

**STORAGE NAME:** h1429a.bdt

**DATE:** March 30, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS DEVELOPMENT & INTERNATIONAL TRADE  
ANALYSIS**

**BILL #:** HB 1429

**RELATING TO:** Property and Services Procurement

**SPONSOR(S):** Representative Roberts

**COMPANION BILL(S):** HB 785(s), HB 835(s), SB 1684(s), HB 823(c) and SB 1686(c)

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

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE YEAS 6 NAYS 0
  - (2) COLLEGES & UNIVERSITIES
  - (3) GOVERNMENTAL OPERATIONS
  - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
  - (5)
- 

**I. SUMMARY:**

This bill creates the Commission on Small Business and Economic Development and provides specific duties and membership. The Minority Business Advocacy and Assistance Office is deleted and its current duties, along with newly-created ones, would become the responsibility of the newly-created Small Business and Economic Development Office in the Commission.

Additionally, this bill affects sections relating to property and services procurement including: requiring the Board of Regents and university presidents to comply with the minority business enterprise program; providing for price preferences in historically underutilized business zones; creating a small business enterprise program, a mentor-protege program, a linked-deposit program, and a management and technical assistance program for minority and small businesses; revising certification criteria for minority businesses and changing the definition for a "useful business function;" providing flexibility in statewide reciprocal certification agreements; revising requirements for expenditure percentages for specified minorities; providing for the appointment of a minority business ombudsman; providing for the completion of a disparity study no later than December 1, 2002; extending the expiration date of the enterprise-zone linked-deposit program to July 1, 2006; and revising provisions relating to the Florida Black Business Development Board, Enterprise Florida, Inc., the International Trade and Economic Development Board, and the Capital Development Board to include consideration of small, black-owned, and minority-owned businesses.

The revenue estimating conference has not reviewed this bill; however, the Governor's Office estimates that the provisions of this bill will result in an annual fiscal impact of (\$158,586) for staffing and (\$300,000) for OPS and operational expenses.

The bill authorizes the newly-created Small Business and Economic Development Office to promulgate rules pertaining to price-preference for minority businesses, for carrying out the responsibilities of the Commission, and to implement the newly-created programs.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

***Board of Regents and the State University System***

Part II of chapter 240, F.S., provides for the State University System. Section 240.205, F.S., provides for the Board of Regents as a body corporate with all of the powers of a body corporate, including: having a corporate seal, the power to contract and be contracted with; to sue and be sued; and to plead and be impleaded in all courts of law and equity.

Section 240.209(1), F.S., provides the Board of Regents with the responsibility of adopting system wide rules and policies such as; planning for the future needs of the State University System; planning the programmatic, financial and physical development of the system; and monitoring the fiscal performance of the universities. Subparagraph (q) of paragraph (3) of this section, provides that the board shall adopt rules to ensure compliance with the provisions of s. 287.0945, F.S., for all State University procurement, and additionally, ss. 255.101 and 255.102, F.S., for construction contracts, relating to minority business enterprises. Section 287.0945, F.S., was repealed by s. 27, Chapter 96-320, L.O.F., however, s. 28, ch 96-320, adopted s. 287.09451, F.S., creating the Minority Business Advocacy and Assistance Office.

***History of Minority Business Assistance***

Since 1982, the Legislature has enacted provisions designed to provide market, managerial, technical and financial assistance to minority-owned businesses that have suffered economic disadvantage in the private marketplace. These provisions are found throughout the statutes, as evidenced by the previous discussion under the Board of Regents and State University System. The primary focus of these provisions has been on government procurement in an effort to create a sheltered market for minority business enterprises in state contracting.

The Florida Small and Minority Business Assistance Act of 1985, enacted as Chapter 85-104, L.O.F., was the first comprehensive effort to define and facilitate measured improvements in the businesses through government assistance. The Act established more procurement requirements along with requirements for technical, managerial and financial assistance to minority business enterprises. In 1989, the U.S. Supreme Court reviewed the authority of state and local governments to implement measures such as these in its decision in City of Richmond v. Croson, 478 U.S. 469 (1989). The court determined that the state's actions must be justified by objective proof of disparate treatment by the state of the minority groups to be benefited by the provisions. The Legislature commissioned a study to gather this evidence, the results of which were presented in 1991. The study determined that disparities existed in government contracting, and spending goals were enacted by Chapter 91-162, L.O.F., to encourage increased levels of spending with minority business enterprises.

In 1994, Chapter 94-322, L.O.F., was adopted that: created a statewide, unified certification process by way of an interlocal agreement to be entered into by the state and political subdivisions and provided that minority firms need undergo a singular review to be qualified for participation in assistance programs for the state and all political subdivisions that opt to enter into the agreement; appointed a task force consisting of state, local, public and private officials that would develop, through collaborative effort, common procedures and criteria to guide the uniform certification; created the Commission on Minority Economic and Business Development as the central oversight body for minority business enterprise development efforts with oversight of the state's minority business enterprise assistance programs; provided budget responsibilities to it, and it was a fiscal entity within the Department of Commerce; and provided a review by repealer during the 2001 Regular Session of all provisions relating to minority business enterprise programs.

