Advocacy Council and Advocate	71 P.S. § 745.5 (1998) 71 P.S. § 1709.704; 73 P.S. § 399.45 (1998)
<u>Utah</u>	Small Business Advisory Council reviews impacts	Utah Code Ann. § 9-2-302 (1998)
<u>Vermont</u>	Economic impact statement and small business alternatives	3 V.S.A. § 838 (1998)
<u>Washington</u>	Economic impact statement and review of impacts	Rev. Code Wash. §§ 19.85.020-70 (1997)
<u>Wisconsin</u>	Regulatory flexibility analysis, hearings, and alternatives	WWis. Stat. §§ 227.17-19



**Appendix I: Utah Code Ann. § 9-2-302 (1998)**

**Small Business Advisory Council**

**Utah Code -- Title 09 -- Community and Economic Development**

**9-2-302. Council duties.** The council shall:

- (1) advise the governor on matters of concern to small businesses;
- (2) review and evaluate proposed and existing laws and regulations of the state that affect small businesses and make recommendations for regulatory and statutory changes needed to encourage the stability and growth of small business;
- (3) study any special problems confronting small businesses and recommend solutions to such problems;
- (4) review existing programs of assistance to small businesses at federal, state, and local levels of government and recommend priorities for the delivery of such programs;
- (5) provide a public forum and schedule hearings at which the views of the small business person may be solicited and represented to state government; and
- (6) maintain communication and cooperation with small business individuals and local, state, and national small business organizations.

Renumbered and Amended by Chapter 241, 1992 General Session



## Appendix J: Arizona Governor's regulatory review council

### A.R.S § 41-1052

#### 41-1052 Council review and approval

A. Before filing a final rule with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule, preamble, concise explanatory statement and economic, small business and consumer impact statement which meets the requirements of section 41-1055.

B. Within ninety days of receipt of the rule, preamble, concise explanatory statement and economic, **small business and consumer impact statement**, the council shall review and approve or return, in whole or in part, the rule, preamble, concise explanatory statement or economic, small business and consumer impact statement. An agency may resubmit a rule, preamble, concise explanatory statement or economic, small business and consumer impact statement if the council returns the rule or economic, small business and consumer impact statement, in whole or in part, to the agency.

C. The council shall not approve the rule unless:

1. The economic, small business and consumer impact statement contains the information, data and analysis prescribed by this article.
2. The economic, small business and consumer impact statement is generally accurate.
3. The probable benefits of the rule outweigh the probable costs of the rule.
4. The rule is clear, concise and understandable.
5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.
6. The agency adequately addressed the comments on the proposed rule and any supplemental proposals.
7. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.

D. The council shall verify that a rule with new fees does not violate section 41-1008. The council shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present vote to approve the rule.

E. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble, concise explanatory statement or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

F. A person may submit written comments to the council that are within the scope of subsection C of this section. The council may permit oral comments at a council meeting within the scope of subsection C of this section.

G. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided for by section 41-1056.01.

H. The absence of comments pursuant to subsection C of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.



## Appendix K: California Executive order W-144-97

### EXECUTIVE ORDER W-144-97

**WHEREAS**, as California continues to build a competitive, dynamic economy to meet our needs in the 21<sup>st</sup> Century, government must do its part by continually improving the regulatory structure to recognize and accommodate these dynamic changes; and

**WHEREAS**, just as Californians have demanded through the State Constitution that government limit its spending and taxing powers, so too must state agencies minimize the hidden taxes to consumers, business, and local government inherent in regulations; and

**WHEREAS**, the Legislature through measures such as AB 2061 (Polanco, 1991), AB 3511 (Jones, 1992), AB 969 (Jones, 1993), AB 1144(Goldsmith, 1993), SB 513 (Morgan, 1993), and SB 1082 (Calderon, 1993) has repeatedly directed state agencies to consider the cost effectiveness of regulations, in an effort to minimize the regulatory impact on business, local governments, the state's business climate, and the state's economic competitiveness; and

**WHEREAS**, on February 8, 1996, I signed Executive Order W-131-96 which directed each state agency to forward all regulations identified as unnecessary or redundant to the Office of Administrative Law for appropriate action, and also directed the Governor's Office of Planning and Research to hold regional meetings throughout the state to receive public testimony on further reform; and

**WHEREAS**, more than 300 citizens, businesses, and organizations offered extensive and varied suggestions for regulatory improvements at the California regulatory Roundtables held throughout California in the Spring of 1996; and

**WHEREAS**, as a result of Executive Order W-131-96 and the California Regulatory Roundtables, 3900 redundant and outdated regulations have been -- or are in the process of -- being repealed, with an additional 1700 regulations identified to date for modification; and

**WHEREAS**, on June 3, 1996, the Governor's Office of Planning and Research presented its final recommendations and findings in the report entitled "Recommendations from the regulatory Review Roundtables."

