

By Senators Meek, Dawson-White, Jones and Dyer

36-649B-99

See HB

1 A bill to be entitled
2 An act relating to property and services
3 procurement; amending s. 240.205, F.S.;
4 requiring that the Board of Regents comply with
5 the minority business enterprise program;
6 amending s. 240.227, F.S.; requiring that
7 university presidents comply with the minority
8 business enterprise program; amending s.
9 287.012, F.S.; redefining the terms "agency"
10 and "office"; creating s. 287.085, F.S.;
11 providing for price preferences in historically
12 underutilized business zones; creating s.
13 287.086, F.S.; creating a small business
14 enterprise program with goals, incentives, and
15 size standards; amending s. 287.0943, F.S.;
16 revising certification criteria for certain
17 minority business enterprises; amending s.
18 287.09431, F.S.; providing for flexibility in
19 statewide reciprocal certification agreements;
20 amending s. 287.09451, F.S.; creating the
21 Commission on Small Business and Economic
22 Development composed of the Governor and
23 Cabinet; renaming the Minority Business
24 Advocacy and Assistance Office as the Small
25 Business and Economic Development Office;
26 revising procedural requirements for property
27 and services expenditure percentages for
28 specified minorities; requiring the office to
29 develop procedures to establish dollar goals by
30 procurement category for certain agencies;
31 providing an expiration date; providing for the

1 appointment of a Minority Business Ombudsman;
2 creating a mentor and protege program; creating
3 s. 287.09452, F.S.; establishing the Small and
4 Minority Business Management and Technical
5 Assistance Program; providing state purposes;
6 providing for participation; providing program
7 criteria and requirements; providing duties of
8 the Small Business and Economic Development
9 Office; authorizing the office to engage in
10 certain financial activities for program
11 purposes; requiring a report; creating s.
12 287.0946, F.S.; authorizing the Small Business
13 and Economic Development Office to establish a
14 linked-deposit program for minority and small
15 business enterprises; providing an expiration
16 date; amending s. 290.0075, F.S.; extending the
17 expiration date of the enterprise-zone
18 linked-deposit program; amending ss. 17.11,
19 255.102, 287.042, 287.057, 287.0947, 288.703,
20 F.S.; conforming provisions; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (6) of section 240.205, Florida
26 Statutes, 1998 Supplement, is amended to read:

27 240.205 Board of Regents incorporated.--The Board of
28 Regents is hereby created as a body corporate with all the
29 powers of a body corporate for all the purposes created by, or
30 that may exist under, the provisions of this chapter or laws
31 amendatory hereof and shall:

1 (6) Acquire real and personal property and contract
2 for the sale and disposal of same and approve and execute
3 contracts for the acquisition of commodities, goods,
4 equipment, contractual services, leases of real and personal
5 property, and construction. The acquisition may include
6 purchase by installment or lease-purchase. Such contracts may
7 provide for payment of interest on the unpaid portion of the
8 purchase price. The board may also acquire the same
9 commodities, goods, equipment, contractual services, leases,
10 and construction for use by a university when the contractual
11 obligation exceeds \$1 million. Title to all real property,
12 however acquired, shall be vested in the Board of Trustees of
13 the Internal Improvement Trust Fund and shall be transferred
14 and conveyed by it. Notwithstanding any other provisions of
15 this subsection, the Board of Regents shall comply with the
16 provisions of s. 287.055 for the procurement of professional
17 services as defined in that section and with s. 287.09451 and
18 other sections relating to the minority business enterprise
19 program therein.

20 Section 2. Subsection (12) of section 240.227, Florida
21 Statutes, 1998 Supplement, is amended to read:

22 240.227 University presidents; powers and duties.--The
23 president is the chief administrative officer of the
24 university and is responsible for the operation and
25 administration of the university. Each university president
26 shall:

27 (12) Approve and execute contracts for the acquisition
28 of commodities, goods, equipment, services, leases of real and
29 personal property, and construction to be rendered to or by
30 the university, provided such contracts are made pursuant to
31 rules of the Board of Regents, are for the implementation of

1 approved programs of the university, and do not require
2 expenditures in excess of \$1 million. The acquisition may be
3 made by installment or lease-purchase contract. Such
4 contracts may provide for the payment of interest on the
5 unpaid portion of the purchase price. Notwithstanding any
6 other provisions of this subsection, university presidents
7 shall comply with the provisions of s. 287.055 for the
8 procurement of professional services and with s. 287.09451 and
9 other sections relating to the minority business enterprise
10 program, and may approve and execute all contracts for
11 planning, construction, and equipment for projects with
12 building programs and construction budgets approved by the
13 Board of Regents.

14 Section 3. Subsections (1) and (19) of section
15 287.012, Florida Statutes, 1998 Supplement, are amended to
16 read:

17 287.012 Definitions.--The following definitions shall
18 apply in this part:

19 (1) "Agency" means any of the various state officers,
20 departments, boards, commissions, divisions, bureaus, and
21 councils and any other unit of organization, however
22 designated, of the executive branch of state government.

23 "Agency" does not include the Board of Regents or the State
24 University System, except as it relates to compliance with the
25 state's minority business enterprise program in s. 287.09451
26 and other related sections, rules, policies, and procedures.

27 (19) "Office" means the Small Minority Business and
28 Economic Development Advocacy and Assistance Office of the
29 Commission on Small Business and Economic Development
30 ~~Department of Labor and Employment Security.~~

31

1 Section 4. Section 287.085, Florida Statutes, is
2 created to read:

3 287.085 Historically underutilized business zones.--

4 (1) Whenever two or more bids or proposals that are
5 equal with respect to price, quality, service, and minority
6 business participation are received by a state agency or the
7 State University System for the procurement of goods or
8 services under a contract solicitation, a bid or proposal
9 received from a certified zone business must be awarded a
10 10-percent price preference, a state-of-Florida vendor
11 preference, or weighted points amounting to 10 percent of the
12 overall points. In order to be a certified zone business, the
13 business must:

14 (a) Certify that at least 35 percent of its employees
15 are full-time residents of a zone in this state; or

16 (b) Certify that it is providing a commercially useful
17 function with the license to do business in the state.

18 (2) Each agency is encouraged to spend 0.5 percent of
19 moneys actually expended on private vendors and use purchasing
20 incentives with zone businesses.

21 (3) For the purposes of this section, the term "zone"
22 means a historically underutilized business zone in a
23 geographical area that has been designated as an enterprise
24 zone under chapter 290 or an area targeted by the Governor.

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

28 (5) This section does not apply to related services or
29 contracts subject to chapter 339.

30 (6) The Commission on Small Business and Economic
31 Development shall adopt rules, monitor and report progress,

1 and do all things necessary or convenient to guide all state
2 agencies and the State University System toward making
3 expenditures for commodities, contractual services,
4 construction, and architectural and engineering services with
5 historically-underutilized-business-zones businesses.

6 Section 5. Section 287.086, Florida Statutes, is
7 created to read:

8 287.086 Small business enterprise program.--

9 (1) An eligible small business enterprise is one that
10 is located in an area targeted by the Governor or domiciled in
11 the state and that is independently owned and operated and
12 does not exceed the small business size standard in the
13 relevant standard industry code, as outlined in 13 C.F.R.,
14 part 121. Any business that is certified as a small business
15 by any governmental entity is deemed reciprocally certified
16 for this program upon presentation of current certification
17 letters or certificates from a governmental entity or its
18 designee to the Small Business and Economic Development
19 Office. This office must verify with the certifying
20 governmental entity that the information is current and that
21 the business does not exceed the established size standards of
22 13 C.F.R., part 121. Upon verification, the firm may be
23 registered with the Small Business and Economic Development
24 Office.

25 (2) Purchases of competitively bid commodities,
26 construction, contractual services, and professional services
27 may be reserved by state agencies and the State University
28 System for registered small business enterprises. Reserved
29 procurement must be by economically feasible contracts or
30 portions of contracts within the capability of small business
31 enterprises as described in subsection (1). In order to assure

1 necessary competition, at least three registered firms must be
2 available in the area before the purchase may be reserved.
3 State agencies and state universities may use a 10-percent
4 price incentive or a state-of-Florida vendor incentive for
5 small business enterprises.

6 (3) Payment and performance bonds may be waived on
7 state projects for small business enterprises under s.
8 255.05(1)(a). The state agency shall comply with the following
9 procedures to determine whether to waive bond requirements for
10 a project:

11 (a) Identify those projects that are eligible;

12 (b) Determine, by careful review of the technical
13 documents, the nature, scope, and complexity of the project;
14 and

15 (c) Review the list to ensure that at least three
16 small business enterprises are registered to perform the work.