Additionally, Chapter 94-322, L.O.F., consolidated the functions of the Bureau of Minority Business Enterprise Assistance Office in the Department of Management Services and the Small and Minority Business Advocate in the Department of Commerce, into the Minority Business Advocacy and Assistance Office under the commission. Also, the Small and Minority Business Advisory Council in the Department of Commerce was repealed and replaced with the Florida Council on Small and Minority Business Development under the commission.

In 1996, Chapter 96-320, L.O.F., was adopted dissolving the Department of Commerce and the Florida International Affairs Commission and transferring their duties to Enterprise Florida Inc., and the Florida Commission on Tourism. These provisions transferred the Minority Business Advocacy and Assistance Office to the Department of Labor and repealed s. 287.0945, F.S., that created the Commission on Minority Economic and Business Development, and enacted s. 287.09451, F.S., providing enhanced responsibilities and duties for the Minority Business Advocacy and Assistance Office.

### ***Some of Florida's Current Provisions for Small and Minority Business Assistance***

#### **Miscellaneous provisions**

Section 17.11, F.S., provides that the Comptroller shall report from the state automated management accounting subsystem no less than quarterly the disbursements agencies made to: small businesses, as defined in the Florida Small and Minority Business Assistance Act of 1985; certified minority business enterprises in the aggregate; and certified minority business enterprises broken down into categories of minority persons, as well as gender and nationality subgroups. The information must be made available to the agencies, the Minority Business Advocacy and Assistance Office, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 255.101, F.S., relates to contracts for public construction works and the utilization of minority business enterprises. This section provides that public officials charged with the letting of contracts for public works and other structures shall operate in accordance with s. 287.093, F.S., and rules adopted pursuant thereto, for the utilization of minority business enterprises.

Section 255.102, F.S., relates to contractor utilization of minority business enterprises. This section provides that agencies shall consider the use of price preferences, weighted preference formulas, or other preferences for construction contracts, as determined appropriate by the Minority Business Advocacy and Assistance Office to increase minority participants. Additionally, this section provides that the Minority Business Advocacy and Assistance Office, in collaboration with the Department of Management Services and the State University System, shall adopt rules to determine what is a "good faith effort" for purposes of contractor compliance with minority participation goals established for competitively awarded building and construction projects.

#### **Chapter 287**

Section 287.093, F.S., provides that any county, municipality, community college, or district school board may set aside up to 10 percent or more of the total amount of funds allocated for the procurement of personal property and services for the purpose of entering into contracts with minority business enterprises. Such contracts shall be competitively bid only among minority business enterprises. This section specifically states that the set-aside is used to redress present effects of past discriminatory practices and shall be subject to periodic reassessment to account for changing needs and circumstances.

Section 287.0943, F.S., provides the certification procedures and criteria of minority business enterprises to be used by the Minority Business Certification Task Force, and that are to be ultimately adopted by the Secretary of the Department of Labor.

Section 287.0931, F.S., relates to minority business enterprises and their participation in bond underwriting. This section provides that any state or local government agency, or political subdivision thereof, issuing bonds or other tax-exempt obligations through one or more underwriters is encouraged to offer not less than 20 percent participation to minority firms. Further, to meet such participation requirement, the minority firm must have full-time employees located in this state, must have a permanent place of business located in this state, and must be a firm which is at least 51-percent-owned by minority persons as defined in s. 288.703(3), F.S. However, for the purpose of bond underwriting only, the requirement that a minority person be a permanent resident of this state does not apply.

Section 287.094, F.S., provides penalties for false representation of minority business enterprises.

Section 287.09431, F.S., enacts the statewide and interlocal agreement on certification of business concerns for the status of minority business enterprises.

Section 287.09451, F.S., provides for the Minority Business Advocacy and Assistance Office within the Department of Labor along with its powers and duties. This section provides for spending goals by industry category and subdivided goals by minority group, to be used by state agencies.

Section 287.0947, F.S., provides for the Secretary of the Department of Labor and Employment Security to create the Florida Advisory Council on Small and Minority Business Development with the purpose of advising and assisting the secretary in carrying out the secretary's duties with respect to minority businesses and economic and business development.

### **Chapter 288**

Section 288.702, F.S., provides for the act, to be known and cited as the "Florida Small and Minority Business Assistance Act of 1985."

Section 288.703, F.S., provides definitions, including:

(1) "Small business" means an independently owned and operated business concern that employs 100 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$3 million and an average net income after federal income taxes, excluding any carryover losses, for the preceding 2 years of not more than \$2 million. As applicable to sole proprietorships, the \$3 million net worth requirement shall include both personal and business investments.

