

By the Committee on Commerce; and Senator Smith

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1 A bill to be entitled
2 An act relating to the Black Business Investment
3 Board, Inc.; amending s. 288.707, F.S.; deleting a
4 description of the board as a public-private entity;
5 requiring the board to assist the Office of Tourism,
6 Trade, and Economic Development in creating a long-
7 range strategic policy for the Black Business Loan
8 Program; revising the entities with whom the board may
9 create partnerships for the development and expansion
10 of black business enterprises; revising the membership
11 of the board of directors; providing for certain
12 members to be ex officio, nonvoting members; revising
13 requirements for the selection, removal, and terms of
14 the chair and vice chair; amending s. 288.709, F.S.;
15 requiring that upon dissolution of the board, an asset
16 that was not acquired through the use of state funds
17 be returned to the donor who provided the asset or the
18 funding or resources to acquire the asset; amending s.
19 288.7091, F.S.; requiring the board to aid the
20 development and expansion of black business
21 enterprises by leveraging federal, state, local, and
22 private funds; requiring the board to collaborate with
23 agencies of the federal, state, and local governments,
24 private entities, nonprofit organizations, and
25 national organizations; amending s. 288.7102, F.S.;
26 revising the dates by which applications for loans
27 from the Black Business Loan Program must be received
28 and processed by the Office of Tourism, Trade, and
29 Economic Development; revising eligibility

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30 requirements for new and existing program recipients;
31 revising the date by which the Office of Tourism,
32 Trade, and Economic Development must distribute
33 appropriations to program recipients; deleting
34 provisions providing for the board to recommend the
35 certification of eligible recipients for loans;
36 revising the percentages of program funds that a
37 program recipient may use for technical support for
38 black business enterprises or direct administrative
39 costs; amending s. 288.71025, F.S.; authorizing the
40 Office of Tourism, Trade, and Economic Development to
41 bring a civil action against an entity that unlawfully
42 holds itself out as a black business investment
43 corporation; amending s. 288.712, F.S.; deleting a
44 provision relating to the black contractors bonding
45 program, which requires the board to provide
46 assistance to the Office of Supplier Diversity within
47 the Department of Management Services; amending s.
48 288.714, F.S.; requiring that recipients of loans from
49 the Black Business Loan Program provide quarterly
50 reports to the Office of Tourism, Trade, and Economic
51 Development; requiring that the Office of Tourism,
52 Trade, and Economic Development compile a summary of
53 quarterly reports from loan recipients and provide a
54 copy of the summary to the board; requiring that the
55 Office of Tourism, Trade, and Economic Development and
56 the board provide annual reports to the Governor and
57 Legislature by a certain date; providing an effective
58 date.

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

Section 1. Subsections (1), (2), (3), and (6) of section 288.707, Florida Statutes, are amended to read:

288.707 Florida Black Business Investment Board, Inc.; findings; creation; membership; organization; meetings; disclosure.—

(1) The Legislature finds that the public interest of the state will be served by the creation of a not-for-profit corporation, ~~public-private entity~~ the primary mission of which ~~is shall be~~ to assist in the development and expansion of black business enterprises by:

(a) Advising the Office of Tourism, Trade, and Economic Development in its oversight of the Black Business Loan Program and assisting in the creation of a ~~creating~~ long-range strategic policy for the program.

(b) Evaluating the unmet need for capital by black business enterprises in the state.

(c) Creating partnerships between federal, state, and local governments, and private enterprises, and national organizations to aid in the development and expansion of black business enterprises.

(d) Providing a network of information resources for black business enterprises and providing technical assistance through this network.

(2) (a) There is created a not-for-profit corporation to be known as the "Florida Black Business Investment Board, Inc.," referred to in ss. 288.707-288.714 as the board, which shall be

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88 registered, incorporated, organized, and operated in compliance
89 with chapter 617 and which must ~~shall~~ not be a unit or entity of
90 state government. The Legislature determines, however, that
91 public policy dictates that the board operate in the most open
92 and accessible manner consistent with its public purpose.
93 Therefore, the Legislature specifically declares that the board
94 and its advisory committees or similar groups created by the
95 board, including any subsidiaries, are subject to the provisions
96 of chapter 119, relating to public records, and the provisions
97 of chapter 286, relating to public meetings and records.

98 (b) The board shall contract with the Office of Tourism,
99 Trade, and Economic Development to implement the provisions of
100 ss. 288.707-288.714.

