

By Representative Eggelletion

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; creating s. 287.0941, F.S.;
16 prohibiting specified activities; providing
17 civil penalties; amending s. 287.0943, F.S.;
18 revising certification criteria for certain
19 minority business enterprises; amending s.
20 287.09431, F.S.; providing for flexibility in
21 statewide reciprocal certification agreements;
22 amending s. 287.09451, F.S.; creating the
23 Commission on Small Business and Economic
24 Development composed of the Governor and
25 Cabinet; renaming the Minority Business
26 Advocacy and Assistance Office as the Small
27 Business and Economic Development Office;
28 revising procedural requirements for property
29 and services expenditure percentages for
30 specified minorities; requiring the office to
31 develop procedures to establish dollar goals by

1 procurement category for certain agencies;
2 providing an expiration date; providing for the
3 appointment of a Minority Business Ombudsman;
4 creating a mentor and protege program; creating
5 s. 287.0946, F.S.; authorizing the Small
6 Business and Economic Development Office to
7 establish a linked-deposit program for minority
8 and small business enterprises; providing an
9 expiration date; amending s. 290.0075, F.S.;
10 extending the expiration date of the
11 enterprise-zone linked-deposit program;
12 amending ss. 17.11, 255.102, 287.042, 287.057,
13 287.0947, 288.703, F.S.; conforming provisions;
14 providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (6) of section 240.205, Florida
19 Statutes, 1998 Supplement, is amended to read:

20 240.205 Board of Regents incorporated.--The Board of
21 Regents is hereby created as a body corporate with all the
22 powers of a body corporate for all the purposes created by, or
23 that may exist under, the provisions of this chapter or laws
24 amendatory hereof and shall:

25 (6) Acquire real and personal property and contract
26 for the sale and disposal of same and approve and execute
27 contracts for the acquisition of commodities, goods,
28 equipment, contractual services, leases of real and personal
29 property, and construction. The acquisition may include
30 purchase by installment or lease-purchase. Such contracts may
31 provide for payment of interest on the unpaid portion of the

1 purchase price. The board may also acquire the same
2 commodities, goods, equipment, contractual services, leases,
3 and construction for use by a university when the contractual
4 obligation exceeds \$1 million. Title to all real property,
5 however acquired, shall be vested in the Board of Trustees of
6 the Internal Improvement Trust Fund and shall be transferred
7 and conveyed by it. Notwithstanding any other provisions of
8 this subsection, the Board of Regents shall comply with the
9 provisions of s. 287.055 for the procurement of professional
10 services as defined in that section and with s. 287.09451 and
11 other sections relating to the minority business enterprise
12 program therein.

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

15 240.227 University presidents; powers and duties.--The
16 president is the chief administrative officer of the
17 university and is responsible for the operation and
18 administration of the university. Each university president
19 shall:

20 (12) Approve and execute contracts for the acquisition
21 of commodities, goods, equipment, services, leases of real and
22 personal property, and construction to be rendered to or by
23 the university, provided such contracts are made pursuant to
24 rules of the Board of Regents, are for the implementation of
25 approved programs of the university, and do not require
26 expenditures in excess of \$1 million. The acquisition may be
27 made by installment or lease-purchase contract. Such
28 contracts may provide for the payment of interest on the
29 unpaid portion of the purchase price. Notwithstanding any
30 other provisions of this subsection, university presidents
31 shall comply with the provisions of s. 287.055 for the

1 procurement of professional services and with s. 287.09451 and
2 other sections relating to the minority business enterprise
3 program, and may approve and execute all contracts for
4 planning, construction, and equipment for projects with
5 building programs and construction budgets approved by the
6 Board of Regents.

7 Section 3. Subsections (1) and (19) of section
8 287.012, Florida Statutes, 1998 Supplement, are amended to
9 read:

10 287.012 Definitions.--The following definitions shall
11 apply in this part:

12 (1) "Agency" means any of the various state officers,
13 departments, boards, commissions, divisions, bureaus, and
14 councils and any other unit of organization, however
15 designated, of the executive branch of state government.

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

20 (19) "Office" means the Small Minority Business and
21 Economic Development Advocacy and Assistance Office of the
22 Commission on Small Business and Economic Development
23 ~~Department of Labor and Employment Security.~~

24 Section 4. Section 287.085, Florida Statutes, is
25 created to read:

26 287.085 Historically underutilized business zones.--

27 (1) Whenever two or more bids or proposals that are
28 equal with respect to price, quality, service, and minority
29 business participation are received by a state agency or the
30 State University System for the procurement of goods or
31 services under a contract solicitation, a bid or proposal

1 received from a certified zone business must be awarded a
2 10-percent price preference, a state-of-Florida vendor
3 preference, or weighted points amounting to 10 percent of the
4 overall points. In order to be a certified zone business, the
5 business must:

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

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

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

13 (3) For the purposes of this section, the term "zone"
14 means a historically underutilized business zone in a
15 geographical area that has been designated as an enterprise
16 zone under chapter 290 or an area targeted by the Governor's
17 Front Porch Florida Initiative.

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

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

23 (6) The Commission on Small Business and Economic
24 Development shall adopt rules, monitor and report progress,
25 and do all things necessary or convenient to guide all state
26 agencies and the State University System toward making
27 expenditures for commodities, contractual services,
28 construction, and architectural and engineering services with
29 historically-underutilized-business-zones businesses.

30 Section 5. Section 287.086, Florida Statutes, is
31 created to read:

1 287.086 Small business enterprise program.--
2 (1) An eligible small business enterprise is one that
3 is located in an area targeted by the Governor's Front Porch
4 Florida Initiative or domiciled in the state and that is
5 independently owned and operated and does not exceed the small
6 business size standard in the relevant standard industry code,
7 as outlined in 13 C.F.R., part 121. Any business that is
8 certified as a small business by any governmental entity is
9 deemed reciprocally certified for this program upon
10 presentation of current certification letters or certificates
11 from a governmental entity or its designee to the Small
12 Business and Economic Development Office. This office must
13 verify with the certifying governmental entity that the
14 information is current and that the business does not exceed
15 the established size standards of 13 C.F.R., part 121. Upon
16 verification, the firm may be registered with the Small
17 Business and Economic Development Office.

18 (2) Purchases of competitively bid commodities,
19 construction, contractual services, and professional services
20 may be reserved by state agencies and the State University
21 System for registered small business enterprises. Reserved
22 procurement must be by economically feasible contracts or
23 portions of contracts within the capability of small business
24 enterprises as described in subsection (1). In order to assure
25 necessary competition, at least three registered firms must be
26 available in the area before the purchase may be reserved.
27 State agencies and state universities may use a 10-percent
28 price incentive or a state-of-Florida vendor incentive for
29 small business enterprises.

30 (3) Payment and performance bonds may be waived on
31 state projects for small business enterprises under s.

1 255.05(1)(a). The state agency shall comply with the following
2 procedures to determine whether to waive bond requirements for
3 a project:
4 (a) Identify those projects that are eligible;
5 (b) Determine, by careful review of the technical
6 documents, the nature, scope, and complexity of the project;
7 and
8 (c) Review the list to ensure that at least three
9 small business enterprises are registered to perform the work.
10 (4) When a firm registered with the Small Business and
11 Economic Development Office is awarded a state project as a
12 prime contractor, state agencies, or state universities may
13 permit the issuance of joint checks. The use of this procedure
14 shall not be construed to create a contractual relationship
15 between the state and the supply or material house or other
16 outside vendors of the small business enterprise. It is
17 intended solely for the benefit and assistance of the small
18 business enterprise.
19 (5) The small business enterprise must be registered
20 with the Commission on Small Business and Economic
21 Development.
22 (6) The Commission on Small Business Development shall
23 adopt rules, monitor, and do all things necessary or
24 convenient to guide all state agencies and state universities
25 toward making expenditures for commodities, contractual
26 services, construction, and architecture and engineering
27 services to small business enterprises.
28 Section 6. Section 287.0941, Florida Statutes, is
29 created to read:
30 287.0941 Discrimination in procurement of personal
31 property and services; penalties.--

1 (1) It is unlawful for any employee of the state, a
2 municipality, a county, a school district, a special district,
3 or a political subdivision, because of race, color, religion,
4 sex, national origin, age, handicap, or marital status, to:

5 (a) Discriminate against a person in the terms,
6 conditions, or privileges of participation in contracting and
7 procurement activities.

