

1
2 An act relating to state procurement; amending
3 s. 287.094, F.S.; revising provisions relating
4 to minority business enterprise programs;
5 providing for revoking the certification of
6 certain minority businesses under certain
7 circumstances; providing exceptions;
8 prohibiting agencies from denying contractors,
9 firms, or individuals an opportunity to compete
10 in public procurement of commodities and
11 services under certain circumstances; providing
12 for filing of certain complaints; providing
13 procedures and requirements; providing a
14 penalty for certain discrimination; amending s.
15 287.0943, F.S.; requiring the Office of
16 Supplier Diversity to accept certain businesses
17 as certified minority businesses for certain
18 purposes under certain circumstances; revising
19 the appointment criteria for the Minority
20 Business Certification Task Force; revising
21 criteria for certification of minority business
22 enterprises; requiring businesses to comply
23 with state licensing requirements for certain
24 certification; providing for review or audit of
25 certain businesses under certain circumstances;
26 providing for random reviews or audits of
27 certain business by the Office of Supplier
28 Diversity; authorizing the Auditor General to
29 review or audit certain minority businesses for
30 certain purposes; transferring the Minority
31 Business Advocacy and Assistance Office from

1 the Department of Labor and Employment Security
2 to the Department of Management Services and
3 renaming the office as the Office of Supplier
4 Diversity; amending s. 287.09451, F.S., to
5 conform to such transfer and renaming; amending
6 s. 288.703, F.S.; revising certain definitions;
7 creating s. 287.134, F.S.; providing
8 definitions; prohibiting certain entities or
9 affiliates from bidding on certain contracts;
10 prohibiting public entities from accepting
11 certain bids from, awarding certain contracts
12 to, or transacting business with certain
13 entities; requiring invitations to bid,
14 requests for proposals, and certain written
15 contracts to contain notice of provisions;
16 providing requirements, procedures, and
17 limitations for determinations of
18 discrimination by certain entities; providing
19 for notice and administrative hearings;
20 providing for nonapplication to certain
21 activities; amending ss. 17.11, 255.102,
22 287.012, 287.042, 287.057, and 287.9431, F.S.,
23 to conform; providing an effective date.
24

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

26
27 Section 1. Section 287.094, Florida Statutes, is
28 amended to read:

29 287.094 Minority business enterprise programs; penalty
30 for discrimination and false representation.--
31

1 (1) It is unlawful for any individual to falsely claim
2 to be ~~represent any entity as~~ a minority business enterprise
3 for purposes of qualifying for certification with any
4 governmental certifying organization as a minority business
5 enterprise in order to participate under a program of a state
6 agency which is designed to assist certified minority business
7 enterprises in the receipt of contracts with the agency for
8 the provision of goods or services. The certification of any
9 contractor, firm, or individual obtained by such false
10 representation shall be permanently revoked and the entity
11 shall be barred from doing business with state government for
12 a period of 36 months. Any person who violates this section is
13 guilty of a felony of the second degree, punishable as
14 provided in s. 775.082, s. 775.083, or s. 775.084.

15 (2) Any contractor, firm, or individual which falsely
16 represents to an agency or to a contractor, pursuant to a
17 state contract, that it is a certified minority business
18 enterprise or which represents that it will use the services
19 or commodities of a certified minority business enterprise and
20 subsequently does not do so shall be in breach of contract.
21 Upon determination that a breach has occurred, all payments
22 under the contract may be immediately suspended. The
23 contractor or firm may show that it attempted through
24 reasonable and objective means and in good faith to comply
25 with the terms of the contract relating to minority business
26 enterprises but was unable to comply. If the agency determines
27 that the contractor or firm did not act in good faith, all
28 amounts paid to the contractor or firm under the state
29 contract intended for expenditure with the certified minority
30 business enterprises shall be forfeited and recoverable by the
31 Department of Legal Affairs. In addition, the contract may be

1 rescinded and the agency may return all goods received and
2 recover all amounts paid under the contract.

3 (3) Any ~~No~~ contractor, firm, or individual shall be
4 barred from doing business with state government for a period
5 of 36 months, and shall be permanently disqualified from doing
6 business with state government as a certified minority
7 business enterprise, if ~~qualified for 36 months to bid on~~
8 ~~contracts or negotiate for the rendering of professional~~
9 ~~services pursuant to s. 287.055 awarded by an agency after the~~
10 ~~office determines that the contractor, firm, or individual has~~
11 ~~falsely represented that it is a certified minority business~~
12 ~~enterprise, or the office has determined that the contractor,~~
13 ~~firm, or individual has not acted in good faith to fulfill the~~
14 ~~terms of a contract calling for it to use the services or~~
15 ~~commodities of a certified minority business enterprise. If~~
16 ~~the Department of Legal Affairs, agency final order, or a~~
17 court of law determines ~~or a court of law adjudges~~ that a
18 person was involved in a violation of this section, knew about
19 such violation, or collaborated with a contractor or firm in
20 such violation, the person, or any contractor or firm the
21 person is employed by or affiliated with, shall be barred from
22 doing business with state government for a period of at least
23 36 months ~~shall not be a qualified vendor for the state for at~~
24 ~~least 36 months to bid on contracts or negotiate for the~~
25 ~~rendering of professional services pursuant to s. 287.055~~
26 ~~awarded by an agency after such determination is made.~~

27 (4) No agency shall deny any contractor, firm, or
28 individual a fair opportunity to compete in the public
29 procurement of commodities and services based on race,
30 national origin, gender, religion, or physical disability,
31 which for purposes of this subsection constitutes prohibited

1 discrimination. Complaints alleging prohibited discrimination
2 by an agency in its public procurement may be filed with the
3 Office of Supplier Diversity within 60 days after the facts
4 giving rise to the complaint are known, or reasonably should
5 have been discovered. Any complaint shall be filed in
6 writing, and must set forth the specific facts giving rise to
7 the claim of prohibited discrimination. The Office of
8 Supplier Diversity shall, within 10 days, refer the complaint
9 to the Inspector General for the agency that is the subject of
10 the complaint, who shall coordinate a prompt investigation and
11 issue written findings of fact. These findings shall be
12 reviewed by the Chief Inspector General or his or her
13 designee, who is authorized to conduct any further
14 investigation deemed necessary or appropriate. Upon a final
15 determination that an agency has abused its discretion by
16 engaging in prohibited discrimination, the Chief Inspector
17 General shall refer any state employee determined to have
18 participated in the prohibited discrimination for disciplinary
19 action in accordance with Chapter 60K(9), Florida
20 Administrative Code, and subsequently enacted rules, up to and
21 including termination.

22 (5)(4) The owner of a minority business enterprise
23 that has been found guilty under subsection (1) or subsection
24 (3) shall not attempt to circumvent this section by creating a
25 new business entity for the purposes of attempting to transact
26 business in this state ~~corporate~~ structure.

27 Section 2. Section 287.0943, Florida Statutes, is
28 amended to read:

29 287.0943 Certification of minority business
30 enterprises.--

31

1 (1) A business certified by any local governmental
2 jurisdiction or organization shall be accepted by the
3 Department of Management Services, Office of Supplier
4 Diversity, as a certified minority business enterprise for
5 purposes of doing business with state government when the
6 Office of Supplier Diversity determines that the state's
7 minority business enterprise certification criteria are
8 applied in the local certification process.

9 (2)~~(1)~~(a) The office is hereby directed to convene a
10 "Minority Business Certification Task Force." The task force
11 shall meet as often as necessary, but no less frequently than
12 annually.

