

CHAPTER 2008-149

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 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 impact 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 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.