

## ENROLLED

HB 7109, Engrossed 1

2008 Legislature

1                                   A bill to be entitled  
2           An act relating to small business regulatory relief;  
3           creating s. 288.001, F.S.; designating the Florida Small  
4           Business Development Center Network as the principal  
5           business assistance organization for small businesses in  
6           the state; creating s. 288.7001, F.S.; providing a short  
7           title; providing definitions; creating the Small Business  
8           Regulatory Advisory Council; providing for appointments,  
9           membership, and meetings; providing powers and duties of  
10          the council; providing administrative location for  
11          council; providing for periodic review of agency rules by  
12          the council with agency sunset review; providing timelines  
13          for review; providing for the council to issue a report;  
14          creating s. 288.7002, F.S.; providing definitions;  
15          creating the Office of Small Business Advocate; providing  
16          for selection of the Florida Small Business Advocate;  
17          providing for preferred qualifications of the advocate;  
18          providing duties of the advocate; providing for agency  
19          cooperation with the advocate; providing for an annual  
20          report by the advocate to the Governor and Legislature;  
21          amending s. 11.908, F.S.; including the Small Business  
22          Regulatory Advisory Council among groups that may be  
23          consulted for agency or committee review; amending s.  
24          11.911, F.S.; providing for the inclusion of the report of  
25          the Small Business Regulatory Advisory Council in the  
26          Legislative Sunset Committee's recommendations; amending  
27          s. 11.919, F.S.; requiring agency assistance to the Small  
28          Business Regulatory Advisory Council; authorizing the

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

45  
 46 Be It Enacted by the Legislature of the State of Florida:

47  
 48 Section 1. Section 288.001, Florida Statutes, is created  
 49 to read:

50 288.001 The Florida Small Business Development Center  
 51 Network; purpose.--The Florida Small Business Development Center  
 52 Network is the principal business assistance organization for  
 53 small businesses in the state.

54 Section 2. Section 288.7001, Florida Statutes, is created  
 55 to read:

56 288.7001 Small Business Regulatory Advisory Council.--

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

59           (2) DEFINITIONS.--As used in this section, the term:

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

61           (b) "Council" means the Small Business Regulatory Advisory  
 62 Council.

63           (c) "Rule" means a rule as defined in s. 120.52.

64           (d) "Small business" means a small business as defined in  
 65 s. 288.703.

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

68           (a) The Small Business Regulatory Advisory Council is  
 69 created. The council shall consist of nine members who are  
 70 current or former small business owners, three appointed by the  
 71 Governor, three appointed by the President of the Senate, and  
 72 three appointed by the Speaker of the House of Representatives.  
 73 The initial appointments to the council must be made within 60  
 74 days after the effective date of this act. The members shall be  
 75 from different geographic regions of the state. Members shall  
 76 serve 4-year terms; however, in order to establish staggered  
 77 terms, for the initial appointments, each appointing official  
 78 shall appoint one member to a 2-year term and two members to a  
 79 4-year term. A member shall not serve more than three  
 80 consecutive terms. Members shall select the chairperson from  
 81 among the members of the council. The council shall meet  
 82 quarterly or upon the call of the chairperson. A majority of the  
 83 members constitutes a quorum for the conduct of business.  
 84 Members of the council shall serve without compensation. The

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85 appointing official may remove his or her appointee without  
 86 cause at any time. A member whose term has expired shall  
 87 continue to serve on the council until such time as a  
 88 replacement is appointed. Vacancies shall be filled for the  
 89 remainder of the term and by the original appointing official.

90 (b) The council is established, assigned to, and  
 91 administratively housed within the Florida Small Business  
 92 Development Center Network, which shall provide staff support to  
 93 the council.

94 (c) The council may:

95 1. Provide agencies with recommendations regarding  
 96 proposed rules or programs that may adversely affect small  
 97 business;

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

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

103 4. Review rules promulgated by an agency to determine  
 104 whether a rule places an unnecessary burden on small business  
 105 and make recommendations to the agency to mitigate the adverse  
 106 effects.

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

108 1. Initiate or intervene in any administrative or judicial  
 109 proceeding; or

110 2. Issue subpoenas.

111 (e) The council shall prepare and submit a written annual  
 112 report to the Governor, the President of the Senate, and the

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113 Speaker of the House of Representatives that describes the  
 114 activities and recommendations of the council.

115 (4) PERIODIC REVIEW OF RULES.--

116 (a) In coordination with the sunset review schedule  
 117 provided in s. 11.905, the council may review rules of agencies  
 118 subject to sunset review to determine whether the rules should  
 119 be continued without change or should be amended or repealed to  
 120 reduce the impact of the rules on small businesses, subject to  
 121 the requirement that the recommendations of the council must be  
 122 feasible and consistent with the stated objectives of the rules.