8 (b) Cause to be made any untrue or intentionally
9 misleading statement or advertisement regarding the
10 availability of contracting and procurement activities.

11 (c) Aid, abet, incite, compel, or coerce any person to
12 engage in any of the practices prohibited by this section or
13 to obstruct or prevent any person from complying with this
14 section.

15 (2) Violation of any provision of subsection (1)
16 shall, under applicable procedures of law, constitute grounds
17 for and may be punished by:

18 (a) Dismissal from employment;

19 (b) Suspension from employment for not more than 90
20 days without pay;

21 (c) Demotion; or

22 (d) Reduction in salary.

23 Section 7. Paragraphs (b) and (e) of subsection (1)
24 and paragraph (a) of subsection (4) of section 287.0943,
25 Florida Statutes, 1998 Supplement, are amended to read:

26 287.0943 Certification of minority business
27 enterprises.--

28 (1)

29 (b) The task force shall be regionally balanced and
30 comprised of officials representing the department, counties,
31 municipalities, school boards, special districts, and other

1 political subdivisions of the state who administer programs to
2 assist minority businesses in procurement or development in
3 government-sponsored programs. The following organizations may
4 appoint two members each of the task force who fit the
5 description above:

- 6 1. The Florida League of Cities, Inc.
- 7 2. The Florida Association of Counties.
- 8 3. The Florida School Boards Association, Inc.
- 9 4. The Association of Special Districts.
- 10 5. The Florida Association of Minority Business
11 Enterprise Officials.
- 12 6. The Florida Association of Government Purchasing
13 Officials.

14
15 In addition, the Small Minority Business and Economic
16 Development Advocacy and Assistance Office shall appoint seven
17 members consisting of three representatives of minority
18 business enterprises, two officials of the office, and two
19 at-large members to ensure regional, gender, racial, and
20 ethnic balance among the groups specified in s. 288.703(3).
21 The chairperson of the Legislative Committee on
22 Intergovernmental Relations or a designee shall be a member of
23 the task force, ex officio. A quorum shall consist of
24 one-third of the current members, and the task force may take
25 action by majority vote. Any vacancy may only be filled by the
26 organization or agency originally authorized to appoint the
27 position.

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

- 30 1. Link ownership by a minority person, as defined in
31 s. 288.703(3), or as dictated by the legal obligations of a

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

11 2. If present ownership was obtained by transfer,
12 require the minority person on whom eligibility is based to
13 have owned at least 51 percent of the applicant firm for a
14 minimum of 2 years, when any previous majority ownership
15 interest in the firm was by a nonminority who is or was a
16 relative, former employer, or current employer of the minority
17 person on whom eligibility is based. This requirement shall
18 not apply to minority persons who are otherwise eligible who
19 take a 51-percent-or-greater interest in a firm that requires
20 professional licensure to operate and who will be the
21 qualifying licenseholder for the firm when certified. A
22 transfer made within a related immediate family group from a
23 nonminority person to a minority person in order to establish
24 ownership by a minority person shall be deemed to have been
25 made solely for purposes of satisfying certification criteria
26 and shall render such ownership invalid for purposes of
27 qualifying for such certification if the combined total net
28 asset value of all members of such family group exceeds \$1
29 million. For purposes of this subparagraph, the term "related
30 immediate family group" means one or more children under 16
31

1 years of age and a parent of such children or the spouse of
2 such parent residing in the same house or living unit.

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

24 (4)(a) The executive administrator ~~secretary~~ of the
25 Small Business and Economic Development Office ~~Department of~~
26 ~~Labor and Employment Security~~ shall monitor and implement
27 ~~execute the~~ statewide reciprocal certification ~~and interlocal~~
28 ~~agreement~~ established under s. 287.09431 on behalf of the
29 state. The office shall certify minority business enterprises
30 in accordance with statewide reciprocal certification ~~the~~
31 ~~agreement~~ and, ~~by affidavit,~~ shall recertify such minority

1 business enterprises not less than once every 2 years ~~each~~
2 ~~year.~~

3 Section 8. Section 287.09431, Florida Statutes, is
4 amended to read:

5 287.09431 Statewide reciprocal certification and
6 ~~interlocal agreement on certification~~ of business concerns for
7 the status of minority business enterprise.--The statewide
8 reciprocal certification and interlocal agreement on
9 ~~certification~~ of business concerns for the status of minority
10 business enterprise is hereby enacted and entered into with
11 all jurisdictions or organizations legally joining therein.
12 The executive administrator of the Small Business and Economic
13 Development Office may enter into flexible agreements with all
14 jurisdictions for the purpose of effectuating this section.
15 Therefore, additional eligibility criteria may be permissible
16 in order for local government jurisdictions and private
17 organizations to comply with local and federal laws,
18 especially those laws that are enacted to counter the findings
19 of disparity studies. The executive administrator of the Small
20 Business and Economic Development Office may negotiate the
21 terms of agreement with the local government jurisdictions and
22 private organizations to include as many participating
23 entities as feasible, whether or not they have minority
24 business programs.~~If, within 2 years from the date that the~~
25 ~~certification core criteria are approved by the Department of~~
26 ~~Labor and Employment Security, the agreement included herein~~
27 ~~is not executed by a majority of county and municipal~~
28 ~~governing bodies that administer a minority business~~
29 ~~assistance program on the effective date of this act, then the~~
30 ~~Legislature shall review this agreement. It is the intent of~~
31 ~~the Legislature that if the agreement is not executed by a~~

1 ~~majority of the requisite governing bodies, then a statewide~~
2 ~~uniform certification process should be adopted, and that said~~
3 ~~agreement should be repealed and replaced by a mandatory state~~
4 ~~government certification process.~~

5
6 ~~ARTICLE I~~

7
8 ~~PURPOSE, FINDINGS, AND POLICY.--~~

9 ~~(1) The parties to this agreement, desiring by common~~
10 ~~action to establish a uniform certification process in order~~
11 ~~to reduce the multiplicity of applications by business~~
12 ~~concerns to state and local governmental programs for minority~~
13 ~~business assistance, declare that it is the policy of each of~~
14 ~~them, on the basis of cooperation with one another, to remedy~~
15 ~~social and economic disadvantage suffered by certain groups,~~
16 ~~resulting in their being historically underutilized in~~
17 ~~ownership and control of commercial enterprises. Thus, the~~
18 ~~parties seek to address this history by increasing the~~
19 ~~participation of the identified groups in opportunities~~
20 ~~afforded by government procurement.~~

21 ~~(2) The parties find that the State of Florida~~
22 ~~presently certifies firms for participation in the minority~~
23 ~~business assistance programs of the state. The parties find~~
24 ~~further that some counties, municipalities, school boards,~~
25 ~~special districts, and other divisions of local government~~
26 ~~require a separate, yet similar, and in most cases redundant~~
27 ~~certification in order for businesses to participate in the~~
28 ~~programs sponsored by each government entity.~~

29 ~~(3) The parties find further that this redundant~~
30 ~~certification has proven to be unduly burdensome to the~~
31

1 ~~minority-owned firms intended to benefit from the underlying~~
2 ~~purchasing incentives.~~

3 ~~(4) The parties agree that:~~

4 ~~(a) They will facilitate integrity, stability, and~~
5 ~~cooperation in the statewide and interlocal certification~~
6 ~~process, and in other elements of programs established to~~
7 ~~assist minority-owned businesses.~~

8 ~~(b) They shall cooperate with agencies, organizations,~~
9 ~~and associations interested in certification and other~~
10 ~~elements of minority business assistance.~~

11 ~~(c) It is the purpose of this agreement to provide for~~
12 ~~a uniform process whereby the status of a business concern may~~
13 ~~be determined in a singular review of the business information~~
14 ~~for these purposes, in order to eliminate any undue expense,~~
15 ~~delay, or confusion to the minority-owned businesses in~~
16 ~~seeking to participate in the minority business assistance~~
17 ~~programs of state and local jurisdictions.~~