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

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

29
30 In addition, the ~~Minority Business Advocacy and Assistance~~
31 Office of Supplier Diversity shall appoint seven members

1 consisting of three representatives of minority business
2 enterprises, one of whom should be a woman business owner, two
3 officials of the office, and two at-large members to ensure
4 balance regional, gender, racial, and ethnic balance among the
5 groups specified in s. 288.703(3). The chairperson of the
6 Legislative Committee on Intergovernmental Relations or a
7 designee shall be a member of the task force, ex officio. A
8 quorum shall consist of one-third of the current members, and
9 the task force may take action by majority vote. Any vacancy
10 may only be filled by the organization or agency originally
11 authorized to appoint the position.

12 (c) The purpose of the task force will be to propose
13 uniform criteria and procedures by which participating
14 entities and organizations can qualify businesses to
15 participate in procurement or contracting programs as
16 certified minority business enterprises in accordance with the
17 certification criteria established by law.

18 (d) A final list of the criteria and procedures
19 proposed by the task force shall be considered by the
20 secretary. The task force may seek technical assistance from
21 qualified providers of technical, business, and managerial
22 expertise to ensure the reliability of the certification
23 criteria developed.

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

26 1. Link ownership by a minority person, as defined in
27 s. 288.703(3), or as dictated by the legal obligations of a
28 certifying organization, to day-to-day control and financial
29 risk by the qualifying minority owner, and to demonstrated
30 expertise or licensure ~~licensure~~ of a minority owner in any
31 trade or profession that the minority business enterprise will

1 offer to the state when certified; ~~however, the minority~~
2 ~~licenseholder need not be the controlling owner of the~~
3 ~~enterprise, but must hold an ownership interest. Minority~~
4 ~~business enterprises presently certified by the state will not~~
5 ~~be subject to the licensure requirement until 5 years after~~
6 ~~the effective date of this act. Businesses must comply with~~
7 ~~all state licensing requirements prior to becoming certified~~
8 ~~as a minority business enterprise.~~

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

31

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

18 (f) When a business receives payments or awards
19 exceeding \$100,000 in one fiscal year, a review of its
20 certification status or an audit will be conducted within 2
21 years. In addition, random reviews or audits will be
22 conducted as deemed appropriate by the Office of Supplier
23 Diversity.~~The certification procedures should include, at a~~
24 ~~minimum, an onsite visit to inspect business operations and~~
25 ~~verify statements included in the application, unless~~
26 ~~verification can be accomplished by other methods of adequate~~
27 ~~verification or assessment of ownership and control.~~

28 (g) The certification criteria approved by the task
29 force and adopted by the Department of Management Services
30 ~~Labor and Employment Security~~ shall be included in a statewide
31 and interlocal agreement as defined in s. 287.09431 and, in

1 accordance with s. 163.01, shall be executed according to the
2 terms included therein.

3 (h) The certification procedures should allow an
4 applicant seeking certification to designate on the
5 application form the information the applicant considers to be
6 proprietary, confidential business information. As used in
7 this paragraph, "proprietary, confidential business
8 information" includes, but is not limited to, any information
9 that would be exempt from public inspection pursuant to the
10 provisions of s. 119.07(3); trade secrets; internal auditing
11 controls and reports; contract costs; or other information the
12 disclosure of which would injure the affected party in the
13 marketplace or otherwise violate s. 286.041. The executor in
14 receipt of the application shall issue written and final
15 notice of any information for which noninspection is requested
16 but not provided for by law.

17 (i) A business that is certified under the provisions
18 of the statewide and interlocal agreement shall be deemed a
19 certified minority enterprise in all jurisdictions or
20 organizations where the agreement is in effect, and that
21 business is deemed available to do business as such within any
22 such jurisdiction or with any such organization statewide. All
23 state agencies must accept minority business enterprises
24 certified in accordance with the statewide and interlocal
25 agreement of s. 287.09431, and that business shall also be
26 deemed a "certified minority business enterprise" as defined
27 in s. 288.703. However, any governmental jurisdiction or
28 organization that administers a minority business purchasing
29 program may reserve the right to establish further
30 certification procedures necessary to comply with federal law.

31

1 (j) The statewide and interlocal agreement shall be
2 guided by the terms and conditions found therein and may be
3 amended at any meeting of the task force and subsequently
4 adopted by the secretary of the Department of Management
5 Services ~~Labor and Employment Security~~. The amended agreement
6 must be enacted, initialed, and legally executed by at least
7 two-thirds of the certifying entities party to the existing
8 agreement and adopted by the state as originally executed in
9 order to bind the certifying entity.

10 (k) The task force shall meet for the first time no
11 later than 45 days after the effective date of this act.

12 (3)~~(2)~~(a) The office shall review and evaluate the
13 certification programs and procedures of all prospective
14 executors of the statewide and interlocal agreement to
15 determine if their programs exhibit the capacity to meet the
16 standards of the agreement.

17 (b) The evaluations shall, at a minimum, consider: the
18 certifying entity's capacity to conduct investigations of
19 applicants seeking certification under the designated
20 criteria; the ability of the certifying entity to collect the
21 requisite data and to establish adequate protocol to store and
22 exchange said information among the executors of the agreement
23 and to provide adequate security to prevent unauthorized
24 access to information gathered during the certification
25 process; and the degree to which any legal obligations or
26 supplemental requirements unique to the certifying entity
27 exceed the capacity of that entity to conduct certifications.

28 (c) Any firms certified by organizations or
29 governmental entities determined not to meet the state
30 certification criteria ~~standards of the agreement~~ shall not be
31 eligible to participate as certified minority business

1 enterprises in the minority business assistance programs of
2 the state ~~or of the executors of the agreement.~~ For a period
3 of 1 year from the effective date of this legislation, the
4 executor of the statewide and interlocal agreement may elect
5 to accept only minority business enterprises certified
6 pursuant to criteria in place at the time the agreement was
7 signed. After the 1-year period, either party may elect to
8 withdraw from the agreement without further notice. ~~Such a~~
9 ~~firm may subsequently apply to an executor of the agreement~~
10 ~~for certification.~~

11 (d) Any organizations or governmental entities
12 determined by the office not to meet the standards of the
13 agreement shall not be eligible to execute the statewide and
14 interlocal agreement as a participating organization until
15 approved by the office.

16 (e) Any participating program receiving three or more
17 challenges to its certification decisions pursuant to
18 subsection (3) from other organizations that are executors to
19 the statewide and interlocal agreement, shall be subject to a
20 review by the office, as provided in paragraphs (a) and (b),
21 of the organization's capacity to perform under such agreement
22 and in accordance with the core criteria established by the
23 task force. The office shall submit a report to the secretary
24 of the Department of Management Services ~~Labor and Employment~~
25 ~~Security~~ regarding the results of the review.

26 (f) The office shall maintain a directory of all
27 executors of the statewide and interlocal agreement. The
28 directory should be communicated to the general public.

29 ~~(4)~~ ~~(3)~~ A certification may be challenged by any
30 executor to the statewide and interlocal agreement upon the
31 grounds of failure by the certifying organization to adhere to

1 the adopted criteria or to the certifying organization's rules
2 and procedures, or on the grounds of a misrepresentation or
3 fraud by the certified minority business enterprise. The
4 challenge shall proceed according to procedures specified in
5 the agreement.

6 (5)~~(4)~~(a) The secretary of the Department of
7 Management Services ~~Labor and Employment Security~~ shall
8 execute the statewide and interlocal agreement established
9 under s. 287.09431 on behalf of the state. The office shall
10 certify minority business enterprises in accordance with the
11 laws of this state ~~agreement~~ and, by affidavit, shall
12 recertify such minority business enterprises not less than
13 once each year.