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

- 126 1. Continued need for the rule;
- 127 2. The nature of complaints or comments received from the  
 128 public concerning the rule;
- 129 3. The complexity of the rule;
- 130 4. The extent to which the rule overlaps, duplicates, or  
 131 conflicts with other federal, state, and local government rules;  
 132 and

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

136 (c) Within 6 months after the agency report is submitted  
 137 to the Joint Legislative Sunset Committee pursuant to s. 11.907,  
 138 the council shall provide a report to the Governor, the  
 139 President of the Senate, the Speaker of the House of  
 140 Representatives, and the Joint Legislative Sunset Committee that

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141 includes recommendations and evaluations of agency rules and  
 142 programs regarding regulatory fairness for small businesses. A  
 143 component of the report shall be a rating system, developed by  
 144 the council, entitled "Small Business Friendliness and  
 145 Development Scorecard."

146 Section 3. Section 288.7002, Florida Statutes, is created  
 147 to read:

148 288.7002 Small business advocate.--

149 (1) DEFINITIONS.--

150 (a) "Advocate" means the Florida Small Business Advocate,  
 151 who is also the Director of the Office of Small Business  
 152 Advocate.

153 (b) "Director" means the Director of the Office of Small  
 154 Business Advocate.

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

156 (2) OFFICE OF SMALL BUSINESS ADVOCATE.--The Office of  
 157 Small Business Advocate is established, assigned to, and  
 158 administratively housed within the Florida Small Business  
 159 Development Center Network. The director shall be the Florida  
 160 Small Business Advocate.

161 (3) DIRECTOR OF THE OFFICE OF SMALL BUSINESS ADVOCATE;  
 162 APPOINTMENT; DUTIES.--

163 (a) The advocate shall be selected by the director of the  
 164 Florida Small Business Development Center Network and shall be  
 165 an employee of or under contract with the Florida Small Business  
 166 Development Center Network. Preferred qualifications for the  
 167 advocate include at least 5 years' experience in small business,  
 168 extensive knowledge of the issues and challenges of importance

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169 to small business, and actual experience in small business  
 170 advocacy and assistance.

171 (b) The duties and functions of the advocate shall include  
 172 the following:

173 1. Act as staff for the Small Business Regulatory Advisory  
 174 Council.

175 2. Serve as principal advocate in the state on behalf of  
 176 small businesses, including, but not limited to, advisory  
 177 participation in the consideration of all legislation and  
 178 administrative rules that affect small businesses and advocacy  
 179 on state policy and programs related to small businesses on  
 180 disaster preparedness and recovery, including providing  
 181 technical assistance.

182 3. Represent the views and interests of small businesses  
 183 before agencies whose policies and activities may affect small  
 184 businesses. Among other activities, the advocate may encourage  
 185 standardized applications and information packages that would  
 186 include all the information needed by each agency that a  
 187 business has to deal with to prevent an applicant from having to  
 188 fill out duplicative information on forms from various agencies.

189 4. Enlist the cooperation and assistance of public and  
 190 private agencies, businesses, and other organizations in  
 191 disseminating information about the programs and services  
 192 provided by all levels of government that are of benefit to  
 193 small businesses and information on how small businesses can  
 194 participate in, or make use of, those programs and services.

195 5. Issue a report every 2 years evaluating the efforts of  
 196 agencies that significantly regulate small businesses, to assist

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197 minority and other small business enterprises and to make  
 198 recommendations that may be appropriate to assist the  
 199 development and strengthening of minority and other small  
 200 business enterprises.

201 6. Consult with experts and authorities in the fields of  
 202 small business investment, venture capital investment, and  
 203 commercial banking and other comparable financial institutions  
 204 involved in the financing of business; with individuals with  
 205 regulatory, legal, economic, or financial expertise, including  
 206 members of the academic community; and with individuals who  
 207 generally represent the public interest.

208 7. Seek the assistance and cooperation of all agencies and  
 209 departments providing services to, or affecting, small business,  
 210 to ensure coordination of state efforts.

211 8. Receive and respond to complaints from small businesses  
 212 concerning the actions of agencies and the operative effects of  
 213 state laws and regulations adversely affecting those businesses.  
 214 The advocate shall establish an annual process for small  
 215 businesses to nominate agency rules or programs for reform. The  
 216 advocate shall publish those nominations online and update the  
 217 status of agency action on the proposed reforms twice yearly.

218 9. Counsel small businesses on how to resolve questions  
 219 and problems concerning the relationship of small business to  
 220 state government.

221 10. Maintain, publicize, and distribute an annual list of  
 222 persons serving as small business ombudsmen throughout state  
 223 government.

