

By Senator Villalobos

37-1474-02

See HB 1323

1                                   A bill to be entitled  
2           An act relating to the Florida Minority  
3           Business Loan Mobilization Program; creating s.  
4           288.706, F.S.; providing legislative findings  
5           and intent; creating the Florida Minority  
6           Business Loan Mobilization Program for certain  
7           purposes; providing for program administration  
8           by the Department of Management Services;  
9           authorizing state agencies to expend a certain  
10          amount of a contract award to minority business  
11          enterprises for certain purposes; authorizing  
12          professional services vendors to apply for a  
13          direct retainer from agencies of a percentage  
14          of a base contract amount; specifying  
15          procedures for certain minority business  
16          enterprise performance contracts; providing for  
17          working capital agreements and lines of credit;  
18          providing requirements and limitations;  
19          providing requirements for prime contractors;  
20          providing agency requirements; providing for  
21          alternative agency disbursement procedures;  
22          authorizing the Department of Management  
23          Services to adopt rules; providing an effective  
24          date.

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

28           Section 1.   Section 288.706, Florida Statutes, is  
29           created to read:  
30           288.706 Florida Minority Business Loan Mobilization  
31           Program.--

1           (1) The Legislature finds that it is in the interest  
2 of the public welfare to meaningfully assist minority business  
3 enterprises that are vital to the overall economy of the  
4 state. It is the intent of the Legislature to promote  
5 diversity in state contracting by eliminating barriers that  
6 prevent minority business enterprises from providing goods and  
7 services to the state. It is also the intent of the  
8 Legislature to encourage prime contractors to participate in  
9 agency contracts by providing a mechanism to minimize any risk  
10 to which the contractor might be exposed as a result of  
11 reduction in the amount of allowable subcontract retainage  
12 withheld by the prime contractor for vendors participating in  
13 this program. The Legislature recognizes the contribution of  
14 minority business enterprises to employment opportunities in  
15 this state.

16           (2) The Florida Minority Business Loan Mobilization  
17 Program is hereby created to promote the development of  
18 minority business enterprises, as defined in s. 288.703(2), in  
19 this state, increase the ability of minority business  
20 enterprises to compete for state contracting opportunities,  
21 and sustain the continued economic growth of minority business  
22 enterprises in this state. The goal of the program is to  
23 provide financial assistance for minority business enterprises  
24 by facilitating working capital loans to minority business  
25 enterprises that serve as vendors on state contracts. The  
26 Department of Management Services shall administer the  
27 program.

28           (3) State agencies are authorized to expend up to 10  
29 percent of a contract award amount to minority business  
30 enterprises as a retainer for the basic services portion of  
31 the contract award to firms providing construction,

1 procurement of goods and services, and professional services.  
2 Professional services include, but are not limited to,  
3 architectural, engineering, information technology, legal, and  
4 accounting services.

5 (4) Professional services vendors may apply for a  
6 direct retainer from the agency in an amount not to exceed 5  
7 percent of the base contract award amount, or the vendor may  
8 apply for participation in the Florida Minority Business Loan  
9 Mobilization Program and receive up to 10 percent of the base  
10 contract award amount pursuant to the terms of such program.

11 (5) The following procedures apply to contracts  
12 performed by minority business enterprises in the areas of  
13 construction, procurement of goods and services, and  
14 professional services:

15 (a) Upon receipt of an award of a prime contract or  
16 subcontract, a vendor may seek to obtain working capital  
17 financing from any participating lending institution approved  
18 by the Department of Management Services. The vendor shall  
19 complete all application requirements with any participating  
20 lending institution in order to obtain a working capital  
21 agreement. A vendor shall only be entitled to receive a line  
22 of credit, to be known as the designated loan mobilization  
23 payment, if a working capital agreement is established with a  
24 participating lending institution.

25 (b) Upon the execution of a working capital agreement,  
26 the participating lending institutions shall be committed to  
27 extending the designated loan mobilization payment to a vendor  
28 in the amount of not less than 125 percent and not to exceed a  
29 maximum of 200 percent of the collateral described below.  
30 Individual loans shall be a minimum of \$5,000 and a maximum of  
31 \$250,000.

1           (c) Following execution of a working capital agreement  
2 and satisfaction of the department's requirements, a  
3 designated loan mobilization payment shall be issued under the  
4 contract in accordance with:

5           1. A minimum of 5 percent and a maximum of 10 percent  
6 of a contract between the prime contract vendor and the  
7 agency; or

8           2. A minimum of 5 percent and a maximum of 10 percent  
9 of the subcontract amount between a subcontract vendor and a  
10 prime contract vendor.

