

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 officers, compensation of
8 board members, the executive director, and
9 employees, and financial disclosure by board
10 members; providing for board meetings;
11 authorizing the board to appoint at-large
12 members; amending s. 288.708, F.S.; revising
13 provisions relating to appointment of the
14 executive director; providing for delegation of
15 powers and responsibilities to the executive
16 director; providing the board's
17 responsibilities regarding use of funds;
18 providing requirements regarding employees'
19 compensation; amending s. 288.709, F.S.;
20 removing references to board rulemaking;
21 amending s. 288.7091, F.S.; revising provisions
22 relating to duties of the board regarding
23 developing memoranda of understanding with
24 certain entities and increasing the number of
25 black business enterprises in construction
26 projects; creating s. 288.7092, F.S.; providing
27 intent regarding operation of the board and
28 return on investment; defining the state's
29 operating investment in the board; directing
30 the board to adopt an annual operating budget;
31 providing requirements regarding private sector

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

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

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

16 288.707 Florida Black Business Investment Board.--

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

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

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

29 (c) "Consortium" means two or more financial
30 institutions which jointly negotiate and agree to provide

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1 assistance to black business enterprises as provided in ss.
2 288.707-288.714 ~~9-21, chapter 85-104, Laws of Florida.~~

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

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

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

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

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1 (d) The Governor shall appoint the chairperson who
2 shall be a member of the board and shall serve at the pleasure
3 of the Governor. The board shall annually elect one of its
4 members as vice chairperson and shall designate a
5 secretary-treasurer who need not be a member of the board.
6 The secretary-treasurer shall keep a record of the proceedings
7 of the board and shall be the custodian of all books,
8 documents, and papers filed with the board, of the minute
9 books of the board, and of its official seal. ~~A majority of~~
10 ~~the members of the board shall constitute a quorum.~~

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

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

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

1 (h) Notwithstanding the provisions of paragraph (a),
2 the board may by resolution appoint at-large members to the
3 board from the private sector, each of whom may serve a 1-year
4 term. At-large members shall have the powers and duties of
5 other members of the board, except that they may not serve on
6 an executive committee. An at-large member is eligible for
7 reappointment but may not vote on his or her own
8 reappointment.

9 Section 2. Section 288.708, Florida Statutes, is
10 amended to read:

11 288.708 Executive director; employees.--

12 (1) The executive director of the board, who may also
13 be designated as secretary-treasurer, shall be appointed by
14 the board and shall serve at the pleasure of the board. The
15 board shall establish and adjust the compensation of the
16 executive director.The executive director shall be the chief
17 administrative and operational officer of the board and shall
18 direct and supervise administrative affairs and the general
19 management of the board. The board may delegate to its
20 executive director those powers and responsibilities it deems
21 appropriate, except for appointment of the executive director.

22 The executive director:

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

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

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

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1 (2) The board and its officers shall be responsible
2 for the prudent use of all public and private funds and shall
3 ensure that the use of such funds is in accordance with all
4 applicable laws, bylaws, or contractual requirements. No
5 employee of the board shall receive compensation for
6 employment which exceeds the salary paid to the Governor,
7 unless the board and the employee have executed a contract
8 that prescribes specific, measurable performance outcomes for
9 the employee, the satisfaction of which provides the basis for
10 the award of incentive payments that increase the employee's
11 total compensation to a level above the salary paid to the
12 Governor.~~The executive director and all employees of the~~
13 ~~board shall be exempt from the provisions of part II of~~
14 ~~chapter 110, and the executive director shall be subject to~~
15 ~~the provisions of part IV of chapter 110.~~

16 Section 3. Section 288.709, Florida Statutes, is
17 amended to read:

18 288.709 Powers of the Florida Black Business
19 Investment Board.--The board shall have all the powers
20 necessary or convenient to carry out and effectuate the
21 purposes and provisions of ss. 288.707-288.714 ~~9-21, chapter~~
22 ~~85-104, Laws of Florida~~, including, but not limited to, the
23 power to:

24 (1) Adopt bylaws for the regulation of its affairs and
25 the conduct of its business ~~and adopt rules pursuant to ss.~~
26 ~~120.536(1) and 120.54~~ to implement the provisions of law
27 conferring duties upon it. However, any proposed bylaws ~~rules~~
28 affecting the operation or administration or financial
29 well-being of any of the black business investment
30 corporations must first be reviewed ~~approved~~ by a majority of
31 the black business investment corporations.

