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1 A bill to be entitled
2 An act relating to Small Business Regulatory Relief;
3 creating s. 11.9006, F.S.; providing a short title;
4 providing findings and purpose; providing definitions;
5 creating the Small Business Regulatory Advisory Council;
6 providing for appointments, membership, and meetings;
7 providing for per diem and travel expenses of members;
8 providing administrative location for Council; providing
9 powers and limitations of Council; providing for
10 coordinated review of agency rules by the Council with
11 agency sunset review; providing timelines for review;
12 providing for the Council to issue a business friendly
13 scorecard of agency rules; creating s. 11.9007, F.S.;
14 providing findings and purpose; providing definitions;
15 providing for selection of small business advocate;
16 providing for preferred qualifications of advocate;
17 providing duties of advocate; providing for agency
18 cooperation with advocate; providing for annual report by
19 advocate to Governor and Legislature; amending s. 11.908,
20 F.S.; requiring report of Small Business Regulatory
21 Advisory Council to be included in recommendations of
22 Joint Legislative Sunset Committee;; amending s. 11.919;
23 requiring agency assistance to Small Business Regulatory
24 Advisory Council; authorizing Council to inspect agency
25 documents; amending s. 120.54, F.S.; requiring agency to
26 prepare statement of estimated regulatory costs; requiring
27 agency notification to Small Business Regulatory Advisory

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28 Council relating to proposed agency action affecting small
 29 business; requiring agency to adopt regulatory
 30 alternatives offered by Council under certain
 31 circumstances; providing for rule filing extension when
 32 regulatory alternatives offered by Council; providing for
 33 outside review of regulatory alternatives not adopted by
 34 agency and for agency response; amending s. 120.74, F.S.;
 35 requiring biennial rule review by agency to consider
 36 impact of rules on small business and results to be
 37 included in report to Legislature; providing an effective
 38 date.

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

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

44 11.9006 Small Business Regulatory Advisory Council.--

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

47 (2) FINDINGS AND PURPOSE.--

48 (a) A vibrant and growing small business sector is
 49 critical to creating jobs in a dynamic economy;

50 (b) At times, small businesses bear a disproportionate
 51 share of regulatory costs and burdens;

52 (c) Fundamental changes that are needed in the regulatory
 53 culture of state agencies to make them not only more responsive,
 54 but responsive in a timelier fashion, to small business should

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55 be made without compromising the statutory missions of the
 56 agencies;

57 (d) When adopting rules to protect the health, safety and
 58 economic welfare of the state, agencies should seek to achieve
 59 statutory goals as effectively and efficiently as possible
 60 without imposing unnecessary burdens on small businesses;

61 (e) Uniform regulatory reporting requirements can impose
 62 unnecessary and disproportionately burdensome demands, including
 63 legal, accounting and consulting costs, upon small businesses
 64 with limited resources;

65 (f) The failure to recognize differences in the scale and
 66 resources of regulated businesses can adversely affect
 67 competition in the marketplace, discourage innovation and
 68 restrict improvements in productivity;

69 (g) Unnecessary rules create entry barriers in many
 70 industries and discourage potential entrepreneurs from
 71 introducing beneficial products and processes;

72 (h) The practice of treating all regulated businesses as
 73 equivalent may lead to inefficient use of agency resources,
 74 enforcement problems and, in some cases, to actions inconsistent
 75 with stated legislative intent of health, safety, environmental,
 76 economic welfare and other legislation; and

77 (i) Alternative regulatory approaches that do not conflict
 78 with applicable statutes may be available to minimize the
 79 significant economic impact of rules on small businesses.

80 (3) DEFINITIONS.--As used in this section:

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

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82 (b) "Council" means the Small Business Regulatory Advisory
 83 Council.

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

85 (d) "Small business" means a small business as defined in
 86 s. 288.703.

