

By Senator Smith

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1 A bill to be entitled
2 An act relating to the Black Business Investment
3 Board, Inc.; amending s. 288.707, F.S.; deleting a
4 description of the board as a public-private entity;
5 requiring the board to assist the Office of Tourism,
6 Trade, and Economic Development in creating a long-
7 range strategic policy for the Black Business Loan
8 Program; providing for certain members of the board to
9 be ex officio, nonvoting members; amending s. 288.709,
10 F.S.; requiring that upon dissolution of the board, an
11 asset that was not acquired through the use of state
12 funds be returned to the donor who provided the asset
13 or the funding or resources to acquire the asset;
14 amending s. 288.7091, F.S.; requiring the board to aid
15 the development and expansion of black business
16 enterprises by leveraging federal funds; requiring the
17 board to collaborate with agencies of the federal,
18 state, and local governments, private entities,
19 nonprofit organizations, and national organizations;
20 amending s. 288.7102, F.S.; revising the dates by
21 which applications for loans from the Black Business
22 Loan Program must be received and processed by the
23 Office of Tourism, Trade, and Economic Development;
24 revising the date by which the Office of Tourism,
25 Trade, and Economic Development must distribute
26 appropriations to program recipients; deleting
27 provisions providing for the board to recommend the
28 certification of eligible recipients for loans;
29 amending s. 288.71025, F.S.; authorizing the Office of

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30 Tourism, Trade, and Economic Development to bring a
31 civil action against an entity that unlawfully holds
32 itself out as a black business investment corporation;
33 amending s. 288.712, F.S.; deleting a provision
34 relating to the black contractors bonding program,
35 which requires the board to provide assistance to the
36 Office of Supplier Diversity within the Department of
37 Management Services; amending s. 288.714, F.S.;
38 requiring that recipients of loans from the Black
39 Business Loan Program provide quarterly reports to the
40 Office of Tourism, Trade, and Economic Development;
41 requiring that the Office of Tourism, Trade, and
42 Economic Development provide a summary of the
43 quarterly reports from loan recipients to the board;
44 requiring that the Office of Tourism, Trade, and
45 Economic Development and the board provide annual
46 reports on the Black Business Loan Program to the
47 Governor, President of the Senate, and Speaker of the
48 House of Representatives by a certain date; providing
49 an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Subsections (1), (2), and (3) of section
54 288.707, Florida Statutes, are amended to read:

55 288.707 Florida Black Business Investment Board, Inc.;
56 findings; creation; membership; organization; meetings;
57 disclosure.—

58 (1) The Legislature finds that the public interest of the

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59 state will be served by the creation of a not-for-profit
60 corporation, ~~public-private entity~~ the primary mission of which
61 is shall be to assist in the development and expansion of black
62 business enterprises by:

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

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

69 (c) Creating partnerships between federal, state, and local
70 governments, ~~and~~ private enterprises, and national organizations
71 to aid in the development and expansion of black business
72 enterprises.

73 (d) Providing a network of information resources for black
74 business enterprises and providing technical assistance through
75 this network.

76 (2) (a) There is created a not-for-profit corporation to be
77 known as the "Florida Black Business Investment Board, Inc.,"
78 referred to in ss. 288.707-288.714 as the board, which shall be
79 registered, incorporated, organized, and operated in compliance
80 with chapter 617 and which may shall not be a unit or entity of
81 state government. The Legislature determines, however, that
82 public policy dictates that the board operate in the most open
83 and accessible manner consistent with its public purpose.
84 Therefore, the Legislature specifically declares that the board
85 and its advisory committees or similar groups created by the
86 board, including any subsidiaries, are subject to the provisions
87 of chapter 119, relating to public records, and the provisions

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88 of chapter 286, relating to public meetings and records.

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

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

94 (a) Five members appointed by the Governor who shall serve
95 terms of 4 years each, except that in making initial
96 appointments, the Governor shall appoint three members to serve
97 for terms of 2 years each and two members to serve for terms of
98 3 years each.

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

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

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

105 (e) The chair of the Florida Development Finance
106 Corporation created pursuant to s. 288.9604, who shall be an ex
107 officio, nonvoting member.