1 (2) Adopt an official seal.

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

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

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

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

10 (7) Encourage financial institutions to participate in
11 consortia for the purpose of investing in black business
12 enterprises.

13 (8) Ensure that funds available to the board for
14 purposes set forth in ss. 288.707-288.714 ~~9-21, chapter~~
15 ~~85-104, Laws of Florida~~, are disbursed on a statewide basis
16 and are not concentrated in one geographical area.

17 (9) Acquire real property or any interest therein, by
18 purchase or foreclosure, where such acquisition is necessary
19 or appropriate to protect or secure any investment or loan in
20 which the board has an interest; to sell, transfer, and convey
21 any such property to a buyer without regard to the provisions
22 of chapters 253 and 270; and, in the event that such sale,
23 transfer, or conveyance cannot be effected with reasonable
24 promptness or at a reasonable price, to lease such property
25 for occupancy by eligible persons.

26 (10) Invest any funds held in reserves or sinking
27 funds, or any funds not required for immediate disbursement,
28 in such investments as may be authorized for trust funds under
29 s. 215.47; provided, such investments will be made on behalf
30 of the board by the Office of State Treasurer or by another
31 trustee appointed for that purpose.

1 (11) Appear in its own behalf before boards,
2 commissions, departments, or other agencies of municipal,
3 county, state, or federal government.

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

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

13 (14) Create, issue, and buy and sell stock, evidences
14 of indebtedness, and other capital participation instruments;
15 to hold such stock, evidences of indebtedness, and capital
16 participation instruments; and to underwrite the creation of a
17 capital market for these securities in a manner designed to
18 enhance development of capital ownership in the target group.

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

22 (16) Engage in special programs to enhance the
23 development of black business enterprises as authorized by
24 this act.

25 (17) Promote black ownership of financial institutions
26 in Florida.

27 (18) Take, hold, and improve property, including real
28 property.

29 (19) Do any and all things necessary or convenient to
30 carry out the purposes of, and exercise the powers given and
31 granted in, ss. 288.707-288.714 ~~9-21, chapter 85-104, Laws of~~

1 ~~Florida~~, and exercise any other powers, rights, or
2 responsibilities of a corporation.

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

5 288.7091 Duties of the Florida Black Business
6 Investment Board.--The Florida Black Business Investment Board
7 shall:

8 (5) Develop memoranda of understanding with the
9 Departments of ~~Labor and Employment Security~~, Education,
10 Transportation, Community Affairs, and Management Services, as
11 well as the Agency for Workforce Innovation and the State
12 Board of Regents, detailing efforts of common interest and
13 collaborations to expand black business development;

14 (6) Intensify efforts to increase the number of
15 franchises owned by black businesses or the black business
16 enterprises in construction and construction-related projects,
17 focusing on federal, state, and local government financed
18 construction projects; and

19 Section 5. Section 288.7092, Florida Statutes, is
20 created to read:

21 288.7092 Return on investment from activities of the
22 board.--

23 (1) The public funds appropriated each year for the
24 operation of the board are invested in this public-private
25 partnership to enhance black business ownership and
26 investments in Florida. This policy shall be the Legislature's
27 priority consideration when reviewing the return on investment
28 for the board.

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

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

6 (4)(a) The state's operating investment in the board
7 is the budget contracted by the Office of Tourism, Trade, and
8 Economic Development to the board, less funding that is
9 directed by the Legislature to be subcontracted to a specific
10 recipient.

11 (b) The board shall adopt for each upcoming fiscal
12 year an operating budget for the organization that specifies
13 the intended uses of the state's operating investment, other
14 sources of income, and a plan for securing private sector
15 support to the board. Each fiscal year, private sector support
16 to the board shall be as follows: no less than 50 percent of
17 the state's investment by July 1, 2002; no less than 60
18 percent of the state's investment by July 1, 2003; no less
19 than 70 percent of the state's investment by July 1, 2004; no
20 less than 80 percent of the state's investment by July 1,
21 2005; and no less than 100 percent of the state's investment
22 by July 1, 2006.

