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CS/HB 1551

2010 Legislature

1 A bill to be entitled
2 An act relating to the Black Business Investment Board,
3 Inc.; amending s. 288.707, F.S.; deleting a description of
4 the board as a public-private entity; requiring the board
5 to assist the Office of Tourism, Trade, and Economic
6 Development in creating a long-range strategic policy for
7 the Black Business Loan Program; revising the entities
8 with whom the board may create partnerships for the
9 development and expansion of black business enterprises;
10 revising the membership of the board of directors;
11 providing for certain members to be ex officio, nonvoting
12 members; revising requirements for the selection, removal,
13 and terms of the chair and vice chair; amending s.
14 288.709, F.S.; requiring that upon dissolution of the
15 board, an asset that was not acquired through the use of
16 state funds be returned to the donor who provided the
17 asset or the funding or resources to acquire the asset;
18 amending s. 288.7091, F.S.; requiring the board to aid the
19 development and expansion of black business enterprises by
20 leveraging federal, state, local, and private funds;
21 requiring the board to collaborate with agencies of the
22 federal, state, and local governments, private entities,
23 nonprofit organizations, and national organizations;
24 amending s. 288.7102, F.S.; revising the dates by which
25 applications for loans from the Black Business Loan
26 Program must be received and processed by the Office of
27 Tourism, Trade, and Economic Development; revising
28 eligibility requirements for new and existing program

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 recipients; revising the date by which the Office of
30 Tourism, Trade, and Economic Development must distribute
31 appropriations to program recipients; deleting provisions
32 providing for the board to recommend the certification of
33 eligible recipients for loans; revising the percentages of
34 program funds that a program recipient may use for
35 technical support for black business enterprises or direct
36 administrative costs; amending s. 288.71025, F.S.;
37 authorizing the Office of Tourism, Trade, and Economic
38 Development to bring a civil action against an entity that
39 unlawfully holds itself out as a black business investment
40 corporation; amending s. 288.712, F.S.; deleting a
41 provision relating to the black contractors bonding
42 program, which requires the board to provide assistance to
43 the Office of Supplier Diversity within the Department of
44 Management Services; amending s. 288.714, F.S.; requiring
45 that recipients of loans from the Black Business Loan
46 Program provide quarterly reports to the Office of
47 Tourism, Trade, and Economic Development; requiring that
48 the Office of Tourism, Trade, and Economic Development
49 compile a summary of quarterly reports from loan
50 recipients and provide a copy of the summary to the board;
51 requiring that the Office of Tourism, Trade, and Economic
52 Development and the board provide annual reports to the
53 Governor and Legislature by a certain date; providing an
54 effective date.

55
56 Be It Enacted by the Legislature of the State of Florida:

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58 Section 1. Subsections (1), (2), (3), and (6) of section
59 288.707, Florida Statutes, are amended to read:

60 288.707 Florida Black Business Investment Board, Inc.;
61 findings; creation; membership; organization; meetings;
62 disclosure.-

63 (1) The Legislature finds that the public interest of the
64 state will be served by the creation of a not-for-profit
65 corporation, ~~public-private entity~~ the primary mission of which
66 is shall be to assist in the development and expansion of black
67 business enterprises by:

68 (a) Advising the Office of Tourism, Trade, and Economic
69 Development in its oversight of the Black Business Loan Program
70 and assisting in the creation of a ~~creating~~ long-range strategic
71 policy for the program.

72 (b) Evaluating the unmet need for capital by black
73 business enterprises in the state.

74 (c) Creating partnerships between federal, state, and
75 local governments, ~~and~~ private enterprises, and national
76 organizations to aid in the development and expansion of black
77 business enterprises.

78 (d) Providing a network of information resources for black
79 business enterprises and providing technical assistance through
80 this network.

81 (2) (a) There is created a not-for-profit corporation to be
82 known as the "Florida Black Business Investment Board, Inc.,"
83 referred to in ss. 288.707-288.714 as the board, which shall be
84 registered, incorporated, organized, and operated in compliance

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85 with chapter 617 and which must ~~shall~~ not be a unit or entity of
 86 state government. The Legislature determines, however, that
 87 public policy dictates that the board operate in the most open
 88 and accessible manner consistent with its public purpose.
 89 Therefore, the Legislature specifically declares that the board
 90 and its advisory committees or similar groups created by the
 91 board, including any subsidiaries, are subject to the provisions
 92 of chapter 119, relating to public records, and the provisions
 93 of chapter 286, relating to public meetings and records.