18
19 ARTICLE II

20
21 DEFINITIONS.--~~As used in this agreement and contracts~~
22 ~~made pursuant to it, unless the context clearly requires~~
23 ~~otherwise:~~

24 ~~(1) "Awarding organization" means any political~~
25 ~~subdivision or organization authorized by law, ordinance, or~~
26 ~~agreement to enter into contracts and for which the governing~~
27 ~~body has entered into this agreement.~~

28 ~~(2) "Department" means the Department of Labor and~~
29 ~~Employment Security.~~

30 ~~(3) "Minority" means a person who is a lawful,~~
31 ~~permanent resident of the state, having origins in one of the~~

1 ~~minority groups as described and adopted by the Department of~~
2 ~~Labor and Employment Security, hereby incorporated by~~
3 ~~reference.~~

4 ~~(4) "Minority business enterprise" means any small~~
5 ~~business concern as defined in subsection (5) that meets all~~
6 ~~of the criteria described and adopted by the Department of~~
7 ~~Labor and Employment Security, hereby incorporated by~~
8 ~~reference.~~

9 ~~(5) "Participating state or local organization" means~~
10 ~~any political subdivision of the state or organization~~
11 ~~designated by such that elects to participate in the~~
12 ~~certification process pursuant to this agreement, which has~~
13 ~~been approved according to s. 287.0943(2) and has legally~~
14 ~~entered into this agreement.~~

15 ~~(6) "Small business concern" means an independently~~
16 ~~owned and operated business concern which is of a size and~~
17 ~~type as described and adopted by vote related to this~~
18 ~~agreement of the commission, hereby incorporated by reference.~~

19
20 ARTICLE III

21
22 STATEWIDE AND INTERLOCAL CERTIFICATIONS.==

23 ~~(1) All awarding organizations shall accept a~~
24 ~~certification granted by any participating organization which~~
25 ~~has been approved according to s. 287.0943(2) and has entered~~
26 ~~into this agreement, as valid status of minority business~~
27 ~~enterprise.~~

28 ~~(2) A participating organization shall certify a~~
29 ~~business concern that meets the definition of minority~~
30 ~~business enterprise in this agreement, in accordance with the~~
31 ~~duly adopted eligibility criteria.~~

1 ~~(3) All participating organizations shall issue notice~~
2 ~~of certification decisions granting or denying certification~~
3 ~~to all other participating organizations within 14 days of the~~
4 ~~decision. Such notice may be made through electronic media.~~

5 ~~(4) No certification will be granted without an onsite~~
6 ~~visit to verify ownership and control of the prospective~~
7 ~~minority business enterprise, unless verification can be~~
8 ~~accomplished by other methods of adequate verification or~~
9 ~~assessment of ownership and control.~~

10 ~~(5) The certification of a minority business~~
11 ~~enterprise pursuant to the terms of this agreement shall not~~
12 ~~be suspended, revoked, or otherwise impaired except on any~~
13 ~~grounds which would be sufficient for revocation or suspension~~
14 ~~of a certification in the jurisdiction of the participating~~
15 ~~organization.~~

16 ~~(6) The certification determination of a party may be~~
17 ~~challenged by any other participating organization by the~~
18 ~~issuance of a timely written notice by the challenging~~
19 ~~organization to the certifying organization's determination~~
20 ~~within 10 days of receiving notice of the certification~~
21 ~~decision, stating the grounds therefor.~~

22 ~~(7) The sole accepted grounds for challenge shall be~~
23 ~~the failure of the certifying organization to adhere to the~~
24 ~~adopted criteria or the certifying organization's rules or~~
25 ~~procedures, or the perpetuation of a misrepresentation or~~
26 ~~fraud by the firm.~~

27 ~~(8) The certifying organization shall reexamine its~~
28 ~~certification determination and submit written notice to the~~
29 ~~applicant and the challenging organization of its findings~~
30 ~~within 30 days after the receipt of the notice of challenge.~~

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

~~ARTICLE VIII~~

~~EFFECT AND WITHDRAWAL.--~~

~~(1) This agreement shall become effective when properly executed by a legal representative of the participating organization, when enacted into the law of the state and after an ordinance or other legislation is enacted into law by the governing body of each participating organization. Thereafter it shall become effective as to any participating organization upon the enactment of this agreement by the governing body of that organization.~~

~~(2) Any party may withdraw from this agreement by enacting legislation repealing the same, but no such withdrawal shall take effect until one year after the governing body of the withdrawing party has given notice in writing of the withdrawal to the other parties.~~

~~(3) No withdrawal shall relieve the withdrawing party of any obligations imposed upon it by law.~~

~~ARTICLE IX~~

~~FINANCIAL RESPONSIBILITY.--~~

~~(1) A participating organization shall not be financially responsible or liable for the obligations of any other participating organization related to this agreement.~~

~~(2) The provisions of this agreement shall constitute neither a waiver of any governmental immunity under Florida law nor a waiver of any defenses of the parties under Florida law. The provisions of this agreement are solely for the~~

1 ~~benefit of its executors and not intended to create or grant~~
2 ~~any rights, contractual or otherwise, to any person or entity.~~

3
4 ~~ARTICLE X~~

5
6 ~~VENUE AND GOVERNING LAW.--The obligations of the~~
7 ~~parties to this agreement are performable only within the~~
8 ~~county where the participating organization is located, and~~
9 ~~statewide for the Minority Business Advocacy and Assistance~~
10 ~~Office, and venue for any legal action in connection with this~~
11 ~~agreement shall lie, for any participating organization except~~
12 ~~the Minority Business Advocacy and Assistance Office,~~
13 ~~exclusively in the county where the participating organization~~
14 ~~is located. This agreement shall be governed by and construed~~
15 ~~in accordance with the laws and court decisions of the state.~~

16
17 ~~ARTICLE XI~~

18
19 ~~CONSTRUCTION AND SEVERABILITY.--This agreement shall be~~
20 ~~liberally construed so as to effectuate the purposes thereof.~~
21 ~~The provisions of this agreement shall be severable and if any~~
22 ~~phrase, clause, sentence, or provision of this agreement is~~
23 ~~declared to be contrary to the State Constitution or the~~
24 ~~United States Constitution, or the application thereof to any~~
25 ~~government, agency, person, or circumstance is held invalid,~~
26 ~~the validity of the remainder of this agreement and the~~
27 ~~applicability thereof to any government, agency, person, or~~
28 ~~circumstance shall not be affected thereby. If this agreement~~
29 ~~shall be held contrary to the State Constitution, the~~
30 ~~agreement shall remain in full force and effect as to all~~
31 ~~severable matters.~~

1 Section 9. Section 287.09451, Florida Statutes, 1998
2 Supplement, is amended to read:

3 287.09451 Commission on Small Business and Economic
4 Development ~~Minority Business Advocacy and Assistance Office;~~
5 powers, duties, and functions.--

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

1 (2) There is created the Commission on Small Business
2 and Economic Development, the membership of which shall be the
3 Governor and the Cabinet. The commission is assigned to the
4 Executive Office of the Governor for administrative purposes.
5 The Governor is the chairperson of the commission, and may
6 call a meeting of the commission when the need arises. All
7 actions taken by the commission may be taken by approval of a
8 simple majority.

9 (3) An executive administrator of the commission shall
10 be appointed and may be removed by the Governor with the
11 approval of three members of the Cabinet and shall serve at
12 the direction of the commission.

13 (4) The executive administrator is responsible for all
14 administrative functions of the commission, including
15 budgeting, personnel, purchasing, and such additional matters
16 as are delegated by the commission.

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

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

23 (7) The commission shall:

24 (a) Provide overall leadership and promote
25 coordination of economic and business development resources
26 for the benefit of minority business enterprises and of
27 distressed communities that are affected by the business.

28 (b) Provide direction relating to economic and
29 business development of minority business enterprises to
30 regional and statewide planning entities and county,
31 municipal, and special district minority business enterprise

1 programs to help promote the redevelopment of distressed areas
2 and minority business enterprises and minority and small
3 business enterprise programs, where necessary, and to foster
4 strategic alliances among these entities so as to target
5 resources and achieve specific objectives in the economic and
6 business development of minority business enterprises.