87 (4) CREATION OF SMALL BUSINESS REGULATORY ADVISORY
 88 COUNCIL; MEMBERSHIP; POWERS AND DUTIES.--

89 (a) The "Small Business Regulatory Advisory Council" is
 90 created. The Council shall consist of nine members who are
 91 current or former small business owners, three appointed by the
 92 Governor and three each appointed by the President of the Senate
 93 and the Speaker of the House of Representatives. The initial
 94 appointments to the council must be made within sixty days from
 95 the effective date of this act. The members shall be from
 96 different geographic regions of the state. Members shall serve
 97 four-year terms; however in order to establish staggered terms,
 98 for the initial appointments, each appointing official shall
 99 appoint one member to a two-year term and two members to a four-
 100 year term. A member shall not serve more than three consecutive
 101 terms. Members shall select the chairperson from among the
 102 members of the Council. The Council shall meet quarterly or upon
 103 the call of the chairperson. A majority of the members
 104 constitutes a quorum for the conduct of business. Members of the
 105 council shall serve without compensation. Members are entitled
 106 to reimbursement for per diem and travel expenses as provided in
 107 s. 112.061. The appointing official may remove his or her
 108 appointee without cause at any time. A member whose term has

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109 expired shall continue to serve on the council until such time
 110 as a replacement is appointed. Vacancies shall be filled for the
 111 remainder of the term and by the original appointing official.

112 (b) The Council is independent from but administratively
 113 attached to the Office of Tourism, Trade, and Economic
 114 Development, which shall provide staff support to the Council.

115 (c) The Council may:

116 1. Provide agencies with recommendations regarding
 117 proposed rules or programs that may adversely affect small
 118 business;

119 2. Consider requests from small business owners to review
 120 rules or programs adopted by an agency; and

121 3. Review rules promulgated by an agency to determine
 122 whether a rule places an unnecessary burden on small business
 123 and make recommendations to the agency to mitigate the adverse
 124 effects.

125 (d) The Council does not have authority to:

126 1. Initiate or intervene in any administrative or judicial
 127 proceeding; or

128 2. Issue subpoenas.

129 (e) The Council shall prepare and submit a written annual
 130 report to the Governor, the President of the Senate, and the
 131 Speaker of the House of Representatives that describes the
 132 activities and recommendations of the Council.

133 (5) PERIODIC REVIEW OF RULES.--

134 (a) In coordination with the Sunset Review schedule
 135 provided in s. 11.905, the Council may review rules of agencies

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136 subject to sunset review to determine whether the rules should
 137 be continued without change or should be amended or repealed to
 138 reduce the impact of the rules on small businesses, subject to
 139 the requirement that the recommendations of the Council must be
 140 feasible and consistent with the stated objectives of the rules.

141 (b) In reviewing agency rules to reduce the impact on
 142 small businesses, the Council, in coordination with the agency,
 143 shall consider the following factors:

144 1. Continued need for the rule;

145 2. The nature of complaints or comments received from the
 146 public concerning the rule;

147 3. The complexity of the rule;

148 4. The extent to which the rule overlaps, duplicates or
 149 conflicts with other federal, state and local government rules;
 150 and

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

154 (c) Within six months after the agency report is submitted
 155 to the Joint Legislative Sunset Committee pursuant to s. 11.907,
 156 the Council shall provide a report to the Governor, the
 157 President of the Senate, the Speaker of the House of
 158 Representatives, and the Joint Legislative Sunset Committee that
 159 includes recommendations and evaluations of agency rules and
 160 programs regarding regulatory fairness for small businesses. A
 161 component of the report shall be a rating system, developed by

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162 the Council, entitled "Small Business Friendliness and
 163 Development Scorecard."

164 Section 2. Section 11.9007, Florida Statutes, is created
 165 to read:

166 11.9007 SMALL BUSINESS ADVOCATE.--

167 (1) FINDINGS AND PURPOSE.--

168 (a) The Legislature finds and declares that it is in the
 169 public interest to aid, counsel, assist, and protect, insofar as
 170 is possible, the interests of small business concerns in order
 171 to preserve free competitive enterprise and maintain a healthy
 172 state economy.

173 (b) The Legislature finds that the state should provide a
 174 point person to advocate the causes of small business and to
 175 provide small businesses with the information they need to
 176 survive in the marketplace.

