

PCB GEAC 08-22

ORIGINAL

YEAR

1                                   A bill to be entitled  
 2           An act relating to Small Business Regulatory Relief;  
 3           creating s. 11.9006, F.S.; providing a short title;  
 4           providing findings and purpose; providing definitions;  
 5           creating the Small Business Regulatory Advisory Council;  
 6           providing for appointments, membership, and meetings;  
 7           providing for per diem and travel expenses of members;  
 8           providing administrative location for Council; providing  
 9           powers and limitations of Council; providing for  
 10          coordinated review of agency rules by the Council with  
 11          agency sunset review; providing timelines for review;  
 12          providing for the Council to issue a business friendly  
 13          scorecard of agency rules; creating s. 11.9007, F.S.;  
 14          providing findings and purpose; providing definitions;  
 15          providing for selection of small business advocate;  
 16          providing for preferred qualifications of advocate;  
 17          providing duties of advocate; providing for agency  
 18          cooperation with advocate; providing for annual report by  
 19          advocate to Governor and Legislature; amending s. 11.908,  
 20          F.S.; requiring report of Small Business Regulatory  
 21          Advisory Council to be included in recommendations of  
 22          Joint Legislative Sunset Committee;; amending s. 11.919;  
 23          requiring agency assistance to Small Business Regulatory  
 24          Advisory Council; authorizing Council to inspect agency  
 25          documents; amending s. 120.54, F.S.; requiring agency to  
 26          prepare statement of estimated regulatory costs; requiring  
 27          agency notification to Small Business Regulatory Advisory

PCB GEAC 08-22

ORIGINAL

YEAR

28 Council relating to proposed agency action affecting small  
 29 business; requiring agency to adopt regulatory  
 30 alternatives offered by Council under certain  
 31 circumstances; providing for rule filing extension when  
 32 regulatory alternatives offered by Council; providing for  
 33 outside review of regulatory alternatives not adopted by  
 34 agency and for agency response; amending s. 120.74, F.S.;  
 35 requiring biennial rule review by agency to consider  
 36 impact of rules on small business and results to be  
 37 included in report to Legislature; providing an effective  
 38 date.

39

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

41

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

44 11.9006 Small Business Regulatory Advisory Council.--

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

47 (2) FINDINGS AND PURPOSE.--

48 (a) A vibrant and growing small business sector is  
 49 critical to creating jobs in a dynamic economy;

50 (b) At times, small businesses bear a disproportionate  
 51 share of regulatory costs and burdens;

52 (c) Fundamental changes that are needed in the regulatory  
 53 culture of state agencies to make them not only more responsive,  
 54 but responsive in a timelier fashion, to small business should

PCB GEAC 08-22

ORIGINAL

YEAR

55 be made without compromising the statutory missions of the  
 56 agencies;

57 (d) When adopting rules to protect the health, safety and  
 58 economic welfare of the state, agencies should seek to achieve  
 59 statutory goals as effectively and efficiently as possible  
 60 without imposing unnecessary burdens on small businesses;

61 (e) Uniform regulatory reporting requirements can impose  
 62 unnecessary and disproportionately burdensome demands, including  
 63 legal, accounting and consulting costs, upon small businesses  
 64 with limited resources;

65 (f) The failure to recognize differences in the scale and  
 66 resources of regulated businesses can adversely affect  
 67 competition in the marketplace, discourage innovation and  
 68 restrict improvements in productivity;

69 (g) Unnecessary rules create entry barriers in many  
 70 industries and discourage potential entrepreneurs from  
 71 introducing beneficial products and processes;

72 (h) The practice of treating all regulated businesses as  
 73 equivalent may lead to inefficient use of agency resources,  
 74 enforcement problems and, in some cases, to actions inconsistent  
 75 with stated legislative intent of health, safety, environmental,  
 76 economic welfare and other legislation; and

77 (i) Alternative regulatory approaches that do not conflict  
 78 with applicable statutes may be available to minimize the  
 79 significant economic impact of rules on small businesses.

