

## House Bill No. 7109

An act relating to small business regulatory relief; creating s. 288.001, F.S.; designating the Florida Small Business Development Center Network as the principal business assistance organization for small businesses in the state; creating s. 288.7001, F.S.; providing a short title; providing definitions; creating the Small Business Regulatory Advisory Council; providing for appointments, membership, and meetings; providing powers and duties of the council; providing administrative location for council; providing for periodic review of agency rules by the council with agency sunset review; providing timelines for review; providing for the council to issue a report; creating s. 288.7002, F.S.; providing definitions; creating the Office of Small Business Advocate; providing for selection of the Florida Small Business Advocate; providing for preferred qualifications of the advocate; providing duties of the advocate; providing for agency cooperation with the advocate; providing for an annual report by the advocate to the Governor and Legislature; amending s. 11.908, F.S.; including the Small Business Regulatory Advisory Council among groups that may be consulted for agency or committee review; amending s. 11.911, F.S.; providing for the inclusion of the report of the Small Business Regulatory Advisory Council in the Legislative Sunset Committee's recommendations; amending s. 11.919, F.S.; requiring agency assistance to the Small Business Regulatory Advisory Council; authorizing the council to access or request information and assistance; amending s. 120.54, F.S.; requiring an agency to prepare a statement of estimated regulatory costs; requiring agency notification to the Small Business Regulatory Advisory Council relating to proposed agency action affecting small business; requiring an agency to adopt regulatory alternatives offered by the council under certain circumstances; providing for rule filing extension when regulatory alternatives are offered by the council; providing for outside review of regulatory alternatives not adopted by an agency and for an agency response; amending s. 120.74, F.S.; requiring biennial rule review by each agency to consider the impact of rules on small business; requiring the economic impact of the rules to be included in a report to the Legislature; providing an effective date.

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

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

288.001 The Florida Small Business Development Center Network; purpose.—The Florida Small Business Development Center Network is the principal business assistance organization for small businesses in the state.

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

288.7001 Small Business Regulatory Advisory Council.—

(1) SHORT TITLE.—This section may be cited as the “Small Business Regulatory Relief Act.”

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

(a) “Agency” means an agency as defined in s. 120.52.

(b) “Council” means the Small Business Regulatory Advisory Council.

(c) “Rule” means a rule as defined in s. 120.52.

(d) “Small business” means a small business as defined in s. 288.703.

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

(a) The Small Business Regulatory Advisory Council is created. The council shall consist of nine members who are current or former small business owners, three appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House of Representatives. The initial appointments to the council must be made within 60 days after the effective date of this act. The members shall be from different geographic regions of the state. Members shall serve 4-year terms; however, in order to establish staggered terms, for the initial appointments, each appointing official shall appoint one member to a 2-year term and two members to a 4-year term. A member shall not serve more than three consecutive terms. Members shall select the chairperson from among the members of the council. The council shall meet quarterly or upon the call of the chairperson. A majority of the members constitutes a quorum for the conduct of business. Members of the council shall serve without compensation. The appointing official may remove his or her appointee without cause at any time. A member whose term has expired shall continue to serve on the council until such time as a replacement is appointed. Vacancies shall be filled for the remainder of the term and by the original appointing official.

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

(c) The council may:

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

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

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

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

(d) The council does not have authority to:

1. Initiate or intervene in any administrative or judicial proceeding; or
2. Issue subpoenas.

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

(4) PERIODIC REVIEW OF RULES.—

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

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

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

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

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

288.7002 Small business advocate.—

(1) DEFINITIONS.—

(a) “Advocate” means the Florida Small Business Advocate, who is also the Director of the Office of Small Business Advocate.

(b) “Director” means the Director of the Office of Small Business Advocate.

(c) “Office” means the Office of Small Business Advocate.

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

(3) DIRECTOR OF THE OFFICE OF SMALL BUSINESS ADVOCATE; APPOINTMENT; DUTIES.—

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

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

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

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

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

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

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

6. Consult with experts and authorities in the fields of small business investment, venture capital investment, and commercial banking and other comparable financial institutions involved in the financing of business; with

individuals with regulatory, legal, economic, or financial expertise, including members of the academic community; and with individuals who generally represent the public interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

11.911 Committee recommendations.—

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

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

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

11.919 Assistance of and access to state agencies.—

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

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

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

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

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

2. Small businesses, small counties, and small cities.—

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define “small business” to include businesses employing more than 100 persons, may define “small county” to include those with populations of more than 75,000, and may define “small city” to include those with

populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

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

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

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

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

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

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

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

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, prior to rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days of the filing of such notice, the agency shall send a copy of such notice to the Small Business Regulatory Advisory Council ~~small business ombudsman~~. The Small Business Regulatory Advisory Council may make a request of the President of the Senate and the Speaker of the House of Representatives that the presiding officers direct the Office of Program Policy Analysis and Government Accountability to determine whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. Within 60 days after the date of the directive from the presiding officers, the Office of Program Policy Analysis and Government Accountability shall report to the Administrative Procedures Committee its findings as to whether an alternative reduces the im-

pact on small business while meeting the stated objectives of the proposed rule. The Office of Program Policy Analysis and Government Accountability shall consider the proposed rule, the economic impact statement, the written statement of the agency, the proposed alternatives, and any comment submitted during the comment period on the proposed rule. The Office of Program Policy Analysis and Government Accountability shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Administrative Procedures Committee shall report such findings to the agency, and the agency shall respond in writing to the Administrative Procedures Committee if the Office of Program Policy Analysis and Government Accountability found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency will not adopt the alternative, it must also provide a detailed written statement to the committee as to why it will not adopt the alternative.

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

120.74 Agency review, revision, and report.—

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

- (a) Identify and correct deficiencies in its rules;
- (b) Clarify and simplify its rules;
- (c) Delete obsolete or unnecessary rules;
- (d) Delete rules that are redundant of statutes;

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

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

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

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

the private sector. The report must specifically address the economic impact of the rules on small business. The report must identify the types of cases or disputes in which the agency is involved which should be conducted under the summary hearing process described in s. 120.574.

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

Approved by the Governor June 10, 2008.

Filed in Office Secretary of State June 10, 2008.