7 (c) Develop a clear statement of the mission, desired
8 outcomes and strategies for accomplishing the outcomes, and
9 performance measures to assess whether the outcomes are being
10 achieved for the state's small and minority business
11 enterprise programs. The goals are to:

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

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

20 3. Significantly reduce the disparities evidenced by a
21 statistical analysis of the availability and use of minority
22 businesses for state procurement.

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

28 (e) Submit the information required to be developed to
29 the Governor, the President of the Senate, and the Speaker of
30 the House of Representatives by February 1 of each year.~~of a~~
31 ~~systematic pattern of past and continuing racial~~

1 ~~discrimination against minority business enterprises and a~~
2 ~~disparity in the availability and use of minority business~~
3 ~~enterprises in the state procurement system. It is determined~~
4 ~~to be a compelling state interest to rectify such~~
5 ~~discrimination and disparity. Based upon statistical data~~
6 ~~profiling this discrimination, the Legislature has enacted~~
7 ~~race-conscious and gender-conscious remedial programs to~~
8 ~~ensure minority participation in the economic life of the~~
9 ~~state, in state contracts for the purchase of commodities and~~
10 ~~services, and in construction contracts. The purpose and~~
11 ~~intent of this section is to increase participation by~~
12 ~~minority business enterprises accomplished by encouraging the~~
13 ~~use of minority business enterprises and the entry of new and~~
14 ~~diversified minority business enterprises into the~~
15 ~~marketplace.~~

16 ~~(2) The Minority Business Advocacy and Assistance~~
17 ~~Office is established within the Department of Labor and~~
18 ~~Employment Security to assist minority business enterprises in~~
19 ~~becoming suppliers of commodities, services, and construction~~
20 ~~to state government.~~

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

24 ~~(8)(4) The Small Minority and Economic Development~~
25 ~~Business Advocacy and Assistance Office is established within~~
26 ~~the commission to assist small and minority businesses in~~
27 ~~becoming suppliers of commodities, services, and construction~~
28 ~~to state governments. The Small Business and Economic~~
29 ~~Development Office shall have the following powers, duties,~~
30 ~~and functions:~~

31

1 (a) To adopt rules to determine what constitutes a
2 "good faith effort" for purposes of state agency compliance
3 with the minority business enterprise procurement goals set
4 forth in s. 287.042. Factors which shall be considered by the
5 Small Minority Business and Economic Development Enterprise
6 ~~Assistance~~ Office in determining good faith effort shall
7 include, but not be limited to:

8 1. Whether the agency scheduled presolicitation or
9 prebid meetings for the purpose of informing minority business
10 enterprises of contracting and subcontracting opportunities.

11 2. Whether the contractor advertised in general
12 circulation, trade association, or minority-focus media
13 concerning the subcontracting opportunities.

14 3. Whether the agency effectively used services and
15 resources 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 4. Whether the agency provided written notice to a
21 reasonable number of minority business enterprises that their
22 interest in contracting with the agency was being solicited in
23 sufficient time to allow the minority business enterprises to
24 participate effectively.

25 (b) To adopt rules to determine what constitutes a
26 "good faith effort" for purposes of contractor compliance with
27 contractual requirements relating to the use of services or
28 commodities of a minority business enterprise under s.
29 287.094(2). Factors which shall be considered by the Small
30 Minority Business and Economic Development ~~Advocacy and~~
31

1 ~~Assistance~~ Office in determining whether a contractor has made
2 good faith efforts shall include, but not be limited to:

3 1. Whether the contractor attended any presolicitation
4 or prebid meetings that were scheduled by the agency to inform
5 minority business enterprises of contracting and
6 subcontracting opportunities.

7 2. Whether the contractor advertised in general
8 circulation, trade association, or minority-focus media
9 concerning the subcontracting opportunities.

10 3. Whether the contractor provided written notice to a
11 reasonable number of specific minority business enterprises
12 that their interest in the contract was being solicited in
13 sufficient time to allow the minority business enterprises to
14 participate effectively.

15 4. Whether the contractor followed up initial
16 solicitations of interest by contacting minority business
17 enterprises or minority persons to determine with certainty
18 whether the minority business enterprises or minority persons
19 were interested.

20 5. Whether the contractor selected portions of the
21 work to be performed by minority business enterprises in order
22 to increase the likelihood of meeting the minority business
23 enterprise procurement goals, including, where appropriate,
24 breaking down contracts into economically feasible units to
25 facilitate minority business enterprise participation.

26 6. Whether the contractor provided interested minority
27 business enterprises or minority persons with adequate
28 information about the plans, specifications, and requirements
29 of the contract or the availability of jobs.

30 7. Whether the contractor negotiated in good faith
31 with interested minority business enterprises or minority

1 persons, not rejecting minority business enterprises or
2 minority persons as unqualified without sound reasons based on
3 a thorough investigation of their capabilities.

4 8. Whether the contractor effectively used the
5 services of available minority community organizations;
6 minority contractors' groups; local, state, and federal
7 minority business assistance offices; and other organizations
8 that provide assistance in the recruitment and placement of
9 minority business enterprises or minority persons.

10 (c) To adopt rules and do all things necessary or
11 convenient to guide all state agencies toward making
12 expenditures for commodities, contractual services,
13 construction, and architectural and engineering services with
14 certified minority business enterprises in accordance with the
15 minority business enterprise procurement goals set forth in s.
16 287.042.

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

21 (e) To receive and disseminate information relative to
22 procurement opportunities, availability of minority business
23 enterprises, and technical assistance.

24 (f) To advise agencies on methods and techniques for
25 achieving procurement objectives.

26 (g) To provide a central minority business enterprise
27 certification process which includes independent verification
28 of status as a minority business enterprise.

29 (h) To develop procedures to investigate complaints
30 against minority business enterprises or contractors alleged
31 to violate any provision related to this section or s.

1 287.0943, that may include visits to worksites or business
2 premises, and to refer all information on businesses suspected
3 of misrepresenting minority status to the Commission on Small
4 Business and Economic Development ~~Department of Labor and~~
5 ~~Employment Security~~ for investigation. When an investigation
6 is completed and there is reason to believe that a violation
7 has occurred, the commission ~~Department of Labor and~~
8 ~~Employment Security~~ shall refer the matter to the office of
9 the Attorney General, Department of Legal Affairs, for
10 prosecution.

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

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

18 (k) To communicate on a monthly basis with the
19 Commission on Small Business and Economic Development ~~Small~~
20 ~~and Minority Business Advisory Council~~ to keep the commission
21 ~~council~~ informed on issues relating to minority enterprise
22 procurement.

23 (l) To serve as an advocate for minority business
24 enterprises, and coordinate with the small and minority
25 business ombudsman, as defined in s. 288.703, which duties
26 shall include:

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

30 2. Establishing standards within each industry with
31 which the state government contracts on how agencies and

1 contractors may provide the maximum practicable opportunity
2 for minority business enterprises.

3 3. Assisting agencies and contractors by providing
4 outreach to minority businesses, by specifying and monitoring
5 technical and managerial competence for minority business
6 enterprises, and by consulting in planning of agency
7 procurement to determine how best to provide opportunities for
8 minority business enterprises.

9 4. Integrating technical and managerial assistance for
10 minority business enterprises with government contracting
11 opportunities.

12 (m) To make and execute contracts and other
13 instruments necessary for the exercise of its powers and
14 functions, and provide and pay for advisory services and
15 technical assistance that may be necessary to carry out the
16 purposes of this section.

17 (n) To request or accept any grant, including a grant
18 that requires a state match, any payment, gift of funds, or
19 property made by the state, by the United States or any
20 department or agency thereof, or by any individual firm,
21 political subdivision, corporation, municipality, county, or
22 organization for any purpose outlined in chapter 287. All such
23 funds must be deposited into the budget entity of the office,
24 and may be expended above the amount appropriated by the
25 Legislature and in accordance with the terms and conditions of
26 any such grant, payment, or gift, or in the pursuit of the
27 administration of the office or in support of the programs and
28 promotional activities recommended to the commission. If the
29 Small Business and Economic Development Office is awarded a
30 grant or private contribution that requires a match, the
31

1 office shall receive a matching appropriation equal to 80
2 percent of the grant or private contribution.

