

By the Fiscal Responsibility Council and Representative
Johnson

1 A bill to be entitled
2 An act relating to the Florida Black Business
3 Investment Board; amending s. 288.707, F.S.;
4 providing that the board shall be a
5 not-for-profit corporation and not an entity of
6 state government; revising provisions relating
7 to appointment of board members and officers,
8 compensation of board members, the executive
9 director, and employees, and financial
10 disclosure by board members; providing for
11 board meetings; amending s. 288.708, F.S.;
12 revising provisions relating to appointment of
13 the executive director; providing for
14 delegation of powers and responsibilities to
15 the executive director; providing the board's
16 responsibilities regarding use of funds;
17 providing requirements regarding employees'
18 compensation; amending s. 288.709, F.S.;
19 removing references to board rulemaking;
20 amending s. 288.7091, F.S.; revising provisions
21 relating to duties of the board regarding
22 developing memoranda of understanding with
23 certain entities and increasing the number of
24 black business enterprises in construction
25 projects; creating s. 288.7092, F.S.; providing
26 intent regarding operation of the board and
27 return on investment; defining the state's
28 operating investment in the board; directing
29 the board to adopt an annual operating budget;
30 providing requirements regarding private sector
31 support; providing requirements regarding board

1 compliance with performance measures; providing
2 for a report; requiring that the board hire a
3 private accounting firm and providing its
4 duties; amending ss. 288.711 and 288.712, F.S.;
5 conforming language; amending s. 288.714, F.S.;
6 revising the persons to whom the board's annual
7 report is submitted; clarifying references to
8 ss. 288.707-288.714, F.S., in said provisions;
9 providing an effective date.

10

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

12

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

15 288.707 Florida Black Business Investment Board.--

16 (2) For the purposes of ss. 288.707-288.714 ~~9-21,~~
17 ~~chapter 85-104, Laws of Florida:~~

18 (a) "Black business enterprise" means any business
19 concern which is organized to engage in commercial
20 transactions and which is at least 51 percent owned by one or
21 more black Americans as defined in s. 288.703 and whose
22 management and daily operations are controlled by such
23 persons.

24 (b) "Black business investment corporation" means a
25 subsidiary of a financial institution or a consortium of
26 financial institutions investing in, or lending to, black
27 business enterprises.

28 (c) "Consortium" means two or more financial
29 institutions which jointly negotiate and agree to provide
30 assistance to black business enterprises as provided in ss.
31 288.707-288.714 ~~9-21, chapter 85-104, Laws of Florida.~~

1 (3) There is hereby created a not-for-profit
2 corporation ~~within the Office of Tourism, Trade, and Economic~~
3 ~~Development a body politic and corporate~~ to be known as the
4 Florida Black Business Investment Board, hereinafter referred
5 to as the "board," which shall be registered, incorporated,
6 organized, and operated in compliance with chapter 617 and
7 which shall not be a unit or entity of state government. ~~The~~
8 ~~board is hereby constituted a public instrumentality, and the~~
9 ~~exercise by the board of the powers conferred by ss. 9-21,~~
10 ~~chapter 85-104, Laws of Florida, shall be deemed to be the~~
11 ~~performance of an essential governmental function.~~

12 (a) The board shall consist of seven members appointed
13 by the Governor ~~subject to confirmation by the Senate~~, six of
14 whom shall be experienced in investment finance and business
15 development, one of whom must be a member of a black business
16 investment corporation. The chair of the Florida Development
17 Finance Corporation, created pursuant to s. 288.9604, shall be
18 an ex officio member of the board.

19 (b) Members appointed by the Governor shall serve
20 terms of 4 years, except that in making the initial
21 appointments, the Governor shall appoint one member to serve
22 for a term of 1 year, two members to serve for terms of 2
23 years, two members to serve for terms of 3 years, and two
24 members to serve for terms of 4 years.