108 (f) Four presidents of participating black business
109 investment corporations who shall be appointed by the Executive
110 Director of the Office of Tourism, Trade, and Economic
111 Development upon the recommendation of the Florida Consortium of
112 Black Business Investment Corporations, Inc., to serve for terms
113 of 3 years each. Each shall be eligible for reappointment to one
114 additional term of 3 years.

115 Section 2. Section 288.709, Florida Statutes, is amended to
116 read:

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117 288.709 Powers of the Florida Black Business Investment
118 Board, Inc.—The board shall have all the powers granted under
119 chapter 617 and any powers necessary or convenient to carry out
120 and effectuate the purposes and provisions of ss. 288.707-
121 288.714, including, but not limited to, the power to:

122 (1) Adopt bylaws for the regulation of its affairs and the
123 conduct of its business and adopt policies to implement the
124 provisions of law conferring duties upon it. The bylaws shall
125 provide that the board is subject to the requirements of s. 24,
126 Art. I of the State Constitution and chapter 119 and s. 286.011.

127 (2) Enter into agreements or other transactions with any
128 federal, state, or local agency or private entity.

129 (3) Invest any funds held in reserves or sinking funds, or
130 any funds not required for immediate disbursement, in such
131 investments as may be authorized for trust funds under s.
132 215.47; however, such investments will be made on behalf of the
133 board by the Chief Financial Officer or by another trustee
134 appointed for that purpose.

135 (4) Appear in its own behalf before boards, commissions,
136 departments, or other agencies of municipal, county, state, or
137 Federal Government.

138 (5) Apply for, accept, and disburse from any state or
139 nonstate source grants, loans, or advances for, or in aid of,
140 the purposes of ss. 288.707-288.714 and receive and accept
141 contributions from any source of either money, property, labor,
142 or other things of value to be held, used, and applied for said
143 purposes.

144 (6) Provide and pay for advisory services and technical
145 assistance as may be necessary or desirable to carry out the

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146 purposes of this act.

147 (7) Engage in special programs to enhance the development
148 of black business enterprises as authorized by this act.

149 (8) In addition to any indemnification available under
150 chapter 617, indemnify, and purchase and maintain insurance on
151 behalf of, directors, officers, and employees of the board and
152 its boards against any personal liability or accountability by
153 reason of actions taken while acting within the scope of their
154 authority.

155 (9) Provide in its bylaws that, upon the dissolution of the
156 board, all of its assets acquired through the use of state
157 funds, after payment of all legal debts and liabilities, revert
158 to the state. However, an asset that was not acquired through
159 the use of state funds shall be returned to the donor who
160 provided the asset or funding or resources to acquire the asset.

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

163 288.7091 Duties of the Florida Black Business Investment
164 Board, Inc.—The board shall:

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

169 (6) Collaborate with agencies of the federal, state, and
170 local governments, private entities, nonprofit organizations,
171 and national organizations ~~the Department of Transportation, the~~
172 ~~Department of Management Services, including the Florida~~
173 ~~Minority Business Loan Mobilization Program, Workforce Florida,~~
174 ~~Inc., and other state agencies and partners, the State~~

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175 ~~University System, including the Florida Agricultural and~~
176 ~~Mechanical University's Institute of Urban Policy and Commerce,~~
177 ~~school boards, and local governments~~ to create a network of
178 information and to identify available resources to enhance the
179 development and expansion of black business enterprises.

180 Section 4. Section 288.7102, Florida Statutes, is amended
181 to read:

182 288.7102 Black Business Loan Program.—

183 (1) The Black Business Loan Program is established in the
184 Office of Tourism, Trade, and Economic Development. Under the
185 program, the office shall annually certify eligible recipients
186 and subsequently disburse funds appropriated by the Legislature,
187 through such eligible recipients, to black business enterprises
188 that cannot obtain capital through conventional lending
189 institutions but that could otherwise compete successfully in
190 the private sector.

191 (2) The office shall establish an application and annual
192 certification process for entities seeking funds to participate
193 in providing loans, loan guarantees, or investments in black
194 business enterprises pursuant to the Florida Black Business
195 Investment Act. ~~The board shall receive the applications and~~
196 ~~make recommendations for certification to the office.~~ The office
197 shall process all applications and recertifications submitted by
198 June 1 July 1 on or before July 31 ~~September 30~~.

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

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

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

207 (b) Demonstrate that its board of directors includes
208 citizens of the state experienced in the development of black
209 business enterprises.