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

6 (p)(m) To certify minority business enterprises, as
7 defined in s. 288.703, and as specified in ss. 287.0943 and
8 287.09431, and shall recertify such minority businesses not
9 less than once a year. Minority business enterprises must be
10 recertified biannually ~~annually~~ by affidavit.

11 (q)(n)1. To develop procedures to be used by an agency
12 in identifying commodities, contractual services,
13 architectural and engineering services, and construction
14 contracts, except those architectural, engineering,
15 construction, or other related services or contracts subject
16 to the provisions of chapter 339, that could be provided by
17 minority business enterprises. Minority business enterprise
18 goals must be based upon the total state spending with any
19 private or nonprofit entity that is contracting with the state
20 during the current fiscal year; except for the state
21 university construction program, which must be based upon
22 public education capital outlay projections for the subsequent
23 fiscal year and reported to the Legislature under s. 216.023.
24 Each agency is encouraged to spend 12-21 ~~21~~ percent on ~~of the~~
25 ~~moneys actually expended for~~ construction contracts, 17-25 ~~25~~
26 percent on ~~of the moneys actually expended for~~ architectural
27 and engineering contracts, 5-24 ~~24~~ percent on ~~of the moneys~~
28 ~~actually expended for~~ commodities, and 5-25 ~~50.5~~ percent on ~~of~~
29 ~~the moneys actually expended for~~ contractual services during
30 ~~the previous fiscal year, except for the state university~~
31 ~~construction program which shall be based upon public~~

1 ~~education capital outlay projections for the subsequent fiscal~~
2 ~~year, and reported to the Legislature pursuant to s. 216.023,~~
3 ~~for the purpose of entering into contracts~~ with certified
4 minority business enterprises as defined in s. 288.703(2), or
5 approved joint ventures or mentor programs for the purpose of
6 entering into contracts. However, in the event of budget
7 reductions pursuant to s. 216.221, the base amounts may be
8 adjusted to reflect such reductions. The overall spending goal
9 for each industry category shall be subdivided as follows:
10 a. For construction contracts: 2.4-4.3 ~~4~~ percent for
11 black Americans, 2.5-6 ~~6~~ percent for Hispanic-Americans, 0.4
12 percent for Asian-Americans, 0.3 for Native Americans, and
13 6.4-11 ~~11~~ percent for American women.
14 b. For architectural and engineering contracts: 2.6
15 percent for black Americans, 4.5-9 ~~9~~ percent for
16 Hispanic-Americans, 1 percent for Asian-Americans, 0.1 percent
17 for Native Americans, and 8.8-15 ~~15~~ percent for American
18 women.
19 c. For commodities: 1.5-4 ~~2~~ percent for black
20 Americans, 1.5-4 ~~4~~ percent for Hispanic-Americans, 0.2-0.5 ~~0.5~~
21 percent for Asian-Americans, 0.2-0.5 ~~0.5~~ percent for Native
22 Americans, and 1.6-15 ~~17~~ percent for American women.
23 d. For contractual services: 0.4-7 ~~6~~ percent for black
24 Americans, 0.3-7 ~~7~~ percent for Hispanic-Americans, 2.3 ~~±~~
25 percent for Asian-Americans, 0.2-0.5 ~~0.5~~ percent for Native
26 Americans, and 1.8-8.2 ~~36~~ percent for American women.
27 2. To develop procedures to evaluate the performance
28 of state employees in meeting or exceeding the established
29 percentage goals. Additionally, to develop procedures to
30 establish dollar goals, by procurement category, for each
31 agency which range in value from no less than 98 percent of

1 the overall spending goal and no more than 105 percent above
2 the overall spending goal as applied to each agency's total
3 spending with any private or nonprofit entity that is
4 contracting or doing business with the state during the
5 current fiscal year; except for the state university
6 construction program, which must be based upon public
7 education capital outlay projections for the subsequent fiscal
8 year and reported to the Legislature under s. 216.023.

9 ~~3.2.~~ For the purposes of commodities contracts for the
10 purchase of equipment to be used in the construction and
11 maintenance of state transportation facilities involving the
12 Department of Transportation, "minority business enterprise"
13 has the same meaning as provided in s. 288.703. "Minority
14 person" has the same meaning as in s. 288.703(3). In order to
15 ensure that the goals established under this paragraph for
16 contracting with certified minority business enterprises are
17 met, the department, with the assistance of the Small Minority
18 Business and Economic Development ~~Advocacy and Assistance~~
19 Office, shall make recommendations to the Legislature on
20 revisions to the goals, based on an updated statistical
21 analysis, at least once every 5 years. Such recommendations
22 shall be based on statistical data indicating the availability
23 of and disparity in the use of minority businesses contracting
24 with the state. The results of the second ~~first~~ updated
25 disparity study must be presented to the Legislature no later
26 than December 1, 2002, to determine the effectiveness in
27 achieving stated goals and to revise or modify program
28 components for the full achievement of the goals. In those
29 specific areas, including procurement category, ethnic group,
30 geographic region, or agency, when the Legislature determines
31 that there is no disparity in the participation of minority

1 business enterprises based on the disparity analysis, the
2 minority business program must be discontinued, in those areas
3 only, within 1 year after the Legislature's determination. The
4 Governor shall designate a Minority Business Ombudsman to
5 monitor progress, receive complaints, and report progress to
6 the Governor, the President of the Senate, and the Speaker of
7 the House of Representatives, by November 1 of each year, in
8 those areas in which the minority business enterprise programs
9 are phased out or repealed to determine whether disparities or
10 discrimination is a recurring problem. The minority business
11 enterprise program may be reestablished in phased-out
12 programs, when disparities in minority business utilization
13 reoccurs. This section expires July 1, 2006; however, the
14 Minority Business Ombudsman shall continue to monitor, receive
15 complaints, make recommendations, and report findings to the
16 Governor.~~1996~~

17 ~~4.3.~~ In determining the base amounts for assessing
18 compliance with this paragraph, the Small Minority Business
19 and Economic Development Advocacy and Assistance Office may
20 develop, by rule, guidelines for all agencies to use in
21 establishing such base amounts. These rules must include, but
22 are not limited to, guidelines for calculation of base
23 amounts, a deadline for the agencies to submit base amounts, a
24 deadline for approval of the base amounts by the Small
25 Minority Business and Economic Development Advocacy and
26 ~~Assistance~~ Office, and procedures for adjusting the base
27 amounts as a result of budget reductions made pursuant to s.
28 216.221.

29 ~~5.4.~~ To determine guidelines for the use of price
30 preferences, weighted preference formulas, individual project
31 goals, or other preferences, as appropriate to the particular

1 industry or trade, to increase the participation of minority
2 businesses in state contracting. These guidelines shall
3 include consideration of:

4 a. Size and complexity of the project.

5 b. The concentration of transactions with minority
6 business enterprises for the commodity or contractual services
7 in question in prior agency contracting.

8 c. The specificity and definition of work allocated to
9 participating minority business enterprises.

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

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

15 (f) The geographical location of certified minority
16 business enterprises where location is a relevant factor.

17 6.5. To establish programs, adopt rules, establish
18 guidelines, and develop annual plans, where applicable, to be
19 followed by the participants of the mentor program and
20 ~~determine guidelines for use of~~ joint ventures to meet
21 minority business enterprises spending goals. For purposes of
22 this section, "joint venture" means any association of two or
23 more business concerns to carry out a single business
24 enterprise for profit, for which purpose they combine their
25 property, capital, efforts, skills, or ~~and~~ knowledge. The
26 guidelines shall allow transactions with joint ventures to be
27 eligible for credit against the minority business enterprise
28 goals of an agency when the contracting joint venture
29 demonstrates that at least one partner to the joint venture is
30 a certified minority business enterprise as defined in s.
31 288.703, and that such partner is responsible for a clearly

1 defined portion of the work to be performed, and can
2 demonstrate a plan to enhance the certified minority business
3 enterprises' profitability, management skills, financial
4 standing, and marketplace position ~~shares in the ownership,~~
5 ~~control, management, responsibilities, risks, and profits of~~
6 ~~the joint venture.~~ Such demonstration shall be by verifiable
7 documents and sworn statements and may be reviewed by the
8 Small Minority Business and Economic Development Advocacy and
9 ~~Assistance~~ Office at or before the time a contract bid is
10 submitted. An agency may count toward its minority business
11 enterprise goals a portion of the total dollar amount of a
12 contract ~~equal to the percentage of the ownership and control~~
13 ~~held by the qualifying certified minority business partners in~~
14 ~~the business relationship contracting joint venture,~~ so long
15 as ~~it the joint venture~~ meets the guidelines adopted by the
16 office.