14 (b) The office shall contract with parties to the
15 statewide and interlocal agreement to perform onsite visits
16 associated with state certifications. ~~The Minority Business~~
17 ~~Advocacy and Assistance Office may perform random, onsite~~
18 ~~reviews of certified minority business enterprises to~~
19 ~~determine whether the applicants are meeting all certification~~
20 ~~requirements of a certified minority business enterprise and~~
21 ~~of a qualified vendor.~~

22 (6)~~(5)~~(a) The office shall maintain up-to-date records
23 of all certified minority business enterprises, as defined in
24 s. 288.703, ~~that are certified by a party to the statewide and~~
25 ~~interlocal agreement~~ and of applications for certification
26 that were denied and shall make this list available to all
27 agencies. The office shall, for statistical purposes, collect
28 and track subgroupings of gender and nationality status for
29 each certified minority business enterprise. Agency spending
30 shall also be tracked for these subgroups. The records may
31 include information about minority business enterprises that

1 provide legal services, auditing services, and health
2 services. Agencies shall use this list in efforts to meet the
3 minority business enterprise procurement goals set forth in s.
4 289.09451 ~~289.0945~~.

5 (b) The office shall establish and administer a
6 computerized data bank to carry out the requirements of
7 paragraph (a), to be available to all executors of the
8 statewide and interlocal agreement. Data maintained in the
9 data bank shall be sufficient to allow each executor to
10 reasonably monitor certifications it has issued.

11 (7)~~(6)~~ The office shall identify minority business
12 enterprises eligible for certification in all areas of state
13 services and commodities purchasing. The office may contract
14 with a private firm or other agency, if necessary, in seeking
15 to identify minority business enterprises for certification.
16 Agencies may request the office to identify certifiable
17 minority business enterprises that are in the business of
18 providing a given service or commodity; the office shall
19 respond to such requests and seek out such certifiable
20 minority business enterprises.

21 (8)~~(7)~~ The office shall adopt rules necessary to
22 implement this section.

23 (9)~~(8)~~ State agencies shall comply with this act
24 except to the extent that the requirements of this act are in
25 conflict with federal law.

26 (10)~~(9)~~ Any transfer of ownership or permanent change
27 in the management and daily operations of a certified minority
28 business enterprise which may affect certification must be
29 reported to the original certifying jurisdiction or entity and
30 to the office within 14 days of the transfer or change taking
31 place. In the event of a transfer of ownership, the transferee

1 seeking to do business with the state as a certified minority
2 business enterprise is responsible for such reporting. In the
3 event of a permanent change in the management and daily
4 operations, owners seeking to do business with the state as a
5 certified minority business enterprise are responsible for
6 reporting such change to the office. Any person violating the
7 provisions of this subsection shall be guilty of a misdemeanor
8 of the first degree, punishable as provided in s. 775.082 or
9 s. 775.083.

10 (11)~~(10)~~ To deter fraud in the program, the Auditor
11 General may review the criteria by which a business became
12 certified as a certified minority business enterprise these
13 certifications pursuant to s. 11.45.

14 (12)~~(11)~~ Any executor of the statewide and interlocal
15 agreement may revoke the certification or recertification of a
16 firm doing business as a certified minority business
17 enterprise if the minority business enterprise does not meet
18 the requirements of the jurisdiction or certifying entity that
19 certified or recertified the firm as a certified minority
20 business enterprise, or the requirements of subsection (1), s.
21 288.703, and any rule of the office or the Department of
22 Management Services or if the business acquired certification
23 or recertification by means of falsely representing any entity
24 as a minority business enterprise for purposes of qualifying
25 for certification or recertification.

26 (13)~~(12)~~ Unless permanently revoked, a certified
27 minority business enterprise for which certification or
28 recertification has been revoked may not apply or reapply for
29 certification or recertification for a minimum of 36 months
30 after the date of the notice of revocation.

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1 ~~(14)(13)~~(a) Except for certification decisions issued
2 by the Office of Supplier Diversity, an executor to the
3 statewide and interlocal agreement shall, in accordance with
4 its rules and procedures:

5 1. Give reasonable notice to affected persons or
6 parties of its decision to deny certification based on failure
7 to meet eligibility requirements of the statewide and
8 interlocal agreement of s. 287.09431, together with a summary
9 of the grounds therefor.

10 2. Give affected persons or parties an opportunity, at
11 a convenient time and place, to present to the agency written
12 or oral evidence in opposition to the action or of the
13 executor's refusal to act.

14 3. Give a written explanation of any subsequent
15 decision of the executor overruling the objections.

16 (b) An applicant that is denied minority business
17 enterprise certification based on failure to meet eligibility
18 requirements of the statewide and interlocal agreement
19 pursuant to s. 287.09431 may not reapply for certification or
20 recertification until at least 6 months after the date of the
21 notice of the denial of certification or recertification.

22 ~~(15)(14)~~ The office shall adopt rules in compliance
23 with this part.

24 Section 3. Effective July 1, 2000, the Minority
25 Business Advocacy and Assistance Office is transferred by a
26 type two transfer as defined in s. 20.06(2), Florida Statutes,
27 from the Department of Labor and Employment Security to the
28 Department of Management Services and renamed as the Office of
29 Supplier Diversity. The Executive Office of the Governor shall
30 take the necessary actions to ensure the transfer of the
31 budget, as appropriated, of the Minority Business Advocacy and

1 Assistance Office from the Department of Labor and Employment
2 Security to the Department of Management Services.

3 Section 4. Section 287.09451, Florida Statutes, is
4 amended to read:

5 287.09451 ~~Minority Business Advocacy and Assistance~~
6 Office of Supplier Diversity; powers, duties, and functions.--

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

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

30 (3) The secretary shall appoint an executive director
31 for the ~~Minority Business Advocacy and Assistance~~ Office of

1 Supplier Diversity, who shall serve at the pleasure of the
2 secretary.

3 (4) ~~The Minority Business Advocacy and Assistance~~
4 Office of Supplier Diversity shall have the following powers,
5 duties, and functions:

6 (a) To adopt rules to determine what constitutes a
7 "good faith effort" for purposes of state agency compliance
8 with the minority business enterprise procurement goals set
9 forth in s. 287.042. Factors which shall be considered by the
10 Minority Business Enterprise Assistance Office in determining
11 good faith effort shall include, but not be limited to:

12 1. Whether the agency scheduled presolicitation or
13 prebid meetings for the purpose of informing minority business
14 enterprises of contracting and subcontracting opportunities.

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

18 3. Whether the agency effectively used services and
19 resources of available minority community organizations;
20 minority contractors' groups; local, state, and federal
21 minority business assistance offices; and other organizations
22 that provide assistance in the recruitment and placement of
23 minority business enterprises or minority persons.

24 4. Whether the agency provided written notice to a
25 reasonable number of minority business enterprises that their
26 interest in contracting with the agency was being solicited in
27 sufficient time to allow the minority business enterprises to
28 participate effectively.

