

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: April 17, 1998 Revised: _____

Subject: Certified Public Accountants

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Masterton</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Chasteen</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable</u>
3.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
4.	<u> </u>	<u> </u>	<u>WM</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill creates the Certified Public Accountant Education Minority Assistance Program to provide scholarships to minority students in Florida enrolled in their fifth year of an accounting program. The scholarship program is funded out of the Professional Regulation Trust Fund from existing license fees for certified public accountants.

This bill creates section 473.3065 of the Florida Statutes.

II. Present Situation:

Chapter 473, F.S., provides for the regulation of certified public accountants (CPAs) by the Board of Accountancy within the Division of Certified Public Accounting of the Department of Professional Regulation (DBPR). The chapter establishes the education, experience and examination requirements to be licensed as a CPA in Florida.

Section 473.306, F.S., sets forth the requirements to sit for the CPA examination, including, after August 2, 1983, a baccalaureate degree with a major in accounting or its equivalent plus at least 30 semester or 45 quarter hours in excess of those required for a 4-year baccalaureate degree (commonly referred to as the fifth year requirement).

Section 473.305, F.S., allows the board to set fees for applications, examination, and licensing by rule. The fee for new or renewal licenses may not exceed \$250 biennially. The current fee for a new license is \$25. The current biennial renewal fee is \$95. The balance in the Professional Regulation Trust Fund for the Board of Accountancy on December 31, 1997, was \$2,572,509.

III. Effect of Proposed Changes:

The bill creates s. 473.3065, F.S., to establish the Certified Public Accountant Education Minority Assistance Program for Florida residents. The program provides annual scholarships to minority students enrolled in the fifth year of an accounting program at Florida educational institutions approved by the board.

The scholarships are funded from a fee assessed as a portion of the existing license fee for all new and renewed CPA licenses. The Board of Accountancy must establish the fee, which may not exceed \$10 per license. The fees must be deposited in a special account within the Professional Regulation Trust Fund earmarked for the scholarship. DBPR may spend up to \$100,000 annually on the program, but is prohibited from allocating overhead charges to the account. Funds for scholarships may be disbursed only upon recommendation of the advisory council and approval of the board.

The board must establish, by rule, criteria for awarding scholarships, including eligibility criteria, application procedures, amounts and time periods for scholarships, annual amounts of scholarships, and the minimum balance to be maintained in the fund. Eligibility for scholarships must include, at a minimum: financial need; ethnic, gender, or racial minority status as defined in s. 288.703, F.S.; and scholastic ability and performance. Section 288.703, F.S., defines “minority person” as a lawful, permanent resident of Florida who is African American, Hispanic American, Asian American, Native American or an American woman.

The board must evaluate each applicant compared to other applicants in determining scholarship recipients. Determinations of the board regarding scholarship recipients are not agency action for the purposes of ch. 120, F.S.

The bill creates a five member advisory council to assist the board in administering the program. The advisory council consists of five Florida CPAs appointed by the board. Membership must be diverse and representative of gender, ethnic, and racial status. The chairman of the committee 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 of the five members must be a woman. The advisory council members serve without compensation. Each member’s expenses are to be borne by the member or the organization the member represents, except for the Board of Accountancy member, who may be compensated in accordance with s 455.207, F.S. (related to board member compensation) and s.112.061, F.S. (related to per diem and travel expenses for public officers).

The act is effective on July 1 of the year in which it is enacted.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill authorizes the state Board of Accountancy to grant scholarships to fifth year accounting students based on their minority status (that is, African American, Hispanic American, Asian American, Native American, or American woman). The apparent purpose of the scholarship program is to increase the number of minority CPAs in Florida. Race-conscious government action is subject to challenge under the equal protection clause of the federal constitution (s. 1, Art. XIV, U.S. Const.) 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. Pena*, 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 percent 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); *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).

The *Croson* case is of particular interest in light of the factual predicates required of legislative bodies. For race-based remediation to be a valid purpose there must be a statistical showing of imbalance which can be attributed to discrimination, not merely its conclusionary assertion by the implementing authority. In a recent review of Florida government-based minority business enterprise programs¹ the report authors noted the four elements which determine the legal sufficiency of minority-based preferences: they must avoid numerical quotas; they should have a mandatory expiration period when untoward bias has been eliminated; they should be implemented in conjunction with race-neutral programs; and they should be limited in scope.² None of these recommendations appears to be present in this proposed scholarship program.

In distinction to the line of cases cited above, there is case law which has found remedial practices of governmental bodies to be legally sufficient while still being race-conscious. In *South Florida Chapter, Associated General Contractors of America, Inc. v. Metropolitan Dade County*, 723 F.2d 846 (11th Cir. 1984) a minority contractor set-aside program enacted by ordinance was found constitutional since it provided for otherwise qualified contractors and was aimed at remedying specific discriminatory practices. In *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990) a similar validation of county remedial practices was obtained.

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.

¹D.J. Miller & Associates, Inc., *Disparity Study for the State of Florida*, Volume I, Final Report. Tallahassee, FL: December 1997.

²An earlier state review of women and minority business programs also reported no apparent evidence of discriminatory practices. College of Business, Florida State University, *Women and Minority Business Enterprise Disparity Study*, Tallahassee, FL: December 1, 1995. The report found significant compliance ratios relative to legislative performance standards and concluded that there was no inference of disparity in the certified minority vendor programs and, in some cases, actual over representation of minority vendors in state procurement awards.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Since the money to fund the scholarship program must come from existing license fees, the bill should not result in any increase in fees.

B. Private Sector Impact:

The bill would benefit minority accounting students who otherwise might be discouraged from pursuing licensure as a CPA because of the expense of the fifth year of accounting education.

C. Government Sector Impact:

The bill will require an annual appropriation from the Professional Regulation Trust Fund to enable the DBPR to spend the money from the scholarship account.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Institute of Certified Public Accountants Educational Foundation, Inc. currently offers financial assistance to qualified accounting students. Criteria for awarding scholarships include educational achievement, financial need, and professional, social, and charitable activities. Last year the foundation distributed \$1,250 to each of 50 fourth and fifth year students, for a total of \$62,500.

According to an American Association of Certified Public Accountants Issue Briefing (Vol. I, No. 16, November 21, 1997) nationally only 5 percent of CPAs in public accounting come from minority groups, including 1 percent African American, 1.5 percent Hispanic, and less than 0.5 percent Native American.

VIII. Amendments:

None.