

By the Committee on Commerce; and Senator Diaz de la Portilla

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1 A bill to be entitled
2 An act relating to economic development; creating s.
3 11.9006, F.S.; providing a short title; providing
4 definitions; creating the Small Business Regulatory
5 Advisory Council; providing for appointments, membership,
6 and meetings; providing an administrative location for the
7 council; providing powers and limitations of the council;
8 providing for coordinated review of agency rules by the
9 council, with agency sunset review; providing timelines
10 for review; providing for the council to issue a business-
11 friendly scorecard of agency rules; creating s. 11.9007,
12 F.S.; providing definitions; providing for selection of
13 small business advocate; providing for preferred
14 qualifications of the advocate; providing duties of the
15 advocate; providing for agency cooperation with the
16 advocate; providing for an annual report by the advocate
17 to the Governor and Legislature; amending s. 11.908, F.S.;
18 requiring report of the Small Business Regulatory Advisory
19 Council to be included in recommendations of Joint
20 Legislative Sunset Committee; amending s. 11.919, F.S.;
21 requiring agency assistance to the Small Business
22 Regulatory Advisory Council; authorizing the council to
23 inspect agency documents; amending s. 120.54, F.S.;
24 requiring state agencies to prepare statements of
25 estimated regulatory costs; requiring agency notification
26 to Small Business Regulatory Advisory Council relating to
27 proposed agency action affecting small businesses;
28 requiring the agency to adopt regulatory alternatives
29 offered by the council under certain circumstances;

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30 providing for a rule-filing extension when regulatory
31 alternatives are offered by the council; providing for
32 outside review of regulatory alternatives not adopted by
33 the agency and for agency response; amending s. 120.74,
34 F.S.; requiring biennial rule review by each agency to
35 consider the impact of rules on small businesses;
36 requiring that the results be included in report to
37 Legislature; providing an effective date.

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Section 11.9006, Florida Statutes, is created to
42 read:

43 11.9006 Small Business Regulatory Advisory Council.--

44 (1) SHORT TITLE.--This section may be cited as the "Small
45 Business Regulatory Relief Act."

46 (2) DEFINITIONS.--As used in this section:

47 (a) "Agency" means an agency as defined in s. 120.52.

48 (b) "Council" means the Small Business Regulatory Advisory
49 Council.

50 (c) "Rule" means a rule as defined by s. 120.52.

51 (d) "Small business" means a small business as defined in
52 s. 288.703.

53 (3) CREATION OF SMALL BUSINESS REGULATORY ADVISORY COUNCIL;
54 MEMBERSHIP; POWERS AND DUTIES.--

55 (a) The Small Business Regulatory Advisory Council is
56 created. The council shall consist of nine members who are
57 current or former small business owners, three appointed by the
58 Governor and three each appointed by the President of the Senate

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59 and the Speaker of the House of Representatives. The initial
60 appointments to the council must be made within 60 days from the
61 effective date of this act. The members shall be from different
62 geographic regions of the state. Members shall serve 4-year
63 terms; however in order to establish staggered terms, for the
64 initial appointments, each appointing official shall appoint one
65 member to a 2-year term and two members to a 4-year term. A
66 member shall not serve more than three consecutive terms. Members
67 shall select the chairperson from among the members of the
68 council. The council shall meet quarterly or upon the call of the
69 chairperson. A majority of the members constitutes a quorum for
70 the conduct of business. Members of the council shall serve
71 without compensation. The appointing official may remove his or
72 her appointee without cause at any time. A member whose term has
73 expired shall continue to serve on the council until such time as
74 a replacement is appointed. Vacancies shall be filled for the
75 remainder of the term and by the original appointing official.

76 (b) The council is established, assigned to, and
77 administratively housed within the Florida Small Business
78 Development Center Network, which shall provide staff support to
79 the council.

80 (c) The council may:

81 1. Provide agencies with recommendations regarding proposed
82 rules or programs that may adversely affect small business;

83 2. Consider requests from small business owners to review
84 rules or programs adopted by an agency;

85 3. Consider requests from small business owners to review
86 small business owners' private property rights related to rules
87 or programs adopted or implemented by an agency; and

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88 4. Review rules promulgated by an agency to determine
89 whether a rule places an unnecessary burden on small business and
90 make recommendations to the agency to mitigate the adverse
91 effects.

92 (d) The council does not have authority to:

93 1. Initiate or intervene in any administrative or judicial
94 proceeding; or

95 2. Issue subpoenas.

96 (e) The council shall prepare and submit a written annual
97 report to the Governor, the President of the Senate, and the
98 Speaker of the House of Representatives that describes the
99 activities and recommendations of the council.

