

CHAPTER 85-104

House Bill No. 1266

An act relating to small and minority businesses; creating the "Florida Small and Minority Business Assistance Act of 1985"; providing definitions; creating a Small and Minority Business Advisory Council within the Department of Commerce; providing for an advocate; providing for a statewide contracts register; providing a penalty with respect to certain late payments by contractors to subcontractors and suppliers; amending s. 17.11, F.S., directing the Comptroller to have reported from the state accounting system certain disbursements made to small businesses; amending s. 120.54, F.S., requiring agencies to consider the impact of certain actions under the Administrative Procedure Act upon small businesses; providing procedures; amending s. 215.422, F.S., relating to warrants vouchers and invoices, processing time limits and agency compliance: creating the Florida Black Business Investment Board; providing for an executive director and employees; providing powers; providing conditions for board action; creating the Florida Investment Incentive Trust Fund; providing for Florida guarantor funds; providing for capital participation instruments; creating s. 625.3245, F.S., providing for investments in capital participation instruments amending s. 657.042, F.S., relating to investment powers of credit unions; amending s. 658.67, F.S., providing for investment powers of banks and trust companies; amending s. 665.0701, F.S., relating to investment powers of certain associations; providing for an annual report; amending s. 287.042, F.S., providing for the powers of the Division of Purchasing of the Department of General Services; providing for the certification of minority business enterprises; requiring state agencies to utilize minority business enterprises; amending s. 287.055, F.S., relating to the acquisition of professional architectural, engineering, landscape architectural, or land-surveying services; amending s. 287.062, F.S., authorizing agencies to reserve certain competitive bid contracts for certified minority business

enterprises; amending s. 287.094, F.S., relating to minority business enterprise programs and penalties for false representation; establishing the Minority Business Enterprise Assistance Office within the Department of General Services; providing for agency minority enterprise assistance; amending s. 288.39, F.S., relating to the duties of the Division of Economic Development of the Department of Commerce; providing that no surety bonds issued by certain insurers shall be refused under certain circumstances; providing for review and repeal; providing for severability; providing an effective date.

WHEREAS, economic growth and development are among the highest priorities in Florida, and

WHEREAS, an important part of promoting the economic growth in Florida involves fostering economic diversification through the development of new industries and the expansion of existing businesses, and

WHEREAS, the health of small and minority businesses is central to the overall welfare of Florida's economy, and

WHEREAS, independent and locally owned businesses have historically provided a foundation for community stability, a value which is becoming more important as we recognize the mammoth social and economic cost of economic dislocation, and

WHEREAS, a strong small and minority business sector in Florida can protect an endangered right, the right of the individual to enter productive activity as a self-reliant, independent entrepreneur, and

WHEREAS, the Legislature can encourage growth of the small and minority business by removing unnecessary burdens imposed on these businesses and by aggressively promoting an atmosphere conducive to their development, and

WHEREAS, the time has come to eliminate the economically crippling and demeaning disparities between blacks and other Floridians, and

WHEREAS, there is a great disparity in the economic and social well-being of black Floridians as compared to both the general population and other minority groups, and

WHEREAS, the disparities between blacks and other minorities caused primarily by the vestiges of racial discrimination dictate that the most urgent need for direct financial and other assistance lies in the black business community, and

WHEREAS, because of past discrimination and persistent unwritten social prejudices, blacks face substantial barriers in obtaining the major elements necessary for business ownership such as availability of capital, technical assistance, and market opportunities, and

WHEREAS, the rate of business formation for blacks is much lower than it is for the rest of the population, including minorities other than blacks, and

WHEREAS, blacks are represented in the professional, executive, and managerial work force in substantially smaller percentages than nonminorities and other minorities and tend to be much more highly concentrated in the lower paying, lower status manual labor and domestic service sector than the rest of the population, including other minorities, and

WHEREAS, blacks are often unable to establish the necessary relationships in the traditional networks of commerce such as with credit sources, suppliers and potential markets for their products or services, and

WHEREAS, assisting qualified blacks in obtaining adequate capital and management skills for business ventures, as well as eradicating existing market barriers, are essential elements of a strategy to advance business development among blacks, and

WHEREAS, successful strategies to advance business development should reduce crime and social dependence, save state resources in the long run, and enhance self-esteem and the quality of life among black Floridians, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 7. Subsection (2) and paragraph (a) of subsection (11) of section 120.54, Florida Statutes, 1984 Supplement, are amended to read:

