

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Operations Committee

BILL: CS/CS/SB 928

INTRODUCER: Governmental Operations Committee, Commerce Committee, and Senator Diaz de la Portilla

SUBJECT: Economic Development

DATE: April 22, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pugh</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill recognizes the Florida Small Business Development Center Network (network) as the principal business assistance organization for small businesses in the state. The bill creates the Small Business Regulatory Relief Act, and establishes a Small Business Regulatory Review Advisory Council (council) and a Small Business Advocate (advocate), and adds a number of procedural and reporting requirements related to agency rulemaking under ch. 120, F.S.

The council's duties include providing state agencies with input regarding proposed rules or programs that may adversely affect small business, and reviewing agency rules in conjunction with the agency sunset review process in s. 11.991, F.S.

The advocate's duties include representing the views and interests of small businesses before the Legislature and state agencies; receiving and responding to complaints from small businesses about agency rules or state laws that may adversely affect small businesses; and coordinating statewide meetings on small-business issues. The council and advocate will be housed within Florida's Small Business Development Center Network.

Both the council and the advocate must submit reports to the Governor and the Legislature on various topics.

The bill also requires state agencies to prepare a statement of estimated regulatory cost if their proposed rules will impact small business, and creates a review process utilizing the Office of Program Policy Analysis & Government Accountability (OPPAGA) when an agency does not accept rule-language alternatives offered by the council.

The bill creates sections 288.7001 and 288.7002, and amends section. 11.908, 11.919, 120.54, and 120.74 of the Florida Statutes.

II. Present Situation:

Small Businesses in Florida

Information compiled by the Small Business Administration (SBA) in 2004 and 2005 indicates that there are 1,942,200 small businesses in Florida.¹ Of that number, 393,830 businesses have 1 to 99 employees, for a total non-farm employment of 2.3 million persons.² The vast majority of small businesses in Florida – nearly 1.5 million in 2005 – are “non-employer firms,” which have no paid employees but they can and do contract out for work-related tasks.³

According to Florida’s Agency for Workforce Innovation, in 2005 Florida had 568,420 employer businesses, with a total employment of 7.6 million people.⁴ So, comparing these statistics with those from the SBA, 69 percent of Florida’s employer businesses have fewer than 100 employees and account for 30 percent of the state’s non-farm workers.

Small businesses continue to generate a greater percentage and greater numbers of jobs compared with job losses.⁵ From 2003-2004, employer firms with fewer than 100 workers added a net 191,000 jobs to Florida’s economy, meaning 27 percent more jobs were created by small businesses than were lost. During that same period of time, employer businesses with at least 500 workers created a net 78,000 jobs, only an 11-percent increase in jobs created versus jobs lost.

Existing Regulatory Flexibility Legislation & Administrative Procedures Act (APA)

The APA refers to the Commercial Development and Capital Improvements Act to define small business, which defines a “small business” as an entity employing 200 or fewer full-time employees and that, together with its affiliates, has a net worth of less than \$5 million or any firm

¹ Information in this section compiled from the U.S. Small Business Administration’s website. Specifically see <http://www.sba.gov/advo/research/profiles/07fl.pdf>. Last visited April 3, 2008.

² Ibid.

³ According to the U.S. Small Business Administration Office of Advocacy, a non-employer firm is defined as one that has no paid employees, has annual business receipts of at least \$1,000 (at least \$1 in the construction trades), and is subject to federal income taxes. According to the U.S. Census Bureau, non-employers account for roughly 3 percent of business activity [in terms of sales or receipts], but nearly three-quarters of all businesses. Most non-employer businesses are very small, and many are not the primary source of income for their owners. More than half of these businesses are operated by sole-proprietors, working full-time without any paid employees.

⁴ State employment data for multiple years can be retrieved at <http://labormarketinfo.com/library/qcew.htm>. Last visited April 3, 2008.

