



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 2 (as introduced 1-14-09)  
Sponsor: Senator Alan Sanborn  
Committee: Economic Development and Regulatory Reform

Date Completed: 6-8-09

### **CONTENT**

**The bill would create a new act to establish the Office of the Small Business Ombudsman to investigate and review the actions of Michigan regulatory agencies. The bill would do all of the following:**

- Specify that the office's principal executive, the Small Business Ombudsman, would be appointed with the advice and consent of the Senate.**
- Allow the Governor to remove the Ombudsman for cause.**
- Specify the powers and duties of the Office and the Ombudsman.**
- Require State departments and other State and local government entities to assist the Office.**
- Allow the Office to issue subpoenas, hear sworn testimony, and bring an action in circuit court to enforce the proposed act.**
- Create an advisory panel representing the regulated small business community to consult with the Ombudsman, prepare reports pertaining to Office operations, and review information prepared by the Office.**

#### Office of Small Business Ombudsman

The bill would create the Office of the Small Business Ombudsman as an autonomous entity in the Department of Management and Budget (DMB). The Office would be an independent, impartial State office empowered to investigate and review the actions of Michigan regulatory agencies. The Office would have to monitor and ensure compliance with relevant laws and policies and recommend appropriate changes in policy, procedure, and legislation.

The Office's principal executive would be the Small Business Ombudsman, who would be appointed with the advice and consent of the Senate. The appointed person would have to be qualified by training and experience to perform the duties and exercise the powers of the Ombudsman and the Office as provided in the proposed act. The Governor could remove the Ombudsman from office for cause, including incompetence, official misconduct, habitual or willful neglect of duty, or other misfeasance or malfeasance in connection with the operation of the Office. The Governor would have to report the reason for the Ombudsman's removal to the Legislature.

The Ombudsman could not be actively involved in political party activities or publicly endorse, solicit funds for, or make contributions to political parties or candidates for elective office. The Ombudsman could not engage in any other occupation, business, or profession likely to detract from the full-time performance of his or her duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality.

## Powers & Duties

The Office would have to receive, investigate, and resolve complaints and disputes from small businesses against Michigan departments and agencies. Any individual could submit a complaint to the Office, and the Office would have sole discretion and authority to determine if a complaint fell within its powers and duties to investigate. The Office also could initiate an investigation without receiving a complaint. Complainants would be entitled to receive the Ombudsman's recommendations, and the department's or agency's response to the recommendations, consistent with State and Federal law.

The Office could coordinate or do all of the following:

- Conduct independent evaluations of all of its administrative activities outlined in the proposed act.
- Review and provide comments and recommendations to the Federal government and State departments and agencies regarding the development and implementation of regulatory requirements that affect small businesses.
- Facilitate and promote the participation of small businesses in the development of rules that affect small businesses.
- Assist in providing reports to the Governor and Legislature and the public regarding the applicability of State laws and regulations to small business.
- Aid in the dissemination of information to small businesses and other interested parties.
- Participate in or sponsor meetings and conferences with State and local regulatory officials, industry groups, and small business representatives.
- Periodically review the work and services provided by the program with trade associations and representatives of small business.
- Refer small businesses to the appropriate specialist in the program where they may obtain information and assistance on affordable alternative technologies, process changes, and products and operational methods.
- Arrange for and assist in the preparation of guideline documents by the program and ensure that the language was readily understandable by laypersons.
- Work with trade associations and small businesses to bring about voluntary compliance with regulatory laws and rules.
- Work with regional and State offices of the Small Business Administration, the U.S. Department of Commerce, the Michigan Economic Development Corporation, and other Federal and State agencies that could have programs to assist financially small businesses that were in need of funds to comply with State regulation.
- Work with private sector financial institutions to assist small businesses in locating sources of funds to comply with State regulation.
- Conduct studies to evaluate the impact of State regulation on the State economy, local economies, and small businesses.
- Work with other states to establish a network for sharing information on small businesses and their efforts to comply with state regulations.
- Make recommendations to the DMB and the Legislature concerning the reduction of any fees required under State law to take into account the financial resources of small businesses.

The Ombudsman would have to establish procedures for the Office for budgeting, spending money, and employing personnel according to the Management and Budget Act. Subject to annual appropriations, the Ombudsman would have to employ sufficient personnel to carry out the duties and powers prescribed by the proposed act.