25 (c) Any person appointed to fill a vacancy on the
26 board shall be appointed in a like manner and shall serve for
27 only the unexpired term. Any member shall be eligible for
28 reappointment.

29 (d) The Governor shall appoint the chairperson who
30 shall be a member of the board and shall serve at the pleasure
31 of the Governor. The board shall annually elect one of its

1 members as vice chairperson and shall designate a
2 secretary-treasurer who need not be a member of the board.
3 The secretary-treasurer shall keep a record of the proceedings
4 of the board and shall be the custodian of all books,
5 documents, and papers filed with the board, of the minute
6 books of the board, and of its official seal. ~~A majority of~~
7 ~~the members of the board shall constitute a quorum.~~

8 (e) The board shall meet at least four times each
9 year, upon the call of the chairperson, the vice chairperson,
10 or at the request of a majority of the membership. A majority
11 of the total number of all members fixed by paragraph (a)
12 shall constitute a quorum. The board may take official action
13 by a majority vote of the members present at any meeting at
14 which a quorum is present.

15 (f)(e) Members of the board shall serve without
16 compensation, but members, the executive director of the
17 board, and other board employees may be reimbursed for all
18 reasonable, necessary, and actual expenses as determined by
19 the board shall be reimbursed for per diem and travel expenses
20 in accordance with s. 112.061.

21 (g)(f) Each member of the board who is not otherwise
22 required to file financial disclosure pursuant to s. 8, Art.
23 II of the State Constitution or s. 112.3144 shall file full
24 and public disclosure of financial interests pursuant to s.
25 112.3145 at the times and places and in the same manner
26 required of elected constitutional officers under s. 8, Art.
27 II of the State Constitution and any law implementing s. 8,
28 Art. II of the State Constitution.

29 Section 2. Section 288.708, Florida Statutes, is
30 amended to read:

31 288.708 Executive director; employees.--

1 (1) The executive director of the board, who may also
2 be designated as secretary-treasurer, shall be appointed by
3 the chairperson of the board and shall serve at the pleasure
4 of the chairperson. The board shall establish and adjust the
5 compensation of the executive director.The executive director
6 shall be the chief administrative and operational officer of
7 the board and shall direct and supervise administrative
8 affairs and the general management of the board. The board may
9 delegate to its executive director those powers and
10 responsibilities it deems appropriate, except for appointment
11 of the executive director.The executive director:

12 (a) May contract with or employ legal and technical
13 experts and such other employees, permanent and temporary, as
14 shall be authorized by the board;

15 (b) Shall attend meetings of the board; and

16 (c) Shall cause copies to be made of all minutes and
17 other records and documents of the board and shall certify
18 that such copies are true copies. All persons dealing with
19 the board may rely upon such certification.

20 (2) The board and its officers shall be responsible
21 for the prudent use of all public and private funds and shall
22 ensure that the use of such funds is in accordance with all
23 applicable laws, bylaws, or contractual requirements. No
24 employee of the board shall receive compensation for
25 employment which exceeds the salary paid to the Governor,
26 unless the board and the employee have executed a contract
27 that prescribes specific, measurable performance outcomes for
28 the employee, the satisfaction of which provides the basis for
29 the award of incentive payments that increase the employee's
30 total compensation to a level above the salary paid to the
31 Governor.~~The executive director and all employees of the~~

1 ~~board shall be exempt from the provisions of part II of~~
2 ~~chapter 110, and the executive director shall be subject to~~
3 ~~the provisions of part IV of chapter 110.~~

4 Section 3. Section 288.709, Florida Statutes, is
5 amended to read:

6 288.709 Powers of the Florida Black Business
7 Investment Board.--The board shall have all the powers
8 necessary or convenient to carry out and effectuate the
9 purposes and provisions of ss. 288.707-288.714 ~~9-21, chapter~~
10 ~~85-104, Laws of Florida~~, including, but not limited to, the
11 power to:

12 (1) Adopt bylaws for the regulation of its affairs and
13 the conduct of its business ~~and adopt rules pursuant to ss.~~
14 ~~120.536(1) and 120.54~~ to implement the provisions of law
15 conferring duties upon it. However, any proposed bylaws ~~rules~~
16 affecting the operation or administration or financial
17 well-being of any of the black business investment
18 corporations must first be reviewed ~~approved~~ by a majority of
19 the black business investment corporations.

