

By Representative Roberts-Burke

1 A bill to be entitled
2 An act relating to property and services
3 procurement; creating s. 287.086, F.S.;
4 providing price preferences for businesses in
5 historically underutilized business zones;
6 providing requirements; providing criteria;
7 providing an exception; creating s. 287.0941,
8 F.S.; prohibiting specified activities in
9 procuring property and services; providing
10 penalties; amending s. 287.0943, F.S.; revising
11 certain certification criteria for certain
12 minority business enterprises; amending s.
13 287.09431, F.S.; authorizing the Department of
14 Labor and Employment Security to negotiate the
15 terms of the statewide and interlocal agreement
16 on certification of business concerns for
17 minority business enterprises for certain
18 purposes; amending s. 287.09451, F.S.;
19 providing additional powers of the Minority
20 Business Advocacy and Assistance Office;
21 revising procedural requirements for relative
22 property and services expenditure percentages
23 for specified minorities for specified
24 contracts; requiring the office to develop
25 procedures to establish dollar goals by
26 procurement category for certain agencies;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
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31

1 Section 1. Section 287.086, Florida Statutes, is
2 created to read:

3 287.086 Preference to historically underutilized
4 business zone businesses.--

5 (1) Whenever two or more bids or proposals, which are
6 equal with respect to price, quality, service, and minority
7 business participation, are received by a state agency for the
8 procurement of goods or services pursuant to an invitation to
9 bid or a request for proposals, a bid received from a
10 certified zone business shall be awarded a 10 percent price
11 preference for an invitation to bid or shall be awarded 10
12 points to the points awarded pursuant to a request for
13 proposals. In order to be a certified zone business, such
14 business shall:

15 (a) Certify that at least 10 percent of the employees
16 of the business are full-time residents of a zone in this
17 state; or

18 (b) Certify that its principal place of business has
19 been located in a zone in this state for the past 2 years.

20 (2) Each agency is encouraged to spend 0.5 percent of
21 moneys actually expended with private vendors with zone
22 businesses.

23 (3) For the purposes of this section, a "zone" means a
24 historically underutilized business zone which is defined as a
25 geographical area which has been designated as an enterprise
26 zone pursuant to chapter 290.

27 (4) Spending with zone businesses owned and operated
28 by a woman or a minority person shall be counted towards the
29 goals specified in s. 287.09451.

30 (5) The provisions of this section shall not apply to
31 federally funded transportation projects.

1 Section 2. Section 287.0941, Florida Statutes, is
2 created to read:

3 287.0941 Discrimination in procurement of personal
4 property and services; penalties.--

5 (1) It is unlawful for any agency employee, because of
6 race, color, religion, sex, national origin, age, handicap, or
7 marital status, to:

8 (a) Discriminate against a person in the terms,
9 conditions, or privileges of participation in contracting and
10 procurement activities.

11 (b) Cause to be made any untrue or intentionally
12 misleading statements or advertisements regarding availability
13 of contacting and procurement activities.

14 (c) Aid, abet, incite, compel, or coerce any person to
15 engage in any of the practices prohibited by the provisions of
16 this act, or to obstruct or prevent any person from complying
17 with the provisions of this section.

18 (2) Violation of any provision of subsection (1)
19 shall, pursuant to applicable procedures of law, constitute
20 grounds for and may be punished by:

21 1. Dismissal from employment;

22 2. Suspension from employment for not more than 90
23 days without pay;

24 3. Demotion; or

25 4. Reduction in salary level.