17 (r) Mentor programs must be established for businesses
18 to qualify to bid on state projects.

19 1. A mentor must possess all applicable state and
20 local licenses related to conducting the mentor's business. A
21 mentor shall provide to a certified minority business
22 enterprise any financial, technical, ethical, management, and
23 practical training and guidance relating to the conduct of the
24 mentor's business, which shall be outlined as written goals
25 and submitted for review to the Small Business and Economic
26 Development Office.

27 2. Mentor requirements apply only to businesses that
28 apply for the mentor program, compete for state contracts, and
29 want certified minority business enterprise participation
30 credit on a state contract. The protege of the mentor
31

1 relationship, must be a certified minority business
2 enterprise.

3 3. Mentors who mentor certified minority business
4 enterprises or small business enterprise located in an area
5 targeted by the Governor's Front Porch Florida Initiative may
6 receive credit for meeting minority business enterprise
7 contracting goals.

8 4. A protege under the program shall participate by
9 being available to benefit from information and expertise
10 offered by the mentor. To qualify as a protege, a business
11 must be a certified minority business enterprise.

12 5. The mentor shall submit the written mentor plan to
13 the Small Business and Economic Development Office, for
14 approval, if the mentor desires to submit the mentor-protege
15 relationship for minority business enterprise participation
16 credit.

17 (s)~~(o)~~1. To establish a system to record and measure
18 the use of certified minority business enterprises in state
19 contracting. This system shall maintain information and
20 statistics on certified minority business enterprise
21 participation, awards, dollar volume of expenditures and
22 agency goals, and other appropriate types of information to
23 analyze progress in the access of certified minority business
24 enterprises to state contracts and to monitor agency
25 compliance with this section. Such reporting must include, but
26 is not limited to, the identification of all subcontracts in
27 state contracting, including state negotiated agreement price
28 schedule contracts and state term contracts,by dollar amount
29 and by number of subcontracts and the identification of the
30 utilization of certified minority business enterprises as
31 prime contractors and subcontractors by dollar amounts of

1 contracts and subcontracts, number of contracts and
2 subcontracts, minority status, industry, and any conditions or
3 circumstances that significantly affected the performance of
4 subcontractors. Agencies shall report their compliance with
5 the requirements of this reporting system at least annually
6 and at the request of the office. All agencies shall cooperate
7 with the office in establishing this reporting system. Except
8 in construction contracting, all agencies shall review
9 contracts costing in excess of CATEGORY FOUR as defined in s.
10 287.017 to determine if such contracts could be divided into
11 smaller contracts to be separately bid and awarded, and shall,
12 when economical, offer such smaller contracts to encourage
13 minority participation.

14 2. To report agency compliance with the provisions of
15 subparagraph 1. for the preceding fiscal year to the Governor
16 and Cabinet, the President of the Senate, and the Speaker of
17 the House of Representatives, ~~and the secretary of the~~
18 ~~Department of Labor and Employment Security~~ on or before
19 February 1 of each year. The report must contain, at a
20 minimum, the following:

21 a. Total expenditures of each agency by industry.

22 b. The dollar amount and percentage of contracts
23 awarded to certified minority business enterprises by each
24 state agency.

25 c. The dollar amount and percentage of contracts
26 awarded indirectly to certified minority business enterprises
27 as subcontractors by each state agency.

28 d. The total dollar amount and percentage of contracts
29 awarded to certified minority business enterprises, whether
30 directly or indirectly, as subcontractors.

31

1 e. A statement and assessment of good faith efforts
2 taken by each state agency.

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

6 (9)(5)(a) Each agency shall, at the time the
7 specifications or designs are developed or contract sizing is
8 determined for any proposed procurement costing in excess of
9 CATEGORY FOUR, as defined in s. 287.017, forward a notice to
10 the Small Minority Business and Economic Development ~~Advocacy~~
11 ~~and Assistance~~ Office of the proposed procurement and any
12 determination on the designs of specifications of the proposed
13 procurement that impose requirements on prospective vendors,
14 no later than 30 days prior to the issuance of a solicitation,
15 except that this provision shall not apply to emergency
16 acquisitions. The 30-day notice period shall not toll the time
17 for any other procedural requirements.

18 (b) If the Small Minority Business and Economic
19 Development ~~Advocacy and Assistance~~ Office determines that the
20 proposed procurement will not likely allow opportunities for
21 minority business enterprises, the office may, within 20 days
22 after it receives the information specified in paragraph (a),
23 propose the implementation of minority business enterprise
24 utilization provisions or submit alternative procurement
25 methods that would significantly increase minority business
26 enterprise contracting opportunities.

27 (c) Whenever the agency and the Small Minority
28 Business and Economic Development ~~Advocacy and Assistance~~
29 Office disagree, the matter shall be submitted for
30 determination to the head of the agency or the senior-level
31

1 official designated pursuant to this section as liaison for
2 minority business enterprise issues.

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

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

21 (f) Paragraph (a) will not apply when the Small
22 Minority Business and Economic Development Advocacy and
23 ~~Assistance~~ Office determines that an agency has established a
24 work plan to allow advance consultation and planning with
25 minority business enterprises and where such plan clearly
26 demonstrates:

27 1. A high level of advance planning by the agency with
28 minority business enterprises.

29 2. A high level of accessibility, knowledge, and
30 experience by minority business enterprises in the agency's
31 contract decisionmaking process.

1 3. A high quality of agency monitoring and enforcement
2 of internal implementation of minority business utilization
3 provisions.

4 4. A high quality of agency monitoring and enforcement
5 of contractor utilization of minority business enterprises,
6 especially tracking subcontractor data, and ensuring the
7 integrity of subcontractor reporting.

8 5. A high quality of agency outreach, agency
9 networking of major vendors with minority vendors, and
10 innovation in techniques to improve utilization of minority
11 business enterprises.

12 6. Substantial commitment, sensitivity, and proactive
13 attitude by the agency head and among the agency minority
14 business staff.

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

19 (a) Adopt a minority business enterprise utilization
20 plan for review and approval by the Small Minority Business
21 and Economic Development Advocacy and Assistance Office which
22 should require meaningful and useful methods to attain the
23 legislative intent in assisting minority business enterprises.

24 (b) Designate a senior-level employee in the agency as
25 a minority enterprise assistance officer, responsible for
26 overseeing the agency's minority business utilization
27 activities, and who is not also charged with purchasing
28 responsibility. A senior-level agency employee and agency
29 purchasing officials shall be accountable to the agency head
30 for the agency's minority business utilization performance.
31 The Small Minority Business and Economic Development Advocacy

1 ~~and Assistance~~ Office shall advise each agency on compliance
2 performance.

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

10 Section 10. Section 287.0946, Florida Statutes, is
11 created to read:

12 287.0946 Small business and minority business
13 enterprise linked-deposit program.--

14 (1) The Commission on Small Business and Economic
15 Development may create a small and minority business
16 enterprise linked-deposit program to encourage financial
17 institutions to increase the volume of loans made to small
18 business enterprises and minority business enterprises to
19 encourage the development of small and minority businesses.

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

21 (a) "Commission" means the Commission on Small
22 Business and Economic Development.

23 (b) "Eligible borrower" means a minority business
24 enterprise that is certified by the statewide reciprocal
25 certification process or a small business enterprise certified
26 by the Small Business and Economic Development Office under
27 ss. 287.0942 and 287.088.