⁵ Information in this section compiled from the U.S. Small Business Administration’s website. Specifically see <http://www.sba.gov/advo/research/profiles/07fl.pdf>. Last visited April 3, 2008.

based in this state which has an SBA 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement includes personal and business investments.⁶ This definition includes approximately 97 percent of firms in Florida, based on the 2002 U.S. Census. Under the APA, an agency may define “small business” to include businesses employing more than 100 persons if it finds that such definition is necessary to adapt a rule to the needs and problems of small businesses.⁷

Economic Impact of Agency Rules

Provisions of the Administrative Procedure Act relating to the economic impact of rules have been amended several times. The 1976 Legislature enacted Chapter 76-276, Laws of Florida, requiring every rule to have an Economic Impact Statement (EIS). It required that a professional methodology be followed in preparing the statement, with both cost-benefit and cost-effectiveness analyses. Agencies generally did not have economists on staff and this type of formal analysis was eventually determined to be too burdensome. Chapter 78-425, Laws of Florida, made the required analysis less formal, replacing determinations with estimates of impact. In 1985, there was concern that a general economic impact statement did not allow consideration of the specific effect on small business and the EIS was amended again to require a more focused consideration of such impacts. Then, in 1992, it was determined that mandatory preparation of statements for every rule had turned the process into a boilerplate paperwork exercise that was not generating any meaningful analysis. In Chapter 92-166, Laws of Florida, the EIS was therefore made optional unless the agency found substantial cost increases, significant adverse effects on the economy, or if its preparation was requested by certain individuals or groups. In 1996, the EIS was replaced with the Statement of Estimated Regulatory Costs (SERC), providing that an agency had to prepare a SERC in response to submission of a Lower Cost Regulatory Alternative (LCRA) and that the agency must adopt a LCRA or explain its reasons for rejecting that alternative. With the exception of a procedural amendment the following year to extend the rule making time period upon submission of a LCRA, the provisions relating to the SERC have remained in the APA unchanged since their creation.

Currently, before the adoption, amendment, or repeal of a rule, state agencies are encouraged but not required to consider the impact of the rule on small businesses and when practicable agencies should reduce the disproportionate impacts on small businesses.⁸ This provision does not include specific economic elements for the agency to consider, only that agencies may prepare a SERC which must include an analysis of the impact on small business.⁹

When practicable, agencies must tier its rules to reduce disproportionate impacts on small business.¹⁰ Agencies must consider alternative methods for reducing the impact of the proposed rule on small business, such as establishing less-stringent compliance or reporting requirements; establishing less stringent schedules or deadlines; consolidating or simplifying the rule’s

⁶ Section 288.703(1), F.S.

⁷ Section 120.54(3)(b)2.a, F.S.

⁸ Section 120.54(3)(b)1. & 2.a., F.S.

⁹ Section 120.541(2)(d), F.S.

¹⁰ Section 120.54(3)(b)2.a., F.S.

compliance or reporting requirements; establishing performance versus design standards; or exempting small businesses from the rule.¹¹

Florida law also requires agencies to identify and correct deficiencies; clarify and simplify its rules; delete obsolete or unnecessary rules; delete rules that are redundant of statutes; and seek to improve efficiency, reduce paperwork, or decrease costs.¹²

If an agency determines the proposed action will affect small businesses, it must send written notice to the small business ombudsman of the Office of Tourism, Trade, and Economic Development (OTTED).¹³ Agencies must adopt regulatory alternatives offered by the small business ombudsman which are feasible and consistent with the stated objective of the proposed rule and which would reduce the impact on small business.¹⁴ If the agency does not adopt the alternatives offered by the small business ombudsman, it must file a detailed written statement with the Joint Administrative Procedures Committee (JAPC) explaining the reason for failure to adopt such alternatives. JAPC also reviews each proposed agency rule.¹⁵

Judicial review process

A party who is adversely affected by final agency action is entitled to judicial review. Agency action is defined as “the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order.”¹⁶ A preliminary, procedural, or intermediate order of the agency or of an administrative law judge is immediately reviewable if review of the final agency decision would not provide adequate remedy.¹⁷

The court must remand the case to the agency for further proceedings consistent with the court’s decision when it finds that the “correctness” of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.¹⁸

Agency Sunset Review Process¹⁹

The Florida Government Accountability Act (act) establishes the agency sunset review process, which determines whether an agency should be abolished, continued, or reorganized. The act establishes a schedule of agency review beginning in 2008. An agency is up for sunset review every 10 years after its initial review. An agency subject to review by the Legislature shall be abolished on June 30 following the date of review, unless the Legislature continues the agency or advisory committee. However, an agency may not be abolished unless the Legislature finds, pursuant to law, that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made for the transfer to a successor agency of all duties and obligations relating to bonds, loans, promissory notes, lease-purchase agreements, installment sales contracts,

¹¹ Section 120.54(3)(b)2.a., F.S.

¹² Section 120.74, F.S.

¹³ Section 120.54(3)(b)2.b.I, F.S.

¹⁴ Section 120.54(3)(b)2.b.II, F.S.