(2) "Minority business enterprise" means any small business concern as defined in subsection (1) which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51-percent-owned by minority persons who are mem

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(3) "Minority person" is a lawful, permanent resident of Florida who is: (a) An African American person having origins in any of the racial groups of the African Diaspora; (b) A Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race; (c) An Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778; (d) A Native American, a person who has origins in any of the Indian Tribes of North America prior to 1835, upon presentation of proper documentation thereof as established by rule of the department of Management Services; and (e) An American woman.

(4) "Certified minority business enterprise" means a business which has been certified by the certifying organization or jurisdiction in accordance with s. 287.0943(1).

(5) "Department" means the Department of Labor and Employment Security.

Section 288.7031, F.S., speaks to the application of certain definitions providing that the definitions of "small business," "minority business enterprise," and "certified minority business enterprise" provided in s. 288.703, F.S., apply to the state and all political subdivisions of the state.



Section 288.707, F.S., creates the Florida Black Business Investment Board to carry out the purposes and provisions of ss. 9 - 21, Chapter 85-104, L.O.F., the Florida Small and Minority Business Assistance Act. These provisions include the power to: adopt bylaws; sue and be sued in its own name; make and execute contracts; acquire, hold and dispose of personal property for its corporate purposes; and encourage financial institutions to participate in consortia for the purpose of investing in black business enterprise.

### ***Disparity Studies***

The 1995 Disparity Study, performed by FSU, found no disparity in state contracting and suggested a race and gender neutral small and disadvantaged program. The 1997 Disparity Study done by D. J. Miller and Associates found over utilization in women and Hispanic firms and a small underutilization of black, Asian, and native American contracting firms. The Miller Disparity study suggested lower goals be set over a broader range of state spending. Neither of these studies have been adopted by the Legislature.

In City of Richmond v. J.A. Corson Company, 109 S.Ct.706, 712, 488 U.S. 469, 474 (1989), the United States Supreme Court adopted strict scrutiny as the standard of Equal Protection Clause review of race-conscious remedial measures. Where a state or municipal government adopts race-based classifications, the Equal Protection Clause of the Fourteenth Amendment requires that the measures be necessary to the fulfillment of a compelling state interest, and that it be narrowly tailored to the fulfillment of that interest. Specifically, the Equal Protection Clause of the Fourteenth Amendment provides that “[n]o State will ...deny to any person within its jurisdiction the equal protection of the laws.” It further prohibits state and local governments from discriminating on the basis of race in order to undo the effects of past discrimination except in one circumstance: where that is necessary to eliminate their own maintenance of a system of unlawful racial classification.

Subsequent to its decision in Corson, the Supreme Court has been frequently quoted for its dicta suggesting that race-neutral measures are the future of minority business enterprise.

In Phillips & Jordan, Inc. v. Ben G. Watts, (N.D. Fla. 1996) (No.4:96cv286-ws), the court granted summary judgement in favor of the plaintiffs and clearly indicated that separate disparity analyses for contracts awarded by FDOT’s district offices should have been conducted for each district. The court specifically stated:

Although the vast majority of FDOT maintenance contract are let at the district level, and although the demographics vary considerably from district to district within the State of Florida, MGT did not analyze the disparity data on a district-by-district basis. Instead, the data from individual districts and counties were aggregated; availability and utilization rates were determined on a state-wide basis; disparity indices were calculated for the state as a whole, and program goals were ultimately set on a state-wide basis. FDOT’s experts, Kenneth Tatum and Gerald L. Jackson, have suggested that district-by-district analysis was eschewed simply because it would have increased the administrative burdens and costs to FDOT. Id. at 17.

### ***Comparisons***

The Miller Disparity Study made recommendations and several are incorporated in this bill, including: changing the current goal setting for expenditures to a range and not a single fixed percentage number; Collaboration with Enterprise Florida, Inc.; and establishing a mentor-protege program.

#### **B. EFFECT OF PROPOSED CHANGES:**

The Commission on Small Business and Economic Development with specific duties as outlined in the section-by-section part of this analysis, would be created and composed of the Governor and two persons appointed by the President of the Senate and two persons appointed by the Speaker of the House of Representatives. The Commission would be assigned to the Office of Tourism, Trade and Economic Development in the Governors Office, and the Governor would be the Commission's chairperson. As such, the Governor would appoint and fire the executive administrator of the Commission. The executive administrator would have responsibilities including: hiring staff; budgeting; purchasing; and other duties delegated by the Commission. The Minority Business Advocacy and Assistance Office would be eliminated and its current duties, along the newly-created ones, would become the responsibility of the newly-created Small Business and Economic Development Office in the Commission.

