

By the Committees on Commerce and Economic Opportunities;
Governmental Oversight and Productivity; and Senator
Villalobos

310-2319-02

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 disburse a
10 specified amount of a contract award to assist
11 certain minority business enterprise vendors in
12 obtaining working capital financing;
13 authorizing professional services vendors to
14 apply for a specified percentage of a base
15 contract amount; specifying procedures for the
16 Florida Minority Business Loan Mobilization
17 Program; providing for working capital
18 agreements and lines of credit; providing
19 requirements and limitations; providing
20 requirements for prime contract vendors;
21 providing requirements for subcontract vendors;
22 providing contracting state agency
23 requirements; authorizing the Department of
24 Management Services to adopt rules; authorizing
25 the Department of Management Services to
26 maintain a listing of participating financial
27 institutions; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
30
31

1 Section 1. Section 288.706, Florida Statutes, is
2 created to read:

3 288.706 Florida Minority Business Loan Mobilization
4 Program.--

5 (1) The Legislature finds that it is in the interest
6 of the public welfare to meaningfully assist minority business
7 enterprises that are vital to the overall economy of the
8 state. It is the intent of the Legislature to promote
9 diversity in state contracting by eliminating barriers to
10 minority business enterprises providing goods and services to
11 the state. Finally, the Legislature recognizes the
12 contribution of minority business enterprises to employment
13 opportunities in this state.

14 (2) The Florida Minority Business Loan Mobilization
15 Program is created to promote the development of minority
16 business enterprises, as defined in s. 288.703(2); to increase
17 the ability of minority business enterprises to compete for
18 state contracts; and to sustain the economic growth of
19 minority business enterprises in this state. The goal of the
20 program is to assist minority business enterprises by
21 facilitating working capital loans to minority business
22 enterprises that are vendors on state agency contracts. The
23 Department of Management Services shall administer the
24 program.

25 (3) Notwithstanding ss. 215.422(14) and 216.181(16),
26 and pursuant to s. 216.351, under the Florida Minority
27 Business Loan Mobilization Program a state agency is
28 authorized to disburse up to 10 percent of the base contract
29 award amount to assist a minority business enterprise vendor
30 that is awarded a state agency contract for goods or services
31

1 in obtaining working capital financing as provided in
2 subsection (5).

3 (4) Notwithstanding ss. 215.422(14) and 216.181(16),
4 and pursuant to s. 216.351, in lieu of applying for
5 participation in the Florida Minority Business Loan
6 Mobilization Program, a minority business enterprise vendor
7 awarded a state-agency contract for the performance of
8 professional services may apply with that contracting state
9 agency for up to 5 percent of the base contract award amount.
10 The contracting state agency may award such advance in order
11 to facilitate the performance of that contract.

12 (5) The following Florida Minority Business Loan
13 Mobilization Program procedures apply to minority business
14 enterprise vendors for contracts awarded by a state agency for
15 construction or professional services or for the provision of
16 goods or services:

17 (a) Upon receipt of an award of a prime contract or
18 subcontract, a minority business enterprise vendor may seek to
19 obtain working-capital financing from a participating
20 financial institution. The minority business enterprise vendor
21 must complete all the necessary requirements of the
22 participating financial institution in order to obtain a
23 working-capital agreement. A minority business enterprise
24 vendor shall be entitled to participate in the program only if
25 a working-capital agreement is established with a
26 participating financial institution.

27 (b) The working-capital agreement may provide for a
28 line of credit that is no less than 125 percent and no more
29 than 200 percent of the designated loan mobilization payment
30 described in paragraph (c).

31

1 (c) The designated loan mobilization payment is that
2 portion of the base contract award amount that is to be
3 disbursed by the agency under this section. The actual amount
4 of the designated loan mobilization payment shall be no less
5 than \$5,000 and no greater than \$250,000. The amount of the
6 designated loan mobilization payment shall be:

7 1. No less than 5 percent and no more than 10 percent
8 of the base contract award amount between the prime minority
9 business enterprise contract vendor and the contracting state
10 agency; or

11 2. No less than 5 percent and no more than 10 percent
12 of the base contract award amount between a subcontract
13 minority business enterprise vendor and a minority business
14 enterprise or nonminority business enterprise prime contract
15 vendor.

16 (d) The designated loan mobilization payment shall be
17 disbursed pursuant to the working-capital agreement and this
18 subsection, and shall be made payable by the contracting state
19 agency to the minority business enterprise prime contract
20 vendor and the participating financial institution using the
21 tax identification number of the minority business enterprise
22 vendor that is the debtor under the working-capital agreement.

