

1                   A bill to be entitled  
2           An act relating to the Department of Management Services;  
3           amending ss. 17.11, 255.102, and 287.012, F.S.; conforming  
4           provisions to the elimination of the Office of Supplier  
5           Diversity and the transfer of its duties to the Division  
6           of State Purchasing; amending s. 287.042, F.S.; providing  
7           that fees collected by the department for the use of its  
8           electronic information services in excess of the  
9           obligations and encumbrances to cover the department's  
10          costs of providing the services shall be calculated  
11          annually and transferred to the General Revenue Fund;  
12          conforming provisions to the elimination of the Office of  
13          Supplier Diversity and the transfer of its duties to the  
14          Division of State Purchasing; amending s. 287.057, F.S.;  
15          conforming provisions to the elimination of the Office of  
16          Supplier Diversity and the transfer of its duties to the  
17          Division of State Purchasing; conforming cross-references;  
18          providing that fees collected by the department for the  
19          use of the services of its online procurement systems in  
20          excess of the obligations and encumbrances to cover the  
21          department's costs of providing the services shall be  
22          calculated annually and transferred to the General Revenue  
23          Fund; amending s. 287.094, F.S.; conforming provisions to  
24          the elimination of the Office of Supplier Diversity and  
25          the transfer of its duties to the Division of State  
26          Purchasing; providing that certain complaints formerly  
27          filed with the office may be filed with agency inspectors  
28          general; providing that a business certified by the office

29 as a minority business enterprise under s. 287.0943, F.S.,  
30 as of a specified date shall continue to be recognized as  
31 a certified minority business enterprise for purposes of  
32 doing business with state government for a specified  
33 period; amending s. 287.0943, F.S.; providing for  
34 certification of minority businesses by other specified  
35 governments if certification criteria meet, at a minimum,  
36 the state's criteria; providing duties of the Division of  
37 State Purchasing; eliminating provisions relating to the  
38 certification of minority business enterprises by the  
39 Office of Supplier Diversity; deleting provisions relating  
40 to the Minority Business Certification Task Force;  
41 deleting provisions relating to review and evaluation of  
42 certification programs and procedures of statewide and  
43 interlocal minority business certification agreements;  
44 amending s. 287.09431, F.S.; conforming provisions to the  
45 elimination of the Office of Supplier Diversity and the  
46 transfer of its duties to the Division of State  
47 Purchasing; conforming cross-references; amending s.  
48 287.09451, F.S.; deleting provisions creating the Office  
49 of Supplier Diversity within the department; providing for  
50 assumption of specified powers and duties by the Division  
51 of State Purchasing; eliminating provisions relating to  
52 the certification of minority business enterprises by the  
53 office; deleting provisions relating to specified  
54 communication and advocacy duties of the office; deleting  
55 obsolete provisions; amending ss. 288.703, 288.712, and  
56 288.955, F.S.; conforming provisions to the elimination of

57 | the Office of Supplier Diversity and the transfer of its  
 58 | duties to the Division of State Purchasing; amending s.  
 59 | 287.05721, F.S.; repealing the definition of "council" as  
 60 | it relates to the Council on Efficient Government;  
 61 | repealing s. 287.0573, F.S., creating the Council on  
 62 | Efficient Government within the department; amending s.  
 63 | 287.0574, F.S.; conforming provisions to the elimination  
 64 | of the Council on Efficient Government; requiring that a  
 65 | business case be submitted in the form and manner required  
 66 | by the budget instructions; providing an effective date.

67 |

68 | Be It Enacted by the Legislature of the State of Florida:

69 |

70 | Section 1. Subsection (2) of section 17.11, Florida  
 71 | Statutes, is amended to read:

72 | 17.11 To report disbursements made.—

73 | (2) The Chief Financial Officer shall also cause to have  
 74 | reported from the Florida Accounting Information Resource  
 75 | Subsystem no less than quarterly the disbursements which  
 76 | agencies made to small businesses, as defined in the Florida  
 77 | Small and Minority Business Assistance Act; to certified  
 78 | minority business enterprises in the aggregate; and to certified  
 79 | minority business enterprises broken down into categories of  
 80 | minority persons, as well as gender and nationality subgroups.  
 81 | This information shall be made available to the agencies, the  
 82 | Division of State Purchasing ~~Office of Supplier Diversity~~, the  
 83 | Governor, the President of the Senate, and the Speaker of the  
 84 | House of Representatives. Each agency shall be responsible for

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85 the accuracy of information entered into the Florida Accounting  
 86 Information Resource Subsystem for use in this reporting.