**NOW, THEREFORE, I, PETE WILSON**, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. **Consolidated Regulatory Program.** By July 1, 1997 the Directors of the Office of Administrative Law and the Office of Planning and Research, in consultation with the Department of Finance and other members of the Cabinet, shall develop procedures for a Consolidated regulatory Program. This program shall be based on the annual Rulemaking Calendar pursuant to Government Code section 11017.6, and shall incorporate the following provisions:
  - a. Beginning in 1997 and by November 1 of each year thereafter, all state agencies shall develop a process of all regulations, regulatory policies, goals, and objectives that the agency proposes to pursue during the

following year. The overview shall include: (1) the primary goals and authorities of the agency; (2) the specific statutory authority for the proposed regulation, including any specific legislative intent; (3) a statement of how the proposed regulation relates to those goals and authorities; (4) the relationship of the proposed regulation to other existing regulations, including federal and local requirements; and (5) estimated costs to develop and implement the regulations, including both state costs and compliance costs to be borne by the regulated community, local governments, and consumers.

- b. For all agencies, the Rulemaking Calendar, published each year by January 30 pursuant to Government Code Section 110017.6, shall be expanded to include the following summary information for each newly proposed regulation: (1) the promulgating agency and contact person; (2) the title of regulation and proposed location in the California Administrative Code; (3) the legal authority to adopt regulations and the specific statute that will be implemented; (4) an abstract describing the problem the regulation will address; (5) alternatives being considered; (6) the intended benefits; (7) any legal deadline for the adoption of the regulation; (8) a sunset review date not to exceed five years by which the proposed rule, if adopted, would be reviewed for retention, revision, or proposed elimination; (9) a schedule for the proposed regulatory action; (10) all budget information required on Form 399; (11) the levels of Government affected; (12) identification of any federal authority with which the regulatory action will comply; (13) the fiscal impact, including an initial estimate of costs to state and local governments; and (14) the economic impact, including an initial estimate of the economic impacts of the proposed regulations, the regulation's likely costs to the regulated community, local Government, and consumers and whether or not the rule qualifies as a Major Regulation.
- c. Any State agency that proposes adoption of a regulation that diverges from a comparable established state, federal, or local law or regulation which governs the same program or conduct shall: 1) identify the manner in which the proposed regulation is different than the applicable federal, state, or local law or regulation; 2) identify the benefit to the public health, safety, or welfare or the environment expected from adopting a regulation that is different from the existing law or regulation; and 3) identify whether having a different provision places an additional burden or cost on regulated persons, local governments, businesses, or consumers.
- d. State agencies shall not issue new regulations unless they are first published in the annual regulatory Overview and Rulemaking Calendar, unless otherwise required by state or federal law or as required by a Declaration of a State of Emergency, Executive Order, or by the need to protect immediate public health, safety, and welfare. Agencies proposing to issue new regulations that are not first published in the annual regulatory Overview and Rulemaking Calendar shall provide a statement to the Cabinet Secretary documenting the requirement for such a

regulation.

