

STORAGE NAME: h3589z.brc
DATE: June 2, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3589

RELATING TO: Certified Public Accountant Education Minority Assistance Program

SPONSOR(S): Representative Bitner and others

COMPANION BILL(S): SB 1220 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 4 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS (W/D)
- (4) SENATE REGULATED INDUSTRIES (W/D)
- (5) SENATE EDUCATION (W/D)
- (6) SENATE GOVERNMENTAL REFORM AND OVERSIGHT (W/D)
- (7) SENATE WAYS AND MEANS (W/D)

I. FINAL ACTION STATUS:

Chapter 98-263, Laws of Florida

HB 3589 passed the House on April 14, 1998, and passed the Senate on May 1, 1998.

Vote: House Yeas 110 Nays 1; Senate Yeas 40 Nays 0

II. SUMMARY:

The bill creates s. 473.3065, Florida Statutes, which establishes the Certified Public Accountant (CPA) Education Minority Assistance Program for Florida residents. The purpose of the program is to provide scholarships to minority students enrolled in their fifth year of an accounting program at institutions approved by the Board of Accountancy (Board). The fifth year references the 30 semester hours required, in addition to the accounting baccalaureate degree or its equivalent, for someone to sit for the CPA examination.

A five member advisory council is created to assist the Board in administering the program. The council membership consists of five Florida CPAs appointed by the Board and must be diverse and representative of gender, ethnic, and racial status.

The funding for scholarships is provided by a special fee, not to exceed \$10 per licensee. The fee is deducted from existing fees collected from each licensee, deposited into a special account in the Professional Regulation Trust Fund, and earmarked for scholarships. Due to all scholarship funds being deducted from existing fees paid by licensees, the bill will have no fiscal impact on state government, and none on local government or the private sector.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 473, Florida Statutes, currently deals with the regulation of Certified Public Accountants (CPA) in Florida. It establishes education, experience, examination, and other requirements for sitting for the CPA examination in Florida. It also provides the basis and general guidelines for the acceptable practice in Florida as a CPA. Additionally, chapter 473 authorizes the Board of Accountancy (Board) to establish certain board-approved specialties.

The fee caps for the various application, examination, and renewal fees for CPAs are established by statute, but the actual fee is set by vote of the Board. The statutory fee cap for renewals is \$250, and the actual fee charged for two year licensure is \$100. The Board is currently authorized by statute to collect from each licensee a \$5 fee which is earmarked for the Department of Business and Professional Regulation (DBPR) to combat unlicensed activities. There is an excess of \$2 M in the CPA account.

Minority person is defined within s. 288.703(3), F.S., as a lawful, permanent resident of Florida who is African American, Hispanic American, Asian American, Native American or an American woman. In 1995, the DBPR began developing a database of minority persons registered as CPA's in Florida, but has not captured data on those registered before that date. Statistics provided by the Board of Accountancy indicate that of the 5,021 individuals licensed during 1995-1997, 51 percent were minorities, 43 percent were non-minorities, and the status of the remaining 6 percent was unknown.

The court held in Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945) that all applicants must be judged against one another when an agency grants a government award in a competitive process. Therefore, a definite application time frame must be established to ensure all applicants are considered as a group when awarding scholarships.

B. EFFECT OF PROPOSED CHANGES:

The bill creates s. 473.3065, F.S., which establishes the Certified Public Accountant Education Minority Assistance Program for Florida residents. The purpose of the program is to provide annual scholarships to minority students enrolled in their fifth year of an accounting program at institutions approved by the Board. According to the Board, the phrase "in their fifth year of an accounting program" simply represents a commonly used phrase referencing the additional 30 semester hours above the accounting baccalaureate degree that a student must attain before sitting for the CPA examination. The additional credit hours are required by s. 473.306(2)(b)2., F.S. A five-member advisory council is created to assist the Board in administering the new program.

The advisory council membership consists of five Florida CPAs appointed by the Board. Council membership must be diverse and representative of gender, ethnic, and racial status. The chairman must be a member of the Board, one member must represent the National Association of Black Accountants, one member must represent the Cuban-American CPA Association, and the two remaining members are to be selected at large. One member must be a woman. The term for initial appointments and subsequent appointments are determined by the Board. The advisory council members (excluding

the Board member) are to serve without compensation. Expenses incurred are to be borne by the member or organization the member represents, except that the Board member is compensated pursuant to ss. 455.207(4) and 112.061, F.S.