Additionally, the changes to the sections relating to property and services procurement would be changed by: requiring the Board of Regents and university presidents to comply with the minority business enterprise program; providing for price preferences in historically underutilized business zones; creating a small business enterprise program, a mentor-protege program, a linked-deposit program and a management and technical assistance program for minority and small businesses; revising certification criteria for minority businesses and changing the definition for a "useful business function;" providing flexibility in statewide reciprocal certification agreements; revising requirements for expenditure percentages for specified minorities; providing for the appointment of a minority business ombudsman; providing for the completion of a disparity study no later than December 1, 2002; extending the expiration date of the enterprise- zone linked-deposit program to July 1, 2006; and revising provisions relating to the Florida Black Business Development Board, Enterprise Florida, Inc., the International Trade and Economic Development Board, and the Capital Development Board to include consideration of small, black-owned, and minority-owned businesses.

#### **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?

Yes, it authorizes the newly-created Small Business and Economic Development Office to promulgate rules pertaining to price-preference for minority business, for carrying out the responsibilities of the Commission, and to implement the newly-created programs.

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

Yes. The Office of Tourism, Trade and Economic Development in the Office of the Governor would become responsible for the newly-created commission and the newly-created Small Business and Economic Development Office replacing the current Minority Business Advocacy and Assistance Office in the Department of Labor.

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

N/A.

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 Department of Labor and Employment Security's Minority Business Advocacy and Assistance Office is eliminated and its duties, along with those associated with the responsibilities of carrying out the newly-created programs, are transferred to the Governor's Office.

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

Estimates by the Governor's Office to cover additional staffing for the new programs and enlarged customer base, and other related operational expenses, are: \$158,586 for staffing; \$100,000 for OPS; and \$200,000 in expenses.

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

Through the Governor's Office.

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.

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

No.

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

N/a

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?

Indeterminate.

4. Individual Freedom:

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

Indeterminate.

- 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?

N/a

- 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:

Sections 17.11, 240.205, 240.227, 255.102, 287.012, 287.042, 287.057, 287.0943, 287.09451, 287.0947, 288.703, 288.707, 288.901, 288.9015, 288.905, 288.906, 288.9412, 288.9414, 288.9611, 288.9613, 288.9614 and 290.0075, F.S., are amended, and ss. 287.085, 287.086, 287.09431, 287.09452 and 287.0946, F.S., are created.

E. SECTION-BY-SECTION ANALYSIS:

**Section 1** - Amends s. 240.205(6), F.S., requiring the Board of Regents to comply with the provisions of s. 287.09451, F.S., which created the Minority Business Advocacy and Assistance Office for the purpose of assisting state agencies in complying with minority business enterprise procurement goals. It further requires the Board of Regents to comply with *other sections relating to the minority business enterprise program*.

**Section 2** - Amends s. 240.227, F.S., requiring University Presidents as the chief administrative officer of the university to comply with s. 287.09451, F.S., which created the Minority Business Advocacy and Assistance Office for the purpose of assisting state agencies in complying with minority business enterprise procurement goals. It further requires University Presidents to comply with *other sections relating to the minority business enterprise program*.

**Section 3** - Amends s. 287.012, F.S., that provides the definitions for certain terms used in this section governing the procurement of personal property and services by state agencies. Paragraph (1) is amended to include the Board of Regents and the State University System in the definition of "Agency" for the purposes of complying with the state's minority business enterprise program found in s. 287.09451, F.S. Paragraph (19) is amended changing the definition for "Office" from the Minority Business Advocacy and Assistance Office in the Department of Labor and Employment Security to the newly created office of Small Business and Economic Development Office of the Commission on Small Business and Economic Development (also newly created).

**Section 4** - Creates s. 287.085, F.S., relating to historically underutilized business zones. The newly created section provides for the certification of a "zone business." "Zone" means a historically underutilized business zone in a geographical area that has been designated as an enterprise zone under chapter 290, F.S., or an area targeted by the Governor. In order for a business to be certified a "zone business" the business must:

- (a) Certify at least 35 percent of its employees are full-time residents of a zone in Florida; or
- (b) Certify it is providing a commercially useful function with the license to do business in Florida.

Further, this section provides that spending with zone businesses owned and operated by a woman or a minority person shall be counted toward the goals established in s. 287.09451, F.S. Each agency is encouraged to spend 0.5 percent of moneys actually expended on private vendors and use purchasing incentives with zone businesses. Additionally, this section provides when that two or more bids or proposals equal with respect to price, quality, service, and minority business participation are received by a state agency or the State University System, a bid or proposal received from a zone business must be awarded a 10 percent price preference, a state-of-Florida vendor preference, or weighted points amounting to 10 percent of the overall points.

Finally, the newly-created Commission on Small Business and Economic Development is directed to adopt rules, monitor and report progress, and do *all things necessary* or convenient to guide state agencies and the State University System toward making expenditures for commodities, contractual services, construction, and architectural and engineering services with historically-underutilized-business-zones businesses.

