

By the Committees on Governmental Operations; Commerce; and
Senator Diaz de la Portilla

585-08392-08

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1 A bill to be entitled

2 An act relating to economic development; amending ss.
3 11.908 and 11.911, F.S.; requiring that the report of the
4 Small Business Regulatory Advisory Council be included in
5 recommendations of the Joint Legislative Sunset Committee;
6 amending s. 11.919, F.S.; requiring agency assistance to
7 the Small Business Regulatory Advisory Council;
8 authorizing the council to inspect agency documents;
9 amending s. 120.54, F.S.; requiring state agencies to
10 prepare statements of estimated regulatory costs;
11 requiring agency notification to the Small Business
12 Regulatory Advisory Council relating to proposed agency
13 action affecting small businesses; requiring the agency to
14 adopt regulatory alternatives offered by the council under
15 certain circumstances; providing for extending the period
16 for filing a rule when regulatory alternatives are offered
17 by the council; providing for outside review of regulatory
18 alternatives that are not adopted by the agency and for
19 the agency to respond; amending s. 120.74, F.S.; requiring
20 biennial rule review by each agency to consider the impact
21 of rules on small businesses; requiring that the results
22 be included in a report to the Legislature; creating s.
23 288.001, F.S.; designating the Florida Small Business
24 Development Center Network as the principal business
25 assistance organization for small businesses in the state;
26 creating s. 288.7001, F.S.; providing a short title;
27 providing definitions; creating the Small Business
28 Regulatory Advisory Council; providing for appointments,
29 membership, and meetings; providing an administrative

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30 location for the council; providing powers and limitations
31 of the council; providing for coordinated review of agency
32 rules by the council as part of agency sunset review;
33 providing timelines for review; requiring that the council
34 issue a business-friendly scorecard of agency rules;
35 creating s. 288.7002, F.S.; providing definitions;
36 providing for the selection of a Small Business Advocate;
37 providing for preferred qualifications of the advocate;
38 providing duties of the advocate; providing for agency
39 cooperation with the advocate; providing for an annual
40 report by the advocate to the Governor and Legislature;
41 providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Subsection (2) of section 11.908, Florida
46 Statutes, is amended to read:

47 11.908 Committee duties.--No later than March 1 of the year
48 in which a state agency or its advisory committees are scheduled
49 to be reviewed, the committee shall and the joint committee may:

50 (2) Consult with the Legislative Budget Commission, the
51 Small Business Regulatory Advisory Council, relevant substantive
52 and appropriations committees of the Senate and the House of
53 Representatives, the Governor's Office of Policy and Budgeting,
54 the Auditor General, and the Chief Financial Officer, or their
55 successors, relating to the review of the agency and its advisory
56 committees.

57 Section 2. Paragraph (a) of subsection (2) of section
58 11.911, Florida Statutes, is amended to read:

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59 11.911 Committee recommendations.--

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

62 (a) Make recommendations on the abolition, continuation, or
63 reorganization of each state agency and its advisory committees
64 and on the need for the performance of the functions of the
65 agency and its advisory committees. If the committee recommends
66 continuation or reorganization, the committee shall include in
67 its recommendations the report of the Small Business Regulatory
68 Advisory Council, as provided in s. 288.7001, regarding the rules
69 of each agency.

70 Section 3. Section 11.919, Florida Statutes, is amended to
71 read:

72 11.919 Assistance of and access to state agencies.--

73 (1) The committee and the Small Business Regulatory
74 Advisory Council may access or request information and request
75 the assistance of state agencies and officers. When assistance is
76 requested, a state agency or officer shall assist the committee
77 and the Small Business Regulatory Advisory Council.

78 Section 4. Paragraph (b) of subsection (3) of section
79 120.54, Florida Statutes, is amended to read:

80 120.54 Rulemaking.--

81 (3) ADOPTION PROCEDURES.--

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

83 1. Statement of estimated regulatory costs.--Prior to the
84 adoption, amendment, or repeal of any rule other than an
85 emergency rule, an agency is encouraged to prepare a statement of
86 estimated regulatory costs of the proposed rule, as provided by
87 s. 120.541. However, an agency shall prepare a statement of

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88 estimated regulatory costs of the proposed rule, as provided by
89 s. 120.541, if the proposed rule will have an impact on small
90 businesses.