29 (b) To adopt rules to determine what constitutes a
30 "good faith effort" for purposes of contractor compliance with
31 contractual requirements relating to the use of services or

1 commodities of a minority business enterprise under s.
2 287.094(2). Factors which shall be considered by the ~~Minority~~
3 ~~Business Advocacy and Assistance Office of Supplier Diversity~~
4 in determining whether a contractor has made good faith
5 efforts shall include, but not be limited to:

- 6 1. Whether the contractor attended any presolicitation
7 or prebid meetings that were scheduled by the agency to inform
8 minority business enterprises of contracting and
9 subcontracting opportunities.
- 10 2. Whether the contractor advertised in general
11 circulation, trade association, or minority-focus media
12 concerning the subcontracting opportunities.
- 13 3. Whether the contractor provided written notice to a
14 reasonable number of specific minority business enterprises
15 that their interest in the contract was being solicited in
16 sufficient time to allow the minority business enterprises to
17 participate effectively.
- 18 4. Whether the contractor followed up initial
19 solicitations of interest by contacting minority business
20 enterprises or minority persons to determine with certainty
21 whether the minority business enterprises or minority persons
22 were interested.
- 23 5. Whether the contractor selected portions of the
24 work to be performed by minority business enterprises in order
25 to increase the likelihood of meeting the minority business
26 enterprise procurement goals, including, where appropriate,
27 breaking down contracts into economically feasible units to
28 facilitate minority business enterprise participation.
- 29 6. Whether the contractor provided interested minority
30 business enterprises or minority persons with adequate
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1 information about the plans, specifications, and requirements
2 of the contract or the availability of jobs.

3 7. Whether the contractor negotiated in good faith
4 with interested minority business enterprises or minority
5 persons, not rejecting minority business enterprises or
6 minority persons as unqualified without sound reasons based on
7 a thorough investigation of their capabilities.

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

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

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

25 (e) To receive and disseminate information relative to
26 procurement opportunities, availability of minority business
27 enterprises, and technical assistance.

28 (f) To advise agencies on methods and techniques for
29 achieving procurement objectives.

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1 (g) To provide a central minority business enterprise
2 certification process which includes independent verification
3 of status as a minority business enterprise.

4 (h) To develop procedures to investigate complaints
5 against minority business enterprises or contractors alleged
6 to violate any provision related to this section or s.
7 287.0943, that may include visits to worksites or business
8 premises, and to refer all information on businesses suspected
9 of misrepresenting minority status to the Department of
10 Management Services ~~Labor and Employment Security~~ for
11 investigation. When an investigation is completed and there is
12 reason to believe that a violation has occurred, the
13 Department of Labor and Employment Security shall refer the
14 matter to the office of the Attorney General, Department of
15 Legal Affairs, for prosecution.

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

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

23 (k) To communicate on a monthly basis with the Small
24 and Minority Business Advisory Council to keep the council
25 informed on issues relating to minority enterprise
26 procurement.

27 (l) To serve as an advocate for minority business
28 enterprises, and coordinate with the small and minority
29 business ombudsman, as defined in s. 288.703, which duties
30 shall include:

31

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

4 2. Establishing standards within each industry with
5 which the state government contracts on how agencies and
6 contractors may provide the maximum practicable opportunity
7 for minority business enterprises.

8 3. Assisting agencies and contractors by providing
9 outreach to minority businesses, by specifying and monitoring
10 technical and managerial competence for minority business
11 enterprises, and by consulting in planning of agency
12 procurement to determine how best to provide opportunities for
13 minority business enterprises.

14 4. Integrating technical and managerial assistance for
15 minority business enterprises with government contracting
16 opportunities.

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

22 (n)1. To develop procedures to be used by an agency in
23 identifying commodities, contractual services, architectural
24 and engineering services, and construction contracts, except
25 those architectural, engineering, construction, or other
26 related services or contracts subject to the provisions of
27 chapter 339, that could be provided by minority business
28 enterprises. Each agency is encouraged to spend 21 percent of
29 the moneys actually expended for construction contracts, 25
30 percent of the moneys actually expended for architectural and
31 engineering contracts, 24 percent of the moneys actually

1 expended for commodities, and 50.5 percent of the moneys
2 actually expended for contractual services during the previous
3 fiscal year, except for the state university construction
4 program which shall be based upon public education capital
5 outlay projections for the subsequent fiscal year, and
6 reported to the Legislature pursuant to s. 216.023, for the
7 purpose of entering into contracts with certified minority
8 business enterprises as defined in s. 288.703(2), or approved
9 joint ventures. However, in the event of budget reductions
10 pursuant to s. 216.221, the base amounts may be adjusted to
11 reflect such reductions. The overall spending goal for each
12 industry category shall be subdivided as follows:

13 a. For construction contracts: 4 percent for black
14 Americans, 6 percent for Hispanic-Americans, and 11 percent
15 for American women.

16 b. For architectural and engineering contracts: 9
17 percent for Hispanic-Americans, 1 percent for Asian-Americans,
18 and 15 percent for American women.

19 c. For commodities: 2 percent for black Americans, 4
20 percent for Hispanic-Americans, 0.5 percent for
21 Asian-Americans, 0.5 percent for Native Americans, and 17
22 percent for American women.

23 d. For contractual services: 6 percent for black
24 Americans, 7 percent for Hispanic-Americans, 1 percent for
25 Asian-Americans, 0.5 percent for Native Americans, and 36
26 percent for American women.

27 2. For the purposes of commodities contracts for the
28 purchase of equipment to be used in the construction and
29 maintenance of state transportation facilities involving the
30 Department of Transportation, "minority business enterprise"
31 has the same meaning as provided in s. 288.703. "Minority

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

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

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

30 a. Size and complexity of the project.

31

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

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

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

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

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

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

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

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

8 a. Total expenditures of each agency by industry.

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

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

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

18 e. A statement and assessment of good faith efforts
19 taken by each state agency.

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

23 (5)(a) Each agency shall, at the time the
24 specifications or designs are developed or contract sizing is
25 determined for any proposed procurement costing in excess of
26 CATEGORY FOUR, as defined in s. 287.017, forward a notice to
27 the ~~Minority Business Advocacy and Assistance Office~~ of
28 Supplier Diversity of the proposed procurement and any
29 determination on the designs of specifications of the proposed
30 procurement that impose requirements on prospective vendors,
31 no later than 30 days prior to the issuance of a solicitation,

1 except that this provision shall not apply to emergency
2 acquisitions. The 30-day notice period shall not toll the time
3 for any other procedural requirements.

4 (b) If the ~~Minority Business Advocacy and Assistance~~
5 Office of Supplier Diversity determines that the proposed
6 procurement will not likely allow opportunities for minority
7 business enterprises, the office may, within 20 days after it
8 receives the information specified in paragraph (a), propose
9 the implementation of minority business enterprise utilization
10 provisions or submit alternative procurement methods that
11 would significantly increase minority business enterprise
12 contracting opportunities.

13 (c) Whenever the agency and the ~~Minority Business~~
14 ~~Advocacy and Assistance~~ Office of Supplier Diversity disagree,
15 the matter shall be submitted for determination to the head of
16 the agency or the senior-level official designated pursuant to
17 this section as liaison for minority business enterprise
18 issues.

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

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

6 (f) Paragraph (a) will not apply when the ~~Minority~~
7 ~~Business Advocacy and Assistance~~ Office of Supplier Diversity
8 determines that an agency has established a work plan to allow
9 advance consultation and planning with minority business
10 enterprises and where such plan clearly demonstrates:

11 1. A high level of advance planning by the agency with
12 minority business enterprises.

13 2. A high level of accessibility, knowledge, and
14 experience by minority business enterprises in the agency's
15 contract decisionmaking process.

16 3. A high quality of agency monitoring and enforcement
17 of internal implementation of minority business utilization
18 provisions.

19 4. A high quality of agency monitoring and enforcement
20 of contractor utilization of minority business enterprises,
21 especially tracking subcontractor data, and ensuring the
22 integrity of subcontractor reporting.

23 5. A high quality of agency outreach, agency
24 networking of major vendors with minority vendors, and
25 innovation in techniques to improve utilization of minority
26 business enterprises.

27 6. Substantial commitment, sensitivity, and proactive
28 attitude by the agency head and among the agency minority
29 business staff.