2. **Sunset Review of Regulations.** Beginning with the 1997 Annual Rulemaking Calendar, all state agencies shall establish a schedule to complete a sunset review of all existing regulations by 1999. This review shall include the following provisions:
  - a. A review of the authority and continued necessity for and cost effectiveness of each regulation, along with a determination to retain, modify, or repeal the regulation, including development of recommended legislation if required to implement the determination;
  - b. An updated estimate of the fiscal and economic impacts of the regulation on all levels of Government, consumers, and the regulated community;
  - c. Changes to the regulation to minimize overlap and conflicts with comparable federal and local regulations, unless the differences in state requirements can be shown to provide additional benefits that exceed the additional costs; and
  - d. Changes to the regulation to consider alternative approaches that are less intrusive or more cost effective. In completing the 1997-1999 regulatory sunset review, each agency shall identify sufficient efficiencies and cost reductions to meet a goal of reducing the total compliance costs--including fees--paid by business, local Government, and the public by 5 percent per year. In calculating the projected compliance cost reductions, agencies may include cost efficiencies achieved as a result of actions taken in accordance with Executive Order W-13 1-96.
3. **Economic Impact Statements.** By July 1, 1997, the Department of Finance, the Trade and Commerce Agency, and the Governor's Office of Planning and Research, in consultation with the other Cabinet Members, Office of Emergency Services, and the Office of Administrative Law, shall develop a standard economic impact statement to be included in each rulemaking record. The economic impact statement shall provide for consistent application of all existing statutory requirements for economic analysis of regulations, shall be used as the basis for the determination of fiscal impacts, and shall be incorporated into the fiscal impact statement required for proposed regulations. As provided in section 15363.6 of the Government Code and section 57005 of the Health and Safety Code, the economic impact statement shall be submitted to the regulation review unit of the Trade and Commerce Agency, and all state agencies and departments shall respond to the Trade and Commerce Agency's comments.
4. **Continuous Review.** In order to ensure continuous improvement in California's regulatory structure and to identify areas where additional efficiencies or other changes are warranted, the following two provisions shall be implemented immediately:
  - a. The Director of the Office of Planning and Research, in cooperation with the other members of the Cabinet, shall hold at least two Regulatory Review Roundtables annually and submit an annual report on further recommendations for regulatory improvement; and
  - b. Each state agency shall institute a customer service survey process. Each Cabinet Officer shall develop procedures for the review, tracking, and

response to surveys for each of their reporting boards, commissions, departments, and offices. For agencies not reporting to a Cabinet Officer such procedures shall be developed by the chief executive officer in consultation with the Director of the Office of Planning and Research.

5. **Open Regulatory Process.** From existing resources, each agency shall develop a regulatory ombudsman program by designating an employee or employees reporting directly to the chief executive officer to serve as ombudsmen. The ombudsman program shall provide an opportunity for any person to raise regulatory issues at both headquarters and any regional offices of the agency.
6. **Regulatory Consistency.** The following provisions shall be implemented to ensure consistent implementation of regulations:
  - a. The Director of the Office of Planning and Research shall compile a list of statutory deadlines set for the review of applications and other regulatory filings. In coordination with the Cabinet Officers, the Director shall complete by May 1, 1997 a review of the effectiveness of these deadlines, adherence of the agencies to deadlines, and existing enforcement mechanisms such as the refund of application fees when deadlines are exceeded without good cause. The Director's evaluation shall include recommendations for broader application of regulatory deadlines, improved tracking and reporting and other applicable provisions to ensure timely action by the regulatory agencies.
  - b. By May 1, 1997, the Legal Affairs Secretary shall complete a review of existing statutory and administrative provisions dealing with minor regulatory violations, and prepare recommendation' to ensure consistent application by the affected agencies. This review shall include recommendations as appropriate for legislation that would extend recent provisions enacted by the Legislature such as AB 2937 (Brulte, 1996) AB 59 (Skier, 1995), and SB 1899 (Peace, 1994).
7. State Constitutional Officers, the University of California the California State University, the California community Colleges, the State Board of Education, and state agencies, departments, boards, and commissions not directly under the authority of the Executive Branch are requested to take all necessary action to comply with the intent and the requirements of this executive order.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 10<sup>th</sup> day of January 1997.

**Appendix L: Utah Code Ann. § 78-27a-4, § 78-27a-5; Rev. Code Wash. (ARCW) § 4.84.350 (1999)**

**Utah Code Ann. § 78-27a-4 (1998)**

**SMALL BUSINESS EQUAL ACCESS TO JUSTICE ACT**

§ 78-27a-4. Litigation expense award authorized in actions by state

In any civil judicial action commenced by the state, which action involves the business regulatory functions of the state, a court may award reasonable litigation expenses to any small business which is a named party in the action if the small business prevails and the court finds that the state action was undertaken without substantial justification.

HISTORY: L. 1983, ch. 298, § 4.

**Utah Code Ann. § 78-27a-5 (1998)**

**SMALL BUSINESS EQUAL ACCESS TO JUSTICE ACT**

§ 78-27a-5. Litigation expense award authorized in appeals from administrative decisions

(1) In any civil judicial appeal taken from an administrative decision regarding a matter in which the administrative action was commenced by the state, and which involves the business regulatory functions of the state, a court may award reasonable litigation expenses to any small business which is a named party if the small business prevails in the appeal and the court finds that the state action was undertaken without substantial justification.

