

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 powers and duties of the council; providing for
8 per diem and travel expenses of members; providing
9 administrative location for council; providing for
10 periodic review of agency rules by the council with agency
11 sunset review; providing timelines for review; providing
12 for the council to issue a report; creating s. 11.9007,
13 F.S.; providing findings and purpose; providing
14 definitions; creating the Office of Small Business
15 Advocate; providing for selection of the Florida Small
16 Business Advocate; providing for preferred qualifications
17 of the advocate; providing duties of the advocate;
18 providing for agency cooperation with the advocate;
19 providing for an annual report by the advocate to the
20 Governor and Legislature; amending s. 11.908, F.S.;
21 including the Small Business Regulatory Advisory Council
22 among groups that may be consulted for agency or committee
23 review; amending s. 11.911, F.S.; providing for the
24 inclusion of the report of the Small Business Regulatory
25 Advisory Council in the Legislative Sunset Committee's
26 recommendations; amending s. 11.919, F.S.; authorizing the
27 Small Business Regulatory Advisory Council to access or
28 request information and assistance of state agencies and

29 officers; authorizing the council to inspect agency
 30 documents; amending s. 120.54, F.S.; requiring each agency
 31 to prepare a statement of estimated regulatory costs under
 32 certain circumstances; requiring written agency
 33 notification to the Small Business Regulatory Advisory
 34 Council relating to proposed agency action affecting small
 35 business; requiring the agency to adopt regulatory
 36 alternatives offered by the council under certain
 37 circumstances; providing for rule filing extension when
 38 regulatory alternatives are offered by the council;
 39 providing for outside review of regulatory alternatives
 40 not adopted by the agency for agency response; amending s.
 41 120.74, F.S.; requiring biennial rule review by each
 42 agency to consider the impact of rules on small business;
 43 requiring the economic impact of the rules to be included
 44 in a report to the Legislature; providing an effective
 45 date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Section 11.9006, Florida Statutes, is created
 50 to read:

51 11.9006 Small Business Regulatory Advisory Council.--

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

54 (2) FINDINGS AND PURPOSE.--

55 (a) A vibrant and growing small business sector is
 56 critical in creating jobs in a dynamic economy;

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

59 (c) Fundamental changes that are needed in the regulatory
60 culture of state agencies to make them not only more responsive,
61 but responsive in a timely fashion, to small business should be
62 made without compromising the statutory missions of the
63 agencies;

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

68 (e) Uniform regulatory reporting requirements can impose
69 unnecessary and disproportionately burdensome demands, including
70 legal, accounting, and consulting costs, upon small businesses
71 with limited resources;

72 (f) The failure to recognize differences in the scale and
73 resources of regulated businesses can adversely affect
74 competition in the marketplace, discourage innovation, and
75 restrict improvements in productivity;

76 (g) Unnecessary rules create entry barriers in many
77 industries and discourage potential entrepreneurs from
78 introducing beneficial products and processes;

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

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

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

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

89 (b) "Council" means the Small Business Regulatory Advisory
90 Council.

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

92 (d) "Small business" means a small business as defined in
93 s. 288.703.

94 (4) CREATION OF THE SMALL BUSINESS REGULATORY ADVISORY
95 COUNCIL; MEMBERSHIP; POWERS AND DUTIES.--

96 (a) The Small Business Regulatory Advisory Council is
97 created. The council shall consist of nine members who are
98 current or former small business owners, three appointed by the
99 Governor, three appointed by the President of the Senate, and
100 three appointed by the Speaker of the House of Representatives.
101 The initial appointments to the council must be made within 60
102 days from the effective date of this act. The members shall be
103 from different geographic regions of the state. Members shall
104 serve 4-year terms; however, in order to establish staggered
105 terms, for the initial appointments, each appointing official
106 shall appoint one member to a 2-year term and two members to a
107 4-year term. A member may not serve more than three consecutive
108 terms. Members shall select the chairperson from among the
109 members of the council. The council shall meet quarterly or upon
110 the call of the chairperson. A majority of the members
111 constitutes a quorum for the conduct of business. Members of the

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112 council shall serve without compensation. Members are entitled
113 to reimbursement for per diem and travel expenses as provided in
114 s. 112.061. The appointing official may remove his or her
115 appointee without cause at any time. A member whose term has
116 expired shall continue to serve on the council until such time
117 as a replacement is appointed. Vacancies shall be filled for the
118 remainder of the term and by the original appointing official.

119 (b) The council is independent from but administratively
120 attached to the Office of Tourism, Trade, and Economic
121 Development, which shall provide staff support to the council.