**Section 5** - Creates s. 287.086, F.S., the small business enterprise program, providing that an eligible small business is one located in an area targeted by the Governor or domiciled in Florida, and that is independently owned and operated and does not exceed the small business size standard in the relevant standard industry code, as outlined in 13 C.F.R., part 121. Any business that is certified as a small business by any governmental entity is deemed reciprocally certified upon presentation of current documentation. Purchases for competitively bid commodities, construction, contractual services, and professional services may be reserved for registered small businesses. Reserved contracts must be economically feasible contracts or portions of contracts within the small businesses capability. Necessary competition is assured by requiring at least three registered firms to be in an area before reserving contracts.

The payment of performance bonds may be waived on state projects for small business enterprises currently required under s. 255.05(1)(a), F.S. The procedures provided for a state agency to determine whether or not to waive bond requirements are: identifying which projects are eligible; determining, the nature, scope, and complexity of the project; and review the list to ensure that at least three small business enterprises are registered to perform the work. Additionally, "joint checks" may be issued by state agencies and the university system when a firm registered with the Small Business Economic Development Office is awarded a state project as the prime contractor.

Small business enterprises must be registered with the Commission on Small Business and Economic Development and the Commission on Small Business Development is required to adopt rules and *do all things necessary* or convenient to guide agencies and state universities toward using small business enterprises for commodities and contractual services.

**Section 6** - Amends s. 287.0943(1)(b)(e)&(4)(a), F.S., by: deleting the reference to the Minority Business Advocacy and Assistance Office and replacing it with the Small Business and Economic Development Office; changing the definition of "useful business function" by deleting the requirement that a minority business enterprise be currently performing a business function to customers other than the state, and allowing for suppliers with distributorship agreements, other forms of industry agreements, or lines of credit demonstrating ability to procure and transport goods, would be considered performing a useful business function; and moving the responsibilities of executing the statewide and interlocal agreement and recertifying minority business enterprises established under s. 287.09431, F.S., from the Secretary of the Department of Labor and Employment Security to the executive administrator of the Small Business and Economic Development Office, and changing the current recertification of such businesses from every 1 year to every 2 years.

**Section 7** - Substantially rewording s. 287.09431, F.S., by: changing the name of the statewide and interlocal agreement on certification of business concerns for the status of minority business enterprises to the statewide reciprocal certification of business concerns for the status of minority business enterprises; moving the responsibilities for the certification process from the Secretary of the Department of Labor and Employment Security to the executive administrator of the Small Business and Economic Development Office; changing the requirement for an annual recertification to a biannual recertification; providing the executive administrator with the ability to enter into flexible agreements with all jurisdictions in order for local governmental jurisdictions and private organizations to comply with local and federal laws, and especially those laws that are enacted to counter the findings of disparity studies and authorizing the administrator to negotiate the terms of agreement with the local government jurisdictions and private organizations to include as many participating entities as feasible, whether or not they have minority business programs; and deleting intent language providing an alternative course of action if the now-stricken statewide and interlocal agreement program was not executed by a majority of the requisite governing bodies.

**Section 8** - Amends s. 287.09451, F.S., deleting the Minority Business Advocacy and Assistance Office within the Department of Labor and creating the Small and Economic Development Business Office within the newly created Commission on Small Business and Economic Development within the Governor's office. Additionally, it expands current intent language by stating that the intent of the Legislature is to provide minority businesses enterprises with technical, managerial, contracting and financial assistance in order to make their search for government contracts consistently fruitful.

*Creation of the Commission:*

- ◆ The membership includes the Governor, as the chairperson, and two persons appointed by the President of the Senate and the Speaker of the House of Representative.
- ◆ The commission is assigned to the Governor's Office, the Office of Tourism, Trade, and Economic Development (OTTED).
- ◆ An executive administrator to the commission is appointed and may be removed by the Governor. The executive administrator is responsible for all administrative responsibilities and functions of the commission.

*Duties of the Commission:*

- ◆ To provide leadership and promote coordination of economic and business development resources for the benefit of minority business enterprises and of distressed communities that are affected by the business.

- ◆ Develop a comprehensive strategic plan that will provide the maximum practical opportunity for economic growth of black-owned businesses and other minority businesses.
- ◆ Provide direction to regional and statewide planning entities and local government minority business enterprise programs to help promote the redevelopment of distressed areas and minority business enterprises and small business enterprise programs, and to foster strategic alliances among these entities to help target resources and achieve objectives in the economic and business development of minority businesses.
- ◆ Develop a clear statement of mission, including outcomes and the strategies to reach the outcomes and performance measures to assess whether outcomes are being achieved.
- ◆ The specific goals include: increased size and profitability of minority businesses served by the program; increased economic self-sufficiency and competitiveness of minority businesses, as measured by their ability to attain necessary capital and surety bonding to successfully compete for larger government contracts, in terms of gross contract amount, outside a served or sheltered market; and significantly reduce the disparities evidenced by a statistical analysis of the availability and use of minority businesses for state procurement.
- ◆ Develop an analysis of the existing strategies of the state's minority business enterprise programs to determine whether the strategies are cost-effective or whether alternative ones should be developed.
- ◆ Submit the information required to be developed to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1 of each year.