The scholarships are funded from a special fee not to exceed \$10 per licensee. This fee is to be deducted from existing fees collected from each licensee and deposited into a special account within the Professional Regulation Trust Fund earmarked for scholarships. DBPR is prohibited from allocating overhead charges to this account, and interest earnings must be credited to the program account. Funds for scholarships may be disbursed only upon recommendation of the advisory council and approval of the Board, and may not exceed \$100,000 per year.

The Board is authorized to adopt rules to establish criteria for awarding scholarships including eligibility criteria, application procedures, amounts and time periods for scholarships, annual amount of scholarships, and minimum balance to be maintained. The Board is required to compare all applicants one to another in making its determination. Eligibility for scholarships must include, at a minimum: financial need; ethnic, gender or racial minority status according to s. 288.703, F.S.; and scholastic ability and performance. Determinations made by the Board regarding the recipients of scholarships are not considered an agency action for purposes of chapter 120. This elimination of access to administrative proceedings automatically moves any challenge to the more costly, time-consuming process of circuit court action.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill authorizes the Board to establish rules to implement the scholarship program.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Any staffing for the bill would come from the Board. The DBPR indicates that the program will not require additional staffing.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The Board would have responsibility for the administration of the scholarship program.

- (2) what is the cost of such responsibility at the new level/agency?

None.

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No, although license fees would support the program, the Board will derive funding from existing fee resources, or the excess monies in its account.

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 473.3065, Florida Statutes

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 473.3065, F.S., to establish the scholarship program, provide minimum eligibility criteria, establish an advisory council, and provide for funding.

Section 2. Makes the bill take effect July 1 of the year in which enacted.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None. The DBPR indicates that this bill could be implemented with existing staff.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The bill permits the Board of Accountancy to deduct a special fee, not to exceed \$10, from the existing license fee paid by each licensee. All of the money is to be used for scholarships and none can be used for administrative expenses. Presently, there are approximately 23,000 active CPA licenses and 2,300 licensed accountancy firms, for a total of 25,300 licensees. One-half of the licensees are registered each year making approximately \$126,500 available annually for scholarships. However, the Board has approximately \$2.5 M in excess funds from which the scholarship monies will be deducted. Expenditures from the education assistance account are limited to \$100,000

per year. DBPR has indicated that the additional administrative expenses would be minimal.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

This bill is supported by the Florida Institute of Certified Public Accountants, the National Association of Black Accountants, the Cuban American CPA Association and the Department of Business and Professional Regulation.

An analysis of the senate companion, SB 1220, noted that race-conscious government action is subject to challenge under the equal protection clause of the federal constitution (U.S. Const. art. XIV, sec. 1.) Case law interpreting the equal protection clause holds that race-conscious government remedial programs are subject to strict scrutiny by the courts to determine if they fulfill a compelling government interest and are narrowly tailored to achieve that interest. Demonstration of a compelling government interest under the strict scrutiny standard requires evidence of past discrimination by government resulting in present harmful effects.

Recent case law relating to the equal protection clause has stringently applied the strict scrutiny analysis, resulting in the rejection of many race-conscious government remedial programs. See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (successful challenge of a federal program to award highway contracts to disadvantaged businesses); *City of Richmond v. Croson*, 488 U.S. 469 (1989) (successful challenge of a city's plan requiring prime contractors to subcontract at least 30% of each contract to minority business enterprises); *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986) (successful challenge of a provision in a school board collective bargaining agreement extending preferential protection against layoffs to some minority employees); *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895 (11th Cir. 1997) (successful challenge of county affirmative action programs that provided for the use of race-, ethnicity-, and gender-conscious measures in awarding county construction projects); *Ensley Branch, N.A.A.C.P. v. Siebels*, 31 F.3d 1548 (11th Cir. 1994) (successful challenge of local government affirmative action provisions for police and fire departments);

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Mallory v. Harkness, 895 F. Supp. 1556 (S.D. Fla. 1995) (successful challenge of a state law requiring that 1/3 of the appointments to judicial nominating commissions be minorities); *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S.Ct. 2581 (1996) (successful challenge of University of Texas law school minority admissions program); *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994), *cert. denied*, 514 U.S. 1128 (1995) (successful challenge of University of Maryland minority scholarship program for African American students).

If the minority scholarship program provided for in the bill were successfully challenged, the state could be liable for attorneys fees, as well as any monetary remedies awarded by a court. All legal costs would likely be covered by the fees CPA licensees pay into the Professional Regulation Trust Fund.

Disparity studies providing evidence of the need for the minority scholarship program to remedy the present effects of past discrimination might be sufficient to counter a constitutional challenge. Amending the bill to open the program to any student who demonstrates financial need, regardless of minority status, would cure the potential constitutional defect.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VIII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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