87 Section 2. Section 255.102, Florida Statutes, is amended  
 88 to read:

89 255.102 Contractor utilization of minority business  
 90 enterprises.—

91 (1) Agencies shall consider the use of price preferences,  
 92 weighted preference formulas, or other preferences for  
 93 construction contracts, as determined appropriate by the  
 94 Division of State Purchasing ~~Office of Supplier Diversity~~ to  
 95 increase minority participation.

96 (2) The Division of State Purchasing ~~Office of Supplier~~  
 97 ~~Diversity~~, in collaboration with the Board of Governors of the  
 98 State University System, shall adopt rules to determine what is  
 99 a "good faith effort" for purposes of contractor compliance with  
 100 minority participation goals established for competitively  
 101 awarded building and construction projects. Pro forma efforts  
 102 shall not be considered good faith. Factors which shall be  
 103 considered by the state agency in determining whether a  
 104 contractor has made good faith efforts shall include, but not be  
 105 limited to:

106 (a) Whether the contractor attended any presolicitation or  
 107 prebid meetings that were scheduled by the agency to inform  
 108 minority business enterprises of contracting and subcontracting  
 109 opportunities.

110 (b) Whether the contractor advertised in general  
 111 circulation, trade association, or minority-focus media  
 112 concerning the subcontracting opportunities.

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113 (c) Whether the contractor provided written notice to all  
114 relevant subcontractors listed on the minority vendor list for  
115 that locality and statewide as provided by the agency as of the  
116 date of issuance of the invitation to bid, that their interest  
117 in the contract was being solicited in sufficient time to allow  
118 the minority business enterprises to participate effectively.

119 (d) Whether the contractor followed up initial  
120 solicitations of interest by contacting minority business  
121 enterprises, the Division of State Purchasing ~~Office of Supplier~~  
122 ~~Diversity~~, or minority persons who responded and provided  
123 detailed information about prebid meetings, access to plans,  
124 specifications, contractor's project manager, subcontractor  
125 bonding, if any, payment schedule, bid addenda, and other  
126 assistance provided by the contractor to enhance minority  
127 business enterprise participation.

128 (e) Whether the contractor selected portions of the work  
129 to be performed by minority business enterprises in order to  
130 increase the likelihood of meeting the minority business  
131 enterprise procurement goals, including, where appropriate,  
132 breaking down contracts into economically feasible units to  
133 facilitate minority business enterprise participation under  
134 reasonable and economical conditions of performance.

135 (f) Whether the contractor provided the Division of State  
136 Purchasing ~~Office of Supplier Diversity~~ as well as interested  
137 minority business enterprises or minority persons with adequate  
138 information about the plans, specifications, and requirements of  
139 the contract or the availability of jobs at a time no later than  
140 when such information was provided to other subcontractors.

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141 (g) Whether the contractor negotiated in good faith with  
142 interested minority business enterprises or minority persons,  
143 not rejecting minority business enterprises or minority persons  
144 as unqualified without sound reasons based on a thorough  
145 investigation of their capabilities or imposing implausible  
146 conditions of performance on the contract.

147 (h) Whether the contractor diligently seeks to replace a  
148 minority business enterprise subcontractor that is unable to  
149 perform successfully with another minority business enterprise.

150 (i) Whether the contractor effectively used the services  
151 of available minority community organizations; minority  
152 contractors' groups; local, state, and federal minority business  
153 assistance offices; and other organizations that provide  
154 assistance in the recruitment and placement of minority business  
155 enterprises or minority persons.

156 (3) If an agency considers any other criteria in  
157 determining whether a contractor has made a good faith effort,  
158 the agency shall adopt such criteria in accordance with s.  
159 120.54, and, where required by that section, by rule, ~~after May~~  
160 ~~31, 1994~~. In adopting such criteria, the agency shall identify  
161 the specific factors in as objective a manner as possible to be  
162 used to assess a contractor's performance against said criteria.