94 (b) The board shall contract with the Office of Tourism,
 95 Trade, and Economic Development to implement the provisions of
 96 ss. 288.707-288.714.

97 (3) The board shall be governed by a board of directors
 98 chosen as follows:

99 (a) Four ~~Five~~ members appointed by the Governor who shall
 100 serve terms of 4 years each, except that in making initial
 101 appointments, the Governor shall appoint three members to serve
 102 for terms of 2 years each and two members to serve for terms of
 103 3 years each.

104 (b) One member appointed by the President of the Senate
 105 who shall serve a term of 2 years.

106 (c) One member appointed by the Speaker of the House of
 107 Representatives who shall serve a term of 2 years.

108 (d) The vice chair of Enterprise Florida, Inc., or his or
 109 her designee, who shall be an ex officio, nonvoting member.

110 (e) Two at-large members selected by the board of
 111 directors who are nationally known for their achievements in
 112 finance, small business development, or economic development.

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113 ~~(e) The chair of the Florida Development Finance~~
114 ~~Corporation created pursuant to s. 288.9604.~~

115 (f) Four presidents of participating black business
116 investment corporations who shall be appointed by the Executive
117 Director of the Office of Tourism, Trade, and Economic
118 Development upon the recommendation of the Florida Consortium of
119 Black Business Investment Corporations, Inc., to serve for terms
120 of 3 years each. Each shall be eligible for reappointment to one
121 additional term of 3 years.

122 (6) The board shall elect a chair and vice chair from
123 among its members for a term of 2 years. The chair may be
124 removed by a two-thirds vote of the membership of the board. ~~The~~
125 ~~Governor shall appoint the chair, who shall be a member of the~~
126 ~~board and shall serve at the pleasure of the Governor. The board~~
127 ~~shall annually elect one of its members as vice chair.~~

128 Section 2. Subsection (9) of section 288.709, Florida
129 Statutes, is amended to read:

130 288.709 Powers of the Florida Black Business Investment
131 Board, Inc.—The board shall have all the powers granted under
132 chapter 617 and any powers necessary or convenient to carry out
133 and effectuate the purposes and provisions of ss. 288.707–
134 288.714, including, but not limited to, the power to:

135 (9) Provide in its bylaws that, upon the dissolution of
136 the board, all of its assets acquired through the use of state
137 funds, after payment of all legal debts and liabilities, revert
138 to the state. However, an asset that is not acquired through the
139 use of state funds, or the funding or resources necessary to
140 acquire the asset, shall be returned to the donor who provided

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141 the asset.

142 Section 3. Subsections (2) and (6) of section 288.7091,
143 Florida Statutes, are amended to read:

144 288.7091 Duties of the Florida Black Business Investment
145 Board, Inc.—The board shall:

146 (2) Aid the development and expansion of black business
147 enterprises by leveraging federal, state, local, and private
148 funds to be held by the board for use according to the
149 provisions of ss. 288.707-288.714.

150 (6) Collaborate with agencies of the federal, state, and
151 local governments, private entities, nonprofit organizations,
152 and national organizations ~~the Department of Transportation, the~~
153 ~~Department of Management Services, including the Florida~~
154 ~~Minority Business Loan Mobilization Program, Workforce Florida,~~
155 ~~Inc., and other state agencies and partners, the State~~
156 ~~University System, including the Florida Agricultural and~~
157 ~~Mechanical University's Institute of Urban Policy and Commerce,~~
158 ~~school boards, and local governments~~ to create a network of
159 information and to identify available resources to enhance the
160 development and expansion of black business enterprises.

161 Section 4. Section 288.7102, Florida Statutes, is amended
162 to read:

163 288.7102 Black Business Loan Program.—

164 (1) The Black Business Loan Program is established in the
165 Office of Tourism, Trade, and Economic Development. Under the
166 program, the office shall annually certify eligible recipients
167 and subsequently disburse funds appropriated by the Legislature,
168 through such eligible recipients, to black business enterprises

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169 that cannot obtain capital through conventional lending
170 institutions but that could otherwise compete successfully in
171 the private sector.

172 (2) The office shall establish an application and annual
173 certification process for entities seeking funds to participate
174 in providing loans, loan guarantees, or investments in black
175 business enterprises pursuant to the Florida Black Business
176 Investment Act. ~~The board shall receive the applications and~~
177 ~~make recommendations for certification to the office.~~ The office
178 shall process all applications and recertifications submitted by
179 June 1 ~~July 1~~ on or before July 31 ~~September 30~~.