23 (5) Private sector support in operating the board
24 includes:

25 (a) Cash given directly to the board for its operating
26 budget.

27 (b) Cash jointly raised by the board and a local
28 economic development organization, a group of such
29 organizations, or a statewide business organization that
30 supports collaborative projects.

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1 (c) Cash generated by products or services of the
2 board.

3 (d) In-kind contributions directly to the board,
4 including private sector equipment contributed as part of
5 technical assistance; goods and services, including time
6 donated by loan officers, advertising or marketing support,
7 and items used to promote the board; business expenditures;
8 business services provided; business support; and other
9 business contributions that augment the operations, program,
10 activities, or assets of the board, including, but not limited
11 to, an individual's time and expertise, sponsored
12 publications, private sector staff services, payment for
13 advertising placements, sponsorship of events, sponsored or
14 joint research, discounts on leases or purchases, mission or
15 program sponsorship, copayments, stock, warrants, royalties,
16 or other private resources dedicated to the board, low
17 interest loans, participations, investment income, equity
18 investments, and the economic impact of board investments and
19 job creation and retention.

20 (6) The board shall fully comply with the performance
21 measures, standards, and sanctions in its contracts with the
22 Office of Tourism, Trade, and Economic Development. The office
23 shall ensure, to the maximum extent possible, that the
24 contract performance measures are consistent with performance
25 measures that the office is required to develop and track
26 under performance-based program budgeting.

27 (7) As part of the annual report required under s.
28 288.714, the board shall provide the Legislature with
29 information quantifying the public's return on investment.

30 (8) The board, in consultation with the Office of
31 Program Policy Analysis and Government Accountability, shall

1 hire a private accounting firm to develop the methodology for
2 establishing and reporting return on investment and in-kind
3 contributions as described in this section. The Office of
4 Program Policy Analysis and Government Accountability shall
5 review and offer feedback on the methodology before it is
6 implemented. The private accounting firm shall certify whether
7 the applicable statements in the annual report comply with
8 this section.

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

11 288.711 Florida Investment Incentive Trust Fund.--

12 (1) There is hereby created the Florida Investment
13 Incentive Trust Fund from which money may be drawn for
14 investments or loans, as authorized by this section, to
15 encourage the development of appropriate financial mechanisms
16 in the private sector to capitalize and assist in the
17 development of black business enterprises. All income earned
18 by investments of the fund shall be deposited in the fund for
19 carrying out the purposes of ss. 288.707-288.714 ~~9-21, chapter~~
20 ~~85-104, Laws of Florida~~. Administrative costs of the program
21 shall be appropriated in a lump-sum appropriation from the
22 fund created herein and shall be provided in the General
23 Appropriations Act.

24 (4) All loans and investments, and any income related
25 thereto, shall be used to carry out the public purpose of ss.
26 288.707-288.714 ~~9-21, chapter 85-104, Laws of Florida~~, which
27 is to develop black business enterprises. This is not meant
28 to preclude a reasonable profit for the participating black
29 business investment corporation or for return of equity
30 developed to the state and participating financial
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1 institutions upon any distribution of the assets or excess
2 income of the investment corporation.

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

6 288.712 Florida guarantor funds.--

7 (3)

8 (b) For purposes of this section, the board may
9 utilize the Black Contractors Bond Trust Fund in the State
10 Treasury, consisting of moneys deposited or credited to the
11 Black Contractors Bond Trust Fund pursuant to appropriation
12 made by law; any grants, gifts, and contributions received
13 pursuant to ss. 288.707-288.714 ~~9-21, chapter 85-104, Laws of~~
14 ~~Florida~~; all moneys recovered following defaults; and any
15 other moneys obtained by the board for this purpose. The fund
16 shall be administered by the board in trust for the purposes
17 of this section and shall at no time be part of general public
18 funds under the following procedures:

19 1. The board is authorized to post or pledge the
20 assets of the Black Contractors Bond Trust Fund as collateral
21 in amounts necessary to secure the issuance of bid bonds and
22 construction contract bonds to black business enterprises.
23 The board shall establish a premium to be charged to the black
24 business enterprise for which the assets have been so posted
25 or pledged, pursuant to generally accepted actuarial
26 principles, and shall establish such rules as may otherwise be
27 necessary to carry out the purposes of this section.