100 (4) PERIODIC REVIEW OF RULES.--

101 (a) In coordination with the Sunset Review schedule provided
102 in s. 11.905, the council may review rules of agencies subject to
103 sunset review to determine whether the rules should be continued
104 without change or should be amended or repealed to reduce the
105 impact of the rules on small businesses, subject to the
106 requirement that the recommendations of the council must be
107 feasible and consistent with the stated objectives of the rules.

108 (b) In reviewing agency rules to reduce the impact on small
109 businesses, the council, in coordination with the agency, shall
110 consider the following factors:

111 1. Continued need for the rule;

112 2. The nature of complaints or comments received from the
113 public concerning the rule;

114 3. The complexity of the rule;

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115 4. The extent to which the rule overlaps, duplicates or
116 conflicts with other federal, state and local government rules;
117 and

118 5. The length of time since the rule has been evaluated or
119 the degree to which technology, economic conditions or other
120 factors have changed in the topical area affected by the rule.

121 (c) Within 6 months after the agency report is submitted to
122 the Joint Legislative Sunset Committee pursuant to s. 11.907, the
123 council shall provide a report to the Governor, the President of
124 the Senate, the Speaker of the House of Representatives, and the
125 Joint Legislative Sunset Committee that includes recommendations
126 and evaluations of agency rules and programs regarding regulatory
127 fairness for small businesses. A component of the report shall be
128 a rating system, developed by the council, entitled "Small
129 Business Friendliness and Development Scorecard."

130 Section 2. Section 11.9007, Florida Statutes, is created to
131 read:

132 11.9007 SMALL BUSINESS ADVOCATE.--

133 (1) DEFINITIONS.--

134 (a) "Advocate" means the Florida Small Business Advocate
135 who is also the director of the Office of Small Business
136 Advocate.

137 (b) "Director" means the director of the Office of Small
138 Business Advocate.

139 (c) "Office" means the Office of Small Business Advocate.

140 (2) The Office of Small Business Advocate is established,
141 assigned to, and administratively housed within the Florida Small
142 Business Development Center Network. The director shall be the
143 Florida Small Business Advocate.

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144 (3) DIRECTOR OF THE OFFICE OF SMALL BUSINESS ADVOCATE;
145 APPOINTMENT; DUTIES.--

146 (a) The advocate shall be selected by the director of the
147 Florida Small Business Development Center Network, and shall be
148 an employee of or under contract with the Florida Small Business
149 Development Center Network. Preferred qualifications for the
150 advocate will include at least 5 years' experience in small
151 business, extensive knowledge of the issues and challenges of
152 importance to small business, and actual experience in small
153 business advocacy and assistance.

154 (b) The duties and functions of the advocate include all of
155 the following:

156 1. Act as staff for the Small Business Regulatory Advisory
157 Council.

158 2. Serve as principal advocate in the state on behalf of
159 small businesses, including, but not limited to, advisory
160 participation in the consideration of all legislation and
161 administrative rules that affect small businesses, and advocacy
162 on state policy and programs related to small businesses on
163 disaster preparedness and recovery, including the provision
164 technical assistance.

165 3. Represent the views and interests of small businesses
166 before agencies whose policies and activities may affect small
167 businesses. Among other activities, the advocate may encourage
168 standardized applications and information packages that would
169 include all the information needed by each agency that a business
170 has to deal with to prevent an applicant from having to fill out
171 duplicative information on forms from various agencies.

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172 4. Enlist the cooperation and assistance of public and
173 private agencies, businesses, and other organizations in
174 disseminating information about the programs and services
175 provided by all levels of government which are of benefit to
176 small businesses, and information on how small businesses can
177 participate in, or make use of, those programs and services.

178 5. Issue a report every 2 years evaluating the efforts of
179 agencies that significantly regulate small businesses, assist
180 minority and other small business enterprises, and make
181 recommendations that may be appropriate to assist the development
182 and strengthening of minority and other small business
183 enterprises.

184 6. Consult with experts and authorities in the fields of
185 small business investment, venture capital investment, and
186 commercial banking and other comparable finance institutions
187 involved in the financing of business, and with individuals who
188 have regulatory, legal, economic, or financial expertise,
189 including members of the academic community and individuals who
190 generally represent the public interest.

191 7. Seek the assistance and cooperation of all agencies and
192 departments providing services to, or affecting, small business,
193 to ensure coordination of state efforts.

194 8. Receive and respond to complaints from small businesses
195 concerning the actions of agencies and the operative effects of
196 state laws and rules adversely affecting those businesses. The
197 advocate shall establish an annual process for small businesses
198 to nominate agency rules or programs for reform. The advocate
199 shall publish those nominations online and update the status of
200 agency action on the proposed reforms twice yearly.