163 (4) Notwithstanding the provisions of s. 287.09451 to the  
164 contrary, agencies shall monitor good faith efforts of  
165 contractors in competitively awarded building and construction  
166 projects, in accordance with rules established pursuant to this  
167 section. It is the responsibility of the contractor to exercise  
168 good faith efforts in accordance with rules established pursuant

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169 to this section, and to provide documentation necessary to  
 170 assess efforts to include minority business participation.

171 Section 3. Subsections (11) through (18) of section  
 172 287.012, Florida Statutes, are redesignated as subsections (12)  
 173 through (19), respectively, and present subsection (19) of that  
 174 section is amended to read:

175 287.012 Definitions.—As used in this part, the term:

176 ~~(11)~~ ~~(19)~~ "Division" ~~"Office"~~ means the Division of State  
 177 Purchasing Office of Supplier Diversity of the Department of  
 178 Management Services.

179 Section 4. Paragraph (h) of subsection (1), paragraphs (a)  
 180 and (c) of subsection (2), paragraphs (b) and (c) of subsection  
 181 (3), and subsection (10) of section 287.042, Florida Statutes,  
 182 are amended to read:

183 287.042 Powers, duties, and functions.—The department  
 184 shall have the following powers, duties, and functions:

185 (1)

186 (h)1. The department may collect fees for the use of its  
 187 electronic information services. The fees may be imposed on an  
 188 individual transaction basis or as a fixed subscription for a  
 189 designated period of time. At a minimum, the fees shall be  
 190 determined in an amount sufficient to cover the department's  
 191 projected costs of the services, including overhead in  
 192 accordance with the policies of the Department of Management  
 193 Services for computing its administrative assessment. All fees  
 194 collected under this paragraph shall be deposited in the  
 195 Operating Trust Fund for disbursement as provided by law.

196 2. Effective July 1, 2010, any fees collected pursuant to

197 subparagraph 1. and remaining in the Operating Trust Fund in  
 198 excess of the obligations and encumbrances to cover the  
 199 department's costs of providing services pursuant to  
 200 subparagraph 1. shall be calculated as of June 5 each year and  
 201 transferred to the General Revenue Fund before June 30 of each  
 202 year.

203 (2) (a) To establish purchasing agreements and procure  
 204 state term contracts for commodities and contractual services,  
 205 pursuant to s. 287.057, under which state agencies shall, and  
 206 eligible users may, make purchases pursuant to s. 287.056. The  
 207 department may restrict purchases from some term contracts to  
 208 state agencies only for those term contracts where the inclusion  
 209 of other governmental entities will have an adverse effect on  
 210 competition or to those federal facilities located in this  
 211 state. In such planning or purchasing the department ~~Office of~~  
 212 ~~Supplier Diversity~~ may monitor to ensure that opportunities are  
 213 afforded for contracting with minority business enterprises. The  
 214 department, for state term contracts, and all agencies, for  
 215 multiyear contractual services or term contracts, shall explore  
 216 reasonable and economical means to utilize certified minority  
 217 business enterprises. Purchases by any county, municipality,  
 218 private nonprofit community transportation coordinator  
 219 designated pursuant to chapter 427, while conducting business  
 220 related solely to the Commission for the Transportation  
 221 Disadvantaged, or other local public agency under the provisions  
 222 in the state purchasing contracts, and purchases, from the  
 223 corporation operating the correctional work programs, of  
 224 products or services that are subject to paragraph (1) (f), are



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225 exempt from the competitive solicitation requirements otherwise  
226 applying to their purchases.

227 (c) Any person who files an action protesting a decision  
228 or intended decision pertaining to contracts administered by the  
229 department, a water management district, or an agency pursuant  
230 to s. 120.57(3)(b) shall post with the department, the water  
231 management district, or the agency at the time of filing the  
232 formal written protest a bond payable to the department, the  
233 water management district, or agency in an amount equal to 1  
234 percent of the estimated contract amount. For protests of  
235 decisions or intended decisions pertaining to exceptional  
236 purchases, the bond shall be in an amount equal to 1 percent of  
237 the estimated contract amount for the exceptional purchase. The  
238 estimated contract amount shall be based upon the contract price  
239 submitted by the protestor or, if no contract price was  
240 submitted, the department, water management district, or agency  
241 shall estimate the contract amount based on factors including,  
242 but not limited to, the price of previous or existing contracts  
243 for similar commodities or contractual services, the amount  
244 appropriated by the Legislature for the contract, or the fair  
245 market value of similar commodities or contractual services. The  
246 agency shall provide the estimated contract amount to the vendor  
247 within 72 hours, excluding Saturdays, Sundays, and state  
248 holidays, after the filing of the notice of protest by the  
249 vendor. The estimated contract amount is not subject to protest  
250 pursuant to s. 120.57(3). The bond shall be conditioned upon the  
251 payment of all costs and charges that are adjudged against the  
252 protestor in the administrative hearing in which the action is