177 (2) DEFINITIONS.--

178 (a) "Advocate" means the Florida Small Business Advocate
 179 who is also the Director of the Office of Small Business
 180 Advocate.

181 (b) "Director" means the Director of the Office of Small
 182 Business Advocate.

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

184 (3) The Office of Small Business Advocate is created within
 185 the Office of Tourism, Trade, and Economic Development and the
 186 director shall be the Florida Small Business Advocate.

187 (4) DIRECTOR OF THE OFFICE OF SMALL BUSINESS ADVOCATE;
 188 APPOINTMENT; DUTIES.--

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189 (a) The advocate shall be an employee, and may be the
 190 director, of the Office of Tourism, Trade, and Economic
 191 Development. Preferred qualifications for the advocate will
 192 include at least 5 years' experience in small business,
 193 extensive knowledge of the issues and challenges of importance
 194 to small business and actual experience in small business
 195 advocacy and assistance.

196 (b) The duties and functions of the advocate shall include
 197 all of the following:

198 1. Act as staff for the Small Business Regulatory Advisory
 199 Council.

200 2. Serve as principal advocate in the state on behalf of
 201 small businesses, including, but not limited to, advisory
 202 participation in the consideration of all legislation and
 203 administrative rules that affect small businesses, and advocacy
 204 on state policy and programs related to small businesses on
 205 disaster preparedness and recovery including providing technical
 206 assistance.

207 3. Represent the views and interests of small businesses
 208 before agencies whose policies and activities may affect small
 209 businesses. Among other activities, the advocate may encourage
 210 standardized applications and information packages that would
 211 include all the information needed by each agency that a
 212 business has to deal with to prevent an applicant from having to
 213 fill out duplicative information on forms from various agencies.

214 4. Enlist the cooperation and assistance of public and
 215 private agencies, businesses, and other organizations in

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216 disseminating information about the programs and services
 217 provided by all levels of government that are of benefit to
 218 small businesses, and information on how small businesses can
 219 participate in, or make use of, those programs and services.

220 5. Issue a report every two years evaluating the efforts
 221 of agencies that significantly regulate small businesses, to
 222 assist minority and other small business enterprises, and to
 223 make recommendations that may be appropriate to assist the
 224 development and strengthening of minority and other small
 225 business enterprises.

226 6. Consult with experts and authorities in the fields of
 227 small business investment, venture capital investment, and
 228 commercial banking and other comparable financial institutions
 229 involved in the financing of business, and with individuals with
 230 regulatory, legal, economic, or financial expertise, including
 231 members of the academic community, and individuals who generally
 232 represent the public interest.

233 7. Seek the assistance and cooperation of all agencies and
 234 departments providing services to, or affecting, small business,
 235 to ensure coordination of state efforts.

236 8. Receive and respond to complaints from small businesses
 237 concerning the actions of agencies and the operative effects of
 238 state laws and regulations adversely affecting those businesses.
 239 The advocate shall establish an annual process for small
 240 businesses to nominate agency rules or programs for reform. The
 241 advocate shall publish those nominations online and update the
 242 status of agency action on the proposed reforms twice yearly.

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243 9. Counsel small businesses on how to resolve questions
 244 and problems concerning the relationship of small business to
 245 state government.

246 10. Maintain, publicize, and distribute an annual list of
 247 persons serving as small business ombudsmen throughout state
 248 government.

249 11. Coordinate a statewide conference on small business
 250 with public and private organizations and entities impacting
 251 small business in the state.

252 12. Coordinate annual public meetings to share best
 253 practices for small business disaster preparedness. The meetings
 254 shall be held in consultation with regional and statewide small
 255 business organizations and shall take place in different
 256 locations throughout the state.

257 (5) REPORTS AND DOCUMENTS FURNISHED TO SMALL BUSINESS
 258 ADVOCATE; ANNUAL REPORTS.--

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

263 (b) The advocate shall prepare and submit a written annual
 264 report to the Governor, the President of the Senate, and the
 265 Speaker of the House of Representatives that describes the
 266 activities and recommendations of the office.