30 (6) Each state agency shall coordinate its minority
31 business enterprise procurement activities with the ~~Minority~~

1 ~~Business Advocacy and Assistance~~ Office of Supplier Diversity.

2 At a minimum, each agency shall:

3 (a) Adopt a minority business enterprise utilization
4 plan for review and approval by the ~~Minority Business Advocacy~~
5 ~~and Assistance~~ Office of Supplier Diversity which should
6 require meaningful and useful methods to attain the
7 legislative intent in assisting minority business enterprises.

8 (b) Designate a senior-level employee in the agency as
9 a minority enterprise assistance officer, responsible for
10 overseeing the agency's minority business utilization
11 activities, and who is not also charged with purchasing
12 responsibility. A senior-level agency employee and agency
13 purchasing officials shall be accountable to the agency head
14 for the agency's minority business utilization performance.
15 The ~~Minority Business Advocacy and Assistance~~ Office of
16 Supplier Diversity shall advise each agency on compliance
17 performance.

18 (c) If an agency deviates significantly from its
19 utilization plan in 2 consecutive or 3 out of 5 total fiscal
20 years, the ~~Minority Business Advocacy and Assistance~~ Office of
21 Supplier Diversity may review any and all solicitations and
22 contract awards of the agency as deemed necessary until such
23 time as the agency meets its utilization plan.

24 Section 5. Subsections (1), (4), (5), (6), and (8) of
25 section 288.703, Florida Statutes, are amended to 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 (1) "Small business" means an independently owned and
30 operated business concern that employs 200 ~~100~~ or fewer
31 permanent full-time employees and that, together with its

1 affiliates, has a net worth of not more than ~~\$5\$3~~ million or
2 any firm based in this state which has a Small Business
3 Administration 8(a) certification ~~and an average net income~~
4 ~~after federal income taxes, excluding any carryover losses,~~
5 ~~for the preceding 2 years of not more than \$2 million.~~ As
6 applicable to sole proprietorships, the ~~\$5\$3~~ million net
7 worth requirement shall include both personal and business
8 investments.

9 (4) "Certified minority business enterprise" means a
10 business which has been certified by the certifying
11 organization or jurisdiction in accordance with s. 287.0943(1)
12 and (2).

13 (5) "Department" means the Department of Management
14 Services ~~Labor and Employment Security.~~

15 (6) "Ombudsman" means an office or individual whose
16 responsibilities include coordinating with the Minority
17 ~~Business Advocacy and Assistance Office of Supplier Diversity~~
18 for the interests of and providing assistance to small and
19 minority business enterprises in dealing with governmental
20 agencies and in developing proposals for changes in state
21 agency rules.

22 (8) "Secretary" means the secretary of the Department
23 of Management Services ~~Labor and Employment Security.~~

24 Section 6. Section 287.134, Florida Statutes, is
25 created to read:

26 287.134 Discrimination; denial or revocation of the
27 right to transact business with public entities.--

28 (1) As used in this section:

29 (a) "Affiliate" means:

30 1. A predecessor or successor of an entity that
31 discriminated; or

1 2. An entity under the control of any natural person
2 or entity that is active in the management of the entity that
3 discriminated. The term "affiliate" includes those officers,
4 directors, executives, partners, shareholders, employees,
5 members, and agents who are active in the management of an
6 affiliate. The ownership by one entity of shares constituting
7 a controlling interest in another entity, or a pooling of
8 equipment or income among entities when not for fair market
9 value under an arm's length agreement, shall be a prima facie
10 case that one entity controls another entity.

11 (b) "Discrimination" or "discriminated" means a
12 determination of liability by a state circuit court or federal
13 district court for a violation of any state or federal law
14 prohibiting discrimination on the basis of race, gender,
15 national origin, disability, or religion by an entity; if an
16 appeal is made, the determination of liability does not occur
17 until the completion of any appeals to a higher tribunal.

18 (c) "Discriminatory vendor list" means the list
19 required to be kept by the department pursuant to paragraph
20 (3)(d).

21 (d) "Department" means the Department of Management
22 Services.

23 (e) "Entity" means any natural person or any entity
24 organized under the laws of any state or of the United States
25 with the legal power to enter into a binding contract and
26 which bids or applies to bid on contracts let by a public
27 entity, or which otherwise transacts or applies to transact
28 business with a public entity.

29 (f) "Public entity" means this state and any
30 department or agency of this state.

31

1 (g) "Senior Management" includes chief executive
2 officers; assistant chief executive officers, including, but
3 not limited to, assistant presidents, vice presidents, or
4 assistant treasurers; chief financial officers; chief
5 personnel officers; or any employee of an entity performing
6 similar functions.

7 (2)(a) An entity or affiliate who has been placed on
8 the discriminatory vendor list may not submit a bid on a
9 contract to provide any goods or services to a public entity,
10 may not submit a bid on a contract with a public entity for
11 the construction or repair of a public building or public
12 work, may not submit bids on leases of real property to a
13 public entity, may not be awarded or perform work as a
14 contractor, supplier, subcontractor, or consultant under a
15 contract with any public entity, and may not transact business
16 with any public entity.

17 (b) No public entity shall accept any bid from, award
18 any contract to, or transact any business with any entity or
19 affiliate on the discriminatory vendor list for a period of 36
20 months from the date that entity or affiliate was placed on
21 the discriminatory vendor list unless that entity or affiliate
22 has been removed from the list pursuant to paragraph (3)(f).
23 No public entity which was transacting business with an entity
24 at the time of the discrimination which resulted in that
25 entity being placed on the discriminatory vendor list shall
26 accept any bid from, award any contract to, or transact any
27 business with any other entity who is under the same, or
28 substantially the same, control as the entity whose name
29 appears on the discriminatory vendor list so long as that
30 entity's name appears on the discriminatory vendor list.

31

1 (3)(a) All invitations to bid, as defined by s.
2 287.012(11), requests for proposals, as defined by s.
3 287.012(15), and any written contract document of the state
4 shall contain a statement informing entities of the provisions
5 of paragraph (2)(a).

6 (b) An entity must notify the department within 30
7 days after a final determination of discrimination. Any
8 public entity which receives information that an entity has
9 discriminated shall transmit that information to the
10 department in writing within 10 days. Before entering into
11 any contract with the state, all entities shall disclose to
12 the department whether they have been found liable, in a state
13 circuit court or federal court, for violation of any state or
14 federal law prohibiting discrimination based on race, gender,
15 national origin, disability, or religion.

16 (c) The department shall maintain a list of the names
17 and addresses of any entity which has been disqualified from
18 the public contracting and purchasing process under this
19 section. The department shall publish an initial list on
20 January 1, 2001, and shall publish an updated version of the
21 list quarterly thereafter. The initial list and revised
22 quarterly lists shall be published in the Florida
23 Administrative Weekly. Notwithstanding this paragraph, an
24 entity or affiliate disqualified from the public contracting
25 and purchasing process pursuant to this section shall be
26 disqualified as of the date the final order is entered.

27 (d)1. Upon receiving reasonable information from any
28 source that an entity has discriminated, the department shall
29 investigate the information and determine whether good cause
30 exists to place that entity or an affiliate of that entity on
31 the discriminatory vendor list. If good cause exists, the

1 department shall notify the entity or affiliate in writing of
2 its intent to place the name of that entity or affiliate on
3 the discriminatory vendor list, and of the entity's or
4 affiliate's right to a hearing, the procedure that must be
5 followed, and the applicable time requirements. If the entity
6 of affiliate does not request a hearing, the department shall
7 enter a final order placing the name of the entity or
8 affiliate on the discriminatory vendor list. No entity or
9 affiliate may be placed on the discriminatory vendor list
10 without receiving an individual notice of intent from the
11 department.