17 (4) When a firm registered with the Small Business and
18 Economic Development Office is awarded a state project as a
19 prime contractor, state agencies, or state universities may
20 permit the issuance of joint checks. The use of this procedure
21 shall not be construed to create a contractual relationship
22 between the state and the supply or material house or other
23 outside vendors of the small business enterprise. It is
24 intended solely for the benefit and assistance of the small
25 business enterprise.

26 (5) The small business enterprise must be registered
27 with the Commission on Small Business and Economic
28 Development.

29 (6) The Commission on Small Business Development shall
30 adopt rules, monitor, and do all things necessary or
31 convenient to guide all state agencies and state universities

1 toward making expenditures for commodities, contractual
2 services, construction, and architecture and engineering
3 services to small business enterprises.

4 Section 6. Paragraphs (b) and (e) of subsection (1)
5 and paragraph (a) of subsection (4) of section 287.0943,
6 Florida Statutes, 1998 Supplement, are amended to read:

7 287.0943 Certification of minority business
8 enterprises.--

9 (1)

10 (b) The task force shall be regionally balanced and
11 comprised of officials representing the department, counties,
12 municipalities, school boards, special districts, and other
13 political subdivisions of the state who administer programs to
14 assist minority businesses in procurement or development in
15 government-sponsored programs. The following organizations may
16 appoint two members each of the task force who fit the
17 description above:

- 18 1. The Florida League of Cities, Inc.
- 19 2. The Florida Association of Counties.
- 20 3. The Florida School Boards Association, Inc.
- 21 4. The Association of Special Districts.
- 22 5. The Florida Association of Minority Business
23 Enterprise Officials.
- 24 6. The Florida Association of Government Purchasing
25 Officials.

26
27 In addition, the Small Minority Business and Economic
28 Development Advocacy and Assistance Office shall appoint seven
29 members consisting of three representatives of minority
30 business enterprises, two officials of the office, and two
31 at-large members to ensure regional, gender, racial, and

1 ethnic balance among the groups specified in s. 288.703(3).
2 The chairperson of the Legislative Committee on
3 Intergovernmental Relations or a designee shall be a member of
4 the task force, ex officio. A quorum shall consist of
5 one-third of the current members, and the task force may take
6 action by majority vote. Any vacancy may only be filled by the
7 organization or agency originally authorized to appoint the
8 position.

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

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

23 2. If present ownership was obtained by transfer,
24 require the minority person on whom eligibility is based to
25 have owned at least 51 percent of the applicant firm for a
26 minimum of 2 years, when any previous majority ownership
27 interest in the firm was by a nonminority who is or was a
28 relative, former employer, or current employer of the minority
29 person on whom eligibility is based. This requirement shall
30 not apply to minority persons who are otherwise eligible who
31 take a 51-percent-or-greater interest in a firm that requires

1 professional licensure to operate and who will be the
2 qualifying licenseholder for the firm when certified. A
3 transfer made within a related immediate family group from a
4 nonminority person to a minority person in order to establish
5 ownership by a minority person shall be deemed to have been
6 made solely for purposes of satisfying certification criteria
7 and shall render such ownership invalid for purposes of
8 qualifying for such certification if the combined total net
9 asset value of all members of such family group exceeds \$1
10 million. For purposes of this subparagraph, the term "related
11 immediate family group" means one or more children under 16
12 years of age and a parent of such children or the spouse of
13 such parent residing in the same house or living unit.

14 3. Require that prospective certified minority
15 business enterprises be currently performing a useful business
16 function. A "useful business function" is defined as a
17 business function which results in the provision of materials,
18 supplies, equipment, or services ~~to customers other than state~~
19 ~~or local government~~. Acting as a conduit to transfer funds to
20 a nonminority business does not constitute a useful business
21 function unless it is done so in a normal industry practice. A
22 supplier that has a distributorship agreement, other forms of
23 industry agreements, or lines of credit and that demonstrates
24 a means of procuring and transporting goods, including catalog
25 sales and drop shipments, is considered to be providing a
26 useful business function. ~~As used in this section, the term~~
27 ~~"acting as a conduit" means, in part, not acting as a regular~~
28 ~~dealer by making sales of material, goods, or supplies from~~
29 ~~items bought, kept in stock, and regularly sold to the public~~
30 ~~in the usual course of business. Brokers, manufacturer's~~
31 ~~representatives, sales representatives, and nonstocking~~

1 ~~distributors are considered as conduits that do not perform a~~
2 ~~useful business function, unless normal industry practice~~
3 ~~dictates.~~

4 (4)(a) The executive administrator ~~secretary~~ of the
5 Small Business and Economic Development Office ~~Department of~~
6 ~~Labor and Employment Security~~ shall monitor and implement
7 ~~execute the statewide reciprocal certification and interlocal~~
8 ~~agreement~~ established under s. 287.09431 on behalf of the
9 state. The office shall certify minority business enterprises
10 in accordance with statewide reciprocal certification ~~the~~
11 ~~agreement~~ and, ~~by affidavit,~~ shall recertify such minority
12 business enterprises not less than once every 2 years ~~each~~
13 ~~year.~~

14 Section 7. Section 287.09431, Florida Statutes, is
15 amended to read:

16 (Substantial rewording of section. See
17 s. 287.09431, F.S., for present text.)

18 287.09431 Statewide reciprocal certification of
19 business concerns for the status of minority business
20 enterprise.--The statewide reciprocal certification of
21 business concerns for the status of minority business
22 enterprise is hereby enacted and entered into with all
23 jurisdictions or organizations legally joining therein. The
24 executive administrator of the Small Business and Economic
25 Development Office may enter into flexible agreements with all
26 jurisdictions for the purpose of effectuating this section.
27 Therefore, additional eligibility criteria may be permissible
28 in order for local government jurisdictions and private
29 organizations to comply with local and federal laws,
30 especially those laws that are enacted to counter the findings
31 of disparity studies. The executive administrator of the Small

1 Business and Economic Development Office may negotiate the
2 terms of agreement with the local government jurisdictions and
3 private organizations to include as many participating
4 entities as feasible, whether or not they have minority
5 business programs.

6 Section 8. Section 287.09451, Florida Statutes, 1998
7 Supplement, is amended to read:

8 287.09451 Commission on Small Business and Economic
9 Development ~~Minority Business Advocacy and Assistance Office;~~
10 powers, duties, and functions.--

11 (1) The Legislature finds that there is evidence that
12 minority business enterprises face extraordinary obstacles and
13 barriers in this state which impact their ability to compete
14 for contracts. The purpose and intent of the Legislature is to
15 provide these businesses with technical, managerial,
16 contracting, and financial assistance in order to make their
17 search for government contracts consistently fruitful. The
18 Legislature further finds that there is evidence of a
19 systematic pattern of past and continuing racial
20 discrimination against minority business enterprises and a
21 disparity in the availability and use of minority business
22 enterprises in the state procurement system. It is determined
23 to be a compelling state interest to rectify that
24 discrimination and disparity. Based upon statistical data
25 profiling discrimination, the Legislature has enacted this
26 race-conscious and gender-conscious remedial program to ensure
27 minority participation in the economic life of the state, in
28 state contracts for the purchase of commodities, contractual
29 services, architectural and engineering services, and in
30 construction contracts. The purpose and intent of this section
31 is to increase participation by minority business enterprises

1 in the state procurement system. This purpose will be
2 accomplished by encouraging the use of minority business
3 enterprises and the entry of new and diversified minority
4 business enterprises into the marketplace.

5 (2) There is created the Commission on Small Business
6 and Economic Development, the membership of which shall be the
7 Governor, two persons appointed by the President of the
8 Senate, and two persons appointed by the Speaker of the House
9 of Representatives. The commission is assigned to the Office
10 of Tourism, Trade, and Economic Development for administrative
11 purposes and fiscal accountability. The Governor is the
12 chairperson of the commission, and may call a meeting of the
13 commission when the need arises. All actions taken by the
14 commission may be taken by approval of a simple majority.

15 (3) An executive administrator to the commission shall
16 be appointed and may be removed by the Governor.

17 (4) The executive administrator is responsible for all
18 administrative functions of the commission, including
19 budgeting, personnel, purchasing, and such additional matters
20 as are delegated by the commission.

21 (5) The executive administrator shall employ, within
22 budgetary limitations, such staff as are necessary to perform
23 adequately the functions of the commission.

24 (6) The executive administrator shall develop a budget
25 in accordance with chapter 216 and submit it to the Executive
26 Office of the Governor.