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

30 3. Nothing in this subsection shall be construed to
31 prohibit or restrict the board from entering into a joint

1 venture or other contractual agreement with a private insurer
 2 or to invest in a private entity to handle all or part of a
 3 black contractors bonding program, credit program, or both for
 4 black business enterprises. Such investments or joint venture
 5 shall be made under conditions required by law and as the
 6 board may, from time to time, require and may take any of the
 7 forms described in s. 288.711(2) and (3). The board is
 8 authorized and encouraged to contract with a regulated surety
 9 company to conduct a surety bond program for black business
 10 enterprises. Moneys from the Black Contractors Bond Trust
 11 Fund may be used for these purposes.

12 (4)

13 (b) If the board chooses to establish a loan guaranty
 14 program, it shall utilize the Black Business Loan Guaranty
 15 Trust Fund in the State Treasury, consisting of moneys
 16 deposited or credited to the Black Business Loan Guaranty
 17 Trust Fund pursuant to appropriation made by law; any grants,
 18 gifts, and contributions received pursuant to ss.

19 288.707-288.714 ~~9-21, chapter 85-104, Laws of Florida~~; all
 20 moneys recovered following defaults; and any other moneys
 21 obtained by the board for this purpose. The Black Business
 22 Loan Guaranty Trust Fund shall be administered by the board in
 23 trust for the purposes of this section and shall at no time be
 24 part of general public funds under the following procedures:

25 1. The board shall utilize the Black Business Loan
 26 Guaranty Program Administrative and Loss Reserve Fund in the
 27 State Treasury, consisting of all premiums charged and
 28 collected in accordance with this section and any income
 29 earned from the moneys in the account. All expenses of the
 30 board in carrying out the purposes of this subsection shall be
 31 paid from the Black Business Loan Guaranty Program

1 Administrative and Loss Reserve Fund. Any moneys to the
2 credit of the Black Business Loan Guaranty Program
3 Administrative and Loss Reserve Fund in excess of the amount
4 necessary to fund the board's activity shall be held as a loss
5 reserve to pay claims arising from defaults on loans
6 underwritten in accordance with this section.

7 2. Any claims against the state arising from defaults
8 shall be payable initially from the Black Business Loan
9 Guaranty Program Administrative and Loss Reserve Fund and,
10 secondarily, from the Black Business Loan Guaranty Trust Fund.

11 3. The board as loan guarantor may exercise all rights
12 and powers of a company authorized by the Department of
13 Insurance to guarantee loans but shall not be subject to any
14 requirements of an insurance company under the Florida
15 Insurance Code, nor to any rules of the Department of
16 Insurance; however, the board shall refer to the insurance
17 code and rules thereunder when designing and administering
18 such program. The board shall follow sound actuarial
19 principles when administering this program. The board shall
20 establish a premium for the loan guaranty and such rules as
21 may be necessary to carry out the purposes of this section.

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

24 Section 8. Section 288.714, Florida Statutes, is
25 amended to read:

26 288.714 Annual report.--By March 31 of each year the
27 board shall submit to the Governor, the President of the
28 Senate, the Speaker of the House of Representatives, the
29 director of the Agency for Workforce Innovation, and the
30 director of the Office of Tourism, Trade, and Economic
31 Development ~~and the secretary of the Department of Labor and~~

1 ~~Employment Security~~ a complete and detailed report setting
2 forth:
3 (1) Operations and accomplishments of the board;
4 (2) The number of black business enterprises which
5 participated during the past year in programs established or
6 administered by the board;
7 (3) The number of black business enterprises receiving
8 assistance from the board and the manner in which the
9 assistance was received;
10 (4) The status of black business enterprises which
11 participated in programs established or administered by the
12 board;
13 (5) The total number of jobs represented by black
14 business enterprises participating in programs established or
15 administered by the board;
16 (6) Receipts and expenditures of the board during its
17 most recent fiscal year in accordance with the categories or
18 classifications established by the board for its operating and
19 capital accounts;
20 (7) Assets and liabilities of the board at the end of
21 its most recent fiscal year and the status of its trust funds;
22 and
23 (8) A schedule of local bonds outstanding authorized
24 by the board and capital participation instruments issued by
25 the board for the year and the total to date.
26 Section 9. This act shall take effect July 1, 2001.