(2) Any state agency or political subdivision may require by rule or ordinance that a small business exhaust administrative remedies prior to making a claim under this act.

**Rev. Code Wash. (ARCW) § 4.84.350 (1999)**

§ 4.84.350. Judicial review of agency action -- Award of fees and expenses

(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses,



including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

(2) The amount awarded a qualified party under subsection (1) of this section shall not exceed twenty-five thousand dollars. Subsection (1) of this section shall not apply unless all parties challenging the agency action are qualified parties. If two or more qualified parties join in an action, the award in total shall not exceed twenty-five thousand dollars. The court, in its discretion, may reduce the amount to be awarded pursuant to subsection (1) of this section, or deny any award, to the extent that a qualified party during the course of the proceedings engaged in conduct that unduly or unreasonably protracted the final resolution of the matter in controversy.

## **Appendix M: ACE-Net brochure**

### **The Facts About...**

#### ***ACE-Net***

The Angel Capital Electronic Network, an Internet-based securities-listing service, is a dynamic, interactive response to the expressed needs of small business entrepreneurs, angel investors, accountants and securities attorneys.

*ACE-Net* provides an unprecedented opportunity for entrepreneurs seeking equity financing for expansion in the \$250,000 to \$3 million range – too high for tapping personal savings or obtaining small loans, but too low to attract most venture capitalists. It enables the entrepreneurs to reach accredited investors (called “angels”) with a net worth exceeding \$1 million or annual income greater than \$200,000 who want to invest in a company by purchasing shares of stock and often want to share their vast business expertise. At the same time, it allows angel investors to search companies from around the country that are listed on the system without giving up their own privacy. The uniform disclosure document required of all companies on the system makes it easier for accountants of entrepreneurs and angel investors alike to submit and retrieve information. Finally, *ACE-Net* permits companies listing offering materials on the system to take advantage of several federal and state securities exemptions, which can significantly reduce the cost of a security offering, without adversely affecting critical investor protections.

*ACE-Net* transforms what was the informal angel investment community into a nationwide system for entrepreneurs and investors to meet. The program is a public/private partnership between not-for-profit local network operators (generally established university- or state-based entrepreneurial development centers) and the Small Business Administration’s Office of Advocacy.

#### ***ACE-Net* for Entrepreneurs**

If you are an entrepreneur looking for equity dollars, *ACE-Net* can provide you with an expanded opportunity to offer securities to private investors. Using the technology of the Internet to create an electronic list of corporate offerings from small firms around the country. This costs less than traditional private placement offerings and saves time due to a streamlined process that has already been approved by federal and many state securities regulators.

*ACE-Net* provides the busy entrepreneur with “one-stop shopping” for information, 24 hours a day, 7 days a week, 52 weeks a year. You can learn about conferences, meetings and programs of interest as well as important legislative information, rules, terms and conditions affecting the entrepreneurial investment community.

In addition, the *ACE-Net* web site provides disclosure documents recognized by 48 states that entrepreneurs can complete with a minimum of expert support. Using *ACE-Net*, you can sell stock in a growing number of states without securing pre-registration with those states. You file and pay fees only after you secure the capital.

### ***ACE-Net* for Angel Investors**

As an angel, you recognize the worth of a good investment; you also value your privacy. *ACE-Net* uses the highest security-encryption software permitted to provide you with full anonymity while you search for investment opportunities. The entrepreneur will not be aware of your interest until you contact the company directly.

Not only has *ACE-Net* reduced the paperwork and regulatory burdens encountered during traditional private placement investments, it also takes advantage of the new efficiencies provided by the Internet. Using *ACE-Net*'s search engine and e-mail systems, you can quickly search for specific types of businesses, markets, investment amounts, geographic locations and other characteristics of the businesses. In addition, any company that newly joins *ACE-Net* and meets your investment criteria will automatically activate the sending of an e-mail to you.

Today about 250,000 angels invest \$20 billion annually in approximately 30,000 small firms. It is estimated that five to 10 times as many individuals have the wealth, entrepreneurial experience and interest in becoming angel investors. Until *ACE-Net*, there was no nationwide, centralized listing service identifying small, dynamic, growing companies for angel investors to investigate and examine.