20 (2) Adopt an official seal.

21 (3) Sue and be sued in its own name.

22 (4) Make and execute contracts and other instruments
23 necessary or convenient for the exercise of its power and
24 functions.

25 (5) Acquire, hold, and dispose of personal property
26 for its corporate purposes.

27 (6) Enter into agreements or other transactions with
28 any federal, state, or local agency.

29 (7) Encourage financial institutions to participate in
30 consortia for the purpose of investing in black business
31 enterprises.

1 (8) Ensure that funds available to the board for
2 purposes set forth in ss. 288.707-288.714 ~~9-21, chapter~~
3 ~~85-104, Laws of Florida~~, are disbursed on a statewide basis
4 and are not concentrated in one geographical area.

5 (9) Acquire real property or any interest therein, by
6 purchase or foreclosure, where such acquisition is necessary
7 or appropriate to protect or secure any investment or loan in
8 which the board has an interest; to sell, transfer, and convey
9 any such property to a buyer without regard to the provisions
10 of chapters 253 and 270; and, in the event that such sale,
11 transfer, or conveyance cannot be effected with reasonable
12 promptness or at a reasonable price, to lease such property
13 for occupancy by eligible persons.

14 (10) Invest any funds held in reserves or sinking
15 funds, or any funds not required for immediate disbursement,
16 in such investments as may be authorized for trust funds under
17 s. 215.47; provided, such investments will be made on behalf
18 of the board by the Office of State Treasurer or by another
19 trustee appointed for that purpose.

20 (11) Appear in its own behalf before boards,
21 commissions, departments, or other agencies of municipal,
22 county, state, or federal government.

23 (12) Procure insurance or require bond against any
24 loss in connection with its property in such amounts and from
25 such insurers as may be necessary or desirable.

26 (13) Receive and accept from any federal, state, or
27 local agency grants, loans, or advances for, or in aid of, the
28 purposes of ss. 288.707-288.714 ~~9-21, chapter 85-104, Laws of~~
29 ~~Florida~~, and to receive and accept contributions from any
30 source of either money, property, labor, or other things of
31 value, to be held, used, and applied for said purposes.

1 (14) Create, issue, and buy and sell stock, evidences
2 of indebtedness, and other capital participation instruments;
3 to hold such stock, evidences of indebtedness, and capital
4 participation instruments; and to underwrite the creation of a
5 capital market for these securities in a manner designed to
6 enhance development of capital ownership in the target group.

7 (15) Provide and pay for such advisory services and
8 technical assistance as may be necessary or desirable to carry
9 out the purposes of this act.

10 (16) Engage in special programs to enhance the
11 development of black business enterprises as authorized by
12 this act.

13 (17) Promote black ownership of financial institutions
14 in Florida.

15 (18) Take, hold, and improve property, including real
16 property.

17 (19) Do any and all things necessary or convenient to
18 carry out the purposes of, and exercise the powers given and
19 granted in, ss. 288.707-288.714 ~~9-21, chapter 85-104, Laws of~~
20 ~~Florida~~, and exercise any other powers, rights, or
21 responsibilities of a corporation.