¹⁵ Section 120.54(3)(b)2.b.III, F.S.

¹⁶ Section 120.52(2), F.S.

¹⁷ Section 120.68(1), F.S.

¹⁸ Section 120.68(7)(c), F.S.

¹⁹ Found in ss.11.901-11.920, F.S., the “Florida Government Accountability Act.”

certificates of participation, master equipment financing agreements, or any other form of indebtedness such that security therefor and the rights of bondholders or holders of other indebtedness are not impaired.

The Florida Small Business Development Center Network²⁰

Florida's network is one of eight original SBDC pilot programs. Funded in 1976 by the U.S. Small Business Administration, the program links the state's education system with community outreach to aid in the development and education of the state's entrepreneurs and small-business community.

Over the years, Florida's network has grown to more than 30 centers involving universities and community colleges, as well as other economic development partner organizations. Additional outreach is provided at approximately 60 "circuit rider" locations utilizing resource partners such as chambers of commerce, financial institutions, and major industries.

Since its inception, the network reports that it has counseled 324,882 small business owners and entrepreneurs with nearly 1.5 million hours of one-on-one counseling; conducted 27,912 business training events for 615,029 participants; and provided answers to nearly 2 million requests for information.

The network reports that in 2006, it helped its clients open 567 businesses; create or retain 11,526 jobs; win contract awards worth \$475 million; acquire \$136 million in capital for business formation and expansion; and earn sales growth worth \$139 million.

Enterprise Florida, Inc.

Enterprise Florida, Inc., (EFI) is a public-private partnership responsible for leading Florida's economic development, international trade, and business marketing efforts. Pursuant to s. 288.9015(1), F.S., EFI is designated as "the principal economic development organization for the state." EFI is authorized to develop and implement specific programs or strategies that address the creation, expansion, and retention of Florida business.

Pursuant to s. 288.9015(4), F.S., EFI must incorporate the needs of small and minority businesses into the economic-development, international-trade and reverse-investment, and workforce-development responsibilities assigned to them by Part VII of ch. 288, F.S. EFI is charged to collaborate with the Florida Black Business Investment Board, Inc., and the Office of Tourism, Trade, and Economic Development (OTTED) for the delivery of services relating to small businesses.

Pursuant to s. 288.904(1)(1), F.S., EFI is required to establish an advisory committee on small business issues, the purpose of which is to guide and advise EFI on the development and implementation of policies, strategies, programs, and activities affecting small business. This committee is required to meet at least quarterly.

²⁰ More information available at <http://floridasbdc.org/>. Last visited April 3, 2008.

Pursuant to s. 288.905(3)(b)3., F.S., EFI is required to involve small business development agencies and organizations, both public and private, in developing and carrying out its policies, strategies and programs.

EFI's website identifies a number of resources for small businesses.²¹

In 2008, EFI is promoting the passage of SB 1120 & HB 593, which are being considered in the 2008 Legislative Session, to create the Florida Research Commercialization Matching Grant Program to assist small or startup companies that take advantage of federal and state partnerships to accelerate their growth and market penetration.

In FY 2007/08, EFI was appropriated \$12.5 million from the state to implement its programs and services.

Additional Entities Providing Technical Assistance to Small Businesses in Florida

Initially created within the Florida Department of Commerce, the **Florida Black Business Investment Board (FBBIB)** now contracts with OTTED to promote the creation and growth of black business enterprises. Over the past 20 years, the mission of the FBBIB has evolved. Initially, the FBBIB served "as a catalyst for the development of competitive black-owned businesses in Florida."²² Today, the FBBIB has expanded its "base of activities and services to include other minorities in order to connect diverse communities and grow the network of business partnerships and alliances."²³

Through the FBBIB's Minority Business Information Center (MBIC), the FBBIB provides technical support and monitoring of the businesses in which they invest—providing them access to contract-supplier assistance, pricing analysis, tax assistance and basic financial management services. Additionally, the center is the central resource for collecting and storing minority business information. MBIC products and services include market and demographic research, white papers, financial information services, technology training, business courses and seminars, application software and web-based services, trade shows, exhibitions, job fairs, and customized information databases.²⁴

Eight regional **Black Business Investment Corporations (BBICs)** worked independently and in concert with the FBBIB to advance business development among black Floridians. The BBICs are not-for-profit subsidiaries of financial institutions or consortia of financial institutions investing in or lending to black business enterprises. BBICs provide loans, loan guarantees, and technical assistance to black business enterprises. The eight regional BBICs are located throughout the state's major urban areas.²⁵

²¹ <http://www.eflorida.com/ContentSubpage.aspx?id=428> .