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

92 a. Each agency, before the adoption, amendment, or repeal
93 of a rule, shall consider the impact of the rule on small
94 businesses as defined by s. 288.703 and the impact of the rule on
95 small counties or small cities as defined by s. 120.52. Whenever
96 practicable, an agency shall tier its rules to reduce
97 disproportionate impacts on small businesses, small counties, or
98 small cities to avoid regulating small businesses, small
99 counties, or small cities that do not contribute significantly to
100 the problem the rule is designed to address. An agency may define
101 "small business" to include businesses employing more than 100
102 persons, may define "small county" to include those with
103 populations of more than 75,000, and may define "small city" to
104 include those with populations of more than 10,000, if it finds
105 that such a definition is necessary to adapt a rule to the needs
106 and problems of small businesses, small counties, or small
107 cities. The agency shall consider each of the following methods
108 for reducing the impact of the proposed rule on small businesses,
109 small counties, and small cities, or any combination of these
110 entities:

111 (I) Establishing less stringent compliance or reporting
112 requirements in the rule.

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

115 (III) Consolidating or simplifying the rule's compliance or
116 reporting requirements.

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117 (IV) Establishing performance standards or best-management
118 practices to replace design or operational standards in the rule.

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

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

127 (II) Each agency shall adopt those regulatory alternatives
128 offered by the Small Business Regulatory Advisory Council
129 ~~ombudsman~~ and provided to the agency no later than 21 days after
130 the council's ~~ombudsman's~~ receipt of the written notice of the
131 rule which it finds are feasible and consistent with the stated
132 objectives of the proposed rule and which would reduce the impact
133 on small businesses. When regulatory alternatives are offered by
134 the council ~~Small Business ombudsman~~, the 90-day period for
135 filing the rule in subparagraph (e)2. is extended for a period of
136 21 days.

137 (III) If an agency does not adopt all alternatives offered
138 pursuant to this sub-subparagraph, it shall, prior to rule
139 adoption or amendment and pursuant to subparagraph (d)1., file a
140 detailed written statement with the committee explaining the
141 reasons for failure to adopt such alternatives. Within 3 working
142 days after ~~of~~ the filing of such notice, the agency shall send a
143 copy of such notice to the Small Business Regulatory Advisory
144 Council ~~ombudsman~~. The council may request that the President of
145 the Senate and the Speaker of the House of Representatives direct

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146 the Office of Program Policy Analysis and Government
147 Accountability to determine whether the rejected alternatives
148 reduce the impact on small businesses while meeting the stated
149 objectives of the proposed rule. Within 60 days after the date of
150 the directive from the presiding officers, the Office of Program
151 Policy Analysis and Government Accountability shall report to the
152 Administrative Procedures Committee its findings as to whether
153 the rejected alternatives would reduce the impact on small
154 businesses while meeting the stated objectives of the proposed
155 rule. The Office of Program Policy Analysis and Government
156 Accountability shall consider the proposed rule, the economic
157 impact statement, the written statement of the agency, the
158 proposed alternatives, and any comment submitted during the
159 comment period on the proposed rule. The Office of Program Policy
160 Analysis and Government Accountability shall submit a report of
161 its findings and recommendations to the Governor, the President
162 of the Senate, and the Speaker of the House of Representatives.
163 The Administrative Procedures Committee shall report such
164 findings to the agency and the agency shall respond in writing to
165 the Administrative Procedures Committee if the Office of Program
166 Policy Analysis and Government Accountability found that the
167 regulatory alternatives would reduce the impact on small
168 businesses while meeting the stated objectives of the proposed
169 rule. If the agency does not adopt the regulatory alternatives,
170 it must also provide a detailed written statement to the
171 Administrative Procedures Committee as to why it will not adopt
172 the alternatives.

173 Section 5. Subsection (1) of section 120.74, Florida
174 Statutes, is amended to read:

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175 120.74 Agency review, revision, and report.--

176 (1) Each agency shall review and revise its rules as often
177 as necessary to ensure that its rules are correct and comply with
178 statutory requirements. Additionally, each agency shall perform a
179 formal review of its rules every 2 years. In the review, each
180 agency must:

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

182 (b) Clarify and simplify its rules;

183 (c) Delete obsolete or unnecessary rules;

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

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

187 (f) Contact agencies that have concurrent or overlapping
188 jurisdiction to determine whether their rules can be coordinated
189 to promote efficiency, reduce paperwork, or decrease costs to
190 government and the private sector; and-

191 (g) Determine whether the rules should be continued without
192 change or should be amended or repealed to reduce the impact on
193 small businesses while meeting the stated objectives of the
194 proposed rule.