28 (c) "Treasurer" means the Insurance Commissioner and
29 Treasurer.

30 (3) Notwithstanding the provisions of s. 18.10, the
31 Treasurer shall designate, for the duration of the small and

1 minority business enterprise linked-deposit program, \$15
2 million of the state's short-term treasury deposits for
3 deposit in participating financial institutions, except that
4 the Treasurer may not deposit more than \$2 million in any one
5 financial institution participating in the small and minority
6 business linked-deposit program.

7 (4) Participating financial institutions must be
8 qualified public depositories under chapter 280 and must be
9 selected via the bid process employed by the Treasurer in the
10 competitive selection program for certificates of deposit. A
11 bid less than 200 basis points below the prevailing rate for
12 United States Treasury securities with a maturity matching the
13 maturity of the deposit may not be accepted. At any one time,
14 not more than \$15 million dollars may be placed in the small
15 and minority business enterprise linked-deposit program under
16 this section.

17 (5) Participating financial institutions must provide
18 a 100 percent match of any state treasury funds that are
19 deposited within the financial institution as a result of
20 participating in the small and minority business enterprise
21 linked-deposit program. The participating financial
22 institution's share of matching funds shall be used to provide
23 loans to eligible borrowers for working capital, contracts,
24 purchases of supplies or equipment, and the lease of the
25 capital assets, including land, buildings or equipment. The
26 maximum amount of a loan provided under the minority business
27 linked-deposit program is \$250,000.

28 (6) At the recommendation of the Department of
29 Insurance, the Treasurer shall remove and competitively rebid
30 all program deposits at a participating financial institution
31 if a review of the participating financial institution's

1 record under the program demonstrates no improvements relative
2 to the financial institution's preparticipation levels of
3 lending to small and minority business enterprises.

4 (7) The Treasurer shall remove and competitively rebid
5 all program deposits at a participating institution, if the
6 participating financial institution ceases to be a qualified
7 public depository under chapter 280.

8 (8) The Small Business and Economic Development
9 Office, along with assistance from the Department of Banking
10 and Finance, shall compile funding data and provide an annual
11 report to the Governor, the President of the Senate, and the
12 Speaker of the House of Representatives, on February 1 of each
13 year which contains:

14 (a) The name of the participating financial
15 institutions and the number and amount of loans made to small
16 and minority businesses under the small and minority business
17 enterprise linked-deposit program during the previous calendar
18 year.

19 (b) The average interest rate for small and minority
20 business loans made by each participating financial
21 institution under the program during the previous calendar
22 year.

23 (c) The number of completed small and minority
24 business loan applications that were denied or disapproved
25 during the previous calendar year by each financial
26 institution participating under the program.

27 (d) Recommendations for continuation, expansion,
28 improvement, or expiration of the minority business
29 linked-deposit program in its annual report to the
30 Legislature.

31

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

4 Section 11. Subsections (6) and (7) of section
5 290.0075, Florida Statutes, are amended to read:

6 290.0075 Enterprise zone linked deposit program.--

7 (6) The Department of Banking and Finance shall
8 provide an annual report to the Governor, the Speaker of the
9 House of Representatives, the President of the Senate, and the
10 Office of Tourism, Trade, and Economic Development prior to
11 March ~~February~~ 1 of each year which contains:

12 (a) The number and amount of loans made to small
13 businesses under this program during the previous calendar
14 year.

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

18 (c) The number of completed small business loan
19 applications that were denied or disapproved during the
20 previous calendar year by each selected financial institution
21 under this program.

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

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

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

30 17.11 To report disbursements made.--

31

1 (2) The Comptroller shall also cause to have reported
2 from the state automated management accounting subsystem no
3 less than quarterly the disbursements which agencies made to
4 small businesses, as defined in the Florida Small and Minority
5 Business Assistance Act of 1985; to certified minority
6 business enterprises in the aggregate; and to certified
7 minority business enterprises broken down into categories of
8 minority persons, as well as gender and nationality subgroups.
9 This information shall be made available to the agencies, the
10 Small Minority Business and Economic Development ~~Advocacy and~~
11 ~~Assistance~~ Office, the Governor, the President of the Senate,
12 and the Speaker of the House of Representatives. Each agency
13 shall be responsible for the accuracy of information entered
14 into the state automated management accounting subsystem for
15 use in this reporting.

16 Section 13. Subsections (1) and (2) of section
17 255.102, Florida Statutes, 1998 Supplement, are amended to
18 read:

19 255.102 Contractor utilization of minority business
20 enterprises.--

21 (1) Agencies shall consider the use of price
22 preferences, weighted preference formulas, or other
23 preferences for construction contracts, as determined
24 appropriate by the Small Minority Business and Economic
25 Development ~~Advocacy and Assistance~~ Office in collaboration
26 with the Department of Management Services to increase
27 minority participation.

28 (2) The Small Minority Business and Economic
29 Development ~~Advocacy and Assistance~~ Office, in collaboration
30 with the Department of Management Services and the State
31 University System, shall adopt rules to determine what is a

1 "good faith effort" for purposes of contractor compliance with
2 minority participation goals established for competitively
3 awarded building and construction projects. Pro forma efforts
4 shall not be considered good faith. Factors which shall be
5 considered by the state agency in determining whether a
6 contractor has made good faith efforts shall include, but not
7 be limited to:

8 (a) Whether the contractor attended any
9 presolicitation or prebid meetings that were scheduled by the
10 agency to inform minority business enterprises of contracting
11 and subcontracting opportunities.

12 (b) Whether the contractor advertised in general
13 circulation, trade association, or minority-focus media
14 concerning the subcontracting opportunities.

15 (c) Whether the contractor provided written notice to
16 all relevant subcontractors listed on the minority vendor list
17 for that locality and statewide as provided by the agency as
18 of the date of issuance of the invitation to bid, that their
19 interest in the contract was being solicited in sufficient
20 time to allow the minority business enterprises to participate
21 effectively.

22 (d) Whether the contractor followed up initial
23 solicitations of interest by contacting minority business
24 enterprises, the Small Minority Business and Economic
25 Development ~~Advocacy and Assistance~~ Office, or minority
26 persons who responded and provided detailed information about
27 prebid meetings, access to plans, specifications, contractor's
28 project manager, subcontractor bonding, if any, payment
29 schedule, bid addenda, and other assistance provided by the
30 contractor to enhance minority business enterprise
31 participation.

1 (e) Whether the contractor selected portions of the
2 work to be performed by minority business enterprises in order
3 to increase the likelihood of meeting the minority business
4 enterprise procurement goals, including, where appropriate,
5 breaking down contracts into economically feasible units to
6 facilitate minority business enterprise participation under
7 reasonable and economical conditions of performance.

8 (f) Whether the contractor provided the Small Minority
9 Business and Economic Development ~~Advocacy and Assistance~~
10 Office as well as interested minority business enterprises or
11 minority persons with adequate information about the plans,
12 specifications, and requirements of the contract or the
13 availability of jobs at a time no later than when such
14 information was provided to other subcontractors.

15 (g) Whether the contractor negotiated in good faith
16 with interested minority business enterprises or minority
17 persons, not rejecting minority business enterprises or
18 minority persons as unqualified without sound reasons based on
19 a thorough investigation of their capabilities or imposing
20 implausible conditions of performance on the contract.

21 (h) Whether the contractor diligently seeks to replace
22 a minority business enterprise subcontractor that is unable to
23 perform successfully with another minority business
24 enterprise.