The Office could develop mechanisms for all of the following:

- Developing, collecting, and coordinating information on compliance methods and technologies for small businesses.

- Assisting small business with information regarding alternative technologies, process changes, and products and methods of operation that would help to ensure compliance with State regulation.
- Establishing a compliance assistance program that would assist small businesses in determining applicable requirements for compliance and the procedures for obtaining permits efficiently in a timely manner under State law.

The Office would have to develop adequate mechanisms for all of the following:

- Encouraging lawful cooperation among small businesses and other people to further compliance with State regulatory laws and for receiving and processing complaints about the administration of those laws by State departments and agencies.
- Providing mechanisms and access to information so that small businesses received notification of their rights under State law in a manner and form that assured reasonably adequate time to evaluate their compliance methods or applicable proposed or final rules or standards.
- Providing information on how to obtain consideration from a State department or agency on requests from small businesses for modifications of any work practice or technological method of compliance.

The Office also would have to develop an adequate mechanism to inform small businesses of their obligations under State law, including mechanisms for referring small businesses to qualified auditors or to the State, if the State elected to provide audits to determine compliance with State law. To the extent permissible by State and Federal law, audits would have to be separate from the formal inspection and compliance program.

#### Other Responsibilities

All departments, agencies, boards, committees, commissions, or officers of this State or any political subdivision of the State, to the extent compatible with their duties, would have to give the Office any assistance it requested in the performance of the Office's duties. All of those entities would have to provide the Office free access to agency personnel and any book, record, or document in their custody, relating to investigation of a complaint by the Office, other than information exempted under Section 13 of the Freedom of Information Act. (That section describes records that a public body may exempt from disclosure.)

The Office could subpoena any person to appear, to give sworn testimony, or to produce documentary or other evidence that was reasonably relevant to the matters under investigation by the Office. A person could not interfere with, prevent, or prohibit the Ombudsman from carrying out his or her powers or duties. The Office could bring an action in the Circuit Court for Ingham County to enforce the proposed act.

A State department or agency could not discriminate against a person because a complaint against the department or agency had been or might be filed with the Office by or on behalf of the person.

Information obtained by the Office from small businesses that used its services would have to be held in confidence by those employed by the Office or the program to the extent authorized under the Freedom of Information Act, including those provisions pertaining to exemptions from disclosure for trade secrets and commercial and financial information.

#### Small Business Compliance Advisory Panel

The bill would create the small business compliance advisory panel within the Office of the Small Business Ombudsman. The advisory panel would have to be broadly representative

of the regulated small business community and include women members and members who were minorities. The panel would consist of six members, as follows:

- Two members appointed by the Governor to represent the general public.
- One member appointed by the Republican leader of the Senate.
- One member appointed by the Democratic leader of the Senate.
- One member appointed by the Republican leader of the House of Representatives.
- One member appointed by the Democratic leader of the House.

Each member appointed by a leader of the Senate or House would have to own or represent owners of small businesses. The members appointed by the Governor could not be or represent small businesses owners.

Members of the advisory panel would serve staggered, four-year terms or until a successor was appointed. The advisory panel would have to elect a chairperson and other officers it considered necessary or appropriate.

Advisory panel members would serve without compensation, but could be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

The advisory panel would have to do all of the following:

- Consult with the Ombudsman and the head of the program to plan the work of the advisory panel, including the frequency of meetings, agenda items, and reports to be issued by the panel.
- Determine whether to use private contractors or expertise available within State departments, or both, to meet the requirements of the proposed act that pertain to providing technical assistance to small businesses.
- Prepare advisory reports concerning the effectiveness of the Office; the costs of operating the Office; and the average costs of different categories of small businesses in complying with the State's regulatory programs.
- Review information prepared by the Office for small businesses to assure that it was understandable to laypersons.

The advisory panel would have to give copies of its reports to each State department, the Legislature, and the Office of the Small Business Ombudsman. The reports also would have to be made available to any person upon request.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

Depending on the number of employees hired, the cost to maintain the proposed Office of the Small Business Ombudsman could likely run between \$500,000 and \$1.0 million annually. Recently, the Office of the Legislative Corrections Ombudsman was created within the Legislative Council at a cost of nearly \$400,000.

Fiscal Analyst: Joe Carrasco

S0910\2sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.