26 Section 3. Paragraph (e) of subsection (1) and
27 paragraph (a) of subsection (4) of section 287.0943, Florida
28 Statutes, are amended to read:

29 287.0943 Certification of minority business
30 enterprises.--

31 (1)

1 (e) In assessing the status of ownership and control,
2 certification criteria shall, at a minimum:

3 1. Link ownership by a minority person, as defined in
4 s. 288.703(3), or as dictated by the legal obligations of a
5 certifying organization, to day-to-day control and financial
6 risk by the qualifying minority owner, and to licensure of a
7 minority owner in any trade or profession that the minority
8 business enterprise will offer to the state when certified;
9 however, the minority licenseholder need not be the
10 controlling owner of the enterprise, but must hold an
11 ownership interest. Minority business enterprises presently
12 certified by the state will not be subject to the licensure
13 requirement until 5 years after the effective date of this
14 act.

15 2. If present ownership was obtained by transfer,
16 require the minority person on whom eligibility is based to
17 have owned at least 51 percent of the applicant firm for a
18 minimum of 2 years, when any previous majority ownership
19 interest in the firm was by a nonminority who is or was a
20 relative, former employer, or current employer of the minority
21 person on whom eligibility is based. This requirement shall
22 not apply to minority persons who are otherwise eligible who
23 take a 51-percent-or-greater interest in a firm that requires
24 professional licensure to operate and who will be the
25 qualifying licenseholder for the firm when certified.

26 3. Require that prospective certified minority
27 business enterprises be currently performing a useful business
28 function. A "useful business function" is defined as a
29 business function which results in the provision of materials,
30 supplies, equipment, or services to customers other than state
31 or local government. Acting as a conduit to transfer funds to

1 a nonminority business does not constitute a useful business
2 function unless it is done so in a normal industry practice.
3 As used in this section, the term "acting as a conduit" means,
4 in part, not acting as a regular dealer by making sales of
5 material, goods, or supplies from items bought, kept in stock,
6 and regularly sold to the public in the usual course of
7 business. Brokers, manufacturer's representatives, sales
8 representatives, and nonstocking distributors are considered
9 as conduits that do not perform a useful business function,
10 unless normal industry practice dictates. A business shall not
11 be considered to be a broker, manufacturer, representative,
12 sales representative, or nonstocking distributor if such
13 business maintains a current stock or inventory of at least 1
14 percent of the value of the gross sales of its previous fiscal
15 year, or 1 percent of the value of the gross sales of the
16 current year if the business is a new startup business.

17 (4)(a) The secretary of the Department of Labor and
18 Employment Security shall execute the statewide and interlocal
19 agreement established under s. 287.09431 on behalf of the
20 state. The office shall certify minority business enterprises
21 in accordance with the agreement and, by affidavit, shall
22 recertify such minority business enterprises not less than
23 once every 2 years ~~each year~~.

24 Section 4. The introductory paragraph of section
25 287.09431, Florida Statutes, is amended to read:

26 287.09431 Statewide and interlocal agreement on
27 certification of business concerns for the status of minority
28 business enterprise.--The statewide and interlocal agreement
29 on certification of business concerns for the status of
30 minority business enterprise is hereby enacted in
31 substantially the following form and entered into with all

1 jurisdictions or organizations legally joining therein. The
2 Secretary of Labor and Employment Security, or his or her
3 designee, may negotiate the terms of such agreement to promote
4 its execution by as many governing bodies as feasible.~~If,~~
5 ~~within 2 years from the date that the certification core~~
6 ~~criteria are approved by the Department of Labor and~~
7 ~~Employment Security, the agreement included herein is not~~
8 ~~executed by a majority of county and municipal governing~~
9 ~~bodies that administer a minority business assistance program~~
10 ~~on the effective date of this act, then the Legislature shall~~
11 ~~review this agreement. It is the intent of the Legislature~~
12 ~~that if the agreement is not executed by a majority of the~~
13 ~~requisite governing bodies, then a statewide uniform~~
14 ~~certification process should be adopted, and that said~~
15 ~~agreement should be repealed and replaced by a mandatory state~~
16 ~~government certification process.~~

17 Section 5. Paragraphs (a) through (o) of subsection
18 (4) of section 287.09451, Florida Statutes, are redesignated
19 as paragraphs (e) through (s), respectively, new paragraphs
20 (a), (b), (c), and (d) are added to said subsection, and
21 redesignated paragraphs (q), (r), and (s) are amended, to
22 read:

23 287.09451 Minority Business Advocacy and Assistance
24 Office; powers, duties, and functions.--

25 (4) The Minority Business Advocacy and Assistance
26 Office shall have the following powers, duties, and functions:

27 (a) To provide overall leadership and promote
28 coordination of economic and business development resources
29 for the benefit of minority business enterprises and of
30 distressed communities that are affected by such business.