²² Page 1, 2003 Annual Report of the FBBIB.

²³ Page 1, 2003 Annual Report of the FBBIB. In 2002, the Legislature required the FBBIB to study the feasibility of including other minority business enterprises within the programs, services, and activities of the FBBIB and the regional BBICs. Section 11, ch. 2002-180, L.O.F. Since then, the FBBIB has expanded services to other minorities through strategic partnerships with other economic development entities.

²⁴ http://www.fbbib.com/about/new_fbbib.htm .

²⁵ The eight regional BBICs are East Central Florida BBIC (Daytona Beach), Metro-Broward BBIC, First Coast BBIC (Jacksonville), BAC Funding Corporation (Miami), Black Business Investment Fund (Orlando), Palm Beach County BBIC, Tampa Bay BBIC, and Northwest Florida BBIC (Tallahassee).

The **Minority/Women Business Enterprise Alliance, Inc.**, is a not-for-profit business resource center located in Central Florida.²⁶ The alliance provides technical, management, business development, and construction assistance along with access to capital and financial counseling.

The **Hispanic Business Initiative Fund (HBIF)** provides technical assistance and training to Hispanic entrepreneurs.²⁷ The HBIF attempts to match Hispanic businesses with private and public programs difficult to access due to cultural and language barriers. The HBIF also helps clients find alternative funding sources for businesses that do not qualify for traditional lending. The HBIF is located in Central Florida with offices in Tampa and Orlando.

Community Development Corporations (CDCs) are not-for-profit organizations that engage in a variety of efforts to revitalize communities, to include business development training.²⁸ In 1998, OPPAGA identified 87 such organizations in Florida.²⁹ As of 2006, the Florida Alliance of Community Development Corporations (FACDCs) reported they have 44 member organizations.³⁰ While most focus their efforts on development of affordable housing, some CDCs engage in other activities to promote economic development – through financial counseling, business-related technical assistance, and micro-enterprise development.³¹

III. Effect of Proposed Changes:

Section 1 amends s. 11.908, F.S., to require the Joint Legislative Sunset Committee to consult with the council relating to the review of agencies by March 1 of each year, as it does with a number of other entities.

Section 2 amends s. 11.911, F.S., to require the council's report on agency rules to be included in recommendations by the Joint Legislative Sunset Committee where the Committee recommends continuation or reorganization of an agency.

Section 3 amends s. 11.919, F.S., to require state agencies to assist the council upon request.

Section 4 amends s. 120.54, F.S., to require agencies to prepare a statement of estimated regulatory cost of a proposed rule as provided in s. 120.541, F.S., if the rule will have an impact on small business.

Additionally, agencies will be required to provide written notification to the council of any proposed rule that will affect small businesses. Agencies also will be required to adopt any regulatory alternatives offered by the council which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses.

²⁶ <http://www.allianceflorida.com> .

²⁷ <http://www.hbiforlando.org> ; <http://www.hbiftampa.org> .

²⁸ Terry Chelikowsky, Executive Director, Florida Alliance of Community Development Corporations (FACDCs) 9/3/06. See <http://www.flacdc.org/> .

²⁹ OPPAGA Report No. 97-45, p.2.

³⁰ Terry Chelikowsky, 8/30/06.

³¹ *Ibid.* Also see <http://www.flacdc.org/> . Also see Florida Senate Interim Project Report 97-R-02, February 1998, p. 2. This report noted that between 1980 and 1992, the Legislature provided \$6.8 million in funding to CDCs to provide economic development loans in their community.

However, if an agency decides not to adopt the council's alternatives, it must file a detailed written statement with JAPC and the council prior to rule adoption explaining its reasons. Finally, the section allows the council to request the President of the Senate and the Speaker of the House of Representatives to direct OPPAGA to review an agency's decision to reject the regulatory alternatives. The process is as follows:

- In conducting its review, OPPAGA is required to consider whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. OPPAGA has 60 days to conduct its review and provide its findings to JAPC.
- Next, JAPC reports OPPAGA's findings to the agency, and the agency must respond in writing to JAPC if OPPAGA found that the council's alternatives reduced the impact on small business while meeting the stated objectives of the proposed rule.
- If the agency still does not adopt the alternative rule language, it also must provide a detailed written statement to JAPC explaining its decision.