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253 brought and in any subsequent appellate court proceeding. In  
254 lieu of a bond, the department, the water management district,  
255 or agency may, in either case, accept a cashier's check,  
256 official bank check, or money order in the amount of the bond.  
257 If, after completion of the administrative hearing process and  
258 any appellate court proceedings, the department, water  
259 management district, or agency prevails, it shall recover all  
260 costs and charges which shall be included in the final order or  
261 judgment, excluding attorney's fees. ~~This section shall not~~  
262 ~~apply to protests filed by the Office of Supplier Diversity.~~  
263 Upon payment of such costs and charges by the protestor, the  
264 bond, cashier's check, official bank check, or money order shall  
265 be returned to the protestor. If, after the completion of the  
266 administrative hearing process and any appellate court  
267 proceedings, the protestor prevails, the protestor shall recover  
268 from the department, water management district, or agency all  
269 costs and charges which shall be included in the final order or  
270 judgment, excluding attorney's fees.

271 (3) To establish a system of coordinated, uniform  
272 procurement policies, procedures, and practices to be used by  
273 agencies in acquiring commodities and contractual services,  
274 which shall include, but not be limited to:

275 (b)1. Development of procedures for advertising  
276 solicitations. These procedures must provide for electronic  
277 posting of solicitations for at least 10 days before the date  
278 set for receipt of bids, proposals, or replies, unless the  
279 department or other agency determines in writing that a shorter  
280 period of time is necessary to avoid harming the interests of

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281 the state. The ~~Office of Supplier Diversity~~ may consult with the  
 282 department may develop ~~regarding the development of~~ solicitation  
 283 distribution procedures to ensure that maximum distribution is  
 284 afforded to certified minority business enterprises as defined  
 285 in s. 288.703.

286 2. Development of procedures for electronic posting. The  
 287 department shall designate a centralized website on the Internet  
 288 for the department and other agencies to electronically post  
 289 solicitations, decisions or intended decisions, and other  
 290 matters relating to procurement.

291 (c) Development of procedures for the receipt and opening  
 292 of bids, proposals, or replies by an agency. Such procedures  
 293 shall provide the department ~~Office of Supplier Diversity~~ an  
 294 opportunity to monitor and ensure that the contract award is  
 295 consistent with the requirements of s. 287.09451.

296 (10) To prepare statistical data concerning the method of  
 297 procurement, terms, usage, and disposition of commodities and  
 298 contractual services by agencies. All agencies shall furnish  
 299 such information for this purpose to the division ~~office~~ and to  
 300 the department, as the department or division ~~office~~ may call  
 301 for, but no less frequently than annually, on such forms or in  
 302 such manner as the department may prescribe.

303 Section 5. Subsection (7), paragraphs (a), (b), and (c) of  
 304 subsection (8), and paragraph (c) of subsection (23) of section  
 305 287.057, Florida Statutes, are amended to read:

306 287.057 Procurement of commodities or contractual  
 307 services.—

308 (7) Upon issuance of any solicitation, an agency shall,

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309 upon request by the department, forward to the department one  
310 copy of each solicitation for all commodity and contractual  
311 services purchases in excess of the threshold amount provided in  
312 s. 287.017 for CATEGORY TWO. An agency shall also, upon request,  
313 furnish a copy of all competitive-solicitation tabulations. ~~The~~  
314 ~~Office of Supplier Diversity may also request from the agencies~~  
315 ~~any information submitted to the department pursuant to this~~  
316 ~~subsection.~~

317 (8) (a) In order to strive to meet the minority business  
318 enterprise procurement goals set forth in s. 287.09451, an  
319 agency may reserve any contract for competitive solicitation  
320 only among certified minority business enterprises. Agencies  
321 shall review all their contracts each fiscal year and shall  
322 determine which contracts may be reserved for solicitation only  
323 among certified minority business enterprises. This reservation  
324 may only be used when it is determined, by reasonable and  
325 objective means, before the solicitation that there are capable,  
326 qualified certified minority business enterprises available to  
327 submit a bid, proposal, or reply on a contract to provide for  
328 effective competition. The department may ~~Office of Supplier~~  
329 ~~Diversity shall~~ consult with any agency in reaching such  
330 determination when deemed appropriate.