12 2. Within 21 days after receipt of the notice of
13 intent, the entity or affiliate may file a petition for a
14 formal hearing pursuant to ss. 120.569 and 120.57(1) to
15 determine whether it is in the public interest for that entity
16 or affiliate to be placed on the discriminatory vendor list.
17 An entity or affiliate may not file a petition for an informal
18 hearing under s. 120.57(2). The procedures of chapter 120
19 shall apply to any formal hearing under this section except
20 where they are in conflict with the following provisions:

21 a. The petition shall be filed with the department.
22 The department shall be a party to the proceeding for all
23 purposes.

24 b. Within 5 days after the filing of the petition, the
25 department shall notify the Division of Administrative
26 Hearings of the request for a formal hearing. The director of
27 the Division of Administrative Hearings shall, within 5 days
28 after receipt of notice from the department, assign an
29 administrative law judge to preside over the proceeding. The
30 administrative law judge, upon request by a party, may
31 consolidate related proceedings.

1 c. The administrative law judge shall conduct the
2 formal hearing within 30 days after being assigned, unless
3 otherwise stipulated by the parties.

4 d. Within 30 days after the formal hearing or receipt
5 of the hearing transcript, whichever is later, the
6 administrative law judge shall enter a final order, which
7 shall consist of findings of fact, conclusions of law,
8 interpretation of agency rules, and any other information
9 required by law or rule to be contained in the final order.
10 Such final order shall place or not place the entity or
11 affiliate on the discriminatory vendor list.

12 e. The final order of the administrative law judge
13 shall be final agency action for purposes of s. 120.68.

14 f. At any time after the filing of the petition,
15 informal disposition may be made pursuant to s. 120.57(4). In
16 that event, the administrative law judge shall enter a final
17 order adopting the stipulation, agreed settlement, or consent
18 order.

19 3. It shall not be in the public interest to place an
20 entity or affiliate on the discriminatory vendor list if:

21 a. Discrimination did not occur;

22 b. The discrimination was committed by an employee of
23 the entity or affiliate other than senior management; or

24 c. The member of senior management responsible for the
25 discrimination is no longer an employee of the entity or
26 affiliate.

27 4. In determining whether it is in the public interest
28 to place an entity or affiliate on the discriminatory vendor
29 list, the administrative law judge shall consider the
30 following factors:

31 a. The nature and details of the discrimination.

1 b. The degree of culpability of the entity or
2 affiliate proposed to be placed on the discriminatory vendor
3 list.

4 c. The prompt or voluntary payment of any damages or
5 penalty as a result of the discrimination.

6 d. Prior or future self-policing by the entity or
7 affiliate to prevent discrimination.

8 e. Compliance by the entity or affiliate with the
9 notification provisions of paragraph (b).

10 f. The needs of public entities for additional
11 competition in the procurement of goods and services in their
12 respective markets.

13 g. Mitigation based upon any demonstration of good
14 citizenship by the entity or affiliate.

15 5. In any proceeding under this section, the
16 department shall be required to prove by clear and convincing
17 evidence that it is in the public interest for the entity to
18 which the department has given notice under this section to be
19 placed on the discriminatory vendor list. Proof of
20 discrimination by the entity or a person or entity which is an
21 affiliate of such entity shall constitute a prima facie case
22 that it is in the public interest for the entity or affiliate
23 to which the department has given notice to be put on the
24 discriminatory vendor list. Status as an affiliate must be
25 proven by clear and convincing evidence.

26 6. Any entity or affiliate which has been notified by
27 the department of the department's intent to place the
28 entity's or affiliate's name on the discriminatory vendor list
29 may offer evidence on any relevant issue. Upon establishment
30 of a prima facie case that it is in the public interest for
31 the entity or affiliate to which the department has given

1 notice to be put on the discriminatory vendor list, that
2 entity or affiliate may prove by a preponderance of the
3 evidence that it would not be in the public interest to put
4 such entity on the discriminatory vendor list, based upon
5 evidence addressing the factors in subparagraphs 3. and 4.

6 (e)1. An entity on the discriminatory vendor list may
7 petition for removal from the list no sooner than 6 months
8 from the date a final order is entered disqualifying that
9 entity from the public purchasing and contracting process
10 pursuant to this section. The petition shall be filed with
11 the department and the proceeding shall be conducted pursuant
12 to the procedures and requirements of this subsection.

13 2. An entity may be removed from the discriminatory
14 vendor list subject to such terms and conditions as may be
15 prescribed by the administrative law judge upon a
16 determination that removal is in the public interest. In
17 determining whether removal would be in the public interest,
18 the administrative law judge shall give consideration to any
19 relevant factors, including, but not limited to, the factors
20 identified in subparagraphs 3. and 4.

21 3. If a petition for removal is denied, the entity or
22 affiliate may not petition for another hearing on removal for
23 a period of 9 months after the date of denial. The department
24 may petition for removal prior to the the expiration of such
25 period if, in the department's discretion, the department
26 determines that removal would be in the public interest.

27 (4) Placement on the discriminatory vendor list shall
28 not affect any rights or obligations under any contract,
29 franchise, or other binding agreement which predates such
30 conviction or placement on the discriminatory vendor list.

31

1 (5) The provisions of this section do not apply to any
2 activities regulated by the Florida Public Service Commission
3 or to the purchase of goods or services made by any public
4 entity from the Department of Corrections, from the nonprofit
5 corporation organized under chapter 946, or from any
6 accredited nonprofit workshop certified under ss.
7 413.032-413.037.

8 Section 7. Subsection (2) of section 17.11, Florida
9 Statutes, is amended to read:

10 17.11 To report disbursements made.--

11 (2) The Comptroller shall also cause to have reported
12 from the Florida Accounting Information Resource Subsystem no
13 less than quarterly the disbursements which agencies made to
14 small businesses, as defined in the Florida Small and Minority
15 Business Assistance Act of 1985; to certified minority
16 business enterprises in the aggregate; and to certified
17 minority business enterprises broken down into categories of
18 minority persons, as well as gender and nationality subgroups.
19 This information shall be made available to the agencies, the
20 ~~Minority Business Advocacy and Assistance~~ Office of Supplier
21 Diversity, the Governor, the President of the Senate, and the
22 Speaker of the House of Representatives. Each agency shall be
23 responsible for the accuracy of information entered into the
24 Florida Accounting Information Resource Subsystem for use in
25 this reporting.

26 Section 8. Subsections (1) and (2) of section 255.102,
27 Florida Statutes, are amended to read:

28 255.102 Contractor utilization of minority business
29 enterprises.--

30 (1) Agencies shall consider the use of price
31 preferences, weighted preference formulas, or other

1 preferences for construction contracts, as determined
2 appropriate by the ~~Minority Business Advocacy and Assistance~~
3 Office of Supplier Diversity in collaboration with the
4 ~~Department of Management Services~~ to increase minority
5 participation.

6 (2) The ~~Minority Business Advocacy and Assistance~~
7 Office of Supplier Diversity, in collaboration with ~~the~~
8 ~~Department of Management Services~~ and the State University
9 System, shall adopt rules to determine what is a "good faith
10 effort" for purposes of contractor compliance with minority
11 participation goals established for competitively awarded
12 building and construction projects. Pro forma efforts shall
13 not be considered good faith. Factors which shall be
14 considered by the state agency in determining whether a
15 contractor has made good faith efforts shall include, but not
16 be limited to:

17 (a) Whether the contractor attended any
18 presolicitation or prebid meetings that were scheduled by the
19 agency to inform minority business enterprises of contracting
20 and subcontracting opportunities.