195 (2) Beginning October 1, 1997, and by October 1 of every
196 other year thereafter, the head of each agency shall file a
197 report with the President of the Senate, the Speaker of the House
198 of Representatives, and the committee, with a copy to each
199 appropriate standing committee of the Legislature, which
200 certifies that the agency has complied with the requirements of
201 this subsection. The report must specify any changes made to its
202 rules as a result of the review and, when appropriate, recommend
203 statutory changes that will promote efficiency, reduce paperwork,

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204 or decrease costs to government and the private sector. The
205 report must specifically address the economic impact of the rules
206 on small businesses. The report must identify the types of cases
207 or disputes in which the agency is involved which should be
208 conducted under the summary hearing process described in s.
209 120.574.

210 Section 6. Section 288.001, Florida Statutes, is created to
211 read:

212 288.001 The Florida Small Business Development Center
213 Network; purpose.--The Florida Small Business Development Center
214 Network is the principal business assistance organization for
215 small businesses in the state.

216 Section 7. Section 288.7001, Florida Statutes, is created
217 to read:

218 288.7001 Small Business Regulatory Advisory Council.--

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

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

222 (a) "Agency" has the same meaning as provided in s. 120.52.

223 (b) "Council" means the Small Business Regulatory Advisory
224 Council.

225 (c) "Rule" has the same meaning as provided in s. 120.52.

226 (d) "Small business" has the same meaning as provided in s.
227 288.703.

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

230 (a) The Small Business Regulatory Advisory Council is
231 created. The council shall consist of nine members who are
232 current or former small business owners, three appointed by the

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233 Governor, three appointed by the President of the Senate, and
234 three appointed by the Speaker of the House of Representatives.
235 The initial appointments to the council must be made by September
236 1, 2008. The members shall be from different geographic regions
237 of the state. Members shall be appointed to 4-year terms; however
238 in order to establish staggered terms, for the initial
239 appointments, each appointing official shall appoint one member
240 to a 2-year term and two members to a 4-year term. A member may
241 not serve more than three consecutive terms. Members shall select
242 the chairperson from among the members of the council. The
243 council shall meet quarterly or upon the call of the chairperson.
244 A majority of the members constitutes a quorum for the conduct of
245 business. Members of the council shall serve without
246 compensation. The appointing official may remove his or her
247 appointee without cause at any time. A member whose term has
248 expired shall continue to serve on the council until such time as
249 a replacement is appointed. Vacancies shall be filled for the
250 remainder of the term and by the original appointing official.

251 (b) The council is established, assigned to, and
252 administratively housed within the Florida Small Business
253 Development Center Network, which shall provide staff support to
254 the council.

255 (c) The council may:

256 1. Provide agencies with recommendations regarding proposed
257 rules or programs that may adversely affect small businesses;

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

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

263 4. Review rules adopted by an agency to determine whether a
264 rule places an unnecessary burden on small businesses and make
265 recommendations to the agency to mitigate the adverse effects.

266 (d) The council may not:

267 1. Initiate or intervene in any administrative or judicial
268 proceeding; or

269 2. Issue subpoenas.

270 (e) The council shall prepare and submit a written annual
271 report to the Governor, the President of the Senate, and the
272 Speaker of the House of Representatives which describes the
273 activities and recommendations of the council.

274 (4) PERIODIC REVIEW OF RULES.--

275 (a) In coordination with the review schedule provided in s.
276 11.905, the council may review rules of agencies subject to
277 sunset review in order to determine whether the rules should be
278 continued without change or should be amended or repealed to
279 reduce the impact of the rules on small businesses, subject to
280 the requirement that the recommendations of the council must be
281 feasible and consistent with the stated objectives of the rules.

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

285 1. Continued need for the rule;

286 2. The nature of complaints or comments received from the
287 public concerning the rule;

288 3. The complexity of the rule;

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289 4. The extent to which the rule overlaps, duplicates, or
290 conflicts with other federal, state, or local government rules;
291 and

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

295 (c) Within 6 months after the agency report is submitted to
296 the Joint Legislative Sunset Committee pursuant to s. 11.907, the
297 council shall provide a report to the Governor, the President of
298 the Senate, the Speaker of the House of Representatives, and the
299 Joint Legislative Sunset Committee which includes recommendations
300 and evaluations of agency rules and programs regarding regulatory
301 fairness for small businesses. A component of the report shall be
302 a rating system, developed by the council, entitled "Small
303 Business Friendliness and Development Scorecard."