331 (b) Before a contract may be reserved for solicitation  
332 only among certified minority business enterprises, the agency  
333 head must find that such a reservation is in the best interests  
334 of the state. All determinations shall be subject to s.  
335 287.09451 (3) ~~(5)~~. Once a decision has been made to reserve a  
336 contract, but before sealed bids, proposals, or replies are

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337 requested, the agency shall estimate what it expects the amount  
338 of the contract to be, based on the nature of the services or  
339 commodities involved and their value under prevailing market  
340 conditions. If all the sealed bids, proposals, or replies  
341 received are over this estimate, the agency may reject the bids,  
342 proposals, or replies and request new ones from certified  
343 minority business enterprises, or the agency may reject the  
344 bids, proposals, or replies and reopen the bidding to all  
345 eligible vendors.

346 (c) All agencies shall consider the use of price  
347 preferences of up to 10 percent, weighted preference formulas,  
348 or other preferences for vendors as determined appropriate  
349 pursuant to guidelines established in accordance with s.  
350 287.09451 (2) ~~(4)~~ to increase the participation of minority  
351 business enterprises.

352 (23) The department, in consultation with the Agency for  
353 Enterprise Information Technology and the Comptroller, shall  
354 develop a program for online procurement of commodities and  
355 contractual services. To enable the state to promote open  
356 competition and to leverage its buying power, agencies shall  
357 participate in the online procurement program, and eligible  
358 users may participate in the program. Only vendors prequalified  
359 as meeting mandatory requirements and qualifications criteria  
360 may participate in online procurement.

361 (c) The department may impose and shall collect all fees  
362 for the use of the online procurement systems.

363 1. The fees may be imposed on an individual transaction  
364 basis or as a fixed percentage of the cost savings generated. At

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365 a minimum, the fees must be set in an amount sufficient to cover  
366 the projected costs of the services, including administrative  
367 and project service costs in accordance with the policies of the  
368 department.

369 2. If the department contracts with a provider for online  
370 procurement, the department, pursuant to appropriation, shall  
371 compensate the provider from the fees after the department has  
372 satisfied all ongoing costs. The provider shall report  
373 transaction data to the department each month so that the  
374 department may determine the amount due and payable to the  
375 department from each vendor.

376 3. All fees that are due and payable to the state on a  
377 transactional basis or as a fixed percentage of the cost savings  
378 generated are subject to s. 215.31 and must be remitted within  
379 40 days after receipt of payment for which the fees are due. For  
380 fees that are not remitted within 40 days, the vendor shall pay  
381 interest at the rate established under s. 55.03(1) on the unpaid  
382 balance from the expiration of the 40-day period until the fees  
383 are remitted.

384 4. All fees and surcharges collected under this paragraph  
385 shall be deposited in the Operating Trust Fund for disbursement  
386 as provided by law.

387 5. Effective July 1, 2010, any fees collected pursuant to  
388 subparagraph 1. and remaining in the Operating Trust Fund in  
389 excess of the obligations and encumbrances to cover the  
390 department's costs of providing services pursuant to  
391 subparagraph 1. shall be calculated as of June 5 each year and

392 transferred to the General Revenue Fund before June 30 of each  
 393 year.

394 Section 6. Subsections (3) and (4) of section 287.094,  
 395 Florida Statutes, are amended to read:

396 287.094 Minority business enterprise programs; penalty for  
 397 discrimination and false representation.—

398 (3) Any contractor, firm, or individual shall be barred  
 399 from doing business with state government for a period of 36  
 400 months, and shall be permanently disqualified from doing  
 401 business with state government as a certified minority business  
 402 enterprise, if the division ~~office~~ has determined that the  
 403 contractor, firm, or individual has not acted in good faith to  
 404 fulfill the terms of a contract calling for it to use the  
 405 services or commodities of a certified minority business  
 406 enterprise. If the Department of Legal Affairs, agency final  
 407 order, or a court of law determines that a person was involved  
 408 in a violation of this section, knew about such violation, or  
 409 collaborated with a contractor or firm in such violation, the  
 410 person, or any contractor or firm the person is employed by or  
 411 affiliated with, shall be barred from doing business with state  
 412 government for a period of at least 36 months.