27 (7) The commission shall:

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

1 (b) Develop a comprehensive strategic plan that will
2 provide the maximum practical opportunity for economic growth
3 of black-owned businesses and other minority businesses in
4 this state.

5 (c) Provide direction relating to economic and
6 business development of minority business enterprises to
7 regional and statewide planning entities and county,
8 municipal, and special district minority business enterprise
9 programs to help promote the redevelopment of distressed areas
10 and minority business enterprises and minority and small
11 business enterprise programs, where necessary, and to foster
12 strategic alliances among these entities so as to target
13 resources and achieve specific objectives in the economic and
14 business development of minority business enterprises.

15 (d) Develop a clear statement of the mission, desired
16 outcomes and strategies for accomplishing the outcomes, and
17 performance measures to assess whether the outcomes are being
18 achieved for the state's small and minority business
19 enterprise programs. The goals are to:

20 1. Increase the size and profitability of minority
21 businesses served by the programs.

22 2. Increase the economic self-sufficiency and
23 competitiveness of minority businesses, as measured by their
24 ability to independently obtain necessary financial capital
25 and surety bonding, and to successfully compete for larger
26 government contracts, in terms of gross contract amount,
27 outside a served or sheltered market.

28 3. Significantly reduce the disparities evidenced by a
29 statistical analysis of the availability and use of minority
30 businesses for state procurement.

31

1 (e) Develop an analysis of the existing strategies of
2 the state's minority business enterprise programs to determine
3 whether the strategies are cost-effective or whether
4 alternative strategies should be developed to more
5 cost-effectively achieve the desired outcomes.

6 (f) Submit the information required to be developed to
7 the Governor, the President of the Senate, and the Speaker of
8 the House of Representatives by February 1 of each year.~~of a~~
9 ~~systematic pattern of past and continuing racial~~
10 ~~discrimination against minority business enterprises and a~~
11 ~~disparity in the availability and use of minority business~~
12 ~~enterprises in the state procurement system. It is determined~~
13 ~~to be a compelling state interest to rectify such~~
14 ~~discrimination and disparity. Based upon statistical data~~
15 ~~profiling this discrimination, the Legislature has enacted~~
16 ~~race-conscious and gender-conscious remedial programs to~~
17 ~~ensure minority participation in the economic life of the~~
18 ~~state, in state contracts for the purchase of commodities and~~
19 ~~services, and in construction contracts. The purpose and~~
20 ~~intent of this section is to increase participation by~~
21 ~~minority business enterprises accomplished by encouraging the~~
22 ~~use of minority business enterprises and the entry of new and~~
23 ~~diversified minority business enterprises into the~~
24 ~~marketplace.~~

25 ~~(2) The Minority Business Advocacy and Assistance~~
26 ~~Office is established within the Department of Labor and~~
27 ~~Employment Security to assist minority business enterprises in~~
28 ~~becoming suppliers of commodities, services, and construction~~
29 ~~to state government.~~

1 ~~(3) The secretary shall appoint an executive director~~
2 ~~for the Minority Business Advocacy and Assistance Office, who~~
3 ~~shall serve at the pleasure of the secretary.~~

4 (8)(4) The Small Minority and Economic Development
5 Business Advocacy and Assistance Office is established within
6 the commission to assist small and minority businesses in
7 becoming suppliers of commodities, services, and construction
8 to state governments. The Small Business and Economic
9 Development Office shall have the following powers, duties,
10 and functions:

11 (a) To adopt rules to determine what constitutes a
12 "good faith effort" for purposes of state agency compliance
13 with the minority business enterprise procurement goals set
14 forth in s. 287.042. Factors which shall be considered by the
15 Small Minority Business and Economic Development Enterprise
16 Assistance Office in determining good faith effort shall
17 include, but not be limited to:

18 1. Whether the agency scheduled presolicitation or
19 prebid meetings for the purpose of informing minority business
20 enterprises of contracting and subcontracting opportunities.

21 2. Whether the contractor advertised in general
22 circulation, trade association, or minority-focus media
23 concerning the subcontracting opportunities.

24 3. Whether the agency effectively used services and
25 resources of available minority community organizations;
26 minority contractors' groups; local, state, and federal
27 minority business assistance offices; and other organizations
28 that provide assistance in the recruitment and placement of
29 minority business enterprises or minority persons.

30 4. Whether the agency provided written notice to a
31 reasonable number of minority business enterprises that their

1 interest in contracting with the agency was being solicited in
2 sufficient time to allow the minority business enterprises to
3 participate effectively.

4 (b) To adopt rules to determine what constitutes a
5 "good faith effort" for purposes of contractor compliance with
6 contractual requirements relating to the use of services or
7 commodities of a minority business enterprise under s.
8 287.094(2). Factors which shall be considered by the Small
9 Minority Business and Economic Development ~~Advocacy and~~
10 ~~Assistance~~ Office in determining whether a contractor has made
11 good faith efforts shall include, but not be limited to:

12 1. Whether the contractor attended any presolicitation
13 or prebid meetings that were scheduled by the agency to inform
14 minority business enterprises of contracting and
15 subcontracting opportunities.

16 2. Whether the contractor advertised in general
17 circulation, trade association, or minority-focus media
18 concerning the subcontracting opportunities.

19 3. Whether the contractor provided written notice to a
20 reasonable number of specific minority business enterprises
21 that their interest in the contract was being solicited in
22 sufficient time to allow the minority business enterprises to
23 participate effectively.

24 4. Whether the contractor followed up initial
25 solicitations of interest by contacting minority business
26 enterprises or minority persons to determine with certainty
27 whether the minority business enterprises or minority persons
28 were interested.

29 5. Whether the contractor selected portions of the
30 work to be performed by minority business enterprises in order
31 to increase the likelihood of meeting the minority business

1 enterprise procurement goals, including, where appropriate,
2 breaking down contracts into economically feasible units to
3 facilitate minority business enterprise participation.

4 6. Whether the contractor provided interested minority
5 business enterprises or minority persons with adequate
6 information about the plans, specifications, and requirements
7 of the contract or the availability of jobs.

8 7. Whether the contractor negotiated in good faith
9 with interested minority business enterprises or minority
10 persons, not rejecting minority business enterprises or
11 minority persons as unqualified without sound reasons based on
12 a thorough investigation of their capabilities.

13 8. Whether the contractor effectively used the
14 services of available minority community organizations;
15 minority contractors' groups; local, state, and federal
16 minority business assistance offices; and other organizations
17 that provide assistance in the recruitment and placement of
18 minority business enterprises or minority persons.

19 (c) To adopt rules and do all things necessary or
20 convenient to guide all state agencies toward making
21 expenditures for commodities, contractual services,
22 construction, and architectural and engineering services with
23 certified minority business enterprises in accordance with the
24 minority business enterprise procurement goals set forth in s.
25 287.042.

26 (d) To monitor the degree to which agencies procure
27 services, commodities, and construction from minority business
28 enterprises in conjunction with the Department of Banking and
29 Finance as specified in s. 17.11.

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31

1 (e) To receive and disseminate information relative to
2 procurement opportunities, availability of minority business
3 enterprises, and technical assistance.

4 (f) To advise agencies on methods and techniques for
5 achieving procurement objectives.

6 (g) To provide a central minority business enterprise
7 certification process which includes independent verification
8 of status as a minority business enterprise.

9 (h) To develop procedures to investigate complaints
10 against minority business enterprises or contractors alleged
11 to violate any provision related to this section or s.
12 287.0943, that may include visits to worksites or business
13 premises, and to refer all information on businesses suspected
14 of misrepresenting minority status to the Commission on Small
15 Business and Economic Development ~~Department of Labor and~~
16 ~~Employment Security~~ for investigation. When an investigation
17 is completed and there is reason to believe that a violation
18 has occurred, the commission ~~Department of Labor and~~
19 ~~Employment Security~~ shall refer the matter to the office of
20 the Attorney General, Department of Legal Affairs, for
21 prosecution.

22 (i) To maintain a directory of all minority business
23 enterprises which have been certified and provide this
24 information to any agency or business requesting it.

25 (j) To encourage all firms which do more than \$1
26 million in business with the state within a 12-month period to
27 develop, implement, and submit to this office a minority
28 business development plan.

29 (k) To communicate on a monthly basis with the
30 Commission on Small Business and Economic Development ~~Small~~
31 ~~and Minority Business Advisory Council~~ to keep the commission

1 ~~council~~ informed on issues relating to minority enterprise
2 procurement.