### ***ACE-Net* for Accountants and Securities Attorneys**

Companies thinking of joining *ACE-Net* need the advice of securities attorneys and accountants to assist them in the preparation of their offerings and business plans. Designed in response to your recommendations, *ACE-Net* provides educational programs to help new entrepreneurs and angel investors better understand the issues they need to discuss with their attorneys and accountants.

*ACE-Net* operates under a no-action letter the Securities and Exchange Commission issued on October 25, 1996. Companies listed on *ACE-Net* can utilize the SEC's revised small business exemptions (under Regulation A and Regulation D, Rule 504) and recently adopted state securities small business exemptions. In April 1997, the North American Securities Administrators Association (NASAA) adopted a Model Accredited Investor Exemption for stock offerings to accredited investors. In states that have adopted the model language, *ACE-Net* companies have minimal regulatory burdens. With the revised exemptions from the SEC and NASAA, a growing number of both law and accounting firms see *ACE-Net* as an effective and efficient way of helping entrepreneurs and angel investors attain their goals and fulfill their dreams.

For more information about the SEC no-action letter, visit the *ACE-Net* web site through the U.S. Small Business Administration Office of Advocacy's home page:

[www.sba.gov/ADVO/](http://www.sba.gov/ADVO/). Some of the details you will find on the ACE-Net home page include --

- the model terms and conditions of securities offerings;
- detailed search engines for angel investors to find entrepreneurs, including specific searches for minority and women-owned businesses;
- a national schedule of events of interest to entrepreneurs and investors, including meetings and conferences sponsored by service providers such as securities attorneys and accountants;
- information about the angel capital market;
- links to other home pages relevant to ACE-Net and to the investors and entrepreneurs that make up the network; and
- subscription information and forms for becoming a part of ACE-Net.

### **ACE-Net Network Operators**

The network operators are not-for-profit organizations with years of experience helping entrepreneurs and investors. With ACE-Net, they are expanding this important service to

a national audience. A list of ACE-Net local network operators can be found on the ACE-Net home page through [www.sba.gov/ADVO/](http://www.sba.gov/ADVO/). It is under “Enrollment.”

### **Resources for the Investor and Entrepreneur**

#### **The Small Business Administration**

The SBA has offices located throughout the United States. For the one nearest you, look under “U.S. Government” in your telephone directory, or call the SBA Answer Desk at (800)-U-ASK-SBA or (800) 827-5722. The SBA’s Internet home page is [www.sba.gov](http://www.sba.gov).

#### **The U.S. Securities and Exchange Commission**

You can contact SEC via the Internet at [www.sec.gov](http://www.sec.gov); the telephone number for the Office of Small Business Policy is 202-942-2950.

#### **North American Securities Administrators Association**

You can reach the NASAA Internet home page at [www.nasaa.org](http://www.nasaa.org); the telephone number is 202-737-0900.



## **Appendix N: Pro-Net information**

Web site: <http://pro-net.sba.gov/>

*Pro-Net*  
PROCUREMENT MARKETING AND ACCESS NETWORK  
Welcome to Pro-Net!

*Pro-Net* is an electronic gateway of procurement information -- for and about small businesses. It is a search engine for contracting officers, a marketing tool for small firms and a "link" to procurement opportunities and important information. It is designed to be a "virtual" one-stop-procurement-shop.

### A Search Engine

*Pro-Net* is an Internet-based database of information on more than 171,000 small, disadvantaged, 8(a) and women-owned businesses. It is free to federal and state government agencies as well as prime and other contractors seeking small business contractors, subcontractors and/or partnership opportunities. *Pro-Net* is open to all small firms seeking federal, state and private contracts.

Businesses profiled on the *Pro-Net* system can be searched by SIC codes; key words; location; quality certifications; business type; ownership race and gender; EDI capability, etc.

### A Marketing Tool

Business profiles in the *Pro-Net* system include data from SBA's files and other available data bases, plus additional business and marketing information on individual firms. Businesses on the system will be responsible for updating their profiles and keeping information current.

Profiles are structured like executive business summaries, with specific data search fields that are user-friendly and designed to meet the needs of contracting officers and other potential users.

Profiles provide vendors an opportunity to put a controlled "marketing spin" on their businesses. Companies with "home-pages" can link their web site to their *Pro-Net* profile, creating a very powerful marketing tool.

