

# SENATE BILL No. 2

January 14, 2009, Introduced by Senator SANBORN and referred to the Committee on Economic Development and Regulatory Reform.

A bill to create a small business ombudsman's office and a small business compliance advisory panel; and to provide for certain powers and duties of certain state officers and agencies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. As used in this act:

2       (a) "Office" means the office of the small business ombudsman.

3       (b) "Ombudsman" means the small business ombudsman.

4       (c) "Small business" means a business that is independently  
5 owned and operated and that is not dominant in its field of  
6 operation as that term is used in 13 CFR 121.102 and is a  
7 stationary source that meets all of the following requirements:

8       (i) Is owned or operated by a person that employs 100 or fewer  
9 individuals.

1           (ii) Is a small business concern as defined in 15 USC 632 and  
2 13 CFR 121.201.

3           Sec. 3. (1) The office of the small business ombudsman is  
4 created as an autonomous entity in the department of management and  
5 budget. The office shall be an independent, impartial state office  
6 empowered to investigate and review the actions of regulatory  
7 agencies of this state. The office shall monitor and ensure  
8 compliance with relevant laws and policies and recommend  
9 appropriate changes in policy, procedure, and legislation.

10           (2) The principal executive officer of the office is the small  
11 business ombudsman, who shall be appointed with the advice and  
12 consent of the senate.

13           (3) The individual appointed ombudsman shall be qualified by  
14 training and experience to perform the duties and exercise the  
15 powers of the small business ombudsman and the office as provided  
16 in this act.

17           (4) The governor may remove the ombudsman from office for  
18 cause, including, but not limited to, incompetence, official  
19 misconduct, habitual or willful neglect of duty, or other  
20 misfeasance or malfeasance in connection with the operation of the  
21 office of the small business ombudsman. The governor shall report  
22 the reason for the removal to the legislature.

23           (5) The ombudsman shall not be actively involved in political  
24 party activities or publicly endorse, solicit funds for, or make  
25 contributions to political parties or candidates for elective  
26 office. The ombudsman shall not engage in any other occupation,  
27 business, or profession likely to detract from the full-time

1 performance of his or her duties as ombudsman or to result in a  
2 conflict of interest or an appearance of impropriety or partiality.

3       Sec. 5. (1) The office of the small business ombudsman shall  
4 receive, investigate, and resolve complaints and disputes from  
5 small businesses against departments and agencies of this state.  
6 Any individual may submit a complaint to the office. The office has  
7 the sole discretion and authority to determine if a complaint falls  
8 within the powers and duties of the office to investigate. The  
9 office may initiate an investigation without receiving a complaint.  
10 Complainants are entitled to receive the recommendations of the  
11 ombudsman and the department or agency's response to the  
12 recommendations of the ombudsman consistent with state and federal  
13 law.

14       (2) The office may coordinate or do all of the following:

15       (a) Conduct independent evaluations of all activities  
16 conducted under section 7.

17       (b) Review and provide comments and recommendations to the  
18 federal government and state departments and agencies regarding the  
19 development and implementation of regulatory requirements that  
20 impact small businesses.

21       (c) Facilitate and promote the participation of small  
22 businesses in the development of rules that impact small  
23 businesses.

24       (d) Assist in providing reports to the governor and  
25 legislature and the public regarding the applicability of state  
26 laws and regulations to small business.

27       (e) Aid in the dissemination of information to small

1 businesses and other interested parties.

2 (f) Participate in or sponsor meetings and conferences with  
3 state and local regulatory officials, industry groups, and small  
4 business representatives.

5 (g) Periodically review the work and services provided by the  
6 program with trade associations and representatives of small  
7 business.

8 (h) Refer small businesses to the appropriate specialist in  
9 the program where they may obtain information and assistance on  
10 affordable alternative technologies, process changes, and products  
11 and operational methods.

12 (i) Arrange for and assist in the preparation of guideline  
13 documents by the program and ensure that the language is readily  
14 understandable by laypersons.

15 (j) Work with trade associations and small businesses to bring  
16 about voluntary compliance with regulatory laws and rules.

17 (k) Work with regional and state offices of the small business  
18 administration, the United States department of commerce and the  
19 Michigan economic development corporation, and other federal and  
20 state agencies that may have programs to financially assist small  
21 businesses in need of funds to comply with state regulation.

22 (l) Work with private sector financial institutions to assist  
23 small businesses in locating sources of funds to comply with state  
24 regulation.

25 (m) Conduct studies to evaluate the impacts of state  
26 regulation on the state's economy, local economies, and small  
27 businesses.

1           (n) Work with other states to establish a network for sharing  
2 information on small businesses and their efforts to comply with  
3 state regulation.

4           (o) Make recommendations to the department and the legislature  
5 concerning the reduction of any fees required under state law to  
6 take into account the financial resources of small businesses.

7           Sec. 7. (1) The ombudsman shall establish procedures for the  
8 office for budgeting, expending money, and employing personnel  
9 according to the management and budget act, 1984 PA 431, MCL  
10 18.1101 to 18.1594. Subject to annual appropriations, the ombudsman  
11 shall employ sufficient personnel to carry out the duties and  
12 powers prescribed by this act.

13           (2) The office of small business ombudsman may develop  
14 mechanisms for all of the following:

15           (a) Developing, collecting, and coordinating information on  
16 compliance methods and technologies for small businesses.

17           (b) Assisting small business with information regarding  
18 alternative technologies, process changes, and products and methods  
19 of operation that help ensure compliance with state regulation.