Duties of the newly-created Small and Economic Development Business Office within the commission include those of the former Minority Business Advocacy and Assistance Office enhanced by the following duties:

- ◆ To make and execute contracts and other instruments necessary for the exercise of its powers and function, and pay for advisory services and technical assistance that may be necessary to carry out the purposes of the section.
- ◆ To request or accept any grant - including a grant that requires a state match, any payment, gift or funds, or property made by the state, the United States, or any individual firm, political subdivision, corporation, or organization for any purpose outlined in chapter 287, F.S. All such funds may be deposited into the budget entity of the office and may be expended above the amount appropriated by the Legislature in accordance with the terms and conditions of the funds. If the Small Business and Economic Development Office is awarded contribution or grant requiring a match, the office shall receive an appropriation equal to 80 percent of the grant or private contribution.
- ◆ To develop procedures to evaluate the performance of state agency heads and purchasing personnel in meeting or exceeding the established percentage goals.
- ◆ To develop procedures to establish dollar goals by procurement category, by each agency ranging in value from no less than 98 percent of the overall spending goal and no more than 105 percent above the overall spending goal as applied to each agency's total spending with any private or nonprofit entity that is doing business with the state during the current fiscal year, except for the state university construction program.
- ◆ To establish programs, adopt rules, and develop annual plans, to be followed by participants in a mentor program in addition to joint ventures. a contracting joint venture must also demonstrate a plan to enhance the certified minority business enterprises' profitability, management skills, financial standing, and marketplace position.

Additionally, the Office may establish mentor programs of businesses to qualify to bid on state projects. Guidelines for the mentor program include:

- ◆ a mentor must possess all applicable state and local licenses related to conducting the mentor's business.
- ◆ a mentor shall provide to a certified minority business enterprise any financial, technical, management, and practical training and guidance relating to the mentor's business, which must be outlined as written goals and submit them to the office for review.
- ◆ Mentor requirements apply only to those businesses applying for the program, competing for state contracts, and wanting certified minority business enterprise participation credit on a state contract. The protege of the mentor must be a certified minority business enterprise.
- ◆ Mentors who mentor certified minority business enterprises or small business enterprises' located in an area targeted by the Governor's Front Porch Florida Initiative may receive credit for meeting minority business enterprise contracting goals.

- ◆ To qualify for being a protege, the business must be a certified minority business enterprise.
- ◆ The mentor must submit the written mentor plan to the office for approval if the mentor desires to submit the mentor-protege relationship for minority business enterprise participation credit.

Furthermore, this section provides the following ranges for state spending goals based on the total amount spent in each industry category, and the ranges for the subdivision of each category.

1. Construction contract spending: 12 - 21 percent of total spending; 2.4 - 4.3 percent to black Americans; 2.4 - 6 percent for Hispanic-Americans, 0.4 percent for Asian-Americans, 0.3 for Native Americans, and 6.4 - 11 percent for American women.
2. Architectural and engineering contract spending: 17 - 25 percent of total spending; 2.6 percent for black Americans; 4.5 - 9 percent for Hispanic-Americans; 1 percent for Asian-Americans; 0.1 percent for Native Americans, and 8.8 - 15 percent for American women.
3. Commodities contract spending: 5 - 24 percent of total spending; 1.5 - 4 percent for black Americans, 1.5 - 4 percent for Hispanic-Americans; 0.2 - 0.5 for Asian-Americans; 0.2 - 0.5 percent for Native Americans; 1.6 - 15 percent for American women.
4. Contractual spending: 5 - 25 percent of total spending; 0.4 - 7 percent for black American; 0.3 - 7 for Hispanic-Americans; 2.3 percent for Asian-Americans; 0.2 -0.5 percent for Native Americans; and 1.8 - 8.2 percent for American women.

Finally, this section provides for a disparity study to be completed and presented to the Legislature no later than December 1, 2002, to determine the effectiveness in achieving stated goals and to revise or modify the program. In specific areas where the Legislature determines there is no disparity, the program must be discontinued within 1 year. The Governor is directed to appoint a Minority Business Ombudsman to monitor progress, receive complaints, and report progress to the commission, by November 1 of each year, in those areas where the program has been phased out or repealed to determine if a disparity is recurring. The program may be reestablished in such areas. The section expires July 1, 2006; however, the ombudsman shall continue to monitor and report findings to the Governor.

**Section 9** - Creates s. 287.09452, F.S., the Small and Minority Business Management and Technical Assistance Program, to provide meaningful assistance to small and business enterprises and certified minority business enterprises by developing skills through a program of construction and business-management training, as well as by contracting opportunities, partnering for mentor- proteges, joint venture, and financial assistance in the form of bond guarantees to primarily remedy the effects of past economic disparity and historical discrimination. Participation in the program is limited to those businesses that are certified by the Small Business and Economic Development Office as a small business enterprise or a minority business enterprise.