3 (1) To serve as an advocate for minority business
4 enterprises, and coordinate with the small and minority
5 business ombudsman, as defined in s. 288.703, which duties
6 shall include:

7 1. Ensuring that agencies supported by state funding
8 effectively target the delivery of services and resources, as
9 related to minority business enterprises.

10 2. Establishing standards within each industry with
11 which the state government contracts on how agencies and
12 contractors may provide the maximum practicable opportunity
13 for minority business enterprises.

14 3. Assisting agencies and contractors by providing
15 outreach to minority businesses, by specifying and monitoring
16 technical and managerial competence for minority business
17 enterprises, and by consulting in planning of agency
18 procurement to determine how best to provide opportunities for
19 minority business enterprises.

20 4. Integrating technical and managerial assistance for
21 minority business enterprises with government contracting
22 opportunities.

23 (m) To make and execute contracts and other
24 instruments necessary for the exercise of its powers and
25 functions, and provide and pay for advisory services and
26 technical assistance that may be necessary to carry out the
27 purposes of this section.

28 (n) To request or accept any grant, including a grant
29 that requires a state match, any payment, gift of funds, or
30 property made by the state, by the United States or any
31 department or agency thereof, or by any individual firm,

1 political subdivision, corporation, municipality, county, or
2 organization for any purpose outlined in chapter 287. All such
3 funds must be deposited into the budget entity of the office,
4 and may be expended above the amount appropriated by the
5 Legislature and in accordance with the terms and conditions of
6 any such grant, payment, or gift, or in the pursuit of the
7 administration of the office or in support of the programs and
8 promotional activities recommended to the commission. If the
9 Small Business and Economic Development Office is awarded a
10 grant or private contribution that requires a match, the
11 office shall receive a matching appropriation equal to 80
12 percent of the grant or private contribution.

13 (o) To adopt rules necessary to ensure agency and
14 contractor compliance with this section and the Florida Small
15 and Minority Business Assistance Act of 1985.

16 (p)~~(m)~~ To certify minority business enterprises, as
17 defined in s. 288.703, and as specified in ss. 287.0943 and
18 287.09431, and shall recertify such minority businesses not
19 less than once a year. Minority business enterprises must be
20 recertified biannually ~~annually~~ by affidavit.

21 (q)~~(n)~~1. To develop procedures to be used by an agency
22 in identifying commodities, contractual services,
23 architectural and engineering services, and construction
24 contracts, except those architectural, engineering,
25 construction, or other related services or contracts subject
26 to the provisions of chapter 339, that could be provided by
27 minority business enterprises. Minority business enterprise
28 goals must be based upon the total state spending with any
29 private or nonprofit entity that is contracting with the state
30 during the current fiscal year; except for the state
31 university construction program, which must be based upon

1 public education capital outlay projections for the subsequent
2 fiscal year and reported to the Legislature under s. 216.023.
3 Each agency is encouraged to spend 12-21 ~~21~~ percent on ~~of the~~
4 ~~moneys actually expended for~~ construction contracts, 17-25 ~~25~~
5 percent on ~~of the moneys actually expended for~~ architectural
6 and engineering contracts, 5-24 ~~24~~ percent on ~~of the moneys~~
7 ~~actually expended for~~ commodities, and 5-25 ~~50.5~~ percent on ~~of~~
8 ~~the moneys actually expended for~~ contractual services during
9 ~~the previous fiscal year, except for the state university~~
10 ~~construction program which shall be based upon public~~
11 ~~education capital outlay projections for the subsequent fiscal~~
12 ~~year, and reported to the Legislature pursuant to s. 216.023,~~
13 ~~for the purpose of entering into contracts~~ with certified
14 minority business enterprises as defined in s. 288.703(2), or
15 approved joint ventures or mentor programs for the purpose of
16 entering into contracts. However, in the event of budget
17 reductions pursuant to s. 216.221, the base amounts may be
18 adjusted to reflect such reductions. The overall spending goal
19 for each industry category shall be subdivided as follows:
20 a. For construction contracts: 2.4-4.3 ~~4~~ percent for
21 black Americans, 2.5-6 ~~6~~ percent for Hispanic-Americans, 0.4
22 percent for Asian-Americans, 0.3 for Native Americans, and
23 6.4-11 ~~11~~ percent for American women.
24 b. For architectural and engineering contracts: 2.6
25 percent for black Americans, 4.5-9 ~~9~~ percent for
26 Hispanic-Americans, 1 percent for Asian-Americans, 0.1 percent
27 for Native Americans, and 8.8-15 ~~15~~ percent for American
28 women.
29 c. For commodities: 1.5-4 ~~2~~ percent for black
30 Americans, 1.5-4 ~~4~~ percent for Hispanic-Americans, 0.2-0.5 ~~0.5~~
31

1 percent for Asian-Americans, 0.2-0.5 ~~0.5~~ percent for Native
2 Americans, and 1.6-15 ~~17~~ percent for American women.

3 d. For contractual services: 0.4-7 ~~6~~ percent for black
4 Americans, 0.3-7 ~~7~~ percent for Hispanic-Americans, 2.3 ~~±~~
5 percent for Asian-Americans, 0.2-0.5 ~~0.5~~ percent for Native
6 Americans, and 1.8-8.2 ~~36~~ percent for American women.

7 2. To develop procedures to evaluate the performance
8 of state agency heads and purchasing personnel in meeting or
9 exceeding the established percentage goals. Additionally, to
10 develop procedures to establish dollar goals, by procurement
11 category, for each agency which range in value from no less
12 than 98 percent of the overall spending goal and no more than
13 105 percent above the overall spending goal as applied to each
14 agency's total spending with any private or nonprofit entity
15 that is contracting or doing business with the state during
16 the current fiscal year; except for the state university
17 construction program, which must be based upon public
18 education capital outlay projections for the subsequent fiscal
19 year and reported to the Legislature under s. 216.023.

20 3.2. For the purposes of commodities contracts for the
21 purchase of equipment to be used in the construction and
22 maintenance of state transportation facilities involving the
23 Department of Transportation, "minority business enterprise"
24 has the same meaning as provided in s. 288.703. "Minority
25 person" has the same meaning as in s. 288.703(3). In order to
26 ensure that the goals established under this paragraph for
27 contracting with certified minority business enterprises are
28 met, ~~the department, with the assistance of the~~ Small Minority
29 Business and Economic Development Advocacy and Assistance
30 Office, shall make recommendations to the Legislature on
31 revisions to the goals, based on an updated statistical

1 analysis, at least once every 5 years. Such recommendations
2 shall be based on statistical data indicating the availability
3 of and disparity in the use of minority businesses contracting
4 with the state. The results of the second ~~first~~ updated
5 disparity study must be presented to the Legislature no later
6 than December 1, 2002, to determine the effectiveness in
7 achieving stated goals and to revise or modify program
8 components for the full achievement of the goals. In those
9 specific areas, including procurement category, ethnic group,
10 geographic region, or agency, when the Legislature determines
11 that there is no disparity in the participation of minority
12 business enterprises based on the disparity analysis, the
13 minority business program must be discontinued, in those areas
14 only, within 1 year after the Legislature's determination. The
15 Governor shall designate a Minority Business Ombudsman to
16 monitor progress, receive complaints, and report progress to
17 the commission, by November 1 of each year, in those areas in
18 which the minority business enterprise programs are phased out
19 or repealed to determine whether disparities or discrimination
20 is a recurring problem. The minority business enterprise
21 program may be reestablished in phased-out programs, when
22 disparities in minority business utilization reoccurs. This
23 section expires July 1, 2006; however, the Minority Business
24 Ombudsman shall continue to monitor, receive complaints, make
25 recommendations, and report findings to the Governor.~~1996~~

26 4.3. In determining the base amounts for assessing
27 compliance with this paragraph, the Small ~~Minority~~ Business
28 and Economic Development ~~Advocacy and Assistance~~ Office may
29 develop, by rule, guidelines for all agencies to use in
30 establishing such base amounts. These rules must include, but
31 are not limited to, guidelines for calculation of base

1 amounts, a deadline for the agencies to submit base amounts, a
2 deadline for approval of the base amounts by the Small
3 Minority Business and Economic Development Advocacy and
4 Assistance Office, and procedures for adjusting the base
5 amounts as a result of budget reductions made pursuant to s.
6 216.221.

7 ~~5.4.~~ To determine guidelines for the use of price
8 preferences, weighted preference formulas, individual project
9 goals, or other preferences, as appropriate to the particular
10 industry or trade, to increase the participation of minority
11 businesses in state contracting. These guidelines shall
12 include consideration of:

13 a. Size and complexity of the project.