224 11. Coordinate a statewide conference on small business



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225 with public and private organizations and entities impacting  
 226 small business in the state.

227 12. Coordinate annual public meetings to share best  
 228 practices for small business disaster preparedness. The meetings  
 229 shall be held in consultation with regional and statewide small  
 230 business organizations and shall take place in different  
 231 locations throughout the state.

232 (4) REPORTS, DOCUMENTS, AND INFORMATION FURNISHED TO THE  
 233 SMALL BUSINESS ADVOCATE; ANNUAL REPORTS.--

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

238 (b) The advocate shall prepare and submit a written annual  
 239 report to the Governor, the President of the Senate, and the  
 240 Speaker of the House of Representatives that describes the  
 241 activities and recommendations of the office.

242 Section 4. Subsection (2) of section 11.908, Florida  
 243 Statutes, is amended to read:

244 11.908 Committee duties.--No later than March 1 of the  
 245 year in which a state agency or its advisory committees are  
 246 scheduled to be reviewed, the committee shall and the joint  
 247 committee may:

248 (2) Consult with the Legislative Budget Commission, the  
 249 Small Business Regulatory Advisory Council, relevant substantive  
 250 and appropriations committees of the Senate and the House of  
 251 Representatives, the Governor's Office of Policy and Budgeting,  
 252 the Auditor General, and the Chief Financial Officer, or their

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253 successors, relating to the review of the agency and its  
 254 advisory committees.

255 Section 5. Paragraph (a) of subsection (2) of section  
 256 11.911, Florida Statutes, is amended to read:

257 11.911 Committee recommendations.--

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

260 (a) Make recommendations on the abolition, continuation,  
 261 or reorganization of each state agency and its advisory  
 262 committees and on the need for the performance of the functions  
 263 of the agency and its advisory committees. If the committee  
 264 recommends continuation or reorganization, the committee shall  
 265 include in its recommendations the report of the Small Business  
 266 Regulatory Advisory Council, as provided in s. 288.7001,  
 267 regarding the rules of each agency.

268 Section 6. Subsection (1) of section 11.919, Florida  
 269 Statutes, is amended to read:

270 11.919 Assistance of and access to state agencies.--

271 (1) The committee and the Small Business Regulatory  
 272 Advisory Council may access or request information and request  
 273 the assistance of state agencies and officers. When assistance  
 274 is requested, a state agency or officer shall assist the  
 275 committee and the Small Business Regulatory Advisory Council.

276 Section 7. Paragraph (b) of subsection (3) of section  
 277 120.54, Florida Statutes, is amended to read:

278 120.54 Rulemaking.--

279 (3) ADOPTION PROCEDURES.--

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

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281           1. Statement of estimated regulatory costs.--Prior to the  
 282 adoption, amendment, or repeal of any rule other than an  
 283 emergency rule, an agency is encouraged to prepare a statement  
 284 of estimated regulatory costs of the proposed rule, as provided  
 285 by s. 120.541. However, an agency shall prepare a statement of  
 286 estimated regulatory costs of the proposed rule, as provided by  
 287 s. 120.541, if the proposed rule will have an impact on small  
 288 business.

289           2. Small businesses, small counties, and small cities.--  
 290           a. Each agency, before the adoption, amendment, or repeal  
 291 of a rule, shall consider the impact of the rule on small  
 292 businesses as defined by s. 288.703 and the impact of the rule  
 293 on small counties or small cities as defined by s. 120.52.  
 294 Whenever practicable, an agency shall tier its rules to reduce  
 295 disproportionate impacts on small businesses, small counties, or  
 296 small cities to avoid regulating small businesses, small  
 297 counties, or small cities that do not contribute significantly  
 298 to the problem the rule is designed to address. An agency may  
 299 define "small business" to include businesses employing more  
 300 than 100 persons, may define "small county" to include those  
 301 with populations of more than 75,000, and may define "small  
 302 city" to include those with populations of more than 10,000, if  
 303 it finds that such a definition is necessary to adapt a rule to  
 304 the needs and problems of small businesses, small counties, or  
 305 small cities. The agency shall consider each of the following  
 306 methods for reducing the impact of the proposed rule on small  
 307 businesses, small counties, and small cities, or any combination  
 308 of these entities:

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309 (I) Establishing less stringent compliance or reporting  
 310 requirements in the rule.

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

313 (III) Consolidating or simplifying the rule's compliance  
 314 or reporting requirements.

315 (IV) Establishing performance standards or best-management  
 316 practices to replace design or operational standards in the  
 317 rule.

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

320 b.(I) If the agency determines that the proposed action  
 321 will affect small businesses as defined by the agency as  
 322 provided in sub-subparagraph a., the agency shall send written  
 323 notice of the rule to the Small Business Regulatory Advisory  
 324 Council and ~~small business ombudsman~~ of the Office of Tourism,  
 325 Trade, and Economic Development not less than 28 days prior to  
 326 the intended action.