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

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269 11.908 Committee duties.--No later than March 1 of the
 270 year in which a state agency or its advisory committees are
 271 scheduled to be reviewed, the committee shall and the joint
 272 committee may:

273 (2) Consult with the Legislative Budget Commission, the
 274 Small Business Regulatory Advisory Council, relevant substantive
 275 and appropriations committees of the Senate and the House of
 276 Representatives, the Governor's Office of Policy and Budgeting,
 277 the Auditor General, and the Chief Financial Officer, or their
 278 successors, relating to the review of the agency and its
 279 advisory committees.

280 Section 4. Paragraph (a) of subsection (2) of section
 281 11.911, Florida Statutes, is amended to read:

282 11.911 Committee recommendations.--

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

285 (a) Make recommendations on the abolition, continuation,
 286 or reorganization of each state agency and its advisory
 287 committees and on the need for the performance of the functions
 288 of the agency and its advisory committees. If the committee
 289 recommends continuation or reorganization, the committee shall
 290 include in its recommendations the report of the Small Business
 291 Regulatory Advisory Council as provided in s. 11.9006, regarding
 292 the rules of each agency.

293 Section 5. Section 11.919, Florida Statutes, is amended to
 294 read:

295 11.919 Assistance of and access to state agencies.--

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296 (1) The committee and the Small Business Regulatory
 297 Advisory Council may access or request information and request
 298 the assistance of state agencies and officers. When assistance
 299 is requested, a state agency or officer shall assist the
 300 committee and the Small Business Regulatory Advisory Council.

301 Section 6. Paragraph (b) of subsection (3) of section
 302 120.54, Florida Statutes, is amended to read:

303 120.54 Rulemaking.--

304 (3) ADOPTION PROCEDURES.--

305 (b) Special matters to be considered in rule adoption.--

306 1. Statement of estimated regulatory costs.--Prior to the
 307 adoption, amendment, or repeal of any rule other than an
 308 emergency rule, an agency is encouraged to prepare a statement
 309 of estimated regulatory costs of the proposed rule, as provided
 310 by s. 120.541. However, an agency shall prepare a statement of
 311 estimated regulatory costs of the proposed rule, as provided by
 312 s. 120.541, if the proposed rule will have an impact on small
 313 business.

314 2. Small businesses, small counties, and small cities.--

315 a. Each agency, before the adoption, amendment, or repeal
 316 of a rule, shall consider the impact of the rule on small
 317 businesses as defined by s. 288.703 and the impact of the rule
 318 on small counties or small cities as defined by s. 120.52.
 319 Whenever practicable, an agency shall tier its rules to reduce
 320 disproportionate impacts on small businesses, small counties, or
 321 small cities to avoid regulating small businesses, small
 322 counties, or small cities that do not contribute significantly

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323 to the problem the rule is designed to address. An agency may
 324 define "small business" to include businesses employing more
 325 than 100 persons, may define "small county" to include those
 326 with populations of more than 75,000, and may define "small
 327 city" to include those with populations of more than 10,000, if
 328 it finds that such a definition is necessary to adapt a rule to
 329 the needs and problems of small businesses, small counties, or
 330 small cities. The agency shall consider each of the following
 331 methods for reducing the impact of the proposed rule on small
 332 businesses, small counties, and small cities, or any combination
 333 of these entities:

334 (I) Establishing less stringent compliance or reporting
 335 requirements in the rule.

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

338 (III) Consolidating or simplifying the rule's compliance
 339 or reporting requirements.

340 (IV) Establishing performance standards or best-management
 341 practices to replace design or operational standards in the
 342 rule.

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

345 b.(I) If the agency determines that the proposed action
 346 will affect small businesses as defined by the agency as
 347 provided in sub-subparagraph a., the agency shall send written
 348 notice of the rule to the Small Business Regulatory Advisory
 349 Council~~small business ombudsman of the Office of Tourism, Trade,~~

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350 ~~and Economic Development~~ not less than 28 days prior to the
 351 intended action.