122 (c) The council may:

123 1. Provide agencies with recommendations regarding
124 proposed rules or programs that may adversely affect small
125 business;

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

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

131 4. Review rules promulgated by an agency to determine
132 whether a rule places an unnecessary burden on small business
133 and make recommendations to the agency to mitigate the adverse
134 effects.

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

136 1. Initiate or intervene in any administrative or judicial
137 proceeding; or

138 2. Issue subpoenas.

139 (e) The council shall prepare and submit a written annual
 140 report to the Governor, the President of the Senate, and the
 141 Speaker of the House of Representatives that describes the
 142 activities and recommendations of the council.

143 (5) PERIODIC REVIEW OF RULES.--

144 (a) In coordination with the sunset review schedule
 145 provided in s. 11.905, the council may review rules of agencies
 146 subject to sunset review to determine whether the rules should
 147 be continued without change or should be amended or repealed to
 148 reduce the impact of the rules on small businesses, subject to
 149 the requirement that the recommendations of the council must be
 150 feasible and consistent with the stated objectives of the rules.

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

- 154 1. Continued need for the rule;
- 155 2. The nature of complaints or comments received from the
 156 public concerning the rule;
- 157 3. The complexity of the rule;
- 158 4. The extent to which the rule overlaps, duplicates, or
 159 conflicts with other federal, state, and local government rules;
 160 and
- 161 5. The length of time since the rule has been evaluated or
 162 the degree to which technology, economic conditions, or other
 163 factors have changed in the topical area affected by the rule.

164 (c) Within 6 months after the agency report is submitted
 165 to the Joint Legislative Sunset Committee pursuant to s. 11.907,
 166 the council shall provide a report to the Governor, the

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167 President of the Senate, the Speaker of the House of
168 Representatives, and the Joint Legislative Sunset Committee that
169 includes recommendations and evaluations of agency rules and
170 programs regarding regulatory fairness for small businesses. A
171 component of the report shall be a rating system, developed by
172 the council, entitled "Small Business Friendliness and
173 Development Scorecard."

174 Section 2. Section 11.9007, Florida Statutes, is created
175 to read:

176 11.9007 Office of Small Business Advocate.--

177 (1) FINDINGS AND PURPOSE.--

178 (a) The Legislature finds and declares that it is in the
179 public interest to aid, counsel, assist, and protect, insofar as
180 is possible, the interests of small business concerns in order
181 to preserve free competitive enterprise and maintain a healthy
182 state economy.

183 (b) The Legislature finds that the state should provide a
184 point person to advocate the causes of small business and to
185 provide small businesses with the information they need to
186 survive in the marketplace.

187 (2) DEFINITIONS.--

188 (a) "Advocate" means the Florida Small Business Advocate,
189 who is also the director of the Office of Small Business
190 Advocate.

191 (b) "Director" means the director of the Office of Small
192 Business Advocate.

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

194 (3) OFFICE OF SMALL BUSINESS ADVOCATE; CREATION.--The
 195 Office of Small Business Advocate is created within the Office
 196 of Tourism, Trade, and Economic Development and the director
 197 shall be the Florida Small Business Advocate.

198 (4) DIRECTOR OF THE OFFICE OF SMALL BUSINESS ADVOCATE;
 199 APPOINTMENT; DUTIES.--

200 (a) The advocate shall be an employee and may be the
 201 director of the Office of Tourism, Trade, and Economic
 202 Development. Preferred qualifications for the advocate include
 203 at least 5 years' experience in small business, extensive
 204 knowledge of the issues and challenges of importance to small
 205 business, and actual experience in small business advocacy and
 206 assistance.

207 (b) The duties and functions of the advocate shall include
 208 the following:

209 1. Act as staff for the Small Business Regulatory Advisory
 210 Council.

211 2. Serve as principal advocate in the state on behalf of
 212 small businesses, including, but not limited to, advisory
 213 participation in the consideration of all legislation and
 214 administrative rules that affect small businesses and advocacy
 215 on state policy and programs related to small businesses on
 216 disaster preparedness and recovery, including providing
 217 technical assistance.

218 3. Represent the views and interests of small businesses
 219 before agencies whose policies and activities may affect small
 220 businesses. Among other activities, the advocate may encourage
 221 standardized applications and information packages that would

222 include all the information needed by each agency that a
223 business has to deal with to prevent an applicant from having to
224 fill out duplicative information on forms from various agencies.