14 b. The concentration of transactions with minority
15 business enterprises for the commodity or contractual services
16 in question in prior agency contracting.

17 c. The specificity and definition of work allocated to
18 participating minority business enterprises.

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

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

24 f. The geographical location of certified minority
25 business enterprises where location is a relevant factor.

26 ~~6.5.~~ To establish programs, adopt rules, establish
27 guidelines, and develop annual plans, where applicable, to be
28 followed by the participants of the mentor program and
29 ~~determine guidelines for use of joint ventures to meet~~
30 minority business enterprises spending goals. For purposes of
31 this section, "joint venture" means any association of two or

1 more business concerns to carry out a single business
2 enterprise for profit, for which purpose they combine their
3 property, capital, efforts, skills, or ~~and~~ knowledge. The
4 guidelines shall allow transactions with joint ventures to be
5 eligible for credit against the minority business enterprise
6 goals of an agency when the contracting joint venture
7 demonstrates that at least one partner to the joint venture is
8 a certified minority business enterprise as defined in s.
9 288.703, and that such partner is responsible for a clearly
10 defined portion of the work to be performed, and can
11 demonstrate a plan to enhance the certified minority business
12 enterprises' profitability, management skills, financial
13 standing, and marketplace position ~~shares in the ownership,~~
14 ~~control, management, responsibilities, risks, and profits of~~
15 ~~the joint venture~~. Such demonstration shall be by verifiable
16 documents and sworn statements and may be reviewed by the
17 Small Minority Business and Economic Development Advocacy and
18 Assistance Office at or before the time a contract bid is
19 submitted. An agency may count toward its minority business
20 enterprise goals a portion of the total dollar amount of a
21 contract ~~equal to the percentage of the ownership and control~~
22 held by the qualifying certified minority business partners in
23 the business relationship ~~contracting joint venture~~, so long
24 as it ~~the joint venture~~ meets the guidelines adopted by the
25 office.

26 (r) Mentor programs may be established for businesses
27 to qualify to bid on state projects.

28 1. A mentor must possess all applicable state and
29 local licenses related to conducting the mentor's business. A
30 mentor shall provide to a certified minority business
31 enterprise any financial, technical, ethical, management, and

1 practical training and guidance relating to the conduct of the
2 mentor's business, which shall be outlined as written goals
3 and submitted for review to the Small Business and Economic
4 Development Office.

5 2. Mentor requirements apply only to businesses that
6 apply for the mentor program, compete for state contracts, and
7 want certified minority business enterprise participation
8 credit on a state contract. The protege of the mentor
9 relationship, must be a certified minority business
10 enterprise.

11 3. Mentors who mentor certified minority business
12 enterprises or small business enterprise located in an area
13 targeted by the Governor's Front Porch Florida Initiative may
14 receive credit for meeting minority business enterprise
15 contracting goals.

16 4. A protege under the program shall participate by
17 being available to benefit from information and expertise
18 offered by the mentor. To qualify as a protege, a business
19 must be a certified minority business enterprise.

20 5. The mentor shall submit the written mentor plan to
21 the Small Business and Economic Development Office, for
22 approval, if the mentor desires to submit the mentor-protege
23 relationship for minority business enterprise participation
24 credit.

25 (s)(o)1. To establish a system to record and measure
26 the use of certified minority business enterprises in state
27 contracting. This system shall maintain information and
28 statistics on certified minority business enterprise
29 participation, awards, dollar volume of expenditures and
30 agency goals, and other appropriate types of information to
31 analyze progress in the access of certified minority business

1 enterprises to state contracts and to monitor agency
2 compliance with this section. Such reporting must include, but
3 is not limited to, the identification of all subcontracts in
4 state contracting, including state negotiated agreement price
5 schedule contracts and state term contracts, by dollar amount
6 and by number of subcontracts and the identification of the
7 utilization of certified minority business enterprises as
8 prime contractors and subcontractors by dollar amounts of
9 contracts and subcontracts, number of contracts and
10 subcontracts, minority status, industry, and any conditions or
11 circumstances that significantly affected the performance of
12 subcontractors. Agencies shall report their compliance with
13 the requirements of this reporting system at least annually
14 and at the request of the office. All agencies shall cooperate
15 with the office in establishing this reporting system. Except
16 in construction contracting, all agencies shall review
17 contracts costing in excess of CATEGORY FOUR as defined in s.
18 287.017 to determine if such contracts could be divided into
19 smaller contracts to be separately bid and awarded, and shall,
20 when economical, offer such smaller contracts to encourage
21 minority participation.

22 2. To report agency compliance with the provisions of
23 subparagraph 1. for the preceding fiscal year to the
24 commission ~~Governor and Cabinet, the President of the Senate,~~
25 ~~the Speaker of the House of Representatives, and the secretary~~
26 ~~of the Department of Labor and Employment Security~~ on or
27 before February 1 of each year. The report must contain, at a
28 minimum, the following:

29 a. Total expenditures of each agency by industry.
30
31

1 b. The dollar amount and percentage of contracts
2 awarded to certified minority business enterprises by each
3 state agency.

4 c. The dollar amount and percentage of contracts
5 awarded indirectly to certified minority business enterprises
6 as subcontractors by each state agency.

7 d. The total dollar amount and percentage of contracts
8 awarded to certified minority business enterprises, whether
9 directly or indirectly, as subcontractors.

10 e. A statement and assessment of good faith efforts
11 taken by each state agency.

12 f. A status report of agency compliance with
13 subsection (6), as determined by the Small Minority Business
14 and Economic Development Enterprise Office.

15 (9)(5)(a) Each agency shall, at the time the
16 specifications or designs are developed or contract sizing is
17 determined for any proposed procurement costing in excess of
18 CATEGORY FOUR, as defined in s. 287.017, forward a notice to
19 the Small Minority Business and Economic Development Advocacy
20 and Assistance Office of the proposed procurement and any
21 determination on the designs of specifications of the proposed
22 procurement that impose requirements on prospective vendors,
23 no later than 30 days prior to the issuance of a solicitation,
24 except that this provision shall not apply to emergency
25 acquisitions. The 30-day notice period shall not toll the time
26 for any other procedural requirements.

27 (b) If the Small Minority Business and Economic
28 Development Advocacy and Assistance Office determines that the
29 proposed procurement will not likely allow opportunities for
30 minority business enterprises, the office may, within 20 days
31 after it receives the information specified in paragraph (a),

1 propose the implementation of minority business enterprise
2 utilization provisions or submit alternative procurement
3 methods that would significantly increase minority business
4 enterprise contracting opportunities.

5 (c) Whenever the agency and the Small Minority
6 Business and Economic Development ~~Advocacy and Assistance~~
7 Office disagree, the matter shall be submitted for
8 determination to the head of the agency or the senior-level
9 official designated pursuant to this section as liaison for
10 minority business enterprise issues.

11 (d) Should the proposed procurement proceed to
12 competitive bidding, the office is hereby granted standing to
13 protest, pursuant to this section, in a timely manner, any
14 contract award in competitive bidding for contractual services
15 and construction contracts that fail to include minority
16 business enterprise participation, if any responding bidder
17 has demonstrated the ability to achieve any level of
18 participation, or, any contract award for commodities where, a
19 reasonable and economical opportunity to reserve a contract,
20 statewide or district level, for minority participation was
21 not executed or, an agency failed to adopt an applicable
22 preference for minority participation. The bond requirement
23 shall be waived for the office purposes of this subsection.

24 (e) An agency may presume that a bidder offering no
25 minority participation has not made a good faith effort when
26 other bidders offer minority participation of firms listed as
27 relevant to the agency's purchasing needs in the pertinent
28 locality or statewide to complete the project.

29 (f) Paragraph (a) will not apply when the Small
30 Minority Business and Economic Development ~~Advocacy and~~
31 ~~Assistance~~ Office determines that an agency has established a

1 work plan to allow advance consultation and planning with
2 minority business enterprises and where such plan clearly
3 demonstrates:

- 4 1. A high level of advance planning by the agency with
5 minority business enterprises.
- 6 2. A high level of accessibility, knowledge, and
7 experience by minority business enterprises in the agency's
8 contract decisionmaking process.
- 9 3. A high quality of agency monitoring and enforcement
10 of internal implementation of minority business utilization
11 provisions.
- 12 4. A high quality of agency monitoring and enforcement
13 of contractor utilization of minority business enterprises,
14 especially tracking subcontractor data, and ensuring the
15 integrity of subcontractor reporting.
- 16 5. A high quality of agency outreach, agency
17 networking of major vendors with minority vendors, and
18 innovation in techniques to improve utilization of minority
19 business enterprises.
- 20 6. Substantial commitment, sensitivity, and proactive
21 attitude by the agency head and among the agency minority
22 business staff.