80 (3) DEFINITIONS.--As used in this section:

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

PCB GEAC 08-22

ORIGINAL

YEAR

82           (b) "Council" means the Small Business Regulatory Advisory  
 83 Council.

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

85           (d) "Small business" means a small business as defined in  
 86 s. 288.703.

87           (4) CREATION OF SMALL BUSINESS REGULATORY ADVISORY  
 88 COUNCIL; MEMBERSHIP; POWERS AND DUTIES.--

89           (a) The "Small Business Regulatory Advisory Council" is  
 90 created. The Council shall consist of nine members who are  
 91 current or former small business owners, three appointed by the  
 92 Governor and three each appointed by the President of the Senate  
 93 and the Speaker of the House of Representatives. The initial  
 94 appointments to the council must be made within sixty days from  
 95 the effective date of this act. The members shall be from  
 96 different geographic regions of the state. Members shall serve  
 97 four-year terms; however in order to establish staggered terms,  
 98 for the initial appointments, each appointing official shall  
 99 appoint one member to a two-year term and two members to a four-  
 100 year term. A member shall not serve more than three consecutive  
 101 terms. Members shall select the chairperson from among the  
 102 members of the Council. The Council shall meet quarterly or upon  
 103 the call of the chairperson. A majority of the members  
 104 constitutes a quorum for the conduct of business. Members of the  
 105 council shall serve without compensation. Members are entitled  
 106 to reimbursement for per diem and travel expenses as provided in  
 107 s. 112.061. The appointing official may remove his or her  
 108 appointee without cause at any time. A member whose term has

PCB GEAC 08-22

ORIGINAL

YEAR

109 expired shall continue to serve on the council until such time  
 110 as a replacement is appointed. Vacancies shall be filled for the  
 111 remainder of the term and by the original appointing official.

112 (b) The Council is independent from but administratively  
 113 attached to the Office of Tourism, Trade, and Economic  
 114 Development, which shall provide staff support to the Council.

115 (c) The Council may:

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

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

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

125 (d) The Council does not have authority to:

126 1. Initiate or intervene in any administrative or judicial  
 127 proceeding; or

128 2. Issue subpoenas.

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

133 (5) PERIODIC REVIEW OF RULES.--

134 (a) In coordination with the Sunset Review schedule  
 135 provided in s. 11.905, the Council may review rules of agencies

PCB GEAC 08-22

ORIGINAL

YEAR

136 subject to sunset review to determine whether the rules should  
 137 be continued without change or should be amended or repealed to  
 138 reduce the impact of the rules on small businesses, subject to  
 139 the requirement that the recommendations of the Council must be  
 140 feasible and consistent with the stated objectives of the rules.

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

144 1. Continued need for the rule;  
 145 2. The nature of complaints or comments received from the  
 146 public concerning the rule;

147 3. The complexity of the rule;  
 148 4. The extent to which the rule overlaps, duplicates or  
 149 conflicts with other federal, state and local government rules;  
 150 and

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

154 (c) Within six months after the agency report is submitted  
 155 to the Joint Legislative Sunset Committee pursuant to s. 11.907,  
 156 the Council shall provide a report to the Governor, the  
 157 President of the Senate, the Speaker of the House of  
 158 Representatives, and the Joint Legislative Sunset Committee that  
 159 includes recommendations and evaluations of agency rules and  
 160 programs regarding regulatory fairness for small businesses. A  
 161 component of the report shall be a rating system, developed by

PCB GEAC 08-22

ORIGINAL

YEAR

162 the Council, entitled "Small Business Friendliness and  
 163 Development Scorecard."

164 Section 2. Section 11.9007, Florida Statutes, is created  
 165 to read:

166 11.9007 SMALL BUSINESS ADVOCATE.--

167 (1) FINDINGS AND PURPOSE.--

168 (a) The Legislature finds and declares that it is in the  
 169 public interest to aid, counsel, assist, and protect, insofar as  
 170 is possible, the interests of small business concerns in order  
 171 to preserve free competitive enterprise and maintain a healthy  
 172 state economy.