101 (3) The board shall be governed by a board of directors
102 chosen as follows:

103 (a) Four ~~Five~~ members appointed by the Governor who shall
104 serve terms of 4 years each, except that in making initial
105 appointments, the Governor shall appoint three members to serve
106 for terms of 2 years each and two members to serve for terms of
107 3 years each.

108 (b) One member appointed by the President of the Senate who
109 shall serve a term of 2 years.

110 (c) One member appointed by the Speaker of the House of
111 Representatives who shall serve a term of 2 years.

112 (d) The vice chair of Enterprise Florida, Inc., or his or
113 her designee, who shall be an ex officio, nonvoting member.

114 (e) Two at-large members selected by the board of directors
115 who are nationally known for their achievements in finance,
116 small business development, or economic development.

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117 ~~(e) The chair of the Florida Development Finance~~
118 ~~Corporation created pursuant to s. 288.9604.~~

119 (f) Four presidents of participating black business
120 investment corporations who shall be appointed by the Executive
121 Director of the Office of Tourism, Trade, and Economic
122 Development upon the recommendation of the Florida Consortium of
123 Black Business Investment Corporations, Inc., to serve for terms
124 of 3 years each. Each shall be eligible for reappointment to one
125 additional term of 3 years.

126 (6) The board shall elect a chair and vice chair from among
127 its members for a term of 2 years. The chair may be removed by a
128 two-thirds vote of the membership of the board. ~~The Governor~~
129 ~~shall appoint the chair, who shall be a member of the board and~~
130 ~~shall serve at the pleasure of the Governor. The board shall~~
131 ~~annually elect one of its members as vice chair.~~

132 Section 2. Subsection (9) of section 288.709, Florida
133 Statutes, is amended to read:

134 288.709 Powers of the Florida Black Business Investment
135 Board, Inc.—The board shall have all the powers granted under
136 chapter 617 and any powers necessary or convenient to carry out
137 and effectuate the purposes and provisions of ss. 288.707-
138 288.714, including, but not limited to, the power to:

139 (9) Provide in its bylaws that, upon the dissolution of the
140 board, all of its assets acquired through the use of state
141 funds, after payment of all legal debts and liabilities, revert
142 to the state. However, an asset that is not acquired through the
143 use of state funds, or the funding or resources necessary to
144 acquire the asset, shall be returned to the donor who provided
145 the asset.

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146 Section 3. Subsections (2) and (6) of section 288.7091,
147 Florida Statutes, are amended to read:

148 288.7091 Duties of the Florida Black Business Investment
149 Board, Inc.—The board shall:

150 (2) Aid the development and expansion of black business
151 enterprises by leveraging federal, state, local, and private
152 funds to be held by the board for use according to the
153 provisions of ss. 288.707-288.714.

154 (6) Collaborate with agencies of the federal, state, and
155 local governments, private entities, nonprofit organizations,
156 and national organizations ~~the Department of Transportation, the~~
157 ~~Department of Management Services, including the Florida~~
158 ~~Minority Business Loan Mobilization Program, Workforce Florida,~~
159 ~~Inc., and other state agencies and partners, the State~~
160 ~~University System, including the Florida Agricultural and~~
161 ~~Mechanical University's Institute of Urban Policy and Commerce,~~
162 ~~school boards, and local governments~~ to create a network of
163 information and to identify available resources to enhance the
164 development and expansion of black business enterprises.

165 Section 4. Section 288.7102, Florida Statutes, is amended
166 to read:

167 288.7102 Black Business Loan Program.—

168 (1) The Black Business Loan Program is established in the
169 Office of Tourism, Trade, and Economic Development. Under the
170 program, the office shall annually certify eligible recipients
171 and subsequently disburse funds appropriated by the Legislature,
172 through such eligible recipients, to black business enterprises
173 that cannot obtain capital through conventional lending
174 institutions but that could otherwise compete successfully in

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175 the private sector.

176 (2) The office shall establish an application and annual
177 certification process for entities seeking funds to participate
178 in providing loans, loan guarantees, or investments in black
179 business enterprises pursuant to the Florida Black Business
180 Investment Act. ~~The board shall receive the applications and~~
181 ~~make recommendations for certification to the office.~~ The office
182 shall process all applications and recertifications submitted by
183 June 1 ~~July 1~~ on or before July 31 ~~September 30~~.