22 Section 4. Subsections (5) and (6) of section
23 288.7091, Florida Statutes, are amended to read:

24 288.7091 Duties of the Florida Black Business
25 Investment Board.--The Florida Black Business Investment Board
26 shall:

27 (5) Develop memoranda of understanding with the
28 Departments of ~~Labor and Employment Security~~, Education,
29 Transportation, Community Affairs, and Management Services, as
30 well as the Agency for Workforce Innovation and the State
31

1 Board of Regents, detailing efforts of common interest and
2 collaborations to expand black business development;

3 (6) Intensify efforts to increase the number of
4 franchises owned by black businesses or ~~the~~ black business
5 enterprises in construction and construction-related projects,
6 focusing on federal, state, and local government financed
7 construction projects; and

8 Section 5. Section 288.7092, Florida Statutes, is
9 created to read:

10 288.7092 Return on investment from activities of the
11 board.--

12 (1) The public funds appropriated each year for the
13 operation of the board are invested in this public-private
14 partnership to enhance black business ownership and
15 investments in Florida. This policy shall be the Legislature's
16 priority consideration when reviewing the return on investment
17 for the board.

18 (2) It is also the intent of the Legislature that the
19 board coordinate its operations with local economic
20 development organizations to maximize the state and local
21 return on investment to create jobs for Floridians.

22 (3) It is further the intent of the Legislature to
23 maximize private sector support in operating the board as an
24 endorsement of its value and as an enhancement of its efforts.

25 (4)(a) The state's operating investment in the board
26 is the budget contracted by the Office of Tourism, Trade, and
27 Economic Development to the board, less funding that is
28 directed by the Legislature to be subcontracted to a specific
29 recipient.

30 (b) The board shall adopt for each upcoming fiscal
31 year an operating budget for the organization that specifies

1 the intended uses of the state's operating investment, other
2 sources of income, and a plan for securing private sector
3 support to the board. Each fiscal year, private sector support
4 to the board shall equal no less than 100 percent of the
5 state's investment. The board shall set as a primary goal to
6 become self-sufficient from state funding.

7 (5) Private sector support in operating the board
8 includes:

9 (a) Cash given directly to the board for its operating
10 budget.

11 (b) Cash jointly raised by the board and a local
12 economic development organization, a group of such
13 organizations, or a statewide business organization that
14 supports collaborative projects.

15 (c) Cash generated by products or services of the
16 board.

17 (d) In-kind contributions directly to the board,
18 including private sector equipment contributed as part of
19 technical assistance; goods and services, including time
20 donated by loan officers, advertising or marketing support,
21 and items used to promote the board; business expenditures;
22 business services provided; business support; and other
23 business contributions that augment the operations, program,
24 activities, or assets of the board, including, but not limited
25 to, an individual's time and expertise, sponsored
26 publications, private sector staff services, payment for
27 advertising placements, sponsorship of events, sponsored or
28 joint research, discounts on leases or purchases, mission or
29 program sponsorship, and copayments, stock, warrants,
30 royalties, or other private resources dedicated to the board.

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1 (6) The board shall fully comply with the performance
2 measures, standards, and sanctions in its contracts with the
3 Office of Tourism, Trade, and Economic Development. The office
4 shall ensure, to the maximum extent possible, that the
5 contract performance measures are consistent with performance
6 measures that the office is required to develop and track
7 under performance-based program budgeting.

8 (7) As part of the annual report required under s.
9 288.714, the board shall provide the Legislature with
10 information quantifying the public's return on investment.

11 (8) The board, in consultation with the Office of
12 Program Policy Analysis and Government Accountability, shall
13 hire a private accounting firm to develop the methodology for
14 establishing and reporting return on investment and in-kind
15 contributions as described in this section. The Office of
16 Program Policy Analysis and Government Accountability shall
17 review and offer feedback on the methodology before it is
18 implemented. The private accounting firm shall certify whether
19 the applicable statements in the annual report comply with
20 this section.