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

24 (c) Whether the contractor provided written notice to
25 all relevant subcontractors listed on the minority vendor list
26 for that locality and statewide as provided by the agency as
27 of the date of issuance of the invitation to bid, that their
28 interest in the contract was being solicited in sufficient
29 time to allow the minority business enterprises to participate
30 effectively.

31

1 (d) Whether the contractor followed up initial
2 solicitations of interest by contacting minority business
3 enterprises, the ~~Minority Business Advocacy and Assistance~~
4 Office of Supplier Diversity, or minority persons who
5 responded and provided detailed information about prebid
6 meetings, access to plans, specifications, contractor's
7 project manager, subcontractor bonding, if any, payment
8 schedule, bid addenda, and other assistance provided by the
9 contractor to enhance minority business enterprise
10 participation.

11 (e) Whether the contractor selected portions of the
12 work to be performed by minority business enterprises in order
13 to increase the likelihood of meeting the minority business
14 enterprise procurement goals, including, where appropriate,
15 breaking down contracts into economically feasible units to
16 facilitate minority business enterprise participation under
17 reasonable and economical conditions of performance.

18 (f) Whether the contractor provided the ~~Minority~~
19 ~~Business Advocacy and Assistance~~ Office of Supplier Diversity
20 as well as interested minority business enterprises or
21 minority persons with adequate information about the plans,
22 specifications, and requirements of the contract or the
23 availability of jobs at a time no later than when such
24 information was provided to other subcontractors.

25 (g) Whether the contractor negotiated in good faith
26 with interested minority business enterprises or minority
27 persons, not rejecting minority business enterprises or
28 minority persons as unqualified without sound reasons based on
29 a thorough investigation of their capabilities or imposing
30 implausible conditions of performance on the contract.

31

1 (h) Whether the contractor diligently seeks to replace
2 a minority business enterprise subcontractor that is unable to
3 perform successfully with another minority business
4 enterprise.

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

11 (3) If an agency considers any other criteria in
12 determining whether a contractor has made a good faith effort,
13 the agency shall adopt such criteria in accordance with s.
14 120.54, and, where required by that section, by rule, after
15 May 31, 1994. In adopting such criteria, the agency shall
16 identify the specific factors in as objective a manner as
17 possible to be used to assess a contractor's performance
18 against said criteria.

19 (4) Notwithstanding the provisions of s. 287.0945 to
20 the contrary, agencies shall monitor good faith efforts of
21 contractors in competitively awarded building and construction
22 projects, in accordance with rules established pursuant to
23 this section. It is the responsibility of the contractor to
24 exercise good faith efforts in accordance with rules
25 established pursuant to this section, and to provide
26 documentation necessary to assess efforts to include minority
27 business participation.

28 Section 9. Subsection (19) of section 287.012, Florida
29 Statutes, is amended to read:

30 287.012 Definitions.--The following definitions shall
31 apply in this part:

1 (19) "Office" means the ~~Minority Business Advocacy and~~
2 ~~Assistance~~ Office of Supplier Diversity of the Department of
3 Management Services ~~Labor and Employment Security~~.

4 Section 10. Paragraphs (a) and (c) of subsection (2)
5 and paragraphs (b) and (c) of subsection (4) of section
6 287.042, Florida Statutes, are amended to read:

7 287.042 Powers, duties, and functions.--The department
8 shall have the following powers, duties, and functions:

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

1 pursuant to chapter 427, while conducting business related
2 solely to the Commission for the Transportation Disadvantaged,
3 or other local public agency under the provisions in the state
4 purchasing contracts, and purchases, from the corporation
5 operating the correctional work programs, of products or
6 services that are subject to paragraph (1)(f), are exempt from
7 the competitive sealed bid requirements otherwise applying to
8 their purchases.

9 (c) Any person who files an action protesting a
10 decision or intended decision pertaining to contracts
11 administered by the department or a state agency pursuant to
12 s. 120.57(3)(b) shall post with the department or the state
13 agency at the time of filing the formal written protest a bond
14 payable to the department or state agency in an amount equal
15 to 1 percent of the department's or the state agency's
16 estimate of the total volume of the contract or \$5,000,
17 whichever is less, which bond shall be conditioned upon the
18 payment of all costs which may be adjudged against him or her
19 in the administrative hearing in which the action is brought
20 and in any subsequent appellate court proceeding. For protests
21 of decisions or intended decisions of the department
22 pertaining to agencies' requests for approval of exceptional
23 purchases, the bond shall be in an amount equal to 1 percent
24 of the requesting agency's estimate of the contract amount for
25 the exceptional purchase requested or \$5,000, whichever is
26 less. In lieu of a bond, the department or state agency may,
27 in either case, accept a cashier's check or money order in the
28 amount of the bond. If, after completion of the administrative
29 hearing process and any appellate court proceedings, the
30 agency prevails, it shall recover all costs and charges which
31 shall be included in the final order or judgment, excluding

1 attorney's fees. This section shall not apply to protests
2 filed by the ~~Minority Business Advocacy and Assistance~~ Office
3 of Supplier Diversity. Upon payment of such costs and charges
4 by the person protesting the award, the bond, cashier's check,
5 or money order shall be returned to him or her. If the person
6 protesting the award prevails, he or she shall recover from
7 the agency all costs and charges which shall be included in
8 the final order of judgment, excluding attorney's fees.

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

13 (b) Development of procedures for the releasing of
14 requests for proposals, invitations to bid, and other
15 competitive acquisitions which procedures shall include, but
16 are not limited to, notice by publication in the Florida
17 Administrative Weekly, on Government Services Direct, or by
18 mail at least 10 days before the date set for submittal of
19 proposals or bids. The ~~Minority Business Advocacy and~~
20 ~~Assistance~~ Office of Supplier Diversity may consult with
21 agencies regarding the development of bid distribution
22 procedures to ensure that maximum distribution is afforded to
23 certified minority business enterprises as defined in s.
24 288.703.

25 (c) Development of procedures for the receipt and
26 opening of bids or proposals by an agency. Such procedures
27 shall provide the ~~Minority Business Advocacy and Assistance~~
28 ~~Office~~ of Supplier Diversity an opportunity to monitor and
29 ensure that the contract award is consistent with the original
30 request for proposal or invitation to bid, in accordance with
31

1 s. 287.0945(6), and subject to the review of bid responses
2 within standard timelines.

3 Section 11. Subsection (5) and paragraph (a) of
4 subsection (6) of section 287.057, Florida Statutes, are
5 amended to read:

6 287.057 Procurement of commodities or contractual
7 services.--

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

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

1 consult with any agency in reaching such determination when
2 deemed appropriate.

3 Section 12. Section 287.09431, Florida Statutes, is
4 amended to read:

5 287.09431 Statewide and interlocal agreement on
6 certification of business concerns for the status of minority
7 business enterprise.--The statewide and interlocal agreement
8 on certification of business concerns for the status of
9 minority business enterprise is hereby enacted and entered
10 into with all jurisdictions or organizations legally joining
11 therein. If, within 2 years from the date that the
12 certification core criteria are approved by the Department of
13 Labor and Employment Security, the agreement included herein
14 is not executed by a majority of county and municipal
15 governing bodies that administer a minority business
16 assistance program on the effective date of this act, then the
17 Legislature shall review this agreement. It is the intent of
18 the Legislature that if the agreement is not executed by a
19 majority of the requisite governing bodies, then a statewide
20 uniform certification process should be adopted, and that said
21 agreement should be repealed and replaced by a mandatory state
22 government certification process.

