

The Honorable Thomas M. Sullivan
Chief Counsel for Advocacy
U.S. Small Business Administration
before the
Massachusetts Joint Committee on Community Development and Small Business
Regarding Senate Bill 133
An Act Relative to Statements of Small Business Consideration
June 20, 2007

Members of the Community Development and Small Business Committee, my name is Thomas M. Sullivan and I am the Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA) Office of Advocacy. I am pleased to be here today to testify on behalf of Senate Bill (SB) 133. This is a welcome visit for me especially because I grew up here, went to school right behind this building at Suffolk University Law School, and most of my family lives in Massachusetts.

The Office of Advocacy, created by Congress in 1976, is an independent voice for small business within the federal government. As the Chief Counsel for Advocacy, I advance the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. My support for this legislation is based on my belief that it will strengthen the regulatory process here in Massachusetts and reduce the unnecessary regulatory burden on small business.

Regulatory flexibility encourages agencies to develop an analytical process for determining how public policy goals can best be achieved, without erecting unnecessary barriers to competition, stifling innovation, or imposing undue burdens on small business. Many times there are alternative ways of implementing a regulation that may be less costly to small business without sacrificing important goals such as health, safety, and welfare issues of major importance to state governments.

The concerns about overly burdensome regulations on small business are not new to the Massachusetts Legislature. The Commonwealth's Administrative Procedure law has long directed state agencies to consider how proposed rules and regulations will affect small businesses. However, the law is missing key components that give regulatory flexibility its effectiveness.

Currently in Massachusetts, very few agencies conduct the small business analysis required by statute. SB 133 seeks to strengthen the existing law by clarifying what is expected of agencies when they are developing new regulations. This will ensure that agencies conduct outreach to the small business community and develop sensible rules that address both the agency's regulatory concern while at the same time doing the least harm to Massachusetts' small businesses.

Specifically, the bill clarifies the current law by directing the regulating agency to:

- identify and estimate the number of small businesses affected by a proposed rule;

- estimate the costs required for compliance with the proposed regulation; and
- consider utilizing alternative regulatory methods that will accomplish the agency objective while minimizing the adverse impact on small business.

The bill also defines a small business as one with fewer than 50 full-time employees. This covers 97 percent of employer firms in Massachusetts and demonstrates that small entities are the backbone of the economy in the state.

Finally, SB 133 calls on agencies to review existing regulations every four years to determine if they are still needed or could be improved. 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.

Massachusetts law is missing another key component that gives regulatory flexibility its effectiveness which is transparency in the rulemaking process. Currently, the small business impact analysis is only required to be filed at the time the regulation is finalized rather than at the beginning of the rulemaking process. I encourage you to include a requirement that agencies make the small business impact and regulatory flexibility analyses available for review by small businesses during the public comment period of a proposed regulation.

A transparent agency rulemaking process allows small business owners to stay informed of agency actions that may have an adverse effect on their business and to participate in the regulatory process. Transparency also helps agencies gather information to formulate a more thorough, well-reasoned and accurate economic impact analysis. In addition, small businesses are an excellent resource to assist agencies in devising less burdensome alternatives. Giving agencies and small businesses the opportunity to cultivate a collaborative relationship, results in the development of sensible regulations.

By adopting SB 133, Massachusetts will join a growing number of states that are working to improve the regulatory environment for their small businesses. Since 2002, 37 state legislatures have considered regulatory flexibility legislation, and 21 states have implemented regulatory flexibility either through Executive Order or legislation. In 2007, 12 other states introduced regulatory flexibility bills (*Arkansas* (SB 55/HB 1147), *Alabama* (HB 84), *Connecticut* (SB 1179), *Hawaii* (SB 188), *Illinois* (HB 302), *Maine* (LD 905), *Mississippi* (HB 1229), *Montana* (SB 148), *New Jersey* (A 2327/SB 1335), *Tennessee* (SB 55/HB 1276), *Texas* (SB 700), and *Washington* (HB1525)). Bills have been signed into law in Arkansas, Maine, Texas and Washington and bills in Hawaii and Tennessee are awaiting their Governor's signature. In addition to Connecticut and Maine introducing legislation to strengthen their current administrative procedures this session, in 2005 Rhode Island adopted a strong regulatory flexibility law.

Because of their size, the overall importance of small businesses to the economy is often overlooked. These amendments will ensure that state agencies consider how their proposed regulations will affect Massachusetts small businesses and that they consider less burdensome alternatives that still accomplish the regulatory goal. Also, by including transparency in the rulemaking process agencies will be better able to gain timely information about the impact of their rules and less costly methods to meeting their regulatory goals.

The Office of Advocacy commends you for bringing SB 133 forward to provide a fair and effective regulatory environment for small business in the state. In doing so, small businesses will be better able to compete on a level playing field.