21 Section 6. Subsections (1) and (4) of section 288.711,
22 Florida Statutes, are amended to read:

23 288.711 Florida Investment Incentive Trust Fund.--

24 (1) There is hereby created the Florida Investment
25 Incentive Trust Fund from which money may be drawn for
26 investments or loans, as authorized by this section, to
27 encourage the development of appropriate financial mechanisms
28 in the private sector to capitalize and assist in the
29 development of black business enterprises. All income earned
30 by investments of the fund shall be deposited in the fund for
31 carrying out the purposes of ss. 288.707-288.714 ~~9-21, chapter~~

1 ~~85-104, Laws of Florida.~~ Administrative costs of the program
2 shall be appropriated in a lump-sum appropriation from the
3 fund created herein and shall be provided in the General
4 Appropriations Act.

5 (4) All loans and investments, and any income related
6 thereto, shall be used to carry out the public purpose of ss.
7 288.707-288.714 ~~9-21, chapter 85-104, Laws of Florida,~~ which
8 is to develop black business enterprises. This is not meant
9 to preclude a reasonable profit for the participating black
10 business investment corporation or for return of equity
11 developed to the state and participating financial
12 institutions upon any distribution of the assets or excess
13 income of the investment corporation.

14 Section 7. Paragraph (b) of subsection (3) and
15 paragraph (b) of subsection (4) of section 288.712, Florida
16 Statutes, are amended to read:

17 288.712 Florida guarantor funds.--

18 (3)

19 (b) For purposes of this section, the board may
20 utilize the Black Contractors Bond Trust Fund in the State
21 Treasury, consisting of moneys deposited or credited to the
22 Black Contractors Bond Trust Fund pursuant to appropriation
23 made by law; any grants, gifts, and contributions received
24 pursuant to ss. 288.707-288.714 ~~9-21, chapter 85-104, Laws of~~
25 ~~Florida;~~ all moneys recovered following defaults; and any
26 other moneys obtained by the board for this purpose. The fund
27 shall be administered by the board in trust for the purposes
28 of this section and shall at no time be part of general public
29 funds under the following procedures:

30 1. The board is authorized to post or pledge the
31 assets of the Black Contractors Bond Trust Fund as collateral

1 in amounts necessary to secure the issuance of bid bonds and
2 construction contract bonds to black business enterprises.
3 The board shall establish a premium to be charged to the black
4 business enterprise for which the assets have been so posted
5 or pledged, pursuant to generally accepted actuarial
6 principles, and shall establish such rules as may otherwise be
7 necessary to carry out the purposes of this section.

8 2. Any claims against the state arising from defaults
9 shall be payable from the Black Contractors Bond Trust Fund.

10 3. Nothing in this subsection shall be construed to
11 prohibit or restrict the board from entering into a joint
12 venture or other contractual agreement with a private insurer
13 or to invest in a private entity to handle all or part of a
14 black contractors bonding program, credit program, or both for
15 black business enterprises. Such investments or joint venture
16 shall be made under conditions required by law and as the
17 board may, from time to time, require and may take any of the
18 forms described in s. 288.711(2) and (3). The board is
19 authorized and encouraged to contract with a regulated surety
20 company to conduct a surety bond program for black business
21 enterprises. Moneys from the Black Contractors Bond Trust
22 Fund may be used for these purposes.

23 (4)

24 (b) If the board chooses to establish a loan guaranty
25 program, it shall utilize the Black Business Loan Guaranty
26 Trust Fund in the State Treasury, consisting of moneys
27 deposited or credited to the Black Business Loan Guaranty
28 Trust Fund pursuant to appropriation made by law; any grants,
29 gifts, and contributions received pursuant to ss.
30 288.707-288.714 ~~9-21, chapter 85-104, Laws of Florida~~; all
31 moneys recovered following defaults; and any other moneys

1 obtained by the board for this purpose. The Black Business
2 Loan Guaranty Trust Fund shall be administered by the board in
3 trust for the purposes of this section and shall at no time be
4 part of general public funds under the following procedures:

5 1. The board shall utilize the Black Business Loan
6 Guaranty Program Administrative and Loss Reserve Fund in the
7 State Treasury, consisting of all premiums charged and
8 collected in accordance with this section and any income
9 earned from the moneys in the account. All expenses of the
10 board in carrying out the purposes of this subsection shall be
11 paid from the Black Business Loan Guaranty Program
12 Administrative and Loss Reserve Fund. Any moneys to the
13 credit of the Black Business Loan Guaranty Program
14 Administrative and Loss Reserve Fund in excess of the amount
15 necessary to fund the board's activity shall be held as a loss
16 reserve to pay claims arising from defaults on loans
17 underwritten in accordance with this section.