413 (4) No agency shall deny any contractor, firm, or  
 414 individual a fair opportunity to compete in the public  
 415 procurement of commodities and services based on race, national  
 416 origin, gender, religion, or physical disability, which for  
 417 purposes of this subsection constitutes prohibited  
 418 discrimination. Complaints alleging prohibited discrimination by  
 419 an agency in its public procurement may be filed with the

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420 Inspector General for the agency that is the subject of the  
421 complaint ~~Office of Supplier Diversity~~ within 60 days after the  
422 facts giving rise to the complaint are known or reasonably  
423 should have been discovered. Any complaint shall be filed in  
424 writing and must set forth the specific facts giving rise to the  
425 claim of prohibited discrimination. The ~~Office of Supplier~~  
426 ~~Diversity shall, within 10 days, refer the complaint to the~~  
427 Inspector General for the agency that is the subject of the  
428 complaint, ~~who~~ shall coordinate a prompt investigation and issue  
429 written findings of fact. These findings shall be reviewed by  
430 the Chief Inspector General or his or her designee, who is  
431 authorized to conduct any further investigation deemed necessary  
432 or appropriate. Upon a final determination that an agency has  
433 abused its discretion by engaging in prohibited discrimination,  
434 the Chief Inspector General shall refer any state employee  
435 determined to have participated in the prohibited discrimination  
436 for disciplinary action in accordance with chapter 60K(9),  
437 Florida Administrative Code, and subsequently enacted rules, up  
438 to and including termination.

439 Section 7. A business certified by the Office of Supplier  
440 Diversity as a minority business enterprise under s. 287.0943,  
441 Florida Statutes, as of June 30, 2010, shall continue to be  
442 recognized as a certified minority business enterprise for  
443 purposes of doing business with state government for 2 years  
444 from the effective date of certification, but not later than  
445 June 30, 2012.

446 Section 8. Section 287.0943, Florida Statutes, is amended  
447 to read:



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448 | 287.0943 Certification of minority business enterprises.-

449 | (1) A business certified by a department of the Federal  
 450 | Government or any local governmental jurisdiction or  
 451 | ~~organization shall be accepted by the Department of Management~~  
 452 | ~~Services, Office of Supplier Diversity,~~ as a certified minority  
 453 | business enterprise for purposes of doing business with state  
 454 | government when the minority business enterprise has obtained  
 455 | certification or recertification within the past 2 years and the  
 456 | ~~Office of Supplier Diversity determines that the state's~~  
 457 | minority business enterprise certification criteria used in the  
 458 | certification process met, at a minimum, the criteria adopted by  
 459 | the Department of Management Services ~~are applied in the local~~  
 460 | ~~certification process.~~

461 | (2) (a) ~~The office is hereby directed to convene a~~  
 462 | ~~"Minority Business Certification Task Force." The task force~~  
 463 | ~~shall meet as often as necessary, but no less frequently than~~  
 464 | ~~annually.~~

465 | ~~(b) The task force shall be regionally balanced and~~  
 466 | ~~comprised of officials representing the department, counties,~~  
 467 | ~~municipalities, school boards, special districts, and other~~  
 468 | ~~political subdivisions of the state who administer programs to~~  
 469 | ~~assist minority businesses in procurement or development in~~  
 470 | ~~government sponsored programs. The following organizations may~~  
 471 | ~~appoint two members each of the task force who fit the~~  
 472 | ~~description above:~~

- 473 | 1. ~~The Florida League of Cities, Inc.~~
- 474 | 2. ~~The Florida Association of Counties.~~
- 475 | 3. ~~The Florida School Boards Association, Inc.~~

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476 ~~4. The Association of Special Districts.~~

477 ~~5. The Florida Association of Minority Business Enterprise~~  
478 ~~Officials.~~