23 (e) The following procedures shall apply when the
24 minority business enterprise is the prime contract vendor to
25 the contracting state agency:

26 1. Pursuant to s. 216.351, the provisions of ss.
27 215.422(14) and 216.181(16) do not apply to this paragraph.

28 2. For construction contracts, the designated loan
29 mobilization payment shall be disbursed when:

30
31

1 a. The minority business enterprise prime contract
2 vendor requests disbursement in the first application for
3 payment; and

4 b. The contracting state agency has issued a notice to
5 proceed and has approved the first application for payment.

6 3. For contracts other than construction contracts,
7 the designated loan mobilization payment shall be disbursed
8 when:

9 a. The minority business enterprise prime contract
10 vendor requests disbursement by letter delivered to the
11 contracting state agency after the execution of the contract
12 but prior to the commencement of work; and

13 b. The contracting state agency has approved the
14 minority business enterprise prime contract vendor's letter of
15 request.

16 4. The designated loan mobilization payment may be
17 paid by the contracting state agency prior to the commencement
18 of work. In order to ensure that the contract time provisions
19 do not commence until the minority business enterprise prime
20 contract vendor has adequate working capital, the contract
21 documents may provide that the contract shall commence at such
22 time as the contracting state agency releases the designated
23 loan mobilization payment to the minority business enterprise
24 prime contract vendor and participating financial institution
25 pursuant to the working-capital agreement.

26 (f) The following procedures shall apply when the
27 minority business enterprise is the subcontract vendor:

28 1. For purposes of this paragraph, the term
29 "subcontract minority business enterprise vendor" is limited
30 to subcontractors and suppliers to prime contract vendors that
31 contract with a state agency.

1 2. A designated loan mobilization payment for a
2 subcontract minority business enterprise vendor shall be made:

3 a. Upon approval by the contracting state agency of a
4 letter from the subcontract minority business enterprise
5 vendor and prime contract vendor that requests the designated
6 loan mobilization payment and that indicates that the prime
7 contract vendor is on notice of the request.

8 b. Payable to the prime contract vendor and the
9 participating financial institution, which shall pay these
10 funds to the subcontract minority business enterprise vendor
11 within 10 business days after the receipt of the funds from
12 the state.

13 3. No prime contract vendor shall retain more than 5
14 percent of the amount earned by a subcontract minority
15 business enterprise vendor participating in this program,
16 except that, if the prime contract vendor is also
17 participating in this program, the amount the prime contract
18 vendor retains shall be subject to the provisions governing
19 prime contract vendors.

20 (6) All prime contract vendors shall be required to
21 incorporate the designated loan mobilization payment
22 procedures in subcontract agreements or purchase orders with
23 minority business enterprise vendors participating in this
24 program and to cooperate in the release of designated loan
25 mobilization payments to achieve the objective of providing
26 working capital for subcontract minority business enterprise
27 vendors.

28 (7) The contracting state agency shall encourage prime
29 contract vendors to make weekly or biweekly payments to
30 subcontract minority business enterprise vendors participating
31 in this program.

1 (8) The contracting state agency shall monitor
2 compliance with this section. Nothing contained in this
3 section shall be construed to limit the contracting state
4 agency's right to insist upon strict compliance with the
5 requirements of the contract documents.

6 (9) The contracting state agency shall not be a party
7 to a working-capital agreement between a participating
8 financial institution and a participating minority business
9 enterprise vendor. The participating financial institution
10 shall notify the contracting state-agency head of vendor
11 program applications received by such institution.

12 (10) The Department of Management Services may adopt
13 rules to administer this section.

14 (11) The Department of Management Services shall
15 maintain a listing of financial institutions willing to
16 participate in the Florida Minority Business Loan Program.
17 This list of financial institutions shall not be exclusive. A
18 minority business enterprise vendor who has a working
19 relationship with a financial institution is encouraged to
20 request that the financial institution apply to participate as
21 a financial institution for the program.

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

23
24 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
25 COMMITTEE SUBSTITUTE FOR
26 CS/SB 2338

27 The committee substitute makes clarifying and conforming
28 changes to the bill. Provisions are added to provide that laws
29 generally prohibiting advance payments are waived and that
30 designated loan mobilization payments for the benefit of
31 subcontractors are made to the prime contractor and a
participating financial institution.