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

31

1 Section 14. Paragraphs (a) and (c) of subsection (2)
2 and paragraphs (b) and (c) of subsection (4) of section
3 287.042, Florida Statutes, 1998 Supplement, are amended to
4 read:

5 287.042 Powers, duties, and functions.--The department
6 shall have the following powers, duties, and functions:

7 (2)(a) To plan and coordinate purchases in volume and
8 to negotiate and execute purchasing agreements and contracts
9 for commodities and contractual services under which state
10 agencies shall make purchases pursuant to s. 287.056, and
11 under which a federal, county, municipality, institutions
12 qualified pursuant to s. 240.605, private nonprofit community
13 transportation coordinator designated pursuant to chapter 427,
14 while conducting business related solely to the Commission for
15 the Transportation Disadvantaged, or other local public agency
16 may make purchases. The department may restrict purchases from
17 some term contracts to state agencies only for those term
18 contracts where the inclusion of other governmental entities
19 will have an adverse effect on competition or to those federal
20 facilities located in this state. In such planning or
21 purchasing the Small Minority Business and Economic
22 Development Advocacy and Assistance Office may monitor to
23 ensure that opportunities are afforded for contracting with
24 minority business enterprises. The department, for state term
25 contracts, and all agencies, for multiyear contractual
26 services or term contracts, shall explore reasonable and
27 economical means to utilize certified minority business
28 enterprises. Purchases by any county, municipality, private
29 nonprofit community transportation coordinator designated
30 pursuant to chapter 427, while conducting business related
31 solely to the Commission for the Transportation Disadvantaged,

1 or other local public agency under the provisions in the state
2 purchasing contracts, and purchases, from the corporation
3 operating the correctional work programs, of products or
4 services that are subject to paragraph (1)(f), are exempt from
5 the competitive sealed bid requirements otherwise applying to
6 their purchases.

7 (c) Any person who files an action protesting a
8 decision or intended decision pertaining to contracts
9 administered by the department or a state agency pursuant to
10 s. 120.57(3)(b) shall post with the department or the state
11 agency at the time of filing the formal written protest a bond
12 payable to the department or state agency in an amount equal
13 to 1 percent of the department's or the state agency's
14 estimate of the total volume of the contract or \$5,000,
15 whichever is less, which bond shall be conditioned upon the
16 payment of all costs which may be adjudged against him or her
17 in the administrative hearing in which the action is brought
18 and in any subsequent appellate court proceeding. For protests
19 of decisions or intended decisions of the department
20 pertaining to agencies' requests for approval of exceptional
21 purchases, the bond shall be in an amount equal to 1 percent
22 of the requesting agency's estimate of the contract amount for
23 the exceptional purchase requested or \$5,000, whichever is
24 less. In lieu of a bond, the department or state agency may,
25 in either case, accept a cashier's check or money order in the
26 amount of the bond. If, after completion of the administrative
27 hearing process and any appellate court proceedings, the
28 agency prevails, it shall recover all costs and charges which
29 shall be included in the final order or judgment, excluding
30 attorney's fees. This section shall not apply to protests
31 filed by the Small ~~Minority~~ Business and Economic Development

1 ~~Advocacy and Assistance~~ Office. Upon payment of such costs and
2 charges by the person protesting the award, the bond,
3 cashier's check, or money order shall be returned to him or
4 her. If the person protesting the award prevails, he or she
5 shall recover from the agency all costs and charges which
6 shall be included in the final order of judgment, excluding
7 attorney's fees.

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

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

1 (c) Development of procedures for the receipt and
2 opening of bids or proposals by an agency. Such procedures
3 shall provide the Small Minority Business and Economic
4 Development Advocacy and Assistance Office an opportunity to
5 monitor and ensure that the contract award is consistent with
6 the original request for proposal or invitation to bid, in
7 accordance with s. 287.0945(6), and subject to the review of
8 bid responses within standard timelines.

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

12 287.057 Procurement of commodities or contractual
13 services.--

14 (5) Upon issuance of any invitation to bid or request
15 for proposals, an agency shall forward to the department one
16 copy of each invitation to bid or request for proposals for
17 all commodity and contractual services purchases in excess of
18 the threshold amount provided in s. 287.017 for CATEGORY TWO.
19 An agency shall also, upon request, furnish a copy of all
20 competitive sealed bid or competitive sealed proposal
21 tabulations. The Small Minority Business and Economic
22 Development Advocacy and Assistance Office may also request
23 from the agencies any information submitted to the department
24 pursuant to this subsection.

25 (6)(a) In order to strive to meet the minority
26 business enterprise procurement goals set forth in s.
27 287.0945, an agency may reserve any contract for competitive
28 sealed bidding only among certified minority business
29 enterprises. Agencies shall review all their contracts each
30 fiscal year and shall determine which contracts may be
31 reserved for bidding only among certified minority business

1 enterprises. This reservation may only be used when it is
2 determined, by reasonable and objective means, before the
3 invitation to bid that there are capable, qualified certified
4 minority business enterprises available to bid on a contract
5 to provide for effective competition. The Small Minority
6 Business and Economic Development ~~Advocacy and Assistance~~
7 Office shall consult with any agency in reaching such
8 determination when deemed appropriate.

9 Section 16. Subsections (1), (5), and (6) of section
10 287.0947, Florida Statutes, are amended to read:

11 287.0947 Florida Council on Small and Minority
12 Business Development; creation; membership; duties.--

13 (1) On or after October 1, 1996, the executive
14 administrator of the Commission on Small Business and Economic
15 Development ~~secretary of the Department of Labor and~~
16 ~~Employment Security~~ may create the Florida Advisory Council on
17 Small and Minority Business Development with the purpose of
18 advising and assisting the executive administrator ~~secretary~~
19 in carrying out the executive administrator's ~~secretary's~~
20 duties with respect to minority businesses and economic and
21 business development. It is the intent of the Legislature that
22 the membership of such council include practitioners,
23 laypersons, financiers, and others with business development
24 experience who can provide invaluable insight and expertise
25 for this state in the diversification of its markets and
26 networking of business opportunities. The council shall
27 initially consist of 19 persons, each of whom is or has been
28 actively engaged in small and minority business development,
29 either in private industry, in governmental service, or as a
30 scholar of recognized achievement in the study of such
31 matters. Initially, the council shall consist of members

1 representing all regions of the state and shall include at
2 least one member from each group identified within the
3 definition of "minority person" in s. 288.703(3), considering
4 also gender and nationality subgroups, and shall consist of
5 the following:

6 (a) Four members consisting of representatives of
7 local and federal small and minority business assistance
8 programs or community development programs.

9 (b) Eight members composed of representatives of the
10 minority private business sector, including certified minority
11 business enterprises and minority supplier development
12 councils, among whom at least two shall be women and at least
13 four shall be minority persons.

14 (c) Two representatives of local government, one of
15 whom shall be a representative of a large local government,
16 and one of whom shall be a representative of a small local
17 government.

18 (d) Two representatives from the banking and insurance
19 industry.

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

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

24

25 A candidate for appointment may be considered if eligible to
26 be certified as an owner of a minority business enterprise, or
27 if otherwise qualified under the criteria above. Vacancies may
28 be filled by appointment of the executive administrator
29 ~~secretary~~, in the manner of the original appointment.

30 (5) The powers and duties of the council include, but
31 are not limited to: researching and reviewing the role of

1 small and minority businesses in the state's economy;
2 reviewing issues and emerging topics relating to small and
3 minority business economic development; studying the ability
4 of financial markets and institutions to meet small business
5 credit needs and determining the impact of government demands
6 on credit for small businesses; assessing the implementation
7 of s. 187.201(22), requiring a state economic development
8 comprehensive plan, as it relates to small and minority
9 businesses; assessing the reasonableness and effectiveness of
10 efforts by any state agency or by all state agencies
11 collectively to assist minority business enterprises; and
12 advising the Governor, the executive administrator ~~secretary~~,
13 and the Legislature on matters relating to small and minority
14 business development which are of importance to the
15 international strategic planning and activities of this state.

16 (6) On or before January 1 of each year, the council
17 shall present an annual report to the executive administrator
18 ~~secretary~~ that sets forth in appropriate detail the business
19 transacted by the council during the year and any
20 recommendations to the executive administrator ~~secretary~~,
21 including those to improve business opportunities for small
22 and minority business enterprises.

23 Section 17. Subsections (5), (6), and (8) of section
24 288.703, Florida Statutes, 1998 Supplement, are amended to
25 read:

26 288.703 Definitions.--As used in this act, the
27 following words and terms shall have the following meanings
28 unless the content shall indicate another meaning or intent:

29 (5) "Commission" ~~"Department"~~ means the Commission on
30 Small Business and Economic Development ~~Department of Labor~~
31 ~~and Employment Security~~.