479 ~~6. The Florida Association of Government Purchasing~~  
480 ~~Officials.~~

481  
482 ~~In addition, the Office of Supplier Diversity shall appoint~~  
483 ~~seven members consisting of three representatives of minority~~  
484 ~~business enterprises, one of whom should be a woman business~~  
485 ~~owner, two officials of the office, and two at-large members to~~  
486 ~~ensure balance. The chairperson of the Legislative Committee on~~  
487 ~~Intergovernmental Relations or a designee shall be a member of~~  
488 ~~the task force, ex officio. A quorum shall consist of one-third~~  
489 ~~of the current members, and the task force may take action by~~  
490 ~~majority vote. Any vacancy may only be filled by the~~  
491 ~~organization or agency originally authorized to appoint the~~  
492 ~~position.~~

493 ~~(c) The purpose of the task force will be to propose~~  
494 ~~uniform criteria and procedures by which participating entities~~  
495 ~~and organizations can qualify businesses to participate in~~  
496 ~~procurement or contracting programs as certified minority~~  
497 ~~business enterprises in accordance with the certification~~  
498 ~~criteria established by law.~~

499 ~~(d) A final list of the criteria and procedures proposed~~  
500 ~~by the task force shall be considered by the secretary. The task~~  
501 ~~force may seek technical assistance from qualified providers of~~  
502 ~~technical, business, and managerial expertise to ensure the~~  
503 ~~reliability of the certification criteria developed.~~

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504        (a)~~(e)~~ In assessing the status of ownership and control,  
505 certification criteria shall, at a minimum:

506            1. Link ownership by a minority person, as defined in s.  
507 288.703(3), or as dictated by the legal obligations of a  
508 certifying organization, to day-to-day control and financial  
509 risk by the qualifying minority owner, and to demonstrated  
510 expertise or licensure of a minority owner in any trade or  
511 profession that the minority business enterprise will offer to  
512 the state when certified. Businesses must comply with all state  
513 licensing requirements prior to becoming certified as a minority  
514 business enterprise.

515            2. If present ownership was obtained by transfer, require  
516 the minority person on whom eligibility is based to have owned  
517 at least 51 percent of the applicant firm for a minimum of 2  
518 years, when any previous majority ownership interest in the firm  
519 was by a nonminority who is or was a relative, former employer,  
520 or current employer of the minority person on whom eligibility  
521 is based. This requirement shall not apply to minority persons  
522 who are otherwise eligible who take a 51-percent-or-greater  
523 interest in a firm that requires professional licensure to  
524 operate and who will be the qualifying licenseholder for the  
525 firm when certified. A transfer made within a related immediate  
526 family group from a nonminority person to a minority person in  
527 order to establish ownership by a minority person shall be  
528 deemed to have been made solely for purposes of satisfying  
529 certification criteria and shall render such ownership invalid  
530 for purposes of qualifying for such certification if the  
531 combined total net asset value of all members of such family

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532 group exceeds \$1 million. For purposes of this subparagraph, the  
 533 term "related immediate family group" means one or more children  
 534 under 16 years of age and a parent of such children or the  
 535 spouse of such parent residing in the same house or living unit.

536 3. Require that prospective certified minority business  
 537 enterprises be currently performing or seeking to perform a  
 538 useful business function. A "useful business function" is  
 539 defined as a business function which results in the provision of  
 540 materials, supplies, equipment, or services to customers. Acting  
 541 as a conduit to transfer funds to a nonminority business does  
 542 not constitute a useful business function unless it is done so  
 543 in a normal industry practice. As used in this section, the term  
 544 "acting as a conduit" means, in part, not acting as a regular  
 545 dealer by making sales of material, goods, or supplies from  
 546 items bought, kept in stock, and regularly sold to the public in  
 547 the usual course of business. Brokers, manufacturer's  
 548 representatives, sales representatives, and nonstocking  
 549 distributors are considered as conduits that do not perform a  
 550 useful business function, unless normal industry practice  
 551 dictates.

552 (b) ~~(f)~~ When a business receives payments or awards  
 553 exceeding \$100,000 in one fiscal year, a review of its  
 554 certification status or an audit will be conducted within 2  
 555 years. ~~In addition, random reviews or audits will be conducted~~  
 556 ~~as deemed appropriate by the Office of Supplier Diversity.~~

557 (c) ~~(g)~~ The certification criteria ~~approved by the task~~  
 558 ~~force and~~ adopted by the Department of Management Services shall  
 559 be included in a statewide and interlocal agreement as defined

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560 in s. 287.09431 and, in accordance with s. 163.01, shall be  
561 executed according to the terms included therein.