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1 (b) To provide direction relating to economic and
2 business development of minority business enterprises to
3 regional and statewide planning entities to help promote the
4 redevelopment of distressed areas, where necessary, and to
5 foster strategic alliances among agencies so as to target
6 resources and achieve specific objectives in the economic and
7 business development of minority business enterprises.

8 (c) To develop a clear statement of the mission,
9 desired outcomes and strategies for accomplishing such
10 outcomes, and performance measures to assess whether such
11 outcomes are being achieved for the state's minority business
12 enterprise programs. Such goals shall be to:

13 1. Increase the size and profitability of minority
14 businesses served by the programs.

15 2. Increase the economic self-sufficiency and
16 competitiveness of minority businesses, as measured by their
17 ability to independently obtain necessary financial capital
18 and surety bonding, and to successfully compete for larger
19 government contracts, in terms of gross contract amount,
20 outside of a served or sheltered market.

21 3. Significantly reduce the disparities evidenced by a
22 statistical analysis relating to the availability and
23 disparity in use of minority businesses for state procurement.

24 (d) To develop an analysis of the existing strategies
25 of the state's minority business enterprise programs to
26 determine whether such strategies are cost-effective or if
27 alternative strategies should be developed to more
28 cost-effectively achieve the desired outcomes.

29 (q)~~(m)~~ To certify minority business enterprises, as
30 defined in s. 288.703, and as specified in ss. 287.0943 and
31 287.09431, and shall recertify such minority businesses not

1 less than once a year. Minority business enterprises must be
2 recertified biannually ~~annually~~ by affidavit.

3 ~~(r)(n)~~1. To develop procedures to be used by an agency
4 in identifying commodities, contractual services,
5 architectural and engineering services, and construction
6 contracts, except those architectural, engineering,
7 construction, or other related services or contracts subject
8 to the provisions of chapter 339, that could be provided by
9 minority business enterprises. Of the total state spending
10 with any private or nonprofit entity that is contracting with
11 the state during the current fiscal year, except for the state
12 university construction program which shall be based upon
13 public education capital outlay projections for the subsequent
14 fiscal year and reported to the Legislature pursuant to s.
15 216.023, each agency is encouraged to spend 12 ~~21~~ percent on
16 of the moneys actually expended for construction contracts, 16
17 25 percent on of the moneys actually expended for
18 architectural and engineering contracts, 3 ~~24~~ percent on of
19 the moneys actually expended for commodities, and 5 50.5
20 percent on of the moneys actually expended for contractual
21 services during the previous fiscal year, except for the state
22 university construction program which shall be based upon
23 public education capital outlay projections for the subsequent
24 fiscal year, and reported to the Legislature pursuant to s.
25 216.023, for the purpose of entering into contracts with
26 certified minority business enterprises as defined in s.
27 288.703(2), or approved joint ventures for the purpose of
28 entering into contracts. However, in the event of budget
29 reductions pursuant to s. 216.221, the base amounts may be
30 adjusted to reflect such reductions. The overall spending goal
31 for each industry category shall be subdivided as follows:

1 a. For construction contracts: 2.4 ~~4~~ percent for black
2 Americans, 2.5 ~~6~~ percent for Hispanic-Americans, 0.4 percent
3 for Asian-Americans, 0.3 percent for Native Americans, and 6.4
4 ~~11~~ percent for American women.

