

Ray Marchiori
Region V Advocate
U.S. Small Business Administration
before the
House State Government Administration Committee
of the
Illinois House of Representatives
February 14, 2007

Chairman Franks and members of the House State Government Administration Committee, my name is Ray Marchiori and I am the Regional Advocate for the U.S. Small Business Administration's Office of Advocacy in Region V (which includes Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin). It is an honor for me to speak to you today and testify on House Bill (HB) 302.

As the Regional Advocate for Region V, my job is to be the direct link between state and local governments, small business groups, small business owners and employees and the Office of Advocacy, based in Washington, DC. My chief focus is to help identify the regulatory concerns of small business by monitoring the impact of federal and state policies at the local level. It is my goal to see that programs and policies that encourage fair regulatory treatment of small business are developed and implemented to ensure future growth and prosperity. This is why I am testifying in

support of proposed legislation which will strengthen regulatory flexibility for small businesses in Illinois.

The Office of Advocacy enforces the Regulatory Flexibility Act (RFA) on the federal level in order to reduce the regulatory burden on small business. There are over 25 million small businesses in the United States, and they create between 60 and 80 percent of the net new jobs in our economy. As Advocacy's research demonstrates, small businesses with less than 20 employees spend \$7,647 each year per employee to comply with federal regulations compared with the \$5,282 spent by firms with 500 or more employees. That is a 45 percent greater burden than their larger counterparts. And that is just the cost of compliance with federal regulations. Small business owners also have to shoulder the cost of compliance with state and local regulations.

There is no question that small business is the backbone of the economy in Illinois. According to the definition of small business under Illinois law (less than 50 employees), over 86 percent of firms in the state are small.

Under the federal RFA, Advocacy has observed time and again that regulations can be reduced and the economy improved without sacrificing important goals such as environmental quality, travel safety, and workplace safety. By working with federal agencies to implement the RFA, in FY 2005 the Office of Advocacy saved small businesses nationwide over \$6 billion in foregone regulatory costs.

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

In December of 2002, the Office of Advocacy drafted model legislation for the states patterned after the federal RFA. Its intent is to foster a climate for entrepreneurial success in the states, so that small businesses will continue to create jobs, produce innovative new products and services, bring more Americans into the economic mainstream, and broaden the tax base.

Since the model was introduced, 35 state legislatures have considered regulatory flexibility legislation, and 19 states have implemented regulatory flexibility via Executive Order (EO) or legislation. This year, 8 states have introduced regulatory flexibility legislation (*Arkansas, Hawaii, Illinois, Mississippi, Montana, New Jersey, Tennessee, and Washington*).

Successful state-level regulatory flexibility laws, as in the model legislation, address the following areas: (1) a small business definition that is consistent with state practices and permitting authorities, (2) a requirement that state agencies prepare an economic impact analysis before they regulate, (3) a requirement that state agencies

consider less burdensome alternatives that still meet regulatory goals, (4) judicial review to give the law teeth, and (5) a requirement that agencies review existing regulations periodically.

Many states, such as Illinois, have some form of regulatory flexibility law in statute. However, many of these laws do not contain all of the five critical elements addressed in Advocacy's model legislation. Recognizing that some laws are missing key components of a successful regulatory flexibility scheme, legislators continue to introduce legislation to improve their current systems.

While Illinois does have some administrative procedure provisions pertaining to regulations affecting small business, it could be strengthened to give the regulatory flexibility law more effectiveness. Under current law, the Business Assistance Office of the Department of Commerce and Community Affairs is responsible for preparing an analysis of a rule's economic effect on small business. HB 302 requires the regulating agency to prepare the economic impact analysis. This will facilitate a working relationship between the agency and the small business community and avoid creating an adversarial relationship among executive departments.

Also, by recognizing the cost of a regulation to small businesses and the differences in scale and resources of regulated entities, agencies are able to craft regulations that consider the uniqueness of small businesses at an early stage in the

regulatory process. As a result, small businesses are better able to comply with agency rules and to survive in a competitive marketplace.

HB 302 also enhances Illinois's current administrative procedure law by adding the important requirement that agencies periodically review existing regulations. Existing rules may unduly burden small businesses because they may no longer serve their purpose, may be duplicated by newer federal or state legislation, or they may have been promulgated without consideration of the effects on small businesses.

Also, given the length of time that may have passed since the rules were promulgated, technology, economic conditions, or other relevant factors may have significantly changed in the area affected by the rules. Under the current law, the Joint Committee on Administrative Rules (JCAR) is responsible for periodically reviewing existing rules. However, given the agency's expertise in the regulated area, it is critical that the agency undertake the review to determine whether they should be continued without change, amended, or rescinded to minimize the economic impact of the rule on small businesses.

A clear example of how benefits can be derived from the periodic review of existing regulations comes from the Washington State Department of Labor and Industries (L&I). L & I recently reviewed 27 of its health and safety regulations to eliminate conflicting and duplicative rule requirements; reach small employers with easy to use and understandable workplace safety and health information; provide safety and

health information to a broader group of employers and employees; achieve greater awareness of workplace hazards among Washington State's workforce; and to reduce worker injury, illness and deaths. As a result of this review, L & I has eliminated duplicative requirements, saved small business owners hours of work and frustration by rewriting some of its rules, and helped small business owners, with limited resources, to avoid the need to hire a safety and health professional to interpret confusing regulations.

During this time of tight state budgets, you may be wondering how much it costs a state to implement regulatory flexibility for small business. The answer is that implementing a regulatory flexibility system can be accomplished at minimal to no additional cost to the state. In many states, agencies have been able to absorb the duties into their existing rulemaking and review system.

The benefits of implementing a regulatory flexibility system truly outweigh the costs. The aggregate importance of small businesses to the economy is often overlooked and it is easy to fail to notice the negative impact of regulatory activities on them. One of the many reasons, I believe, regulatory flexibility legislation has been so successful is because policy makers across the country are realizing that it is an important economic development tool. Many times there are alternative ways of implementing a regulation that may be less burdensome to small business without sacrificing important goals such as health, safety, and welfare issues of major importance to state governments.

The Office of Advocacy commends you for bringing HB 302 forward to enhance Illinois's current administrative law and the regulatory environment for small business in your state.