Section 5 amends s. 120.74, F.S., which requires agencies to review its rules periodically, but at least provide a formal review every 2 years. The new language directs agencies to determine whether their rules should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule. Also, the currently required annual report from agencies about their compliance with the periodic rule review must specifically address the economic impacts of their rules on small business.

Section 6 creates s. 288.001, F.S., to recognize the Small Business Development Center Network as the principal business assistance organization for small businesses in the state.

The implication of this recognition for the state or the Florida Small Business Development Center Network is unclear. The bill does not require or authorize anything of either the state or the Florida Small Business Development Center Network. Additionally, it does not provide or authorize funding to the network.

In addition, the bill does not "attach" or link the Florida Small Business Development Center Network to any state agency, nor does it specifically create a new state agency or department.

Section 7 creates s. 288.7001, F.S., the "Small Business Regulatory Relief Act" and a nine-member Small Business Regulatory Advisory Council (council). It defines several terms used in the context of the new program.

The council will be comprised of current or former small-business owners representing different areas of the state. The Governor, the President of the Senate, and the Speaker of the House of Representatives will each appoint three members to the council. Other key administrative provisions related to the council are:

- Council members will serve 4-year terms, except that the initial appointments will be staggered in order to retain experience in the council's early years.
- No member can serve more than three consecutive terms.
- The council members will serve without compensation.
- The council members will select a chairperson from among themselves.
- A process for removing and replacing council members is included.

- The council is established and administratively housed within the Florida Small Business Development Center Network, which shall provide staff support.

The council is authorized to:

- Provide recommendations to state agencies regarding proposed rules that may impact small business;
- Consider requests from small businesses to review an agency's rules;
- Review rules to determine whether a rule places an unnecessary burden on small businesses; and
- Prepare and submitting an annual report to the Governor and legislative leaders describing its activities and recommendations.

One of the council's key responsibilities is to participate in the agency sunset review process according to the sunset review schedule contained in s. 11.905, F.S. The council may review agencies' rules to determine whether they should continue without change, or should be amended or repealed to reduce the impact on small business. The council's recommendations must be "feasible and consistent with the stated objectives of the proposed rules." If the council reviews an agency's rules, the council must provide a report to the Joint Legislative Sunset Committee, the Governor, and the Legislature with recommendations and evaluations of these rules and agencies regarding regulatory fairness for small businesses. A component of the report is a rating system entitled the "Small Business Friendliness and Development Scorecard."

The council specifically is precluded from interfering with administrative or judicial proceedings, or issuing subpoenas.

Section 8 creates s. 288.7002, F.S., which specifies the responsibilities of the new Office of Small Business Advocate, to be administratively housed within the network, and the office's director, also to be known as the Small Business Advocate (advocate). The advocate shall be selected by the network's director, and shall be either an employee, or under contract with, the network. Requirements for the advocate's position are at least 5 years of experience in small business, extensive knowledge of small-business issues and challenges, and actual experience in small-business advocacy and assistance.

The advocate's responsibilities include:

- Serving as staff for the council;
- Serving as the principal advocate in the state on behalf of small business, including participation in the consideration of legislation and administrative rules that affect small business;
- Working with public and private agencies and organizations to provide information to small business about state and local programs, including small business finance;
- Enlisting the cooperation and assistance of public and private agencies, businesses, and other organizations to disseminate information about programs beneficial to small businesses;
- Preparing and issuing a biennial report evaluating the efforts of state agencies that significantly regulate small businesses, assist minority and other small business

- enterprises, and make recommendations where appropriate to assist the development and strengthening of minority and other small business enterprises;
- Creating an annual process for small businesses to nominate agency regulations for amendment or repeal and to post those nominations online and update the status of agency action on those nominations twice yearly;
 - Coordinating a statewide conference on small business;
 - Coordinating annual public meetings to educate small businesses on disaster preparedness; and
 - Submitting an annual report to the Governor and the Legislature on the activities and recommendations of the Office of the State Advocate.

State agencies are directed to furnish to the advocate any reports, documents, and other public information necessary to carry out the advocate's responsibilities.

Section 9 creates an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not address applicability of public records or public meetings law to the council or the advocate, but chs. 119 and 286, F.S., relating to public records and public meetings, appear to apply to the operations of both entities.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Small-business owners may benefit from having a single advocate leading a coordinated effort to reduce regulation that may be financially detrimental to their operations.

C. Government Sector Impact:

Indeterminate. State agencies may incur additional costs in researching or modeling the fiscal impact their rules have on small businesses, since SERCs will be required in certain

circumstances. It is unknown whether agencies have sufficient current resources to produce an increased number of SERCs and potential related correspondence with JAPC.