225 4. Enlist the cooperation and assistance of public and
226 private agencies, businesses, and other organizations in
227 disseminating information about the programs and services
228 provided by all levels of government that are of benefit to
229 small businesses and information on how small businesses can
230 participate in, or make use of, those programs and services.

231 5. Issue a report every 2 years evaluating the efforts of
232 agencies that significantly regulate small businesses, to assist
233 minority and other small business enterprises and to make
234 recommendations that may be appropriate to assist the
235 development and strengthening of minority and other small
236 business enterprises.

237 6. Consult with experts and authorities in the fields of
238 small business investment, venture capital investment, and
239 commercial banking and other comparable financial institutions
240 involved in the financing of business; with individuals with
241 regulatory, legal, economic, or financial expertise, including
242 members of the academic community; and with individuals who
243 generally represent the public interest.

244 7. Seek the assistance and cooperation of all agencies and
245 departments providing services to, or affecting, small business,
246 to ensure coordination of state efforts.

247 8. Receive and respond to complaints from small businesses
248 concerning the actions of agencies and the operative effects of
249 state laws and regulations adversely affecting those businesses.

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250 The advocate shall establish an annual process for small
251 businesses to nominate agency rules or programs for reform. The
252 advocate shall publish those nominations online and update the
253 status of agency action on the proposed reforms twice yearly.

254 9. Counsel small businesses on how to resolve questions
255 and problems concerning the relationship of small business to
256 state government.

257 10. Maintain, publicize, and distribute an annual list of
258 persons serving as small business ombudsmen throughout state
259 government.

260 11. Coordinate a statewide conference on small business
261 with public and private organizations and entities impacting
262 small business in the state.

263 12. Coordinate annual public meetings to share best
264 practices for small business disaster preparedness. The meetings
265 shall be held in consultation with regional and statewide small
266 business organizations and shall take place in different
267 locations throughout the state.

268 (5) REPORTS, DOCUMENTS, AND INFORMATION FURNISHED TO THE
269 SMALL BUSINESS ADVOCATE; ANNUAL REPORTS.--

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

274 (b) The advocate shall prepare and submit a written annual
275 report to the Governor, the President of the Senate, and the
276 Speaker of the House of Representatives that describes the
277 activities and recommendations of the office.

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

280 11.908 Committee duties.--No later than March 1 of the
 281 year in which a state agency or its advisory committees are
 282 scheduled to be reviewed, the committee shall and the joint
 283 committee may:

284 (2) Consult with the Legislative Budget Commission, the
 285 Small Business Regulatory Advisory Council, relevant substantive
 286 and appropriations committees of the Senate and the House of
 287 Representatives, the Governor's Office of Policy and Budgeting,
 288 the Auditor General, and the Chief Financial Officer, or their
 289 successors, relating to the review of the agency and its
 290 advisory committees.

291 Section 4. Paragraph (a) of subsection (2) of section
 292 11.911, Florida Statutes, is amended to read:

293 11.911 Committee recommendations.--

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

296 (a) Make recommendations on the abolition, continuation,
 297 or reorganization of each state agency and its advisory
 298 committees and on the need for the performance of the functions
 299 of the agency and its advisory committees. If the committee
 300 recommends continuation or reorganization, the committee shall
 301 include in its recommendations the report of the Small Business
 302 Regulatory Advisory Council, as provided in s. 11.9006,
 303 regarding the rules of each agency.

304 Section 5. Subsection (1) of section 11.919, Florida
 305 Statutes, is amended to read:

306 11.919 Assistance of and access to state agencies.--

307 (1) The committee and the Small Business Regulatory
 308 Advisory Council may access or request information and request
 309 the assistance of state agencies and officers. When assistance
 310 is requested, a state agency or officer shall assist the
 311 committee and the Small Business Regulatory Advisory Council.

312 Section 6. Paragraph (b) of subsection (3) of section
 313 120.54, Florida Statutes, is amended to read:

314 120.54 Rulemaking.--

315 (3) ADOPTION PROCEDURES.--

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

317 1. Statement of estimated regulatory costs.--Prior to the
 318 adoption, amendment, or repeal of any rule other than an
 319 emergency rule, an agency is encouraged to prepare a statement
 320 of estimated regulatory costs of the proposed rule, as provided
 321 by s. 120.541. However, an agency shall prepare a statement of
 322 estimated regulatory costs of the proposed rule, as provided by
 323 s. 120.541, if the proposed rule will have an impact on small
 324 business.

