

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 4, 1998 Revised: _____

Subject: Minority Business Enterprises

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|------------------|-----------------------|------------------|------------------|
| 1. | <u>Schmeling</u> | <u>Austin</u> | <u>CM</u> | <u>Favorable</u> |
| 2. | _____ | _____ | <u>GO</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

This bill makes ineligible for Minority Business Enterprise (MBE) certification, those minority-owned businesses which are the result of a transfer from a nonminority to a minority within a related immediate family group if the combined net asset value of all members of that family group exceeds \$1 million. This bill amends the definition of "small business" from one with an annual net worth of \$3 million to \$1 million. Additionally, this bill requires all political divisions of the state to certify minority business enterprises in accordance with the procedures established in s. 287.0943(1), F.S.

This bill amends sections 287.0943 and 288.703, Florida Statutes.

II. Present Situation:

In order to participate in various procurement or contracting programs as certified minority business enterprises, minority businesses must be certified as eligible to participate. Section 287.0943(1)(e), Florida Statutes, requires businesses seeking MBE certification to meet the following criteria in order to be eligible for MBE certification:

- The applicant business must be owned or controlled by a minority person;
- If present ownership was obtained by transfer, that the minority owner has been a 51 percent owner for at least 2 years prior to certification where the transferor was a nonminority. This criteria is expressly inapplicable to otherwise eligible applicants who take majority ownership of a business requiring professional licensure and an applicant who will be the licenceholder for the firm when certified; and

- The prospective certified minority business enterprise must be currently performing a useful business function.

Section 287.09431, F.S., provides for statewide and interlocal agreement on the certification of minority business enterprises. The purpose of this section is to establish a uniform certification process among the various local governmental entities throughout the state who legally join therein. This section requires that if, within 2 years from the date that the certification core criteria are approved by the Department of Labor and Employment Security (DLES), the statewide and interlocal agreement is not executed by a majority of county and municipal governing bodies that administer a minority business assistance program on the effective date of the act, then the Legislature shall review this agreement. It is the intent of the Legislature that if the agreement is not executed by a majority of the requisite governing bodies, then a statewide uniform certification process should be adopted, and that said agreement should be repealed and replaced by a mandatory state government certification process.

The statewide and interlocal agreement certification core criteria were approved by the Department of Labor and Employment Security on July 16, 1996. At this time the Minority Business Assistance and Advocacy Office (MBAAO) of DLES reports that there were 39 potential governmental entities which could participate in this agreement. To date, nine statewide/interlocal agreements have been executed.

Section 288.703(1), F.S., defines a “small business” as one that, together with its affiliates, has a net worth of not more than \$3 million. As applicable to sole proprietors, small businesses are those with personal and business investments not exceeding \$3 million.

Section 288.703(2), F.S., defines “minority business enterprise” as a business which is organized to engaged in commercial transactions, domiciled in Florida, which is at least 51 percent owned by minority persons and whose management and daily operations are controlled by such persons.

III. Effect of Proposed Changes:

This bill amends s. 287.0943, F.S., to further limit eligibility for MBE certification by deeming the ownership transfer of majority ownership made within an “immediate family group” from a nonminority to a minority person, when the combined total net asset value of all members of that family group exceeds \$1 million, invalid for the purpose of qualifying for certification.

This bill amends s. 288.703, F.S., defining a “small business” as one which, together with its affiliates, has a net worth of not more than \$1 million and, as applicable to sole proprietors, those with business and personal investments not exceeding \$1 million.

According to the MBAAO, there are currently approximately 30 certified MBE firms with a net worth of between \$1 million and \$3 million who would be ineligible for re-certification under this bill. That figure represents less than 1 percent of all certified MBEs in the state. Primarily, these businesses are owned by white women.

This bill further amends s. 288.703, F.S., to limit eligibility for MBE certification by deeming the ownership transfer of majority ownership made within an “immediate family group” from a nonminority to a minority person, when the combined total net asset value of all members of that family group exceeds \$1 million, invalid for the purpose of qualifying for certification.

Finally, this bill provides that the definitions of “small business,” “minority business enterprise,” and “certified minority business enterprises” provided in s. 288.703, F.S., apply to the state and all political subdivisions of the state. This provision requires all political divisions of the state to certify minority business enterprises in accordance with the procedures established in s. 287.0943(1), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Those local governments that currently operate a minority business procurement program will be required to certify these businesses in accordance with procedures established under s. 287.0943(1), F.S. Local governments may be required to take action requiring expenditures to bring certification procedures into compliance. The amount of expenditures, if any, would be based on the extent of changes necessary to bring current certifying procedures into compliance with those established in s. 287.0943(1), F.S. These expenditures by local governments are believed to be insignificant, thereby exempting the bill from the provisions of Art. VII, s. 18 of the State Constitution.

Local governments currently with interlocal agreements for minority business certification with the state will be required to collect additional data relating to asset value of family members which may result in expenditures. This cost is indeterminate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section three of this bill requires application of the term “minority business enterprise” to all political subdivisions of the state. It is not immediately clear how this provision relates to *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), which requires specific findings of disparity before a business can be certified as a minority for inclusion in a minority business assistance program. The definition of “minority business enterprise” found in s. 288.703(2), F.S., includes any small business which “is at least 51-percent-owned by minority persons.” It

could be argued that to complete the definition of a “minority business enterprise,” one must also look at the definition of a “minority person” found in s. 288.703(3), F.S. “Minority person” is defined as a lawful, permanent resident of Florida who is: an African American, a Hispanic American, an Asian American, a Native American, or an American woman. It is conceivable that a community implementing a minority business assistance program could not find disparity for those minorities defined in s. 288.703(3), F.S.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Last year, the MBAAO reported the following costs related to the implementation of CS/HB 319, which included the same provisions as SB 940:

| | |
|-----------------|-----------------|
| <u>FY 97/98</u> | <u>FY 98/99</u> |
| \$35,000 | \$55,000 |

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.