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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/07/2010	.	
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	.	
	.	

The Committee on Commerce (Justice) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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



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14 business enterprises by:

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

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

21 (c) Creating partnerships between federal, state, and local
22 governments, and private enterprises, and national organizations
23 to aid in the development and expansion of black business
24 enterprises.

25 (d) Providing a network of information resources for black
26 business enterprises and providing technical assistance through
27 this network.

28 (2) (a) There is created a not-for-profit corporation to be
29 known as the "Florida Black Business Investment Board, Inc.,"
30 referred to in ss. 288.707-288.714 as the board, which shall be
31 registered, incorporated, organized, and operated in compliance
32 with chapter 617 and which must ~~shall~~ not be a unit or entity of
33 state government. The Legislature determines, however, that
34 public policy dictates that the board operate in the most open
35 and accessible manner consistent with its public purpose.
36 Therefore, the Legislature specifically declares that the board
37 and its advisory committees or similar groups created by the
38 board, including any subsidiaries, are subject to the provisions
39 of chapter 119, relating to public records, and the provisions
40 of chapter 286, relating to public meetings and records.

41 (b) The board shall contract with the Office of Tourism,
42 Trade, and Economic Development to implement the provisions of



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43 ss. 288.707-288.714.

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

46 (a) Four ~~Five~~ members appointed by the Governor who shall
47 serve terms of 4 years each, except that in making initial
48 appointments, the Governor shall appoint three members to serve
49 for terms of 2 years each and two members to serve for terms of
50 3 years each.

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

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

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

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

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

62 (f) Four presidents of participating black business
63 investment corporations who shall be appointed by the Executive
64 Director of the Office of Tourism, Trade, and Economic
65 Development upon the recommendation of the Florida Consortium of
66 Black Business Investment Corporations, Inc., to serve for terms
67 of 3 years each. Each shall be eligible for reappointment to one
68 additional term of 3 years.

69 (6) The board shall elect a chair and vice chair from among
70 its members for a term of 2 years. The chair may be removed by a
71 two-thirds vote of the membership of the board. ~~The Governor~~



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72 ~~shall appoint the chair, who shall be a member of the board and~~
73 ~~shall serve at the pleasure of the Governor. The board shall~~
74 ~~annually elect one of its members as vice chair.~~

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

77 288.709 Powers of the Florida Black Business Investment
78 Board, Inc.—The board shall have all the powers granted under
79 chapter 617 and any powers necessary or convenient to carry out
80 and effectuate the purposes and provisions of ss. 288.707-
81 288.714, including, but not limited to, the power to:

82 (9) Provide in its bylaws that, upon the dissolution of the
83 board, all of its assets acquired through the use of state
84 funds, after payment of all legal debts and liabilities, revert
85 to the state. However, an asset that is not acquired through the
86 use of state funds, or the funding or resources necessary to
87 acquire the asset, shall be returned to the donor who provided
88 the asset.

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

91 288.7091 Duties of the Florida Black Business Investment
92 Board, Inc.—The board shall:

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

97 (6) Collaborate with agencies of the federal, state, and
98 local governments, private entities, nonprofit organizations,
99 and national organizations ~~the Department of Transportation, the~~
100 ~~Department of Management Services, including the Florida~~



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101 ~~Minority Business Loan Mobilization Program, Workforce Florida,~~
102 ~~Inc., and other state agencies and partners, the State~~
103 ~~University System, including the Florida Agricultural and~~
104 ~~Mechanical University's Institute of Urban Policy and Commerce,~~
105 ~~school boards, and local governments to create a network of~~
106 information and to identify available resources to enhance the
107 development and expansion of black business enterprises.

108 Section 4. Section 288.7102, Florida Statutes, is amended
109 to read:

110 288.7102 Black Business Loan Program.—

111 (1) The Black Business Loan Program is established in the
112 Office of Tourism, Trade, and Economic Development. Under the
113 program, the office shall annually certify eligible recipients
114 and subsequently disburse funds appropriated by the Legislature,
115 through such eligible recipients, to black business enterprises
116 that cannot obtain capital through conventional lending
117 institutions but that could otherwise compete successfully in
118 the private sector.

119 (2) The office shall establish an application and annual
120 certification process for entities seeking funds to participate
121 in providing loans, loan guarantees, or investments in black
122 business enterprises pursuant to the Florida Black Business
123 Investment Act. ~~The board shall receive the applications and~~
124 ~~make recommendations for certification to the office.~~ The office
125 shall process all applications and recertifications submitted by
126 June 1 ~~July 1~~ on or before July 31 ~~September 30~~.