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201 9. Counsel small businesses on how to resolve questions and
202 problems concerning the relationship of small business to state
203 government.

204 10. Maintain, publicize, and distribute an annual list of
205 any persons serving as small business ombudsmen throughout state
206 government.

207 11. Coordinate a statewide conference on small business
208 with public and private organizations and entities impacting
209 small business in the state.

210 12. Coordinate annual public meetings to share best
211 practices for small business disaster preparedness. The meetings
212 shall be held in consultation with regional and statewide small
213 business organizations and shall take place in different
214 locations throughout the state.

215 (4) REPORTS AND DOCUMENTS FURNISHED TO SMALL BUSINESS
216 ADVOCATE; ANNUAL REPORTS.--

217 (a) Each agency of the state shall furnish to the advocate
218 the reports, documents, and information that are public records
219 and that the director deems necessary to carry out his or her
220 functions under this chapter.

221 (b) The advocate shall prepare and submit a written annual
222 report to the Governor, the President of the Senate, and the
223 Speaker of the House of Representatives which describes the
224 activities and recommendations of the office.

225 Section 3. Subsection (2) of section 11.908, Florida
226 Statutes, is amended to read:

227 11.908 Committee duties.--No later than March 1 of the year
228 in which a state agency or its advisory committees are scheduled
229 to be reviewed, the committee shall and the joint committee may:

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230 (2) Consult with the Legislative Budget Commission, the
231 Small Business Regulatory Advisory Council, relevant substantive
232 and appropriations committees of the Senate and the House of
233 Representatives, the Governor's Office of Policy and Budgeting,
234 the Auditor General, and the Chief Financial Officer, or their
235 successors, relating to the review of the agency and its advisory
236 committees.

237 Section 4. Paragraph (a) of subsection (2) of section
238 11.911, Florida Statutes, is amended to read:

239 11.911 Committee recommendations.--

240 (2) In its report on a state agency, the joint committee
241 shall:

242 (a) Make recommendations on the abolition, continuation, or
243 reorganization of each state agency and its advisory committees
244 and on the need for the performance of the functions of the
245 agency and its advisory committees. If the committee recommends
246 continuation or reorganization, the committee shall include in
247 its recommendations the report of the Small Business Regulatory
248 Advisory Council, as provided in s. 11.9006, regarding the rules
249 of each agency.

250 Section 5. Section 11.919, Florida Statutes, is amended to
251 read:

252 11.919 Assistance of and access to state agencies.--

253 (1) The committee and the Small Business Regulatory
254 Advisory Council may access or request information and request
255 the assistance of state agencies and officers. When assistance is
256 requested, a state agency or officer shall assist the committee
257 and the Small Business Regulatory Advisory Council.

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258 Section 6. Paragraph (b) of subsection (3) of section
259 120.54, Florida Statutes, is amended to read:
260 120.54 Rulemaking.--
261 (3) ADOPTION PROCEDURES.--
262 (b) Special matters to be considered in rule adoption.--
263 1. Statement of estimated regulatory costs.--Prior to the
264 adoption, amendment, or repeal of any rule other than an
265 emergency rule, an agency is encouraged to prepare a statement of
266 estimated regulatory costs of the proposed rule, as provided by
267 s. 120.541. However, an agency shall prepare a statement of
268 estimated regulatory costs of the proposed rule, as provided by
269 s. 120.541, if the proposed rule will have an impact on small
270 business.
271 2. Small businesses, small counties, and small cities.--
272 a. Each agency, before the adoption, amendment, or repeal
273 of a rule, shall consider the impact of the rule on small
274 businesses as defined by s. 288.703 and the impact of the rule on
275 small counties or small cities as defined by s. 120.52. Whenever
276 practicable, an agency shall tier its rules to reduce
277 disproportionate impacts on small businesses, small counties, or
278 small cities to avoid regulating small businesses, small
279 counties, or small cities that do not contribute significantly to
280 the problem the rule is designed to address. An agency may define
281 "small business" to include businesses employing more than 100
282 persons, may define "small county" to include those with
283 populations of more than 75,000, and may define "small city" to
284 include those with populations of more than 10,000, if it finds
285 that such a definition is necessary to adapt a rule to the needs
286 and problems of small businesses, small counties, or small

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287 cities. The agency shall consider each of the following methods
288 for reducing the impact of the proposed rule on small businesses,
289 small counties, and small cities, or any combination of these
290 entities:

291 (I) Establishing less stringent compliance or reporting
292 requirements in the rule.

293 (II) Establishing less stringent schedules or deadlines in
294 the rule for compliance or reporting requirements.

295 (III) Consolidating or simplifying the rule's compliance or
296 reporting requirements.