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

326 a. Each agency, before the adoption, amendment, or repeal
 327 of a rule, shall consider the impact of the rule on small
 328 businesses as defined by s. 288.703 and the impact of the rule
 329 on small counties or small cities as defined by s. 120.52.
 330 Whenever practicable, an agency shall tier its rules to reduce
 331 disproportionate impacts on small businesses, small counties, or
 332 small cities to avoid regulating small businesses, small
 333 counties, or small cities that do not contribute significantly

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334 to the problem the rule is designed to address. An agency may
335 define "small business" to include businesses employing more
336 than 100 persons, may define "small county" to include those
337 with populations of more than 75,000, and may define "small
338 city" to include those with populations of more than 10,000, if
339 it finds that such a definition is necessary to adapt a rule to
340 the needs and problems of small businesses, small counties, or
341 small cities. The agency shall consider each of the following
342 methods for reducing the impact of the proposed rule on small
343 businesses, small counties, and small cities, or any combination
344 of these entities:

345 (I) Establishing less stringent compliance or reporting
346 requirements in the rule.

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

349 (III) Consolidating or simplifying the rule's compliance
350 or reporting requirements.

351 (IV) Establishing performance standards or best-management
352 practices to replace design or operational standards in the
353 rule.

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

356 b.(I) If the agency determines that the proposed action
357 will affect small businesses as defined by the agency as
358 provided in sub-subparagraph a., the agency shall send written
359 notice of the rule to the Small Business Regulatory Advisory
360 Council ~~small business ombudsman of the Office of Tourism,~~

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361 ~~Trade, and Economic Development~~ not less than 28 days prior to
362 the intended action.

363 (II) Each agency shall adopt those regulatory alternatives
364 offered by the Small Business Regulatory Advisory Council
365 ~~ombudsman~~ and provided to the agency no later than 21 days after
366 the council's ~~ombudsman's~~ receipt of the written notice of the
367 rule which it finds are feasible and consistent with the stated
368 objectives of the proposed rule and which would reduce the
369 impact on small businesses. When regulatory alternatives are
370 offered by the Small Business Regulatory Advisory Council
371 ~~ombudsman~~, the 90-day period for filing the rule in subparagraph
372 (e)2. is extended for a period of 21 days.

373 (III) If an agency does not adopt all alternatives offered
374 pursuant to this sub-subparagraph, it shall, prior to rule
375 adoption or amendment and pursuant to subparagraph (d)1., file a
376 detailed written statement with the committee explaining the
377 reasons for failure to adopt such alternatives. Within 3 working
378 days of the filing of such notice, the agency shall send a copy
379 of such notice to the Small Business Regulatory Advisory Council
380 ~~ombudsman~~. The Small Business Regulatory Advisory Council may
381 request that the Office of Program Policy Analysis and
382 Government Accountability determine whether the rejected
383 alternatives reduce the impact on small business while meeting
384 the stated objectives of the proposed rule. Within 30 days after
385 the date of the request, the Office of Program Policy Analysis
386 and Government Accountability shall report to the committee its
387 findings as to whether an alternative reduces the impact on
388 small business while meeting the stated objectives of the

389 proposed rule. The Office of Program Policy Analysis and
 390 Government Accountability shall consider the proposed rule, the
 391 economic impact statement, the written statement of the agency,
 392 the proposed alternatives, and any comment submitted during the
 393 comment period on the proposed rule. The committee shall report
 394 such findings to the agency, and the agency shall respond in
 395 writing to the committee if the Office of Program Policy
 396 Analysis and Government Accountability found that the
 397 alternative reduced the impact on small business while meeting
 398 the stated objectives of the proposed rule. If the agency
 399 decides not to adopt the alternative, it must provide a detailed
 400 written statement to the committee as to why it will not adopt
 401 the alternative.

402 Section 7. Section 120.74, Florida Statutes, is amended to
 403 read:

404 120.74 Agency review, revision, and report.--

405 (1) Each agency shall review and revise its rules as often
 406 as necessary to ensure that its rules are correct and comply
 407 with statutory requirements. Additionally, each agency shall
 408 perform a formal review of its rules every 2 years. In the
 409 review, each agency must:

- 410 (a) Identify and correct deficiencies in its rules;
- 411 (b) Clarify and simplify its rules;
- 412 (c) Delete obsolete or unnecessary rules;
- 413 (d) Delete rules that are redundant of statutes;
- 414 (e) Seek to improve efficiency, reduce paperwork, or
- 415 decrease costs to government and the private sector; ~~and~~

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

420 (g) Determine whether the rules should be continued
421 without change or should be amended or repealed to reduce the
422 impact on small business while meeting the stated objectives of
423 the proposed rule.

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

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