127 (3) If the Black Business Loan Program is appropriated any
128 funding in a fiscal year, the office shall distribute an equal
129 amount of the appropriation, calculated as the total annual



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130 appropriation divided by the total number of program recipients
131 certified on or before July 31 ~~September 30~~ of that fiscal year.

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

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

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

140 (c) For a new recipient:

141 1. ~~(b)~~ Demonstrate that its board of directors includes
142 citizens of the state experienced in the development of black
143 business enterprises.

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

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

150 4. ~~(e)~~ Demonstrate that the recipient has established viable
151 partnerships with public and private funding sources, economic
152 development agencies, and workforce development and job referral
153 networks.

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

157 (d) ~~(g)~~ For an existing or new recipient, agree to maintain
158 the recipient's books and records relating to funds received by



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159 the office according to generally accepted accounting principles
160 and in accordance with the requirements of s. 215.97(7) and to
161 make those books and records available to the office for
162 inspection upon reasonable notice.

163 ~~(5) The board shall annually recommend to the office~~
164 ~~certification of~~ Each eligible recipient, ~~who~~ must meet the
165 provisions of ss. 288.707-288.714, the terms of the contract
166 between the recipient and the office, and any other applicable
167 state or federal laws. An entity may not receive funds under ss.
168 288.707-288.714 unless the entity meets annual certification
169 requirements.

170 (6) Upon approval by the office and before ~~prior to~~ release
171 of the funds as provided in this section, the office shall issue
172 a letter certifying the applicant as qualified for an award. The
173 office and the applicant shall enter into an agreement that sets
174 forth the conditions for award of the funds. The agreement must
175 include the total amount of funds awarded; the performance
176 conditions that must be met once the funding has been awarded,
177 including, but not limited to, compliance with all of the
178 requirements of this section for eligible recipients of funds
179 under this section; and sanctions for failure to meet
180 performance conditions, including any provisions to recover
181 awards.

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

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

187 (8) A black business investment corporation certified by



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188 the office as an eligible recipient under this section is
189 authorized to use funds appropriated for the Black Business Loan
190 Program in any of the following forms:

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

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

196 (c) Technical support to black business enterprises, not to
197 exceed 9 7 percent of the funds received, and direct
198 administrative costs, not to exceed 12 ~~10~~ percent of the funds
199 received.

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

203 (10) All loans, loan guarantees, and investments, and any
204 income related thereto, shall be used to carry out the public
205 purpose of ss. 288.707-288.714, which is to develop black
206 business enterprises. This subsection does not preclude a
207 reasonable profit for the participating black business
208 investment corporation or for return of equity developed to the
209 state and participating financial institutions upon any
210 distribution of the assets or excess income of the investment
211 corporation.

212 Section 5. Section 288.71025, Florida Statutes, is amended
213 to read:

214 288.71025 Prohibited acts; penalties.—

215 (1) It is unlawful for any person to hold itself out as a
216 black business investment corporation without being certified ~~by~~



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217 ~~the board~~ as eligible to participate in the Florida Black
218 Business Loan Program.

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

226 Section 6. Subsection (5) of section 288.712, Florida
227 Statutes, is amended to read:

228 288.712 Guarantor funds.—

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

231 (a) Conduct outreach, marketing, and recruitment of black
232 contractors.

233 ~~(b) Provide assistance to the Office of Supplier Diversity~~
234 ~~within the Department of Management Services, as needed, to~~
235 ~~certify new black business enterprises and to train appropriate~~
236 ~~department staff.~~

237 (b) ~~(c)~~ Provide business development services to black
238 business enterprises in the developmental and transitional
239 stages of the program, including financing and bonding
240 assistance and management and technical assistance.

241 (c) ~~(d)~~ Develop a mentor program to bring businesses into a
242 working relationship with black contractors in a way that
243 commercially benefits both entities and serves the purpose of
244 the program.

245 ~~(e) No later than December 31, 2007, prepare and submit to~~



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246 ~~the Governor a detailed report outlining and evaluating the~~
247 ~~progress made in implementing the black contractors bonding~~
248 ~~program.~~

249 (d)~~(f)~~ Establish a process by which black contractors may
250 apply for contract assistance, financial and bonding assistance,
251 management and technical assistance, and mentoring
252 opportunities.