The program is to consist of classroom instruction and on-the-job instruction. The program may be conducted by contract. Classroom instruction shall include project planning methods for identifying personnel, equipment and financial needs, as well as tax requirements, bonding requirements, obtaining loans, and mentoring agreements and alliances. On-the-job instruction shall include setting up the job site, cash flow method, accounting, project scheduling, quantity takeoffs, estimating, reading plans and specifications, procedures concerning billing and payment, quality assessment and control methods, and bid and proposal preparation methods.

The Small Business and Economic Development Office shall develop, under contract with the State University System, the community college system, a school district on behalf of its vocational-technical center, or a private consulting firm, a curriculum for instruction in the courses that will lead to a *certification of proficiency in business management* for certified minority businesses and small businesses.

The Small Business and Economic Development Office may expend funds on a bond guarantee program for certified minority business enterprises and small business enterprises demonstrating satisfactory project performance as prescribed by the guidelines. The state will guarantee up to 90 percent of any bond amount that is \$250,000 or less and 80 percent of any bond greater than \$250,000, if the bond is provided by an approved surety.



The Small Business and Economic Development Office may accept financial contributions into the Small and Minority Business Trust Fund and enter into memorandums of understanding with local governmental entities within the state, for the purpose of allowing minority business enterprises and small business enterprises certified with these entities to participate in the construction and business management training, financial assistance, and bonding assistance program, as provided for in this section.

Finally, the Small Business and Economic Development Office must report the progress of this program to the Commission, and the report must include the following:

- ◆ The number of users of the bond guarantee plan, along with the number of defaults and dollar loss to the state;
- ◆ The number of students participating in the management and technical assistance program, listed by location;
- ◆ The number of program participants categorized by ethnicity;
- ◆ The number of program participants that receive state contracts;
- ◆ The cost of the program, categorized by the cost of administration;
- ◆ The cost of instruction on-the-job and in classrooms; and
- ◆ The cost of supplies.

**Section 10** - Creates s. 287.0946, F.S., providing for the Commission on Small Business and Economic Development to create a small and minority business enterprise linked-deposit program to encourage financial institutions to increase the volume of loans made to small business enterprises and minority business enterprises to encourage the development of small and minority businesses. The program language provides definitions, including "Eligible borrower" as a minority business enterprise that is certified by the statewide reciprocal certification process or a small business enterprise certified by the Small Business and Economic Development Office.

"Treasurer" is the Insurance Commissioner and Treasurer, and as such is directed to designate \$15 million of the state's short-term treasury deposits for deposit into participating financial institutions; however, no more than \$2 million may be deposited into any one financial institution. Participating financial institutions must be qualified public depositories under chapter 280 F.S., and must be selected by the Treasurer through a competitive selection program for certificates of deposit. Bids less than 200 basis points below the prevailing rate for United States Treasury securities with a maturity matching the maturity of the deposits may not be accepted.

Participating institutions must provide a 100 percent match for any state treasury funds deposited in the financial institution as resulting from participating in the small and minority business enterprise linked-deposit program. The participating financial institutions share of the funds is to be used to provide loans to eligible borrowers for working capital, contracts, purchases of supplies or equipment, lease of capital assets such as land, buildings and equipment. Loans can not be made for more than \$250,000.

The Small Business and Economic Development Office may recommend to the Commission an order of removal and competitive rebidding if a review of a participating financial institutions participation level of lending to certified businesses does not demonstrate improvement. The commission shall order the removal and competitive rebidding of all deposits at a financial institution that ceases to be qualified under chapter 280, F.S.

Finally, the Small Business and Economic Development Office, with the assistance of the Department of Banking and Finance must compile funding data and provide an annual report to the commission on March 1 of each year containing:

- ◆ The names of participating financial institutions and the number and amount of loans made to certified businesses during the previous calendar year;
- ◆ The average interest rate for small and minority business loans made by each participating financial institution during the previous calendar year;
- ◆ The number of completed certified businesses' loan applications that were denied or disapproved during the previous calendar year by each financial institution;
- ◆ Recommendations for continuation, expansion, improvement, or expiration of the linked-deposit program in its annual report to the Legislature.

This section expires on June 30, 2006, and the designated short-term treasury deposits shall be returned to the Treasurer.

**Section 11** - Amends s. 290.0075(6)&(7), F.S., changing the due date of the Department of Banking and Finance's annual report to the Governor, Speaker of the House of Representative, President of the Senate and the Office of Tourism Trade and Economic Development regarding the Enterprise Zone linked deposit program from February 1, to March 1 of each year. Additionally, the program expiration date is changed from June 30, 2000 to July 1, 2006.