5 b. For architectural and engineering contracts: 1.6
6 percent for black Americans, 4.5 ~~9~~ percent for
7 Hispanic-Americans, 1 percent for Asian-Americans, 0.1 percent
8 for Native Americans, and 8.8 ~~15~~ percent for American women.

9 c. For commodities: 0.5 ~~2~~ percent for black Americans,
10 0.5 ~~4~~ percent for Hispanic-Americans, 0.2 ~~0.5~~ percent for
11 Asian-Americans, 0.2 ~~0.5~~ percent for Native Americans, and 1.6
12 ~~17~~ percent for American women.

13 d. For contractual services: 0.4 ~~6~~ percent for black
14 Americans, 0.3 ~~7~~ percent for Hispanic-Americans, 2.3 ~~4~~ percent
15 for Asian-Americans, 0.2 ~~0.5~~ percent for Native Americans, and
16 1.8 ~~36~~ percent for American women.

17 2. To develop procedures to establish dollar goals by
18 procurement category for each agency that range in value from
19 no less than 98 percent of the overall spending goal and no
20 more than 105 percent above the overall spending goal as
21 applied to each agency's total spending with any private or
22 nonprofit entity that is contracting or doing business with
23 the state during the current fiscal year, except for the state
24 university construction program which shall be based upon
25 public education capital outlay projections for the subsequent
26 fiscal year and reported to the Legislature pursuant to s.
27 216.023.

28 ~~3.2.~~ For the purposes of commodities contracts for the
29 purchase of equipment to be used in the construction and
30 maintenance of state transportation facilities involving the
31 Department of Transportation, "minority business enterprise"

1 has the same meaning as provided in s. 288.703. "Minority
2 person" has the same meaning as in s. 288.703(3). In order to
3 ensure that the goals established under this paragraph for
4 contracting with certified minority business enterprises are
5 met, the division, with the assistance of the Minority
6 Business Advocacy and Assistance Office, shall make
7 recommendations to the Legislature on revisions to the goals,
8 based on an updated statistical analysis, at least once every
9 5 years. Such recommendations shall be based on statistical
10 data indicating the availability of and disparity in the use
11 of minority businesses contracting with the state. The results
12 of the first updated disparity study must be presented to the
13 Legislature no later than December 1, 1996.

14 ~~4.3.~~ In determining the base amounts for assessing
15 compliance with this paragraph, the Minority Business Advocacy
16 and Assistance Office may develop, by rule, guidelines for all
17 agencies to use in establishing such base amounts. These rules
18 must include, but are not limited to, guidelines for
19 calculation of base amounts, a deadline for the agencies to
20 submit base amounts, a deadline for approval of the base
21 amounts by the Minority Business Advocacy and Assistance
22 Office, and procedures for adjusting the base amounts as a
23 result of budget reductions made pursuant to s. 216.221.

24 ~~5.4.~~ To determine guidelines for the use of price
25 preferences, weighted preference formulas, individual project
26 goals, or other preferences, as appropriate to the particular
27 industry or trade, to increase the participation of minority
28 businesses in state contracting. These guidelines shall
29 include consideration of:

30 a. Size and complexity of the project.

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1 b. The concentration of transactions with minority
2 business enterprises for the commodity or contractual services
3 in question in prior agency contracting.

4 c. The specificity and definition of work allocated to
5 participating minority business enterprises.

6 d. The capacity of participating minority business
7 enterprises to complete the tasks identified in the project.

8 e. The available pool of minority business enterprises
9 as prime contractors, either alone or as partners in an
10 approved joint venture that serves as the prime contractor.