120.54 Rulemaking; adoption procedures.--

(2)(a) Each agency, prior to the adoption, amendment, or repeal of any rule, shall consider the impact of such proposed action on small business as defined in the Florida Small and Minority Business Assistance Act of 1985 and, whenever possible shall tier such rules to reduce disproportionate impacts on small business and to avoid regulating businesses which do not contribute significantly to the problem the rule is designed to regulate. An agency may define small business to include more than 25 persons if it finds that such a definition is necessary to adapt any rule to the needs and problems of small business. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small business:

1. Establishing less stringent compliance or reporting requirements in the rule for small business.

2. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

3. Consolidating or simplifying the rule's compliance or reporting requirements for small business.

4. Establishing performance standards to replace design or operational standards in the rule for small business.

5. Exempting small business from any or all requirements of the rule

(b) Each agency shall provide information on its proposed action by preparing a detailed economic impact statement. The economic impact statement shall include:

1. An estimate of the cost to the agency of the implementation of the proposed action, including the estimated amount of paperwork;

2. An estimate of the cost or the economic benefit to all persons directly affected by the proposed action;

3. An estimate of the impact of the proposed action on competition and the open market for employment, if applicable; ~~and~~

4. A detailed statement of the data and method used in making each of the above estimate; and-

5. An analysis of the impact on small business as defined in the Florida Small and Minority Business Assistance Act of 1985.

~~(c)(b)~~ If an economic impact statement is required before an agency takes action on an application or petition by any person, the statement shall be prepared within a reasonable time after the application is made or the petition is filed.

~~(d)(e)~~ The failure to provide an adequate statement of economic impact is a ground for holding the rule invalid; however, beginning October 1, 1978, no rule shall be declared invalid for want of an adequate statement of economic impact unless the issue is raised in an administrative or judicial proceeding within 1 year of the effective date of the rule to which the statement applies.

(3)(a) If the intended action concerns any rule other than one relating exclusively to organization, procedure, or practice, the agency shall, on the request of any affected person received within 14 days after the date of publication of the notice, give affected persons an opportunity to present evidence and argument on all issues under consideration appropriate to inform it of their contentions. Prisoners, as defined in s. 944.02(5), may be limited by the Department of Corrections to an opportunity to submit written statements concerning intended action on any department rule. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. Any material pertinent to the issues under consideration submitted to the agency within 14 days after the date of publication of the notice or submitted at a public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

(b) If the agency determines that the proposed action will affect small business as defined by the agency as provided in paragraph (2) (a) the agency shall send written notice of such rule to the Small and Minority Business Advocate, Minority Business Enterprise Assistance Office, and the Division of Economic Development of the Department of Commerce not less than 21 days prior to the intended action.

1. Within the 21-day period after written notice has been sent and the day on which the intended action is to take place the agency shall give the Small and Minority Business Advocate, Minority Business Enterprise Assistance Office and the Division of Economic Development of the Department of Commerce an opportunity to present evidence and argument and to offer alternatives regarding the impact of the rule on small business.

2. Each agency shall adopt those alternatives offered pursuant to this subsection which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small business.

3. If an agency does not adopt all alternatives offered pursuant to this subsection, it shall, prior to rule adoption or amendment and pursuant to subsection

(11) file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days of the filing of such notice, the agency shall send a copy of such notice to the Small and Minority Business Advocate, Minority Business Enterprise Assistance Office, and the Division of Economic Development of the Department of Commerce.

(11)(a) The adopting agency, shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of the estimate of economic impact required by subsection (2); a statement of the extent to which the proposed rule establishes standards more restrictive than federal standards or a statement that the proposed rule is no more restrictive than federal standards or that a federal rule on the same subject does not exist; a written statement of the impact on small business as defined in the Florida Small and Minority Business Assistance Act of 1985; and the notice required by subsection (1). After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, the adopting agency shall file any changes in the proposed rule and the reasons therefor with the committee or advise the committee that there are no changes. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a detailed statement of such change by certified mail or actual delivery to any person who requests it in writing at the public hearing. The agency shall file the change with the committee, and provide the statement of change to persons requesting it, at least 7 days prior to filing the rule for adoption. Educational units, other than units of the State University System and the Florida School for the Deaf and the Blind, and local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee. This paragraph does not apply to emergency rules adopted pursuant to subsection (9). However, agencies, other than those listed herein, adopting emergency rules shall file a copy of each emergency rule with the committee.