23 (6) Each state agency shall coordinate its minority
24 business enterprise procurement activities with the Small
25 Minority Business and Economic Development Advocacy and
26 Assistance Office. At a minimum, each agency shall:

- 27 (a) Adopt a minority business enterprise utilization
28 plan for review and approval by the Small Minority Business
29 and Economic Development Advocacy and Assistance Office which
30 should require meaningful and useful methods to attain the
31 legislative intent in assisting minority business enterprises.

1 (b) Designate a senior-level employee in the agency as
2 a minority enterprise assistance officer, responsible for
3 overseeing the agency's minority business utilization
4 activities, and who is not also charged with purchasing
5 responsibility. A senior-level agency employee and agency
6 purchasing officials shall be accountable to the agency head
7 for the agency's minority business utilization performance.
8 The Small Minority Business and Economic Development ~~Advocacy~~
9 ~~and Assistance~~ Office shall advise each agency on compliance
10 performance.

11 (c) If an agency deviates significantly from its
12 utilization plan in 2 consecutive or 3 out of 5 total fiscal
13 years, the Small Minority Business and Economic Development
14 ~~Advocacy and Assistance~~ Office may review any and all
15 solicitations and contract awards of the agency as deemed
16 necessary until such time as the agency meets its utilization
17 plan.

18 Section 9. Section 287.09452, Florida Statutes, is
19 created to read:

20 287.09452 Small and Minority Business Management and
21 Technical Assistance Program.--

22 (1) It is the policy of the state to meaningfully
23 assist small business enterprises and certified minority
24 business enterprises by developing skills through a program of
25 construction and business-management training, as well as by
26 providing contracting opportunities, partnering for
27 mentor-protoges, joint ventures, and financial assistance in
28 the form of bond guarantees to primarily remedy the effects of
29 past economic disparity and historical discrimination.

30 (2) Participation in the program is limited to those
31 businesses that are certified by the Small Business and

1 Economic Development Office as a minority business enterprise
2 or small business enterprise. The programs are to consist of
3 classroom instruction and on-the-job instruction. To the
4 extent feasible, the registration fee may be set to cover the
5 cost of instruction and overhead. No salary may be paid to any
6 participant.

7 (a) This program may be conducted by contract or
8 otherwise.

9 (b) Classroom instruction shall consist of, but is not
10 limited to, project planning methods for identifying
11 personnel, equipment, and financial resource needs;
12 bookkeeping; marketing; bidding and bonding requirements;
13 state and federal tax requirements; and strategies for
14 obtaining loans, bonding, and joint venture and mentoring
15 agreements and alliances.

16 (c) On-the-job instruction shall consist of, but is
17 not limited to, setting up the job site, cash flow method,
18 accounting, project scheduling, quantity takeoffs, estimating,
19 reading plans and specifications, procedures concerning
20 billing and payments, quality assessment and control methods,
21 and bid and proposal preparation methods.

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

30 (e) The Small Business and Economic Development Office
31 may expend funds on a bond guarantee program for certified

1 minority business enterprises and small business enterprises
2 that have demonstrated satisfactory project performance as
3 prescribed by the guidelines. The state will guarantee up to
4 90 percent of any bond amount that is \$250,000 or less and 80
5 percent of any bond amount that is greater than \$250,000, if
6 the bond is provided by an approved surety.

7 (3) The Small Business and Economic Development Office
8 may accept financial contributions into the Small and Minority
9 Business Trust Fund, if created by law, and enter into
10 memorandums of understanding with local governmental entities
11 and political subdivisions within the state, for the purpose
12 of allowing minority business enterprises and small business
13 enterprises that are certified with these entities to
14 participate in the construction and business management
15 training, financial assistance, and bonding assistance
16 program, as provided for in this section.

17 (4) Annually, the Small Business and Economic
18 Development Office shall report the progress of this program
19 to the Commission on Small Business and Economic Development.
20 The report must include, as a minimum, the number of users of
21 the bond guarantee plan, along with the number of defaults and
22 dollar loss to the state; the number of students participating
23 in the management and technical assistance program, listed by
24 location; the number of program participants, categorized by
25 ethnicity; the number of program participants that received
26 state contracts; and the cost of the program, categorized by
27 cost of administration, the cost of instruction on-the-job and
28 in classrooms, and the cost of supplies.

29 Section 10. Section 287.0946, Florida Statutes, is
30 created to read:
31

1 287.0946 Small business and minority business
2 enterprise linked-deposit program.--

3 (1) The Commission on Small Business and Economic
4 Development may create a small and minority business
5 enterprise linked-deposit program to encourage financial
6 institutions to increase the volume of loans made to small
7 business enterprises and minority business enterprises to
8 encourage the development of small and minority businesses.

9 (2) As used in this section, the term:

10 (a) "Commission" means the Commission on Small
11 Business and Economic Development.

12 (b) "Eligible borrower" means a minority business
13 enterprise that is certified by the statewide reciprocal
14 certification process or a small business enterprise certified
15 by the Small Business and Economic Development Office under
16 ss. 287.0942 and 287.088.

17 (c) "Treasurer" means the Insurance Commissioner and
18 Treasurer.

19 (3) Notwithstanding the provisions of s. 18.10, the
20 Treasurer shall designate, for the duration of the small and
21 minority business enterprise linked-deposit program, \$15
22 million of the state's short-term treasury deposits for
23 deposit in participating financial institutions, except that
24 the Treasurer may not deposit more than \$2 million in any one
25 financial institution participating in the small and minority
26 business linked-deposit program.

27 (4) Participating financial institutions must be
28 qualified public depositories under chapter 280 and must be
29 selected via the bid process employed by the Treasurer in the
30 competitive selection program for certificates of deposit. A
31 bid less than 200 basis points below the prevailing rate for

1 United States Treasury securities with a maturity matching the
2 maturity of the deposit may not be accepted. At any one time,
3 not more than \$15 million dollars may be placed in the small
4 and minority business enterprise linked-deposit program under
5 this section.

6 (5) Participating financial institutions must provide
7 a 100 percent match of any state treasury funds that are
8 deposited within the financial institution as a result of
9 participating in the small and minority business enterprise
10 linked-deposit program. The participating financial
11 institution's share of matching funds shall be used to provide
12 loans to eligible borrowers for working capital, contracts,
13 purchases of supplies or equipment, and the lease of the
14 capital assets, including land, buildings or equipment. The
15 maximum amount of a loan provided under the minority business
16 linked-deposit program is \$250,000.

17 (6) At the recommendation of the Small Business and
18 Economic Development Office, the commission shall order the
19 removal and competitive rebidding of all program deposits at a
20 participating financial institution if a review of the
21 participating financial institution's record under the program
22 demonstrates no improvements relative to the financial
23 institution's preparticipation levels of lending to small and
24 minority business enterprises.

25 (7) The commission shall order the removal and
26 competitive rebidding of all program deposits at a
27 participating institution, if the participating financial
28 institution ceases to be a qualified public depository under
29 chapter 280.

30 (8) The Small Business and Economic Development
31 Office, with assistance from the Department of Banking and

1 Finance, shall compile funding data and provide an annual
2 report to the commission, on March 1 of each year, which
3 contains:

4 (a) The name of the participating financial
5 institutions and the number and amount of loans made to small
6 and minority businesses under the small and minority business
7 enterprise linked-deposit program during the previous calendar
8 year.

9 (b) The average interest rate for small and minority
10 business loans made by each participating financial
11 institution under the program during the previous calendar
12 year.

13 (c) The number of completed small and minority
14 business loan applications that were denied or disapproved
15 during the previous calendar year by each financial
16 institution participating under the program.

17 (d) Recommendations for continuation, expansion,
18 improvement, or expiration of the minority business
19 linked-deposit program in its annual report to the
20 Legislature.

21 (9) This section expires June 30, 2006, and on that
22 date the designated short-term treasury deposits shall be
23 returned to the Treasurer.

24 Section 11. Subsections (6) and (7) of section
25 290.0075, Florida Statutes, are amended to read:

26 290.0075 Enterprise zone linked deposit program.--

27 (6) The Department of Banking and Finance shall
28 provide an annual report to the Governor, the Speaker of the
29 House of Representatives, the President of the Senate, and the
30 Office of Tourism, Trade, and Economic Development prior to
31 ~~March~~ February 1 of each year which contains:

1 (a) The number and amount of loans made to small
2 businesses under this program during the previous calendar
3 year.