23

24

ARTICLE I

25

26

PURPOSE, FINDINGS, AND POLICY.--

27

(1) The parties to this agreement, desiring by common
28 action to establish a uniform certification process in order
29 to reduce the multiplicity of applications by business
30 concerns to state and local governmental programs for minority
31 business assistance, declare that it is the policy of each of

1 them, on the basis of cooperation with one another, to remedy
2 social and economic disadvantage suffered by certain groups,
3 resulting in their being historically underutilized in
4 ownership and control of commercial enterprises. Thus, the
5 parties seek to address this history by increasing the
6 participation of the identified groups in opportunities
7 afforded by government procurement.

8 (2) The parties find that the State of Florida
9 presently certifies firms for participation in the minority
10 business assistance programs of the state. The parties find
11 further that some counties, municipalities, school boards,
12 special districts, and other divisions of local government
13 require a separate, yet similar, and in most cases redundant
14 certification in order for businesses to participate in the
15 programs sponsored by each government entity.

16 (3) The parties find further that this redundant
17 certification has proven to be unduly burdensome to the
18 minority-owned firms intended to benefit from the underlying
19 purchasing incentives.

20 (4) The parties agree that:

21 (a) They will facilitate integrity, stability, and
22 cooperation in the statewide and interlocal certification
23 process, and in other elements of programs established to
24 assist minority-owned businesses.

25 (b) They shall cooperate with agencies, organizations,
26 and associations interested in certification and other
27 elements of minority business assistance.

28 (c) It is the purpose of this agreement to provide for
29 a uniform process whereby the status of a business concern may
30 be determined in a singular review of the business information
31 for these purposes, in order to eliminate any undue expense,

1 delay, or confusion to the minority-owned businesses in
2 seeking to participate in the minority business assistance
3 programs of state and local jurisdictions.

4
5 ARTICLE II

6
7 DEFINITIONS.--As used in this agreement and contracts
8 made pursuant to it, unless the context clearly requires
9 otherwise:

10 (1) "Awarding organization" means any political
11 subdivision or organization authorized by law, ordinance, or
12 agreement to enter into contracts and for which the governing
13 body has entered into this agreement.

14 (2) "Department" means the Department of Labor and
15 Employment Security.

16 (3) "Minority" means a person who is a lawful,
17 permanent resident of the state, having origins in one of the
18 minority groups as described and adopted by the Department of
19 Labor and Employment Security, hereby incorporated by
20 reference.

21 (4) "Minority business enterprise" means any small
22 business concern as defined in subsection (6) that meets all
23 of the criteria described and adopted by the Department of
24 Labor and Employment Security, hereby incorporated by
25 reference.

26 (5) "Participating state or local organization" means
27 any political subdivision of the state or organization
28 designated by such that elects to participate in the
29 certification process pursuant to this agreement, which has
30 been approved according to s. 287.0943~~(3)~~(2) and has legally
31 entered into this agreement.

1 (6) "Small business concern" means an independently
2 owned and operated business concern which is of a size and
3 type as described and adopted by vote related to this
4 agreement of the commission, hereby incorporated by reference.

5
6 ARTICLE III

7
8 STATEWIDE AND INTERLOCAL CERTIFICATIONS.--

9 (1) All awarding organizations shall accept a
10 certification granted by any participating organization which
11 has been approved according to s. 287.0943(3)~~(2)~~and has
12 entered into this agreement, as valid status of minority
13 business enterprise.

14 (2) A participating organization shall certify a
15 business concern that meets the definition of minority
16 business enterprise in this agreement, in accordance with the
17 duly adopted eligibility criteria.

18 (3) All participating organizations shall issue notice
19 of certification decisions granting or denying certification
20 to all other participating organizations within 14 days of the
21 decision. Such notice may be made through electronic media.

22 (4) No certification will be granted without an onsite
23 visit to verify ownership and control of the prospective
24 minority business enterprise, unless verification can be
25 accomplished by other methods of adequate verification or
26 assessment of ownership and control.

27 (5) The certification of a minority business
28 enterprise pursuant to the terms of this agreement shall not
29 be suspended, revoked, or otherwise impaired except on any
30 grounds which would be sufficient for revocation or suspension

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1 of a certification in the jurisdiction of the participating
2 organization.

3 (6) The certification determination of a party may be
4 challenged by any other participating organization by the
5 issuance of a timely written notice by the challenging
6 organization to the certifying organization's determination
7 within 10 days of receiving notice of the certification
8 decision, stating the grounds therefor.

9 (7) The sole accepted grounds for challenge shall be
10 the failure of the certifying organization to adhere to the
11 adopted criteria or the certifying organization's rules or
12 procedures, or the perpetuation of a misrepresentation or
13 fraud by the firm.

14 (8) The certifying organization shall reexamine its
15 certification determination and submit written notice to the
16 applicant and the challenging organization of its findings
17 within 30 days after the receipt of the notice of challenge.

18 (9) If the certification determination is affirmed,
19 the challenging agency may subsequently submit timely written
20 notice to the firm of its intent to revoke certification of
21 the firm.

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23

ARTICLE IV

24

25 APPROVED AND ACCEPTED PROGRAMS.--Nothing in this
26 agreement shall be construed to repeal or otherwise modify any
27 ordinance, law, or regulation of a party relating to the
28 existing minority business assistance provisions and
29 procedures by which minority business enterprises participate
30 therein.

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ARTICLE V

TERM.--The term of the agreement shall be 5 years, after which it may be reexecuted by the parties.

ARTICLE VI

AGREEMENT EVALUATION.--The designated state and local officials may meet from time to time as a group to evaluate progress under the agreement, to formulate recommendations for changes, or to propose a new agreement.

ARTICLE VII

OTHER ARRANGEMENTS.--Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party in order to comply with federal law.

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

1 withdrawal shall take effect until one year after the
2 governing body of the withdrawing party has given notice in
3 writing of the withdrawal to the other parties.

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

6

7

ARTICLE IX

8

9

FINANCIAL RESPONSIBILITY.--

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

13 (2) The provisions of this agreement shall constitute
14 neither a waiver of any governmental immunity under Florida
15 law nor a waiver of any defenses of the parties under Florida
16 law. The provisions of this agreement are solely for the
17 benefit of its executors and not intended to create or grant
18 any rights, contractual or otherwise, to any person or entity.

19

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ARTICLE X

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23 VENUE AND GOVERNING LAW.--The obligations of the
24 parties to this agreement are performable only within the
25 county where the participating organization is located, and
26 statewide for the ~~Minority Business Advocacy and Assistance~~
27 Office of Supplier Diversity, and venue for any legal action
28 in connection with this agreement shall lie, for any
29 participating organization except the ~~Minority Business~~
30 ~~Advocacy and Assistance~~ Office of Supplier Diversity,
31 exclusively in the county where the participating organization

31

1 is located. This agreement shall be governed by and construed
2 in accordance with the laws and court decisions of the state.

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ARTICLE XI

5

6 CONSTRUCTION AND SEVERABILITY.--This agreement shall be
7 liberally construed so as to effectuate the purposes thereof.
8 The provisions of this agreement shall be severable and if any
9 phrase, clause, sentence, or provision of this agreement is
10 declared to be contrary to the State Constitution or the
11 United States Constitution, or the application thereof to any
12 government, agency, person, or circumstance is held invalid,
13 the validity of the remainder of this agreement and the
14 applicability thereof to any government, agency, person, or
15 circumstance shall not be affected thereby. If this agreement
16 shall be held contrary to the State Constitution, the
17 agreement shall remain in full force and effect as to all
18 severable matters.

19 Section 13. This act shall take effect July 1, 2000.

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