210 (c) Demonstrate that the recipient has a business plan that
211 allows the recipient to operate in a manner consistent with ss.
212 288.707-288.714 and the rules of the office.

213 (d) Demonstrate that the recipient has the technical skills
214 to analyze and evaluate applications by black business
215 enterprises for loans, loan guarantees, or investments.

216 (e) Demonstrate that the recipient has established viable
217 partnerships with public and private funding sources, economic
218 development agencies, and workforce development and job referral
219 networks.

220 (f) Demonstrate that the recipient can provide a private
221 match equal to 20 percent of the amount of funds provided by the
222 office.

223 (g) Agree to maintain the recipient's books and records
224 relating to funds received by the office according to generally
225 accepted accounting principles and in accordance with the
226 requirements of s. 215.97(7) and to make those books and records
227 available to the office for inspection upon reasonable notice.

228 ~~(5) The board shall annually recommend to the office~~
229 ~~certification of~~ Each eligible recipient, ~~who~~ must meet the
230 provisions of ss. 288.707-288.714, the terms of the contract
231 between the recipient and the office, and any other applicable
232 state or federal laws. An entity may not receive funds under ss.

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233 288.707-288.714 unless the entity meets annual certification
234 requirements.

235 (6) Upon approval by the office and before ~~prior to~~ release
236 of the funds as provided in this section, the office shall issue
237 a letter certifying the applicant as qualified for an award. The
238 office and the applicant shall enter into an agreement that sets
239 forth the conditions for award of the funds. The agreement must
240 include the total amount of funds awarded; the performance
241 conditions that must be met once the funding has been awarded,
242 including, but not limited to, compliance with all of the
243 requirements of this section for eligible recipients of funds
244 under this section; and sanctions for failure to meet
245 performance conditions, including any provisions to recover
246 awards.

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

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

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

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

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

261 (c) Technical support to black business enterprises, not to

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262 exceed 7 percent of the funds received, and direct
263 administrative costs, not to exceed 10 percent of the funds
264 received.

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

268 (10) All loans, loan guarantees, and investments, and any
269 income related thereto, shall be used to carry out the public
270 purpose of ss. 288.707-288.714, which is to develop black
271 business enterprises. This subsection does not preclude a
272 reasonable profit for the participating black business
273 investment corporation or for return of equity developed to the
274 state and participating financial institutions upon any
275 distribution of the assets or excess income of the investment
276 corporation.

277 Section 5. Section 288.71025, Florida Statutes, is amended
278 to read:

279 288.71025 Prohibited acts; penalties.—

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

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

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291 Section 6. Section 288.712, Florida Statutes, is amended to
292 read:

293 288.712 Guarantor funds.—

294 (1) The board is authorized to establish, with or without
295 public or private partners, guarantor funds to assist qualified
296 black business enterprises in obtaining surety bonds and other
297 credit instruments when required.

298 (2) The board may contract with a regulated surety company
299 to conduct a surety bond program for black business enterprises.

300 (3) For purposes of this section, the board may utilize the
301 Black Contractors Bond Trust Fund, consisting of moneys
302 deposited or credited to the Black Contractors Bond Trust Fund
303 pursuant to any appropriation made by law; any grants, gifts,
304 and contributions received pursuant to ss. 288.707-288.714; all
305 moneys recovered following defaults; all premiums charged and
306 collected in accordance with this section and any interest
307 earned; and any other moneys obtained by the board for this
308 purpose. The fund shall be administered by the board in trust
309 for the purposes of this section and shall at no time be part of
310 general public funds under the following procedures:

311 (a) Any claims against the state arising from defaults
312 shall be payable from the Black Contractors Bond Trust Fund.
313 Nothing in this section grants or pledges to any obligee or
314 other person any state moneys other than the moneys in the Black
315 Contractors Bond Trust Fund.

316 (b) The board may guarantee bonds executed by sureties for
317 black business enterprises under this section as principals on
318 contracts with the state, any political subdivision or
319 instrumentality, or any person as the obligee. The board, as

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320 guarantor, may exercise all the rights and powers of a company
321 authorized by the Department of Financial Services to guarantee
322 bonds under chapter 624, but otherwise is not subject to any
323 laws related to a guaranty company under chapter 624 or to any
324 rules of the department.