4 (b) The average interest rate for small business loans
5 made by each selected financial institution under this program
6 during the previous calendar year.

7 (c) The number of completed small business loan
8 applications that were denied or disapproved during the
9 previous calendar year by each selected financial institution
10 under this program.

11 (d) Recommendations concerning the continuation,
12 expansion, improvement, or termination of this program.

13 (7) This section expires July 1, 2006 ~~shall stand~~
14 ~~repealed on June 30, 2000, and on that date upon such repeal,~~
15 the designated short-term treasury deposits shall be returned
16 to the Treasurer.

17 Section 12. Subsection (2) of section 17.11, Florida
18 Statutes, is amended to read:

19 17.11 To report disbursements made.--

20 (2) The Comptroller shall also cause to have reported
21 from the state automated management accounting subsystem no
22 less than quarterly the disbursements which agencies made to
23 small businesses, as defined in the Florida Small and Minority
24 Business Assistance Act of 1985; to certified minority
25 business enterprises in the aggregate; and to certified
26 minority business enterprises broken down into categories of
27 minority persons, as well as gender and nationality subgroups.
28 This information shall be made available to the agencies, the
29 Small Minority Business and Economic Development Advocacy and
30 ~~Assistance~~ Office, the Governor, the President of the Senate,
31 and the Speaker of the House of Representatives. Each agency

1 shall be responsible for the accuracy of information entered
2 into the state automated management accounting subsystem for
3 use in this reporting.

4 Section 13. Subsections (1) and (2) of section
5 255.102, Florida Statutes, 1998 Supplement, are amended to
6 read:

7 255.102 Contractor utilization of minority business
8 enterprises.--

9 (1) Agencies shall consider the use of price
10 preferences, weighted preference formulas, or other
11 preferences for construction contracts, as determined
12 appropriate by the Small Minority Business and Economic
13 Development Advocacy and Assistance Office in collaboration
14 with the Department of Management Services to increase
15 minority participation.

16 (2) The Small Minority Business and Economic
17 Development Advocacy and Assistance Office, in collaboration
18 with the Department of Management Services and the State
19 University System, shall adopt rules to determine what is a
20 "good faith effort" for purposes of contractor compliance with
21 minority participation goals established for competitively
22 awarded building and construction projects. Pro forma efforts
23 shall not be considered good faith. Factors which shall be
24 considered by the state agency in determining whether a
25 contractor has made good faith efforts shall include, but not
26 be limited to:

27 (a) Whether the contractor attended any
28 presolicitation or prebid meetings that were scheduled by the
29 agency to inform minority business enterprises of contracting
30 and subcontracting opportunities.

31

1 (b) Whether the contractor advertised in general
2 circulation, trade association, or minority-focus media
3 concerning the subcontracting opportunities.

4 (c) Whether the contractor provided written notice to
5 all relevant subcontractors listed on the minority vendor list
6 for that locality and statewide as provided by the agency as
7 of the date of issuance of the invitation to bid, that their
8 interest in the contract was being solicited in sufficient
9 time to allow the minority business enterprises to participate
10 effectively.

11 (d) Whether the contractor followed up initial
12 solicitations of interest by contacting minority business
13 enterprises, the Small Minority Business and Economic
14 Development Advocacy and Assistance Office, or minority
15 persons who responded and provided detailed information about
16 prebid meetings, access to plans, specifications, contractor's
17 project manager, subcontractor bonding, if any, payment
18 schedule, bid addenda, and other assistance provided by the
19 contractor to enhance minority business enterprise
20 participation.

21 (e) Whether the contractor selected portions of the
22 work to be performed by minority business enterprises in order
23 to increase the likelihood of meeting the minority business
24 enterprise procurement goals, including, where appropriate,
25 breaking down contracts into economically feasible units to
26 facilitate minority business enterprise participation under
27 reasonable and economical conditions of performance.

28 (f) Whether the contractor provided the Small Minority
29 Business and Economic Development Advocacy and Assistance
30 Office as well as interested minority business enterprises or
31 minority persons with adequate information about the plans,

1 specifications, and requirements of the contract or the
2 availability of jobs at a time no later than when such
3 information was provided to other subcontractors.

4 (g) Whether the contractor negotiated in good faith
5 with interested minority business enterprises or minority
6 persons, not rejecting minority business enterprises or
7 minority persons as unqualified without sound reasons based on
8 a thorough investigation of their capabilities or imposing
9 implausible conditions of performance on the contract.

10 (h) Whether the contractor diligently seeks to replace
11 a minority business enterprise subcontractor that is unable to
12 perform successfully with another minority business
13 enterprise.

14 (i) Whether the contractor effectively used the
15 services of available minority community organizations;
16 minority contractors' groups; local, state, and federal
17 minority business assistance offices; and other organizations
18 that provide assistance in the recruitment and placement of
19 minority business enterprises or minority persons.

20 Section 14. Paragraphs (a) and (c) of subsection (2)
21 and paragraphs (b) and (c) of subsection (4) of section
22 287.042, Florida Statutes, 1998 Supplement, are amended to
23 read:

24 287.042 Powers, duties, and functions.--The department
25 shall have the following powers, duties, and functions:

26 (2)(a) To plan and coordinate purchases in volume and
27 to negotiate and execute purchasing agreements and contracts
28 for commodities and contractual services under which state
29 agencies shall make purchases pursuant to s. 287.056, and
30 under which a federal, county, municipality, institutions
31 qualified pursuant to s. 240.605, private nonprofit community

1 transportation coordinator designated pursuant to chapter 427,
2 while conducting business related solely to the Commission for
3 the Transportation Disadvantaged, or other local public agency
4 may make purchases. The department may restrict purchases from
5 some term contracts to state agencies only for those term
6 contracts where the inclusion of other governmental entities
7 will have an adverse effect on competition or to those federal
8 facilities located in this state. In such planning or
9 purchasing the Small Minority Business and Economic
10 Development ~~Advocacy and Assistance~~ Office may monitor to
11 ensure that opportunities are afforded for contracting with
12 minority business enterprises. The department, for state term
13 contracts, and all agencies, for multiyear contractual
14 services or term contracts, shall explore reasonable and
15 economical means to utilize certified minority business
16 enterprises. Purchases by any county, municipality, private
17 nonprofit community transportation coordinator designated
18 pursuant to chapter 427, while conducting business related
19 solely to the Commission for the Transportation Disadvantaged,
20 or other local public agency under the provisions in the state
21 purchasing contracts, and purchases, from the corporation
22 operating the correctional work programs, of products or
23 services that are subject to paragraph (1)(f), are exempt from
24 the competitive sealed bid requirements otherwise applying to
25 their purchases.

26 (c) Any person who files an action protesting a
27 decision or intended decision pertaining to contracts
28 administered by the department or a state agency pursuant to
29 s. 120.57(3)(b) shall post with the department or the state
30 agency at the time of filing the formal written protest a bond
31 payable to the department or state agency in an amount equal

1 to 1 percent of the department's or the state agency's
2 estimate of the total volume of the contract or \$5,000,
3 whichever is less, which bond shall be conditioned upon the
4 payment of all costs which may be adjudged against him or her
5 in the administrative hearing in which the action is brought
6 and in any subsequent appellate court proceeding. For protests
7 of decisions or intended decisions of the department
8 pertaining to agencies' requests for approval of exceptional
9 purchases, the bond shall be in an amount equal to 1 percent
10 of the requesting agency's estimate of the contract amount for
11 the exceptional purchase requested or \$5,000, whichever is
12 less. In lieu of a bond, the department or state agency may,
13 in either case, accept a cashier's check or money order in the
14 amount of the bond. If, after completion of the administrative
15 hearing process and any appellate court proceedings, the
16 agency prevails, it shall recover all costs and charges which
17 shall be included in the final order or judgment, excluding
18 attorney's fees. This section shall not apply to protests
19 filed by the Small ~~Minority~~ Business and Economic Development
20 Advocacy and Assistance Office. Upon payment of such costs and
21 charges by the person protesting the award, the bond,
22 cashier's check, or money order shall be returned to him or
23 her. If the person protesting the award prevails, he or she
24 shall recover from the agency all costs and charges which
25 shall be included in the final order of judgment, excluding
26 attorney's fees.