11 6.5. To determine guidelines for use of joint ventures
12 to meet minority business enterprises spending goals. For
13 purposes of this section, "joint venture" means any
14 association of two or more business concerns to carry out a
15 single business enterprise for profit, for which purpose they
16 combine their property, capital, efforts, skills, and
17 knowledge. The guidelines shall allow transactions with joint
18 ventures to be eligible for credit against the minority
19 business enterprise goals of an agency when the contracting
20 joint venture demonstrates that at least one partner to the
21 joint venture is a certified minority business enterprise as
22 defined in s. 288.703, and that such partner is responsible
23 for a clearly defined portion of the work to be performed, and
24 shares in the ownership, control, management,
25 responsibilities, risks, and profits of the joint venture.
26 Such demonstration shall be by verifiable documents and sworn
27 statements and may be reviewed by the Minority Business
28 Advocacy and Assistance Office at or before the time a
29 contract bid is submitted. An agency may count toward its
30 minority business enterprise goals a portion of the total
31 dollar amount of a contract equal to the percentage of the

1 ownership and control held by the qualifying certified
2 minority business partners in the contracting joint venture,
3 so long as the joint venture meets the guidelines adopted by
4 the office.

5 ~~(s)(1)~~1. To establish a system to record and measure
6 the use of certified minority business enterprises in state
7 contracting. This system shall maintain information and
8 statistics on certified minority business enterprise
9 participation, awards, dollar volume of expenditures and
10 agency goals, and other appropriate types of information to
11 analyze progress in the access of certified minority business
12 enterprises to state contracts and to monitor agency
13 compliance with this section. Such reporting must include, but
14 is not limited to, the identification of all subcontracts in
15 state contracting, including state negotiated agreement price
16 schedule contracts and state term contracts, by dollar amount
17 and by number of subcontracts and the identification of the
18 utilization of certified minority business enterprises as
19 prime contractors and subcontractors by dollar amounts of
20 contracts and subcontracts, number of contracts and
21 subcontracts, minority status, industry, and any conditions or
22 circumstances that significantly affected the performance of
23 subcontractors. Agencies shall report their compliance with
24 the requirements of this reporting system at least annually
25 and at the request of the office. All agencies shall cooperate
26 with the office in establishing this reporting system. Except
27 in construction contracting, all agencies shall review
28 contracts costing in excess of CATEGORY FOUR as defined in s.
29 287.017 to determine if such contracts could be divided into
30 smaller contracts to be separately bid and awarded, and shall,
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1 when economical, offer such smaller contracts to encourage
2 minority participation.

3 2. To report agency compliance with the provisions of
4 subparagraph 1. for the preceding fiscal year to the Governor
5 and Cabinet, the President of the Senate, the Speaker of the
6 House of Representatives, and the secretary of the Department
7 of Labor and Employment Security on or before February 1 of
8 each year. The report must contain, at a minimum, the
9 following:

10 a. Total expenditures of each agency by industry.

11 b. The dollar amount and percentage of contracts
12 awarded to certified minority business enterprises by each
13 state agency.

14 c. The dollar amount and percentage of contracts
15 awarded indirectly to certified minority business enterprises
16 as subcontractors by each state agency.

17 d. The total dollar amount and percentage of contracts
18 awarded to certified minority business enterprises, whether
19 directly or indirectly, as subcontractors.

20 e. A statement and assessment of good faith efforts
21 taken by each state agency.

22 f. A status report of agency compliance with
23 subsection (6), as determined by the Minority Business
24 Enterprise Office.

25 Section 6. This act shall take effect upon becoming a
26 law.

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HOUSE SUMMARY

Provides price preferences for businesses in historically underutilized business zones. Prohibits discriminatory activities and misleading statements or advertising in procuring property and services and provides penalties. Authorizes the Department of Labor and Employment Security to negotiate the terms of the statewide and interlocal agreement on certification of business concerns for minority business enterprises. Provides additional powers of the Minority Business Advocacy and Assistance Office, revises relative property and services expenditure percentages for specified minorities for property or service procurement contracts, and requires the office to develop procedures to establish dollar goals by procurement category for agencies. See bill for details.