297 (IV) Establishing performance standards or best-management
298 practices to replace design or operational standards in the rule.

299 (V) Exempting small businesses, small counties, or small
300 cities from any or all requirements of the rule.

301 b.(I) If the agency determines that the proposed action
302 will affect small businesses as defined by the agency as provided
303 in sub-subparagraph a., the agency shall send written notice of
304 the rule to the Small Business Regulatory Advisory Council at
305 least ~~ombudsman of the Office of Tourism, Trade, and Economic~~
306 ~~Development not less than~~ 28 days prior to the intended action.

307 (II) Each agency shall adopt those regulatory alternatives
308 offered by the Small Business Regulatory Advisory Council
309 ~~ombudsman~~ and provided to the agency no later than 21 days after
310 the council's ~~ombudsman's~~ receipt of the written notice of the
311 rule which it finds are feasible and consistent with the stated
312 objectives of the proposed rule and which would reduce the impact
313 on small businesses. When regulatory alternatives are offered by
314 the council ~~Small Business ombudsman~~, the 90-day period for

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315 filing the rule in subparagraph (e)2. is extended for a period of
316 21 days.

317 (III) If an agency does not adopt all alternatives offered
318 pursuant to this sub-subparagraph, it shall, prior to rule
319 adoption or amendment and pursuant to subparagraph (d)1., file a
320 detailed written statement with the committee explaining the
321 reasons for failure to adopt such alternatives. Within 3 working
322 days of the filing of such notice, the agency shall send a copy
323 of such notice to the Small Business Regulatory Advisory Council
324 ~~ombudsman~~. The council may make a request of the President of the
325 Senate and the Speaker of the House of Representatives that the
326 presiding officers direct the Office of Program Policy Analysis
327 and Government Accountability to determine whether the rejected
328 alternatives reduce the impact on small business while meeting
329 the stated objectives of the proposed rule. Within 60 days after
330 the date of the directive from the presiding officers, the Office
331 of Program Policy Analysis and Government Accountability shall
332 report to the Administrative Procedures Committee its findings as
333 to whether an alternative reduces the impact on small business
334 while meeting the stated objectives of the proposed rule. The
335 Office of Program Policy Analysis and Government Accountability
336 shall consider the proposed rule, the economic impact statement,
337 the written statement of the agency, the proposed alternatives,
338 and any comment submitted during the comment period on the
339 proposed rule. The Administrative Procedures Committee shall
340 report such findings to the agency and the agency shall respond
341 in writing to the Administrative Procedures Committee if the
342 Office of Program Policy Analysis and Government Accountability
343 found that the alternative reduced the impact on small business

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344 while meeting the stated objectives of the proposed rule. If the
345 agency does not adopt the alternative, it must also provide a
346 detailed written statement to the Administrative Procedures
347 Committee as to why it will not adopt the alternative.

348 Section 7. Subsection (1) of section 120.74, Florida
349 Statutes, is amended to read:

350 120.74 Agency review, revision, and report.--

351 (1) Each agency shall review and revise its rules as often
352 as necessary to ensure that its rules are correct and comply with
353 statutory requirements. Additionally, each agency shall perform a
354 formal review of its rules every 2 years. In the review, each
355 agency must:

356 (a) Identify and correct deficiencies in its rules;

357 (b) Clarify and simplify its rules;

358 (c) Delete obsolete or unnecessary rules;

359 (d) Delete rules that are redundant of statutes;

360 (e) Seek to improve efficiency, reduce paperwork, or
361 decrease costs to government and the private sector; ~~and~~

362 (f) Contact agencies that have concurrent or overlapping
363 jurisdiction to determine whether their rules can be coordinated
364 to promote efficiency, reduce paperwork, or decrease costs to
365 government and the private sector; ~~and-~~

366 (g) Determine whether the rules should be continued without
367 change or should be amended or repealed to reduce the impact on
368 small business while meeting the stated objectives of the
369 proposed rule.

370 (2) Beginning October 1, 1997, and by October 1 of every
371 other year thereafter, the head of each agency shall file a
372 report with the President of the Senate, the Speaker of the House

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373 of Representatives, and the committee, with a copy to each
374 appropriate standing committee of the Legislature, which
375 certifies that the agency has complied with the requirements of
376 this subsection. The report must specify any changes made to its
377 rules as a result of the review and, when appropriate, recommend
378 statutory changes that will promote efficiency, reduce paperwork,
379 or decrease costs to government and the private sector. The
380 report must specifically address the economic impact of the rules
381 on small business. The report must identify the types of cases or
382 disputes in which the agency is involved which should be
383 conducted under the summary hearing process described in s.
384 120.574.

385 Section 8. This act shall take effect July 1, 2008.