325 (c) The board shall adopt policies and procedures for the
326 application for bond guarantees and for the review and approval
327 of applications for bond guarantees submitted by sureties that
328 execute bonds eligible for guarantees under this section.

329 (d) In accordance with the policies and procedures adopted
330 pursuant to this section, the board may guarantee up to 90
331 percent of the loss incurred and paid by sureties on bonds
332 guaranteed under this section.

333 (e) The policies and procedures of the board shall require
334 the black business enterprise to pay a premium in advance for
335 the bond to be established by the board. All premiums paid by
336 the black business enterprise shall be paid into the Black
337 Contractors Bond Trust Fund.

338 (f) The penal sum amounts of all outstanding bonds issued
339 by the board shall not exceed the amount of moneys in the Black
340 Contractors Bond Trust Fund.

341 (g) Any funds to the credit of the Black Contractors Bond
342 Trust Fund in excess of the amount necessary to fund the
343 appropriation authority for the fund shall be held as a loss
344 reserve to pay claims arising from defaults on surety bonds
345 guaranteed in accordance with this section.

346 (4) Nothing in this section shall be construed to prohibit
347 or restrict the board from entering into a joint venture or
348 other contractual agreement with a private insurer or to invest

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349 in a private entity to handle all or part of a black contractors
350 bonding program for black business enterprises. The board is
351 authorized and encouraged to contract with a regulated surety
352 company to conduct a surety bond program for black business
353 enterprises. Moneys from the Black Contractors Bond Trust Fund
354 may be used for these purposes. The board may approve one
355 application per fiscal year from each surety company to support
356 1 fiscal year of that company's activities under this section. A
357 surety bond company that applies for a bond guarantee under this
358 section, regardless of whether the guarantee is approved, is not
359 restricted from also applying for individual bond guarantees
360 under this section.

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

363 (a) Conduct outreach, marketing, and recruitment of black
364 contractors.

365 ~~(b) Provide assistance to the Office of Supplier Diversity~~
366 ~~within the Department of Management Services, as needed, to~~
367 ~~certify new black business enterprises and to train appropriate~~
368 ~~department staff.~~

369 (b) ~~(e)~~ Provide business development services to black
370 business enterprises in the developmental and transitional
371 stages of the program, including financing and bonding
372 assistance and management and technical assistance.

373 (c) ~~(d)~~ Develop a mentor program to bring businesses into a
374 working relationship with black contractors in a way that
375 commercially benefits both entities and serves the purpose of
376 the program.

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

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378 ~~the Governor a detailed report outlining and evaluating the~~
379 ~~progress made in implementing the black contractors bonding~~
380 ~~program.~~

381 (d) ~~(f)~~ Establish a process by which black contractors may
382 apply for contract assistance, financial and bonding assistance,
383 management and technical assistance, and mentoring
384 opportunities.

385 Section 7. Section 288.714, Florida Statutes, is amended to
386 read:

387 288.714 Quarterly and annual reports.—

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

393 (a) The dollar amount of all loans or loan guarantees made
394 to black business enterprises, the percentages of the loans
395 guaranteed, and the names and identification of the types of
396 businesses served.

397 (b) Loan performance information.

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

400 (d) The amount and nature of technical assistance provided
401 to black business enterprises, including technical assistance
402 services provided in areas in which such services are otherwise
403 unavailable.

404 (e) A balance sheet for the recipient, including an
405 explanation of all investments and administrative and
406 operational expenses.

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407 (f) A summary of all services provided to nonblack business
408 enterprises, including the dollar value and nature of such
409 services and the names and identification of the types of
410 businesses served.

411 (g) Any other information as required by policies adopted
412 by the office board.

413 (2) The office board must compile and provide to the board
414 ~~office~~ a summary of all quarterly reports within 30 days after
415 the end of each calendar quarter that includes a detailed
416 summary of the recipient's performance of the duties imposed by
417 s. 288.7102.

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

423 ~~(a)~~ a cumulative summary of quarterly report data required
424 by subsection (1).

425 (4) By August 31 of each year, the board shall provide to
426 the Governor, the President of the Senate, and the Speaker of
427 the House of Representatives a detailed report of the
428 performance of the Black Business Loan Program, including:

429 (a) ~~(b)~~ A description of the strategies implemented by the
430 board to increase private investment in black business
431 enterprises.

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

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

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

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

441 Section 8. This act shall take effect July 1, 2010.