18 2. Any claims against the state arising from defaults
19 shall be payable initially from the Black Business Loan
20 Guaranty Program Administrative and Loss Reserve Fund and,
21 secondarily, from the Black Business Loan Guaranty Trust Fund.

22 3. The board as loan guarantor may exercise all rights
23 and powers of a company authorized by the Department of
24 Insurance to guarantee loans but shall not be subject to any
25 requirements of an insurance company under the Florida
26 Insurance Code, nor to any rules of the Department of
27 Insurance; however, the board shall refer to the insurance
28 code and rules thereunder when designing and administering
29 such program. The board shall follow sound actuarial
30 principles when administering this program. The board shall
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1 establish a premium for the loan guaranty and such rules as
2 may be necessary to carry out the purposes of this section.

3 4. The board may guarantee no more than 20 percent of
4 the principal of a loan to a black business enterprise.

5 Section 8. Section 288.714, Florida Statutes, is
6 amended to read:

7 288.714 Annual report.--By March 31 of each year the
8 board shall submit to the Governor, the President of the
9 Senate, the Speaker of the House of Representatives, the
10 director of the Agency for Workforce Innovation, and the
11 director of the Office of Tourism, Trade, and Economic
12 Development ~~and the secretary of the Department of Labor and~~
13 ~~Employment Security~~ a complete and detailed report setting
14 forth:

15 (1) Operations and accomplishments of the board;

16 (2) The number of black business enterprises which
17 participated during the past year in programs established or
18 administered by the board;

19 (3) The number of black business enterprises receiving
20 assistance from the board and the manner in which the
21 assistance was received;

22 (4) The status of black business enterprises which
23 participated in programs established or administered by the
24 board;

25 (5) The total number of jobs represented by black
26 business enterprises participating in programs established or
27 administered by the board;

28 (6) Receipts and expenditures of the board during its
29 most recent fiscal year in accordance with the categories or
30 classifications established by the board for its operating and
31 capital accounts;

1 (7) Assets and liabilities of the board at the end of
2 its most recent fiscal year and the status of its trust funds;
3 and

4 (8) A schedule of local bonds outstanding authorized
5 by the board and capital participation instruments issued by
6 the board for the year and the total to date.

7 Section 9. This act shall take effect July 1, 2001.

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HOUSE SUMMARY

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12 Provides that the Florida Black Business Investment Board
13 shall be a not-for-profit corporation and not an entity
14 of state government. Revises provisions relating to
15 appointment of board members and officers, compensation
16 of board members, the executive director, and employees,
17 and financial disclosure by board members. Provides for
18 board meetings. Revises provisions relating to
19 appointment of the executive director and provides for
20 delegation of powers and responsibilities to the
21 executive director. Provides the board's responsibilities
22 regarding use of funds. Provides requirements regarding
23 employees' compensation. Revises provisions relating to
24 duties of the board regarding developing memoranda of
25 understanding with certain entities and increasing the
26 number of black business enterprises in construction
27 projects. Provides intent regarding operation of the
28 board and return on investment. Defines the state's
29 operating investment in the board. Directs the board to
30 adopt an annual operating budget. Provides requirements
31 regarding private sector support and board compliance
with performance measures. Requires that the board hire a
private accounting firm and provides its duties. Revises
the persons to whom the board's annual report is
submitted.

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