327 (II) Each agency shall adopt those regulatory alternatives  
 328 offered by the Small Business Regulatory Advisory Council ~~small~~  
 329 ~~business ombudsman~~ and provided to the agency no later than 21  
 330 days after the council's ~~ombudsman's~~ receipt of the written  
 331 notice of the rule which it finds are feasible and consistent  
 332 with the stated objectives of the proposed rule and which would  
 333 reduce the impact on small businesses. When regulatory  
 334 alternatives are offered by the Small Business Regulatory  
 335 Advisory Council ~~small business ombudsman~~, the 90-day period for  
 336 filing the rule in subparagraph (e)2. is extended for a period

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337 of 21 days.

338 (III) If an agency does not adopt all alternatives offered

339 pursuant to this sub-subparagraph, it shall, prior to rule

340 adoption or amendment and pursuant to subparagraph (d)1., file a

341 detailed written statement with the committee explaining the

342 reasons for failure to adopt such alternatives. Within 3 working

343 days of the filing of such notice, the agency shall send a copy

344 of such notice to the Small Business Regulatory Advisory Council

345 ~~small business ombudsman~~. The Small Business Regulatory Advisory

346 Council may make a request of the President of the Senate and

347 the Speaker of the House of Representatives that the presiding

348 officers direct the Office of Program Policy Analysis and

349 Government Accountability to determine whether the rejected

350 alternatives reduce the impact on small business while meeting

351 the stated objectives of the proposed rule. Within 60 days after

352 the date of the directive from the presiding officers, the

353 Office of Program Policy Analysis and Government Accountability

354 shall report to the Administrative Procedures Committee its

355 findings as to whether an alternative reduces the impact on

356 small business while meeting the stated objectives of the

357 proposed rule. The Office of Program Policy Analysis and

358 Government Accountability shall consider the proposed rule, the

359 economic impact statement, the written statement of the agency,

360 the proposed alternatives, and any comment submitted during the

361 comment period on the proposed rule. The Office of Program

362 Policy Analysis and Government Accountability shall submit a

363 report of its findings and recommendations to the Governor, the

364 President of the Senate, and the Speaker of the House of

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365 Representatives. The Administrative Procedures Committee shall  
 366 report such findings to the agency, and the agency shall respond  
 367 in writing to the Administrative Procedures Committee if the  
 368 Office of Program Policy Analysis and Government Accountability  
 369 found that the alternative reduced the impact on small business  
 370 while meeting the stated objectives of the proposed rule. If the  
 371 agency will not adopt the alternative, it must also provide a  
 372 detailed written statement to the committee as to why it will  
 373 not adopt the alternative.

374 Section 8. Section 120.74, Florida Statutes, is amended to  
 375 read:

376 120.74 Agency review, revision, and report.--

377 (1) Each agency shall review and revise its rules as often  
 378 as necessary to ensure that its rules are correct and comply  
 379 with statutory requirements. Additionally, each agency shall  
 380 perform a formal review of its rules every 2 years. In the  
 381 review, each agency must:

- 382 (a) Identify and correct deficiencies in its rules;
- 383 (b) Clarify and simplify its rules;
- 384 (c) Delete obsolete or unnecessary rules;
- 385 (d) Delete rules that are redundant of statutes;
- 386 (e) Seek to improve efficiency, reduce paperwork, or  
 387 decrease costs to government and the private sector; ~~and~~
- 388 (f) Contact agencies that have concurrent or overlapping  
 389 jurisdiction to determine whether their rules can be coordinated  
 390 to promote efficiency, reduce paperwork, or decrease costs to  
 391 government and the private sector; and.

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392           (g) Determine whether the rules should be continued  
393 without change or should be amended or repealed to reduce the  
394 impact on small business while meeting the stated objectives of  
395 the proposed rule.

396           (2) Beginning October 1, 1997, and by October 1 of every  
397 other year thereafter, the head of each agency shall file a  
398 report with the President of the Senate, the Speaker of the  
399 House of Representatives, and the committee, with a copy to each  
400 appropriate standing committee of the Legislature, which  
401 certifies that the agency has complied with the requirements of  
402 this subsection. The report must specify any changes made to its  
403 rules as a result of the review and, when appropriate, recommend  
404 statutory changes that will promote efficiency, reduce  
405 paperwork, or decrease costs to government and the private  
406 sector. The report must specifically address the economic impact  
407 of the rules on small business. The report must identify the  
408 types of cases or disputes in which the agency is involved which  
409 should be conducted under the summary hearing process described  
410 in s. 120.574.

411           Section 9. This act shall take effect July 1, 2008.