304 Section 8. Section 288.7002, Florida Statutes, is created
305 to read:

306 288.7002 Small Business Advocate.--

307 (1) DEFINITIONS.--As used in this section, the term:

308 (a) "Advocate" means the Florida Small Business Advocate
309 who is also the director of the Office of Small Business
310 Advocate.

311 (b) "Director" means the director of the Office of Small
312 Business Advocate.

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

314 (2) ADMINISTRATION.--The Office of Small Business Advocate
315 is established, assigned to, and administratively housed within
316 the Florida Small Business Development Center Network. The
317 director shall be the Florida Small Business Advocate.

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318 (3) DIRECTOR OF THE OFFICE OF SMALL BUSINESS ADVOCATE;
319 APPOINTMENT; DUTIES.--

320 (a) The advocate shall be selected by the director of the
321 Florida Small Business Development Center Network, and shall be
322 an employee of or under contract with the Florida Small Business
323 Development Center Network. Preferred qualifications for the
324 advocate include at least 5 years' experience in small
325 businesses, extensive knowledge of the issues and challenges of
326 importance to small businesses, and actual experience in advocacy
327 for and assistance to small businesses.

328 (b) The duties and functions of the advocate include all of
329 the following:

330 1. Act as staff for the Small Business Regulatory Advisory
331 Council.

332 2. Serve as principal advocate in the state on behalf of
333 small businesses, including, but not limited to, advisory
334 participation in the consideration of all legislation and
335 administrative rules that affect small businesses, and advocacy
336 concerning state policy and programs related to small businesses
337 with respect to disaster preparedness and recovery, including the
338 provision technical assistance.

339 3. Represent the views and interests of small businesses
340 before agencies whose policies and activities may affect small
341 businesses. Among other activities, the advocate may encourage
342 standardized applications and information packages that would
343 include all the information needed by each agency that a business
344 has to deal with in order to prevent an applicant from having to
345 fill out duplicative information on forms from various agencies.

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346 4. Enlist the cooperation and assistance of public and
347 private agencies, businesses, and other organizations in
348 disseminating information about the programs and services
349 provided by all levels of government which are of benefit to
350 small businesses, and information on how small businesses can
351 participate in, or make use of, those programs and services.

352 5. Issue a report every 2 years evaluating the efforts of
353 agencies which significantly regulate small businesses, assist
354 minority and other small business enterprises, and make
355 recommendations that may be appropriate to assist the development
356 and strengthening of minority and other small business
357 enterprises.

358 6. Consult with experts and authorities in the fields of
359 small business investment, venture capital investment, and
360 commercial banking and other comparable finance institutions
361 involved in the financing of business, and with individuals who
362 have regulatory, legal, economic, or financial expertise,
363 including members of the academic community and individuals who
364 generally represent the public interest.

365 7. Seek the assistance and cooperation of all agencies and
366 departments providing services to, or affecting, small businesses
367 in order to ensure the coordination of state efforts.

368 8. Receive and respond to complaints from small businesses
369 concerning the actions of agencies and the operative effects of
370 state laws and rules adversely affecting those businesses. The
371 advocate shall establish an annual process for small businesses
372 to nominate agency rules or programs for reform. The advocate
373 shall publish those nominations online and update the status of
374 agency action on the proposed reforms twice yearly.

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375 9. Counsel small businesses on how to resolve questions and
376 problems concerning the relationship of small business to state
377 government.

378 10. Maintain, publicize, and distribute an annual list of
379 any persons serving as small business ombudsmen throughout state
380 government.

381 11. Coordinate a statewide conference on small businesses
382 with public and private organizations and entities impacting
383 small business in the state.

384 12. Coordinate annual public meetings to share best
385 practices for small business disaster preparedness. The meetings
386 shall be held in consultation with regional and statewide small
387 business organizations and shall take place in different
388 locations throughout the state.

389 (4) REPORTS AND DOCUMENTS FURNISHED TO SMALL BUSINESS
390 ADVOCATE; ANNUAL REPORTS.--

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

395 (b) The advocate shall prepare and submit a written annual
396 report to the Governor, the President of the Senate, and the
397 Speaker of the House of Representatives which describes the
398 activities and recommendations of the office.

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