27 (4) To establish a system of coordinated, uniform
28 procurement policies, procedures, and practices to be used by
29 agencies in acquiring commodities and contractual services,
30 which shall include, but not be limited to:

31

1 (b) Development of procedures for the releasing of
2 requests for proposals and invitations to bid, which
3 procedures shall include, but not be limited to, publication
4 in the Florida Administrative Weekly or on the Florida
5 Communities Network of notice for requests for proposals at
6 least 28 days before the date set for submittal of proposals
7 and publication of notice for invitations to bid at least 10
8 calendar days before the date set for submission of bids. An
9 agency may waive the requirement for notice in the Florida
10 Administrative Weekly or on the Florida Communities Network.
11 Notice of the request for proposals shall be mailed to
12 prospective offerors at least 28 calendar days prior to the
13 date for submittal of proposals. Notice of the invitation to
14 bid shall be mailed to prospective bidders at least 10
15 calendar days prior to the date set for submittal of bids. The
16 Small Minority Business and Economic Development Advocacy and
17 ~~Assistance~~ Office may consult with agencies regarding the
18 development of bid distribution procedures to ensure that
19 maximum distribution is afforded to certified minority
20 business enterprises as defined in s. 288.703.

21 (c) Development of procedures for the receipt and
22 opening of bids or proposals by an agency. Such procedures
23 shall provide the Small Minority Business and Economic
24 Development Advocacy and Assistance Office an opportunity to
25 monitor and ensure that the contract award is consistent with
26 the original request for proposal or invitation to bid, in
27 accordance with s. 287.0945(6), and subject to the review of
28 bid responses within standard timelines.

29 Section 15. Subsection (5) and paragraph (a) of
30 subsection (6) of section 287.057, Florida Statutes, 1998
31 Supplement, are amended to read:

1 287.057 Procurement of commodities or contractual
2 services.--

3 (5) Upon issuance of any invitation to bid or request
4 for proposals, an agency shall forward to the department one
5 copy of each invitation to bid or request for proposals for
6 all commodity and contractual services purchases in excess of
7 the threshold amount provided in s. 287.017 for CATEGORY TWO.
8 An agency shall also, upon request, furnish a copy of all
9 competitive sealed bid or competitive sealed proposal
10 tabulations. The Small Minority Business and Economic
11 Development ~~Advocacy and Assistance~~ Office may also request
12 from the agencies any information submitted to the department
13 pursuant to this subsection.

14 (6)(a) In order to strive to meet the minority
15 business enterprise procurement goals set forth in s.
16 287.0945, an agency may reserve any contract for competitive
17 sealed bidding only among certified minority business
18 enterprises. Agencies shall review all their contracts each
19 fiscal year and shall determine which contracts may be
20 reserved for bidding only among certified minority business
21 enterprises. This reservation may only be used when it is
22 determined, by reasonable and objective means, before the
23 invitation to bid that there are capable, qualified certified
24 minority business enterprises available to bid on a contract
25 to provide for effective competition. The Small Minority
26 Business and Economic Development ~~Advocacy and Assistance~~
27 Office shall consult with any agency in reaching such
28 determination when deemed appropriate.

29 Section 16. Subsections (1), (5), and (6) of section
30 287.0947, Florida Statutes, are amended to read:

31

1 287.0947 Florida Council on Small and Minority
2 Business Development; creation; membership; duties.--

3 (1) On or after October 1, 1996, the Commission on
4 Small Business and Economic Development ~~secretary of the~~
5 ~~Department of Labor and Employment Security~~ may create the
6 Florida Advisory Council on Small and Minority Business
7 Development with the purpose of advising and assisting the
8 executive administrator ~~secretary~~ in carrying out the
9 executive administrator's ~~secretary's~~ duties with respect to
10 minority businesses and economic and business development. It
11 is the intent of the Legislature that the membership of such
12 council include practitioners, laypersons, financiers, and
13 others with business development experience who can provide
14 invaluable insight and expertise for this state in the
15 diversification of its markets and networking of business
16 opportunities. The council shall initially consist of 19
17 persons, each of whom is or has been actively engaged in small
18 and minority business development, either in private industry,
19 in governmental service, or as a scholar of recognized
20 achievement in the study of such matters. Initially, the
21 council shall consist of members representing all regions of
22 the state and shall include at least one member from each
23 group identified within the definition of "minority person" in
24 s. 288.703(3), considering also gender and nationality
25 subgroups, and shall consist of the following:

26 (a) Four members consisting of representatives of
27 local and federal small and minority business assistance
28 programs or community development programs.

29 (b) Eight members composed of representatives of the
30 minority private business sector, including certified minority
31 business enterprises and minority supplier development

1 councils, among whom at least two shall be women and at least
2 four shall be minority persons.

3 (c) Two representatives of local government, one of
4 whom shall be a representative of a large local government,
5 and one of whom shall be a representative of a small local
6 government.

7 (d) Two representatives from the banking and insurance
8 industry.

9 (e) Two members from the private business sector,
10 representing the construction and commodities industries.

11 (f) The chairperson of the Florida Black Business
12 Investment Board or the chairperson's designee.

13 (g) The chairperson of Enterprise Florida, Inc., or
14 the chairperson's designee.

15 (h) The Secretary of the Department of Community
16 Affairs or the secretary's designee.

17

18 A candidate for appointment may be considered if eligible to
19 be certified as an owner of a minority business enterprise, or
20 if otherwise qualified under the criteria above. Vacancies may
21 be filled by appointment of the executive administrator
22 ~~secretary~~, in the manner of the original appointment.

23 (5) The powers and duties of the council include, but
24 are not limited to: researching and reviewing the role of
25 small and minority businesses in the state's economy;
26 reviewing issues and emerging topics relating to small and
27 minority business economic development; studying the ability
28 of financial markets and institutions to meet small business
29 credit needs and determining the impact of government demands
30 on credit for small businesses; assessing the implementation
31 of s. 187.201(22), requiring a state economic development

1 comprehensive plan, as it relates to small and minority
2 businesses; assessing the reasonableness and effectiveness of
3 efforts by any state agency or by all state agencies
4 collectively to assist minority business enterprises; and
5 advising the Governor, the executive administrator ~~secretary~~,
6 and the Legislature on matters relating to small and minority
7 business development which are of importance to the
8 international strategic planning and activities of this state.

9 (6) On or before January 1 of each year, the council
10 shall present an annual report to the executive administrator
11 ~~secretary~~ that sets forth in appropriate detail the business
12 transacted by the council during the year and any
13 recommendations to the executive administrator ~~secretary~~,
14 including those to improve business opportunities for small
15 and minority business enterprises.

16 Section 17. Subsections (5), (6), and (8) of section
17 288.703, Florida Statutes, 1998 Supplement, are amended to
18 read:

19 288.703 Definitions.--As used in this act, the
20 following words and terms shall have the following meanings
21 unless the content shall indicate another meaning or intent:

22 (5) "Commission" ~~"Department"~~ means the Commission on
23 Small Business and Economic Development ~~Department of Labor~~
24 ~~and Employment Security~~.

25 (6) "Ombudsman" means an office or individual whose
26 responsibilities include coordinating with the Small Minority
27 Business and Economic Development ~~Advocacy and Assistance~~
28 Office for the interests of and providing assistance to small
29 and minority business enterprises in dealing with governmental
30 agencies and in developing proposals for changes in state
31 agency rules.

1 (8) "Executive administrator" ~~"Secretary"~~ means the
2 executive administrator of the Commission on Small Business
3 and Economic Development ~~secretary of the Department of Labor~~
4 ~~and Employment Security.~~

5 Section 18. This act shall take effect July 1, 1999.

6
7 *****

8 LEGISLATIVE SUMMARY

9 In sections relating to property and services
10 procurement:

11 (1) Requires the Board of Regents and the university
12 presidents to comply with the minority business enterprise
13 program.

14 (2) Provides for price preferences in historically
15 underutilized business zones.

16 (3) Creates a small business enterprise program with
17 incentives, goals, and size standards.

18 (4) Prohibits government employees from discriminating
19 in contracting and procurement activities.

20 (5) Revises certification criteria.

21 (6) Provides for flexibility in statewide reciprocal
22 certification agreements.

23 (7) Creates the Commission on Small Business and
24 Economic Development.

25 (8) Renames the Minority Business Advocacy and
26 Assistance Office as the Small Business and Economic
27 Development Office.

28 (9) Revises requirements for expenditure percentages
29 for specified minorities.

30 (10) Provides for the appointment of a Minority
31 Business Ombudsman.

 (11) Creates a mentor and protege program.

 (12) Establishes a management and technical assistance
program for small and minority business enterprises.

 (13) Authorizes a linked-deposit program for minority
and small business enterprises.

 (14) Extends the expiration date of the
enterprise-zone linked-deposit program.