## A Link to Procurement Opportunities

As an electronic gateway, Pro-Net provides access and is linked to the Commerce Business Daily (CBD), agency home-pages and other sources of procurement opportunities.

The system is also linked to key sources of information, assistance and training.

*The Pro-Net project is a cooperative effort among SBA's offices of Government Contracting, Minority Enterprise Development, Advocacy, Women's Business Ownership, Field Operations, Marketing & Customer Service, the Chief Information Officer, and the National Women's Business Council.*

## **Appendix O: Arizona contractors' bill of rights**

### **CONTRACTING BILL OF RIGHTS**

**We the General Contractors, Subcontractors, Design Professionals, and Construction-Industry Suppliers of the State of Arizona**, in Order to form a more perfect Construction Industry, establish Fairness, insure Equality among all Construction-Industry Business, provide for the Welfare of the Workers, promote quality construction, do ordain and establish this Contracting Bill of Rights.

Articles, proposed by the General Contractors, Subcontractors, Design Professional, and Construction-Industry Suppliers, to be ratified by the Legislature of the State of Arizona and become public law.

#### *Article the first*

All General Contractors, Subcontractors, and Design Professionals shall be entitled to full payment for all work properly performed, for all materials properly stored, and for all services properly provided.

#### *Article the second*

All monies and other forms of compensation due to General Contractors, Subcontractors, Design Professionals, and Construction-Industry Suppliers shall be paid promptly.

#### *Article the third*

Any General Contractor, Subcontractor, or Design Professional not paid promptly for all work properly performed, for all materials properly stored, and for all services properly provided shall have the right immediately to suspend performance until full payment has been received including for all reasonable costs incurred due to suspension. Furthermore that General Contractor, Subcontractor, or Design Professional shall have the right to be paid for all reasonable costs of re-mobilization.

#### *Article the fourth*

The laws of the this State shall take precedence and be enforced on all construction contracts for work performed in this State.

#### *Article the fifth*

All suits brought in construction-contract disputes for work performed in this State shall be filed in a Superior Court in the County where the project is located, and venue shall not be changed without the prior express agreement for all parties to the suite.

#### *Article the six*

All General Contractors, Subcontractors, and Design Professional shall be awarded attorney fees, and other costs associated with enforcing the rights provided for under this Bill of Rights.



*Article the seventh*

All General Contractors and Subcontractors required to be licensed to perform work or provide services in this State shall be duly licensed at the time an offer is made to contract for or perform the work services.

*Article the eighth*

Any contract provision that prevents a General Contractor, Subcontractor, or Design Professional from reasonable compensation for delays caused by the Owner or another party to the construction contract is against the public policy of this State.

*Article the ninth*

The Owner or user of a building, structure or improvement to real property in this State shall not be permitted beneficial use of the building, structure or improvement until all General Contractors, Subcontractors, Design Professionals, and Construction-Industry Suppliers that have provided labor, material or construction services shall have been paid in full.

*Article the tenth*

No General Contractor, Subcontractor, Design Professional, or Construction-Industry Suppliers shall be required to waive the right to make claim against a bond or lien properly until proper payment shall have been made.

## Appendix P: Maryland Real Property Code Ann. § 9-302 (1998)

### § 9-302. Prompt payment

(a) In general; exception. -- Except for work done or materials furnished under a **contract** enumerated in § 9-304 of this subtitle, a contractor or subcontractor who does work or furnishes material under a **contract** shall be entitled to **prompt payment** under subsection (b) of this section.

(b) Time for payments. --

(1) If the **contract** is with an owner, the owner shall:

(i) If the **contract** does not provide for specific dates or times of payment, pay to the contractor undisputed amounts owed under the terms of the written **contract**, within the earlier of:

1. 30 days after the day on which the occupancy permit is granted; or
2. 30 days after the day on which the owner or the owner's agent takes possession; or

(ii) If the **contract** provides for specific dates or times of payment, pay to the contractor undisputed amounts owed within 7 days after the date or time specified in the **contract**.

(2) Paragraph (1) of this subsection does not apply to any **contract** between the contractor and:

- (i) The State;
- (ii) A county;
- (iii) A municipal corporation;
- (iv) A board of education; or
- (v) A public authority or instrumentality.

(3) If the **contract** is not with an owner, the contractor or subcontractor shall pay undisputed amounts owed to its subcontractors within 7 days after receipt by the contractor or subcontractor of each payment received for its subcontractors' work or materials.