180 (3) If the Black Business Loan Program is appropriated any
181 funding in a fiscal year, the office shall distribute an equal
182 amount of the appropriation, calculated as the total annual
183 appropriation divided by the total number of program recipients
184 certified on or before July 31 ~~September 30~~ of that fiscal year.

185 (4) To be eligible to receive funds and provide loans,
186 loan guarantees, or investments under this section, a recipient
187 must:

188 (a) Be a corporation registered in the state.

189 (b) For an existing recipient, annually submit to the
190 office a financial audit performed by an independent certified
191 public account for the most recently completed fiscal year,
192 which audit does not reveal any material weaknesses or instances
193 of material noncompliance.

194 (c) For a new recipient:

195 1. (b) Demonstrate that its board of directors includes
196 citizens of the state experienced in the development of black

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197 business enterprises.

198 2.~~(e)~~ Demonstrate that the recipient has a business plan
199 that allows the recipient to operate in a manner consistent with
200 ss. 288.707-288.714 and the rules of the office.

201 3.~~(d)~~ Demonstrate that the recipient has the technical
202 skills to analyze and evaluate applications by black business
203 enterprises for loans, loan guarantees, or investments.

204 4.~~(e)~~ Demonstrate that the recipient has established
205 viable partnerships with public and private funding sources,
206 economic development agencies, and workforce development and job
207 referral networks.

208 5.~~(f)~~ Demonstrate that the recipient can provide a private
209 match equal to 20 percent of the amount of funds provided by the
210 office.

211 (d)~~(g)~~ For an existing or new recipient, agree to maintain
212 the recipient's books and records relating to funds received by
213 the office according to generally accepted accounting principles
214 and in accordance with the requirements of s. 215.97(7) and to
215 make those books and records available to the office for
216 inspection upon reasonable notice.

217 ~~(5) The board shall annually recommend to the office~~
218 ~~certification of~~ Each eligible recipient, ~~who~~ must meet the
219 provisions of ss. 288.707-288.714, the terms of the contract
220 between the recipient and the office, and any other applicable
221 state or federal laws. An entity may not receive funds under ss.
222 288.707-288.714 unless the entity meets annual certification
223 requirements.

224 (6) Upon approval by the office and before ~~prior to~~

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225 release of the funds as provided in this section, the office
226 shall issue a letter certifying the applicant as qualified for
227 an award. The office and the applicant shall enter into an
228 agreement that sets forth the conditions for award of the funds.
229 The agreement must include the total amount of funds awarded;
230 the performance conditions that must be met once the funding has
231 been awarded, including, but not limited to, compliance with all
232 of the requirements of this section for eligible recipients of
233 funds under this section; and sanctions for failure to meet
234 performance conditions, including any provisions to recover
235 awards.

236 (7)~~(a)~~ The office, in consultation with the board, shall
237 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
238 this section.

239 ~~(b) The board shall adopt policies and procedures
240 necessary to implement this section.~~

241 (8) A black business investment corporation certified by
242 the office as an eligible recipient under this section is
243 authorized to use funds appropriated for the Black Business Loan
244 Program in any of the following forms:

245 (a) Purchases of stock, preferred or common, voting or
246 nonvoting; however, no more than 40 percent of the funds may be
247 used for direct investments in black business enterprises;

248 (b) Loans or loan guarantees, with or without recourse, in
249 either a subordinated or priority position; or

250 (c) Technical support to black business enterprises, not
251 to exceed 9 7 percent of the funds received, and direct
252 administrative costs, not to exceed 12 ~~10~~ percent of the funds

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253 received.

254 (9) It is the intent of the Legislature that if any one
255 type of investment mechanism authorized in subsection (8) is
256 held to be invalid, all other valid mechanisms remain available.

257 (10) All loans, loan guarantees, and investments, and any
258 income related thereto, shall be used to carry out the public
259 purpose of ss. 288.707-288.714, which is to develop black
260 business enterprises. This subsection does not preclude a
261 reasonable profit for the participating black business
262 investment corporation or for return of equity developed to the
263 state and participating financial institutions upon any
264 distribution of the assets or excess income of the investment
265 corporation.

266 Section 5. Section 288.71025, Florida Statutes, is amended
267 to read:

268 288.71025 Prohibited acts; penalties.—

269 (1) It is unlawful for any person to hold itself out as a
270 black business investment corporation without being certified ~~by~~
271 ~~the board~~ as eligible to participate in the Florida Black
272 Business Loan Program.