352 (II) Each agency shall adopt those regulatory alternatives
 353 offered by the Small Business Regulatory Advisory Council
 354 ~~ombudsman~~ and provided to the agency no later than 21 days after
 355 the Council's ~~ombudsman's~~ receipt of the written notice of the
 356 rule which it finds are feasible and consistent with the stated
 357 objectives of the proposed rule and which would reduce the
 358 impact on small businesses. When regulatory alternatives are
 359 offered by the Small Business Regulatory Advisory
 360 Council~~ombudsman~~, the 90-day period for filing the rule in
 361 subparagraph (e)2. is extended for a period of 21 days.

362 (III) If an agency does not adopt all alternatives offered
 363 pursuant to this sub-subparagraph, it shall, prior to rule
 364 adoption or amendment and pursuant to subparagraph (d)1., file a
 365 detailed written statement with the committee explaining the
 366 reasons for failure to adopt such alternatives. Within 3 working
 367 days of the filing of such notice, the agency shall send a copy
 368 of such notice to the Small Business Regulatory Advisory Council
 369 ~~ombudsman~~. The Small Business Regulatory Advisory Council may
 370 request that the Office of Program Policy Analysis and
 371 Government Accountability determine whether the rejected
 372 alternatives reduce the impact on small business while meeting
 373 the stated objectives of the proposed rule. Within 30 days after
 374 the date of the request, the Office of Program Policy Analysis
 375 and Government Accountability shall report to the Administrative
 376 Procedures Committee its findings as to whether an alternative

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377 reduces the impact on small business while meeting the stated
 378 objectives of the proposed rule. The Office of Program Policy
 379 Analysis and Government Accountability shall consider the
 380 proposed rule, the economic impact statement, the written
 381 statement of the agency, the proposed alternatives, and any
 382 comment submitted during the comment period on the proposed
 383 rule. The Administrative Procedures Committee shall report such
 384 findings to the agency and the agency shall respond in writing
 385 to the Administrative Procedures Committee if the Office of
 386 Program Policy Analysis and Government Accountability found that
 387 the alternative reduced the impact on small business while
 388 meeting the stated objectives of the proposed rule. If the
 389 agency will not adopt the alternative, it must also provide a
 390 detailed written statement to the Administrative Procedures
 391 Committee as to why it will not adopt the alternative.

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

394 120.74 Agency review, revision, and report.--

395 (1) Each agency shall review and revise its rules as often
 396 as necessary to ensure that its rules are correct and comply
 397 with statutory requirements. Additionally, each agency shall
 398 perform a formal review of its rules every 2 years. In the
 399 review, each agency must:

- 400 (a) Identify and correct deficiencies in its rules;
- 401 (b) Clarify and simplify its rules;
- 402 (c) Delete obsolete or unnecessary rules;
- 403 (d) Delete rules that are redundant of statutes;

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404 (e) Seek to improve efficiency, reduce paperwork, or
 405 decrease costs to government and the private sector; and

406 (f) Contact agencies that have concurrent or overlapping
 407 jurisdiction to determine whether their rules can be coordinated
 408 to promote efficiency, reduce paperwork, or decrease costs to
 409 government and the private sector.

410 (g) Determine whether the rules should be continued
 411 without change or should be amended or repealed to reduce the
 412 impact on small business while meeting the stated objectives of
 413 the proposed rule.

414 (2) Beginning October 1, 1997, and by October 1 of every
 415 other year thereafter, the head of each agency shall file a
 416 report with the President of the Senate, the Speaker of the
 417 House of Representatives, and the committee, with a copy to each
 418 appropriate standing committee of the Legislature, which
 419 certifies that the agency has complied with the requirements of
 420 this subsection. The report must specify any changes made to its
 421 rules as a result of the review and, when appropriate, recommend
 422 statutory changes that will promote efficiency, reduce
 423 paperwork, or decrease costs to government and the private
 424 sector. The report must specifically address the economic impact
 425 of the rules on small business. The report must identify the
 426 types of cases or disputes in which the agency is involved which
 427 should be conducted under the summary hearing process described
 428 in s. 120.574.

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