Creation of the council and the small business advocate will have no cost to the state.

VI. Technical Deficiencies:

The due dates of the council's and the advocate's various reports to the Governor and the Legislature are not specified.

VII. Related Issues:

Though the bill recognizes the Florida Small Business Development Center Network (network), the network is not given standards, duties, or functions. Generally, a provision in the Florida Statutes or Florida Law "forbids, authorizes, or requires" something of the state, its agencies, or persons in the state. This section creating the network does none of these things.

It is unknown whether SBA funds may be used to support the council and the advocate. The bill does not specify whether council appointees are entitled to receive reimbursements for travel and per diem.

The bill does not specify whether the council or advocate can enter into contracts, and if so, whether procurements are subject to ch. 287, F.S.

Agency rulemaking procedures will be affected by the provisions of the bill. By making a SERC mandatory, when it is currently optional, agencies will have to produce many more such statements, which must include estimates of the number of entities likely to be required to comply with the rule, and costs likely to be incurred by entities required to comply with the rule.³²

The bill interposes into the agency rulemaking process both OPPAGA, a legislative entity which currently has no role in agency rulemaking, and the Small Business Regulatory Advisory Council (council), an appointed council housed in a SBA-funded network of small business development centers located outside the executive and legislative branches. If an agency does not adopt all alternatives to a rule that the council suggests, the council may request that the presiding officers of the Legislature direct OPPAGA to determine whether the rejected alternatives reduce the impact on small business. OPPAGA then reports its findings to JAPC, the Governor, and the Legislature. JAPC reports the findings to the agency, which must respond in writing to JAPC if OPPAGA found that the alternative reduced the impact on small business while meeting the stated objective of the proposed rule. If the agency does not adopt the alternative, it must provide a written statement to JAPC as to why it did not. The bill does not specify timeframes for all of the above steps, which must occur within the context of specified rule adoption timelines. When these steps are actually taken, the agency rulemaking process will be slowed down considerably, and it is unclear how these steps will affect the 90-day period agencies have to file for final adoption of a rule.³³

³² Section 120.541(2), F.S.

³³ Section 120.54(3)(e)2., F.S.

Ultimately, the OPPAGA recommendations required by the bill are advisory, and since the request to OPPAGA to undertake action comes from the Senate President and Speaker of the House, and not directly from the council, separation of power concerns appear to be mitigated.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Operations on April 22, 2008:

This CS is different from the previous CS as follows:

- Creates the council and advocate in ch. 288 rather than ch. 11.
- Requires OPPAGA to report its findings and recommendation regarding whether the rejected alternatives reduce the impact on small business while meeting the state objective of the propose rule.
- Includes the substance of CS/SB 930 into CS/SB 928, designating the Florida Small Business Development Center Network as the principal business assistance organization for small businesses in the state.

CS by Commerce on April 8, 2008:

The CS differs from the bill as filed in the following ways:

- Creates s. 11.9006, F.S., to be cited as the Small Business Regulatory Relief Act, and establishes a nine-member Small Business Regulatory Advisory Council (council), housed administratively within the Florida Small Business Development Centers Network (network).
- Specifies a number of duties for the council, but its primary responsibilities are to provide state agencies with input regarding proposed rules or programs that may adversely affect small business, and reviewing agency rules in conjunction with the agency sunset review process in s. 11.991, F.S. The council also must submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives about its activities and any recommendations, as well as a report to them and the Joint Legislative Sunset Committee on recommendations and evaluations of the impact on agency rules on small businesses. Included in that report will be an agency rating system entitled, “Small Business Friendliness and Development Scorecard.”
- Creates s. 11.9007, F.S., the position of Small Business Advocate and the Office of Small Business Advocate within the network. The advocate will be an employee of, or under contract with, the network.
- Specifies a number of duties for the advocate, including: representing the views and interests of small businesses before the Legislature and state agencies; receiving and responding to complaints from small businesses about agency rules or state laws that may adversely affect small businesses; and coordinating statewide meetings on small-business issues.
- Requires the advocate to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives about his or her

activities and any recommendations, and a biennial report evaluating the efforts of agencies that regulate small businesses.

- Requires state agencies to prepare a statement of estimated regulatory cost if their proposed rules will impact small business, and creates a review process utilizing the Office of Program Policy Analysis & Government Accountability (OPPAGA) when an agency does not accept rule-language alternatives offered by the council.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