273 (2) In addition to any other penalties or remedies
274 provided under law, the office board ~~board~~ may bring a civil action in
275 any court of competent jurisdiction against any person for a
276 knowing or willful violation of this section. Upon an adverse
277 adjudication, the court may impose a civil penalty of up to \$500
278 and payment of court costs and reasonable attorney's fees
279 incurred by the plaintiff.

280 Section 6. Subsection (5) of section 288.712, Florida

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281 Statutes, is amended to read:

282 288.712 Guarantor funds.—

283 (5) The board shall do all of the following to implement
284 the black contractors bonding program:

285 (a) Conduct outreach, marketing, and recruitment of black
286 contractors.

287 ~~(b) Provide assistance to the Office of Supplier Diversity~~
288 ~~within the Department of Management Services, as needed, to~~
289 ~~certify new black business enterprises and to train appropriate~~
290 ~~department staff.~~

291 (b)(e) Provide business development services to black
292 business enterprises in the developmental and transitional
293 stages of the program, including financing and bonding
294 assistance and management and technical assistance.

295 (c)(d) Develop a mentor program to bring businesses into a
296 working relationship with black contractors in a way that
297 commercially benefits both entities and serves the purpose of
298 the program.

299 ~~(e) No later than December 31, 2007, prepare and submit to~~
300 ~~the Governor a detailed report outlining and evaluating the~~
301 ~~progress made in implementing the black contractors bonding~~
302 ~~program.~~

303 (d)(f) Establish a process by which black contractors may
304 apply for contract assistance, financial and bonding assistance,
305 management and technical assistance, and mentoring
306 opportunities.

307 Section 7. Section 288.714, Florida Statutes, is amended
308 to read:

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309 288.714 Quarterly and annual reports.—

310 (1) Each recipient of state funds under s. 288.7102 shall
311 provide to the office ~~board~~ a quarterly report within 15 days
312 after the end of each calendar quarter that includes a detailed
313 summary of the recipient's performance of the duties imposed by
314 s. 288.7102, including, but not limited to:

315 (a) The dollar amount of all loans or loan guarantees made
316 to black business enterprises, the percentages of the loans
317 guaranteed, and the names and identification of the types of
318 businesses served.

319 (b) Loan performance information.

320 (c) The amount and nature of all other financial
321 assistance provided to black business enterprises.

322 (d) The amount and nature of technical assistance provided
323 to black business enterprises, including technical assistance
324 services provided in areas in which such services are otherwise
325 unavailable.

326 (e) A balance sheet for the recipient, including an
327 explanation of all investments and administrative and
328 operational expenses.

329 (f) A summary of all services provided to nonblack
330 business enterprises, including the dollar value and nature of
331 such services and the names and identification of the types of
332 businesses served.

333 (g) Any other information as required by policies adopted
334 by the office ~~board~~.

335 (2) The office ~~board~~ must compile ~~and provide to the~~
336 ~~office~~ a summary of all quarterly reports and provide a copy of

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337 the summary to the board within 30 days after the end of each
338 calendar quarter that includes a detailed summary of the
339 recipient's performance of the duties imposed by s. 288.7102.

340 (3) By August 31 ~~May 1~~ of each year, the office ~~board~~
341 shall provide to the Governor, the President of the Senate, and
342 the Speaker of the House of Representatives a detailed report of
343 the performance of the Black Business Loan Program. The report
344 must include, ~~including:~~

345 ~~(a)~~ a cumulative summary of quarterly report data required
346 by subsection (1).

347 (4) By August 31 of each year, the board shall provide to
348 the Governor, the President of the Senate, and the Speaker of
349 the House of Representatives a detailed report of the board's
350 performance, including:

351 (a) ~~(b)~~ A description of the strategies implemented by the
352 board to increase private investment in black business
353 enterprises.

354 (b) ~~(e)~~ A summary of the board's performance of its duties
355 under ss. 288.707-288.712.

356 (c) ~~(d)~~ The most recent 5-year projection of the need for
357 capital by black business enterprises.

358 (d) ~~(e)~~ Recommendations for legislative or other changes to
359 enhance the development and expansion of black business
360 enterprises in the state.

361 (e) ~~(f)~~ A projection of the program's activities during the
362 next 12 months.

363 Section 8. This act shall take effect upon becoming a law.