**Sections 12, 13, 14, and 15** - Amend ss. 17.11(2), 255.102(1)&(2), 287.042(2)(a)(c)&(4)(b)(c), 287.057(5)(a)&(6), F.S., respectively, deleting references to the Minority Business Advocacy and Assistance Office and replacing it with the Small Business and Economic Development Office.

**Section 16** - Amends s. 287.0947(1)(5)&(6), F.S., relating to the Florida Advisory Council on Small and Minority Business Development by deleting the reference to the Secretary of the Department of Labor and Employment Security and replacing it with the Commission on Small Business and Economic Development, and in certain instances the executive administrator of the Small Business and Economic Development Office. Additionally, the membership of the Council is increased to include the Chairperson of Enterprise Florida, Inc., or his/her designee, and the Secretary of the Department of Community Affairs or his/her designee.

**Section 17** - Amends s. 288.703(5)(6)&(8), F.S., deleting references to the Department of Labor and Employment Security and to the Minority Business Advocacy and Assistance Office and replacing them with the Commission on Small Business and Economic Development and with the Small Business and Economic Development Office. Additionally, "secretary" is replaced with Executive Administrator of the Commission.

**Section 18** - Amends s. 288.707(3)(a), F.S., increasing by three the number of members on the Florida Black Business Investment Board appointed by the Governor and confirmed by the Senate. The additional three shall be representatives of entities each of which shall have invested an aggregate amount of no less than \$500,000 in black business investment corporations. Further it requires one to be a representative of a state certified minority business enterprise.

**Section 19** - Amends s. 288.901(3), F.S., increasing the Board of Directors of Enterprise Florida, Inc., to include the chairperson of the Florida Black Business Investment Board.

**Section 20** - Amends s. 288.9015(1), F.S., requiring Enterprise Florida, Inc., as the economic development organization for the state, to include in its development of programs to address the creation of Florida Businesses, small and minority businesses.

**Section 21** - Amends s. 288.905(2)(b), F.S., to include the Florida Black Business Investment Board, and the Small Business and Economic Development Office with the Enterprise Florida Board of Directors and the Office of Tourism, Trade and Economic Development to share in the responsibility of developing a strategic plan for economic development for the State of Florida. Additionally, the plan itself is expanded to include: the identification of economic development and job creation goals for small and minority businesses; the identification of private sector resources available to small and minority businesses; and the development, in consultation with the Florida Black Business Investment Board and the Small Business and Economic Development Office, of a comprehensive strategic development plan that will provide maximum opportunity for economic growth of black-owned and other minority businesses in Florida.

**Section 22** - Amends s. 288.906(1)(d), F.S., to include in the annual report of Enterprise Florida, Inc., submitted to the Governor, President of the Senate, Speaker of the House of Representatives, the Senate Minority Leader and the House Minority Leader, a description with respect to furthering the development and viability of small and minority businesses, including accomplishments relating to capital access and technology and *domestic and international* business development programs.

**Section 23** - Amends s. 288.9412(2)(g)&(h), F.S., to include the chairperson of the Florida Black Business Investment Board or the chairperson's designee, and one member representing a minority-owned business, on the Board of Directors for the International Trade and Economic Development Board of Enterprise Florida, Inc.

**Section 24** - Amends s. 288.9414(3), F.S., to include minority-owned businesses in the targeted group for intensive export assistance programs.

**Section 25** - Amends s. 288.9611(2)(c), F.S., to include the chairperson for the Florida Black Business Investment Board or the Chairperson's designee, as a member of the Capital Development Board of Enterprise Florida, Inc.

**Section 26** - Amends s. 288.9613(1), F.S., to include small and minority-owned businesses with those firms considered critical in achieving the state's policy of economic development regarding capital availability for the firms' growth and development.

**Section 27** - Amends s. 288.9614, F.S., to include small and minority-owned businesses with those firms targeted by the capital development board's efforts to address the capital needs of such firms including long-term debt needs and availability of venture capital and to increase international trade and export finance opportunities.

**Section 28** - Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The revenue estimating conference has not yet addressed this bill.

2. Recurring Effects:

The revenue estimating conference has not reviewed this bill; however, the Governor's Office estimates (\$158,586) for staffing and (\$300,000) for OPS and operational expenses.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The revenue estimating conference has not reviewed this bill; however, the Governor's Office estimates (\$158,586) for staffing and (\$300,000) for OPS and operational expenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS a WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

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

Indeterminate.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The revenue estimating conference has not yet addressed this bill.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The revenue estimating conference has not yet addressed this bill.

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

The revenue estimating conference has not yet addressed this bill.

V. COMMENTS:

Comments provided by the Associated Builders and Contractors group supported the mentoring provisions and the establishment of the Commission on Small Business and Economic Development. The group does not support the provision for a range of goals nor "brokering" provided in section 6 of the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/a

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Staff Director:

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Jill F. Turman

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J. Paul Whitfield, Jr.