11           (d) The designated loan mobilization payment shall be  
12 made by the agency directly to the lending institution on  
13 behalf of the vendor and shall be pledged as collateral by the  
14 vendor. Upon disbursement, the agency shall retain no  
15 interest in the designated loan mobilization payment.

16           (e) Disbursement of designated loan mobilization  
17 payments shall be as follows:

18           1. The prime contract vendor may request payment of  
19 the designated loan mobilization payment in the first  
20 application for payment or, in the case of nonconstruction  
21 contracts, by letter delivered to the agency after the award  
22 of the contract but prior to the date of commencement of the  
23 contract. Such application or letter shall be accompanied by a  
24 working capital agreement with a participating lending  
25 institution. The designated loan mobilization payment shall be  
26 released pursuant to the working capital agreement and this  
27 subsection.

28           a. For construction contracts, the release of funds  
29 shall occur following the issuance of a notice to proceed from  
30 the agency and within 10 working days after the agency's  
31 approval of the vendor's initial application for payment.

1           b. For nonconstruction contracts, the release of funds  
2 shall occur within 10 days after the agency's approval of the  
3 vendor's letter of request for the designated loan  
4 mobilization payment.

5           c. The designated loan mobilization payment may be  
6 paid by the agency prior to the commencement of work. In  
7 order to ensure that the contract time does not commence until  
8 the vendor has adequate working capital, the agency's contract  
9 documents may provide that the contract shall commence at such  
10 time as the agency releases the designated loan mobilization  
11 payment to the participating lending institution pursuant to  
12 the working capital agreement.

13           2. The term "subcontract vendor," as used in this  
14 subparagraph, is limited to second-tier subcontractors and  
15 suppliers to prime contractors only.

16           a. Prior to the release of a designated loan  
17 mobilization payment to the subcontract vendor, the vendor  
18 shall submit to the agency a letter of request for the payment  
19 of the funds also indicating that the prime contractor is on  
20 notice of the request and a valid working capital agreement  
21 conditioned only on receipt by the participating lending  
22 institution of its subcontract or other documentation  
23 acceptable to the agency evidencing the subcontract amount.

24           b. No prime contractor shall retain more than 5  
25 percent of the amount earned by a subcontract vendor  
26 participating in this program. If the prime contract vendor  
27 is also participating in this program, the amount the prime  
28 vendor retains shall be subject to the provisions governing  
29 prime contract vendors.

30           (6) All prime contractors shall be required to  
31 incorporate the designated loan mobilization payment

1 procedures in subcontract agreements or purchase orders with  
2 vendors participating in this program and cooperate in the  
3 release of designated loan mobilization payments to achieve  
4 the objective of providing working capital for subcontract  
5 vendors.

6 (7) The agency shall encourage prime contractors to  
7 make weekly or biweekly payments to subcontract vendors  
8 participating in this program.

9 (8) The agency shall monitor compliance with and  
10 effectiveness of the procedures set forth in this section.  
11 Nothing contained in this section shall be construed to limit  
12 the agency's right to insist upon strict compliance with the  
13 requirements of the contract documents.

14 (9) The agency shall not be a party to the working  
15 capital agreement between the participating lending  
16 institution and the vendor. The agency shall disburse the  
17 designated loan mobilization payment directly to the  
18 participating lending institution, as authorized by the  
19 working capital agreement. The participating lending  
20 institution shall notify the agency head of vendor  
21 applications received by such institution from vendors  
22 requesting participation in this program.

23 (10) Nothing contained in this section shall prevent  
24 the agency from consenting to a disbursement procedure  
25 pursuant to which a minority vendor or nonminority vendor  
26 agrees to an assignment of contract proceeds in order to  
27 induce a line of credit or other credit facility based upon a  
28 prime contract or subcontract for an agency project. However,  
29 the designated loan mobilization payment program shall remain  
30 exclusive to any such agreements.

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(11) The Department of Management Services may adopt rules to implement the provisions of this section.

Section 2. This act shall take effect October 1, 2002.

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HOUSE SUMMARY

Creates the Florida Minority Business Loan Mobilization Program to promote the development of minority business enterprises in this state, increase the ability of minority business enterprises to compete for state contracting opportunities, and sustain the continued economic growth of minority business enterprises in this state by providing financial assistance for minority business enterprises by facilitating working capital loans to minority business enterprises that serve as vendors on state contracts.