184 (3) If the Black Business Loan Program is appropriated any
185 funding in a fiscal year, the office shall distribute an equal
186 amount of the appropriation, calculated as the total annual
187 appropriation divided by the total number of program recipients
188 certified on or before July 31 ~~September 30~~ of that fiscal year.

189 (4) To be eligible to receive funds and provide loans, loan
190 guarantees, or investments under this section, a recipient must:

191 (a) Be a corporation registered in the state.

192 (b) For an existing recipient, annually submit to the
193 office a financial audit performed by an independent certified
194 public accountant for the most recently completed fiscal year,
195 which audit does not reveal any material weaknesses or instances
196 of material noncompliance.

197 (c) For a new recipient:

198 1. ~~(b)~~ Demonstrate that its board of directors includes
199 citizens of the state experienced in the development of black
200 business enterprises.

201 2. ~~(c)~~ Demonstrate that the recipient has a business plan
202 that allows the recipient to operate in a manner consistent with
203 ss. 288.707-288.714 and the rules of the office.

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204 3.~~(d)~~ Demonstrate that the recipient has the technical
205 skills to analyze and evaluate applications by black business
206 enterprises for loans, loan guarantees, or investments.

207 4.~~(e)~~ Demonstrate that the recipient has established viable
208 partnerships with public and private funding sources, economic
209 development agencies, and workforce development and job referral
210 networks.

211 5.~~(f)~~ Demonstrate that the recipient can provide a private
212 match equal to 20 percent of the amount of funds provided by the
213 office.

214 (d)~~(g)~~ For an existing or new recipient, agree to maintain
215 the recipient's books and records relating to funds received by
216 the office according to generally accepted accounting principles
217 and in accordance with the requirements of s. 215.97(7) and to
218 make those books and records available to the office for
219 inspection upon reasonable notice.

220 ~~(5) The board shall annually recommend to the office~~
221 ~~certification of~~ Each eligible recipient, ~~who~~ must meet the
222 provisions of ss. 288.707-288.714, the terms of the contract
223 between the recipient and the office, and any other applicable
224 state or federal laws. An entity may not receive funds under ss.
225 288.707-288.714 unless the entity meets annual certification
226 requirements.

227 (6) Upon approval by the office and before ~~prior to~~ release
228 of the funds as provided in this section, the office shall issue
229 a letter certifying the applicant as qualified for an award. The
230 office and the applicant shall enter into an agreement that sets
231 forth the conditions for award of the funds. The agreement must
232 include the total amount of funds awarded; the performance

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233 conditions that must be met once the funding has been awarded,
234 including, but not limited to, compliance with all of the
235 requirements of this section for eligible recipients of funds
236 under this section; and sanctions for failure to meet
237 performance conditions, including any provisions to recover
238 awards.

239 (7)~~(a)~~ The office, in consultation with the board, shall
240 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
241 this section.

242 ~~(b) The board shall adopt policies and procedures necessary~~
243 ~~to implement this section.~~

244 (8) A black business investment corporation certified by
245 the office as an eligible recipient under this section is
246 authorized to use funds appropriated for the Black Business Loan
247 Program in any of the following forms:

248 (a) Purchases of stock, preferred or common, voting or
249 nonvoting; however, no more than 40 percent of the funds may be
250 used for direct investments in black business enterprises;

251 (b) Loans or loan guarantees, with or without recourse, in
252 either a subordinated or priority position; or

253 (c) Technical support to black business enterprises, not to
254 exceed 9 7 percent of the funds received, and direct
255 administrative costs, not to exceed 12 ~~10~~ percent of the funds
256 received.

257 (9) It is the intent of the Legislature that if any one
258 type of investment mechanism authorized in subsection (8) is
259 held to be invalid, all other valid mechanisms remain available.

260 (10) All loans, loan guarantees, and investments, and any
261 income related thereto, shall be used to carry out the public

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262 purpose of ss. 288.707-288.714, which is to develop black
263 business enterprises. This subsection does not preclude a
264 reasonable profit for the participating black business
265 investment corporation or for return of equity developed to the
266 state and participating financial institutions upon any
267 distribution of the assets or excess income of the investment
268 corporation.

269 Section 5. Section 288.71025, Florida Statutes, is amended
270 to read:

271 288.71025 Prohibited acts; penalties.—

272 (1) It is unlawful for any person to hold itself out as a
273 black business investment corporation without being certified ~~by~~
274 ~~the board~~ as eligible to participate in the Florida Black
275 Business Loan Program.