253 Section 7. Section 288.714, Florida Statutes, is amended to
254 read:

255 288.714 Quarterly and annual reports.—

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

261 (a) The dollar amount of all loans or loan guarantees made
262 to black business enterprises, the percentages of the loans
263 guaranteed, and the names and identification of the types of
264 businesses served.

265 (b) Loan performance information.

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

268 (d) The amount and nature of technical assistance provided
269 to black business enterprises, including technical assistance
270 services provided in areas in which such services are otherwise
271 unavailable.

272 (e) A balance sheet for the recipient, including an
273 explanation of all investments and administrative and
274 operational expenses.



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275 (f) A summary of all services provided to nonblack business
276 enterprises, including the dollar value and nature of such
277 services and the names and identification of the types of
278 businesses served.

279 (g) Any other information as required by policies adopted
280 by the office board.

281 (2) The office board must compile ~~and provide to the office~~
282 a summary of all quarterly reports and provide a copy of the
283 summary to the board within 30 days after the end of each
284 calendar quarter that includes a detailed summary of the
285 recipient's performance of the duties imposed by s. 288.7102.

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

291 ~~(a)~~ a cumulative summary of quarterly report data required
292 by subsection (1).

293 (4) By August 31 of each year, the board shall provide to
294 the Governor, the President of the Senate, and the Speaker of
295 the House of Representatives a detailed report of the board's
296 performance, including:

297 (a) ~~(b)~~ A description of the strategies implemented by the
298 board to increase private investment in black business
299 enterprises.

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

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



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

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

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

310

311 ===== T I T L E A M E N D M E N T =====

312 And the title is amended as follows:

313 Delete everything before the enacting clause
314 and insert:

315 A bill to be entitled
316 An act relating to the Black Business Investment
317 Board, Inc.; amending s. 288.707, F.S.; deleting a
318 description of the board as a public-private entity;
319 requiring the board to assist the Office of Tourism,
320 Trade, and Economic Development in creating a long-
321 range strategic policy for the Black Business Loan
322 Program; revising the entities with whom the board may
323 create partnerships for the development and expansion
324 of black business enterprises; revising the membership
325 of the board of directors; providing for certain
326 members to be ex officio, nonvoting members; revising
327 requirements for the selection, removal, and terms of
328 the chair and vice chair; amending s. 288.709, F.S.;
329 requiring that upon dissolution of the board, an asset
330 that was not acquired through the use of state funds
331 be returned to the donor who provided the asset or the
332 funding or resources to acquire the asset; amending s.



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333 288.7091, F.S.; requiring the board to aid the
334 development and expansion of black business
335 enterprises by leveraging federal, state, local, and
336 private funds; requiring the board to collaborate with
337 agencies of the federal, state, and local governments,
338 private entities, nonprofit organizations, and
339 national organizations; amending s. 288.7102, F.S.;
340 revising the dates by which applications for loans
341 from the Black Business Loan Program must be received
342 and processed by the Office of Tourism, Trade, and
343 Economic Development; revising eligibility
344 requirements for new and existing program recipients;
345 revising the date by which the Office of Tourism,
346 Trade, and Economic Development must distribute
347 appropriations to program recipients; deleting
348 provisions providing for the board to recommend the
349 certification of eligible recipients for loans;
350 revising the percentages of program funds that a
351 program recipient may use for technical support for
352 black business enterprises or direct administrative
353 costs; amending s. 288.71025, F.S.; authorizing the
354 Office of Tourism, Trade, and Economic Development to
355 bring a civil action against an entity that unlawfully
356 holds itself out as a black business investment
357 corporation; amending s. 288.712, F.S.; deleting a
358 provision relating to the black contractors bonding
359 program, which requires the board to provide
360 assistance to the Office of Supplier Diversity within
361 the Department of Management Services; amending s.



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362 288.714, F.S.; requiring that recipients of loans from
363 the Black Business Loan Program provide quarterly
364 reports to the Office of Tourism, Trade, and Economic
365 Development; requiring that the Office of Tourism,
366 Trade, and Economic Development compile a summary of
367 quarterly reports from loan recipients and provide a
368 copy of the summary to the board; requiring that the
369 Office of Tourism, Trade, and Economic Development and
370 the board provide annual reports to the Governor and
371 Legislature by a certain date; providing an effective
372 date.