173 (b) The Legislature finds that the state should provide a  
 174 point person to advocate the causes of small business and to  
 175 provide small businesses with the information they need to  
 176 survive in the marketplace.

177 (2) DEFINITIONS.--

178 (a) "Advocate" means the Florida Small Business Advocate  
 179 who is also the Director of the Office of Small Business  
 180 Advocate.

181 (b) "Director" means the Director of the Office of Small  
 182 Business Advocate.

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

184 (3) The Office of Small Business Advocate is created within  
 185 the Office of Tourism, Trade, and Economic Development and the  
 186 director shall be the Florida Small Business Advocate.

187 (4) DIRECTOR OF THE OFFICE OF SMALL BUSINESS ADVOCATE;  
 188 APPOINTMENT; DUTIES.--

PCB GEAC 08-22

ORIGINAL

YEAR

189        (a) The advocate shall be an employee, and may be the  
 190 director, of the Office of Tourism, Trade, and Economic  
 191 Development. Preferred qualifications for the advocate will  
 192 include at least 5 years' experience in small business,  
 193 extensive knowledge of the issues and challenges of importance  
 194 to small business and actual experience in small business  
 195 advocacy and assistance.

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

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

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

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

214            4. Enlist the cooperation and assistance of public and  
 215 private agencies, businesses, and other organizations in



PCB GEAC 08-22

ORIGINAL

YEAR

216 disseminating information about the programs and services  
 217 provided by all levels of government that are of benefit to  
 218 small businesses, and information on how small businesses can  
 219 participate in, or make use of, those programs and services.

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

226 6. Consult with experts and authorities in the fields of  
 227 small business investment, venture capital investment, and  
 228 commercial banking and other comparable financial institutions  
 229 involved in the financing of business, and with individuals with  
 230 regulatory, legal, economic, or financial expertise, including  
 231 members of the academic community, and individuals who generally  
 232 represent the public interest.

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

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

PCB GEAC 08-22

ORIGINAL

YEAR

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

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

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

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

257 (5) REPORTS AND DOCUMENTS FURNISHED TO SMALL BUSINESS  
 258 ADVOCATE; ANNUAL REPORTS.--

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

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

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

PCB GEAC 08-22

ORIGINAL

YEAR

269 11.908 Committee duties.--No later than March 1 of the  
 270 year in which a state agency or its advisory committees are  
 271 scheduled to be reviewed, the committee shall and the joint  
 272 committee may:

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

280 Section 4. Paragraph (a) of subsection (2) of section  
 281 11.911, Florida Statutes, is amended to read:

282 11.911 Committee recommendations.--

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

285 (a) Make recommendations on the abolition, continuation,  
 286 or reorganization of each state agency and its advisory  
 287 committees and on the need for the performance of the functions  
 288 of the agency and its advisory committees. If the committee  
 289 recommends continuation or reorganization, the committee shall  
 290 include in its recommendations the report of the Small Business  
 291 Regulatory Advisory Council as provided in s. 11.9006, regarding  
 292 the rules of each agency.

293 Section 5. Section 11.919, Florida Statutes, is amended to  
 294 read:

295 11.919 Assistance of and access to state agencies.--

PCB GEAC 08-22

ORIGINAL

YEAR

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

301 Section 6. Paragraph (b) of subsection (3) of section  
 302 120.54, Florida Statutes, is amended to read:

303 120.54 Rulemaking.--

304 (3) ADOPTION PROCEDURES.--

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

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

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

315 a. Each agency, before the adoption, amendment, or repeal  
 316 of a rule, shall consider the impact of the rule on small  
 317 businesses as defined by s. 288.703 and the impact of the rule  
 318 on small counties or small cities as defined by s. 120.52.  
 319 Whenever practicable, an agency shall tier its rules to reduce  
 320 disproportionate impacts on small businesses, small counties, or  
 321 small cities to avoid regulating small businesses, small  
 322 counties, or small cities that do not contribute significantly