276 (2) In addition to any other penalties or remedies provided
277 under law, the office board ~~board~~ may bring a civil action in any
278 court of competent jurisdiction against any person for a knowing
279 or willful violation of this section. Upon an adverse
280 adjudication, the court may impose a civil penalty of up to \$500
281 and payment of court costs and reasonable attorney's fees
282 incurred by the plaintiff.

283 Section 6. Subsection (5) of section 288.712, Florida
284 Statutes, is amended to read:

285 288.712 Guarantor funds.—

286 (5) The board shall do all of the following to implement
287 the black contractors bonding program:

288 (a) Conduct outreach, marketing, and recruitment of black
289 contractors.

290 ~~(b) Provide assistance to the Office of Supplier Diversity~~

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291 ~~within the Department of Management Services, as needed, to~~
292 ~~certify new black business enterprises and to train appropriate~~
293 ~~department staff.~~

294 (b)~~(e)~~ Provide business development services to black
295 business enterprises in the developmental and transitional
296 stages of the program, including financing and bonding
297 assistance and management and technical assistance.

298 (c)~~(d)~~ Develop a mentor program to bring businesses into a
299 working relationship with black contractors in a way that
300 commercially benefits both entities and serves the purpose of
301 the program.

302 ~~(e) No later than December 31, 2007, prepare and submit to~~
303 ~~the Governor a detailed report outlining and evaluating the~~
304 ~~progress made in implementing the black contractors bonding~~
305 ~~program.~~

306 (d)~~(f)~~ Establish a process by which black contractors may
307 apply for contract assistance, financial and bonding assistance,
308 management and technical assistance, and mentoring
309 opportunities.

310 Section 7. Section 288.714, Florida Statutes, is amended to
311 read:

312 288.714 Quarterly and annual reports.—

313 (1) Each recipient of state funds under s. 288.7102 shall
314 provide to the office ~~board~~ a quarterly report within 15 days
315 after the end of each calendar quarter that includes a detailed
316 summary of the recipient's performance of the duties imposed by
317 s. 288.7102, including, but not limited to:

318 (a) The dollar amount of all loans or loan guarantees made
319 to black business enterprises, the percentages of the loans

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320 guaranteed, and the names and identification of the types of
321 businesses served.

322 (b) Loan performance information.

323 (c) The amount and nature of all other financial assistance
324 provided to black business enterprises.

325 (d) The amount and nature of technical assistance provided
326 to black business enterprises, including technical assistance
327 services provided in areas in which such services are otherwise
328 unavailable.

329 (e) A balance sheet for the recipient, including an
330 explanation of all investments and administrative and
331 operational expenses.

332 (f) A summary of all services provided to nonblack business
333 enterprises, including the dollar value and nature of such
334 services and the names and identification of the types of
335 businesses served.

336 (g) Any other information as required by policies adopted
337 by the office board.

338 (2) The office board must compile and ~~provide to the office~~
339 a summary of all quarterly reports and provide a copy of the
340 summary to the board within 30 days after the end of each
341 calendar quarter that includes a detailed summary of the
342 recipient's performance of the duties imposed by s. 288.7102.

343 (3) By August 31 ~~May 1~~ of each year, the office board shall
344 provide to the Governor, the President of the Senate, and the
345 Speaker of the House of Representatives a detailed report of the
346 performance of the Black Business Loan Program. The report must
347 include, including:

348 ~~(a)~~ a cumulative summary of quarterly report data required

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349 by subsection (1).

350 (4) By August 31 of each year, the board shall provide to
351 the Governor, the President of the Senate, and the Speaker of
352 the House of Representatives a detailed report of the board's
353 performance, including:

354 (a)~~(b)~~ A description of the strategies implemented by the
355 board to increase private investment in black business
356 enterprises.

357 (b)~~(e)~~ A summary of the board's performance of its duties
358 under ss. 288.707-288.712.

359 (c)~~(d)~~ The most recent 5-year projection of the need for
360 capital by black business enterprises.

361 (d)~~(e)~~ Recommendations for legislative or other changes to
362 enhance the development and expansion of black business
363 enterprises in the state.

364 (e)~~(f)~~ A projection of the program's activities during the
365 next 12 months.

366 Section 8. This act shall take effect upon becoming a law.