20           (c) Establishing a compliance assistance program that assists  
21 small businesses in determining applicable requirements for  
22 compliance and the procedures for obtaining permits efficiently in  
23 a timely manner under state law.

24           (3) The office shall develop adequate mechanisms for all of  
25 the following:

26           (a) Encouraging lawful cooperation among small businesses and  
27 other persons to further compliance with state regulatory laws and

1 for receiving and processing complaints about the administration of  
2 those laws by state departments and agencies.

3 (b) Providing mechanisms and access to information so that  
4 small businesses receive notification of their rights under state  
5 law in a manner and form that assures reasonably adequate time for  
6 small businesses to evaluate their compliance methods or applicable  
7 proposed or final rules or standards.

8 (c) Informing small businesses of their obligations under  
9 state law, including mechanisms for referring small businesses to  
10 qualified auditors or to the state if the state elects to provide  
11 audits to determine compliance with state law. To the extent  
12 permissible by state and federal law, audits shall be separate from  
13 the formal inspection and compliance program.

14 (d) Providing information on how to obtain consideration from  
15 a state department or agency on requests from small businesses for  
16 modifications of any work practice or technological method of  
17 compliance.

18 Sec. 9. (1) All departments, agencies, boards, committees,  
19 commissions, or officers of this state or any political subdivision  
20 of this state, so far as is compatible with their duties, shall  
21 give the office any assistance requested by the office in the  
22 performance of the office's duties. All departments, agencies,  
23 boards, committees, commissions, or officers of this state or any  
24 political subdivision of this state shall provide the office free  
25 access to agency personnel and any book, record, or document in  
26 their custody, relating to investigation of a complaint by the  
27 office, other than information described in section 13 of the

1 freedom of information act, 1976 PA 442, MCL 15.243.

2 (2) The office may subpoena any person to appear, to give  
3 sworn testimony, or to produce documentary or other evidence that  
4 is reasonably relevant to the matters under investigation by the  
5 office.

6 (3) A person shall not interfere with, prevent, or prohibit  
7 the ombudsman from carrying out his or her powers or duties under  
8 this part.

9 (4) A state department or agency shall not discriminate  
10 against a person because a complaint against the department or  
11 agency has been or may be filed with the office by or on behalf of  
12 the person.

13 (5) The office may bring an action in the circuit court for  
14 Ingham county to enforce this part as it relates to the office.

15 Sec. 11. Information obtained by the office from small  
16 businesses that utilize its services shall be held in confidence by  
17 those employed by the office or the program to the extent  
18 authorized under the freedom of information act, 1976 PA 442, MCL  
19 15.231 to 15.246, including, but not limited to, those provisions  
20 pertaining to exemptions from disclosure for trade secrets and  
21 commercial and financial information.

22 Sec. 13. (1) The small business compliance advisory panel is  
23 created within the office.

24 (2) The advisory panel shall be broadly representative of the  
25 regulated small business community and shall include women members  
26 and members who are minorities. The advisory panel shall consist of  
27 the following members:

1 (a) Two members appointed by the governor to represent the  
2 general public and who are not owners or representatives of owners  
3 of small businesses.

4 (b) One member appointed by the republican leader of the  
5 senate who is an owner or a representative of owners of small  
6 businesses.

7 (c) One member appointed by the democratic leader of the  
8 senate who is an owner or a representative of owners of small  
9 businesses.

10 (d) One member appointed by the republican leader of the house  
11 of representatives who is an owner or a representative of owners of  
12 small businesses.

13 (e) One member appointed by the democratic leader of the house  
14 of representatives who is an owner or a representative of owners of  
15 small businesses.

16 (3) Members of the advisory panel shall serve for terms of 4  
17 years, or until a successor is appointed, whichever is later.  
18 However, of the members first appointed, the members appointed by  
19 the governor shall serve for 3 years, the members appointed by the  
20 senate shall serve for 1 year, and the members appointed by the  
21 house of representatives shall serve for 2 years.

22 (4) If a vacancy occurs on the advisory panel, the governor,  
23 the department, or the appropriate legislative leader who made the  
24 appointment shall make an appointment for the unexpired term in the  
25 same manner as the original appointment.

26 (5) The advisory panel shall elect from among its members a  
27 chairperson and other officers as it considers necessary or



1 appropriate.

2 (6) A majority of the members of the advisory panel constitute  
3 a quorum for the transaction of business at a meeting of the  
4 advisory panel. A majority of the members present and serving are  
5 required for official action of the advisory panel.

6 (7) Members of the advisory panel shall serve without  
7 compensation. However, members of the advisory panel may be  
8 reimbursed for their actual and necessary expenses incurred in the  
9 performance of their official duties as members of the advisory  
10 panel.

11 (8) The advisory panel shall do all of the following:

12 (a) Consult with the ombudsman and the head of the program to  
13 plan the work of the advisory panel, including the frequency of  
14 meetings, agenda items, and reports to be issued by the advisory  
15 panel.

16 (b) Determine whether to utilize private contractors or  
17 utilize expertise available within state departments, or both, to  
18 meet the requirements of this act that pertain to providing  
19 technical assistance to small businesses.

20 (c) Prepare advisory reports concerning all of the following:

21 (i) The effectiveness of the office.

22 (ii) The costs of operating the office.

23 (iii) The average costs of different categories of small  
24 businesses in complying with regulatory programs of this state.

25 (d) Review information prepared by the office for small  
26 businesses to assure that the information is understandable to  
27 laypersons.

1           (9) The advisory panel shall provide copies of advisory  
2 reports prepared by the advisory panel to each state department,  
3 the legislature, and the office. In addition, the reports shall be  
4 made available to any person upon request.