

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

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1 A bill to be entitled

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

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

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

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

43 11.9006 Small Business Regulatory Advisory Council.--

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

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

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

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

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

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

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

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

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

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

80 (c) The council may:

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

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

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

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

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

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

95       2. Issue subpoenas.

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

100       (4) PERIODIC REVIEW OF RULES.--

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

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

111       1. Continued need for the rule;

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

114       3. The complexity of the rule;

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

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

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

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

132 11.9007 SMALL BUSINESS ADVOCATE.--

133 (1) DEFINITIONS.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

239           11.911 Committee recommendations.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

357 (b) Clarify and simplify its rules;

358 (c) Delete obsolete or unnecessary rules;

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

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

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

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

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

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

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