PCB GEAC 08-22

ORIGINAL

YEAR

323 to the problem the rule is designed to address. An agency may  
 324 define "small business" to include businesses employing more  
 325 than 100 persons, may define "small county" to include those  
 326 with populations of more than 75,000, and may define "small  
 327 city" to include those with populations of more than 10,000, if  
 328 it finds that such a definition is necessary to adapt a rule to  
 329 the needs and problems of small businesses, small counties, or  
 330 small cities. The agency shall consider each of the following  
 331 methods for reducing the impact of the proposed rule on small  
 332 businesses, small counties, and small cities, or any combination  
 333 of these entities:

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

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

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

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

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

345 b.(I) If the agency determines that the proposed action  
 346 will affect small businesses as defined by the agency as  
 347 provided in sub-subparagraph a., the agency shall send written  
 348 notice of the rule to the Small Business Regulatory Advisory  
 349 Council~~small business ombudsman of the Office of Tourism, Trade,~~

PCB GEAC 08-22

ORIGINAL

YEAR

350 ~~and Economic Development~~ not less than 28 days prior to the  
 351 intended action.

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

362 (III) If an agency does not adopt all alternatives offered  
 363 pursuant to this sub-subparagraph, it shall, prior to rule  
 364 adoption or amendment and pursuant to subparagraph (d)1., file a  
 365 detailed written statement with the committee explaining the  
 366 reasons for failure to adopt such alternatives. Within 3 working  
 367 days of the filing of such notice, the agency shall send a copy  
 368 of such notice to the Small Business Regulatory Advisory Council  
 369 ~~ombudsman~~. The Small Business Regulatory Advisory Council may  
 370 request that the Office of Program Policy Analysis and  
 371 Government Accountability determine whether the rejected  
 372 alternatives reduce the impact on small business while meeting  
 373 the stated objectives of the proposed rule. Within 30 days after  
 374 the date of the request, the Office of Program Policy Analysis  
 375 and Government Accountability shall report to the Administrative  
 376 Procedures Committee its findings as to whether an alternative

PCB GEAC 08-22

ORIGINAL

YEAR

377 reduces the impact on small business while meeting the stated  
 378 objectives of the proposed rule. The Office of Program Policy  
 379 Analysis and Government Accountability shall consider the  
 380 proposed rule, the economic impact statement, the written  
 381 statement of the agency, the proposed alternatives, and any  
 382 comment submitted during the comment period on the proposed  
 383 rule. The Administrative Procedures Committee shall report such  
 384 findings to the agency and the agency shall respond in writing  
 385 to the Administrative Procedures Committee if the Office of  
 386 Program Policy Analysis and Government Accountability found that  
 387 the alternative reduced the impact on small business while  
 388 meeting the stated objectives of the proposed rule. If the  
 389 agency will not adopt the alternative, it must also provide a  
 390 detailed written statement to the Administrative Procedures  
 391 Committee as to why it will not adopt the alternative.

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

394 120.74 Agency review, revision, and report.--

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

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

PCB GEAC 08-22

ORIGINAL

YEAR

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

406 (f) Contact agencies that have concurrent or overlapping  
 407 jurisdiction to determine whether their rules can be coordinated  
 408 to promote efficiency, reduce paperwork, or decrease costs to  
 409 government and the private sector.

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

414 (2) Beginning October 1, 1997, and by October 1 of every  
 415 other year thereafter, the head of each agency shall file a  
 416 report with the President of the Senate, the Speaker of the  
 417 House of Representatives, and the committee, with a copy to each  
 418 appropriate standing committee of the Legislature, which  
 419 certifies that the agency has complied with the requirements of  
 420 this subsection. The report must specify any changes made to its  
 421 rules as a result of the review and, when appropriate, recommend  
 422 statutory changes that will promote efficiency, reduce  
 423 paperwork, or decrease costs to government and the private  
 424 sector. The report must specifically address the economic impact  
 425 of the rules on small business. The report must identify the  
 426 types of cases or disputes in which the agency is involved which  
 427 should be conducted under the summary hearing process described  
 428 in s. 120.574.

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