562 (d)~~(h)~~ The certification procedures should allow an  
563 applicant seeking certification to designate on the application  
564 form the information the applicant considers to be proprietary,  
565 confidential business information. As used in this paragraph,  
566 "proprietary, confidential business information" includes, but  
567 is not limited to, any information that would be exempt from  
568 public inspection pursuant to the provisions of chapter 119;  
569 trade secrets; internal auditing controls and reports; contract  
570 costs; or other information the disclosure of which would injure  
571 the affected party in the marketplace or otherwise violate s.  
572 286.041. The executor in receipt of the application shall issue  
573 written and final notice of any information for which  
574 noninspection is requested but not provided for by law.

575 (e)~~(i)~~ A business that is certified under the provisions  
576 of the statewide and interlocal agreement shall be deemed a  
577 certified minority enterprise in all jurisdictions or  
578 organizations where the agreement is in effect, and that  
579 business is deemed available to do business as such within any  
580 such jurisdiction or with any such organization statewide. All  
581 state agencies must accept minority business enterprises  
582 certified in accordance with the statewide and interlocal  
583 agreement of s. 287.09431, and that business shall also be  
584 deemed a "certified minority business enterprise" as defined in  
585 s. 288.703. However, any governmental jurisdiction or  
586 organization that administers a minority business purchasing  
587 program may reserve the right to establish further certification

588 procedures necessary to comply with federal law.

589 ~~(j) The statewide and interlocal agreement shall be guided~~  
 590 ~~by the terms and conditions found therein and may be amended at~~  
 591 ~~any meeting of the task force and subsequently adopted by the~~  
 592 ~~secretary of the Department of Management Services. The amended~~  
 593 ~~agreement must be enacted, initialed, and legally executed by at~~  
 594 ~~least two-thirds of the certifying entities party to the~~  
 595 ~~existing agreement and adopted by the state as originally~~  
 596 ~~executed in order to bind the certifying entity.~~

597 ~~(k) The task force shall meet for the first time no later~~  
 598 ~~than 45 days after the effective date of this act.~~

599 ~~(3)(a) The office shall review and evaluate the~~  
 600 ~~certification programs and procedures of all prospective~~  
 601 ~~executors of the statewide and interlocal agreement to determine~~  
 602 ~~if their programs exhibit the capacity to meet the standards of~~  
 603 ~~the agreement.~~

604 ~~(b) The evaluations shall, at a minimum, consider: the~~  
 605 ~~certifying entity's capacity to conduct investigations of~~  
 606 ~~applicants seeking certification under the designated criteria;~~  
 607 ~~the ability of the certifying entity to collect the requisite~~  
 608 ~~data and to establish adequate protocol to store and exchange~~  
 609 ~~said information among the executors of the agreement and to~~  
 610 ~~provide adequate security to prevent unauthorized access to~~  
 611 ~~information gathered during the certification process; and the~~  
 612 ~~degree to which any legal obligations or supplemental~~  
 613 ~~requirements unique to the certifying entity exceed the capacity~~  
 614 ~~of that entity to conduct certifications.~~

615 (3)(e) Any firms certified by organizations or

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616 governmental entities determined not to meet the state  
617 certification criteria shall not be eligible to participate as  
618 certified minority business enterprises in the minority business  
619 assistance programs of the state. ~~For a period of 1 year from~~  
620 ~~the effective date of this legislation, the executor of the~~  
621 ~~statewide and interlocal agreement may elect to accept only~~  
622 ~~minority business enterprises certified pursuant to criteria in~~  
623 ~~place at the time the agreement was signed. After the 1-year~~  
624 ~~period,~~ Either party to the statewide and interlocal agreement  
625 may elect to withdraw from the agreement without further notice.

626 ~~(d) Any organizations or governmental entities determined~~  
627 ~~by the office not to meet the standards of the agreement shall~~  
628 ~~not be eligible to execute the statewide and interlocal~~  
629 ~~agreement as a participating organization until approved by the~~  
630 ~~office.~~

631 ~~(e) Any participating program receiving three or more~~  
632 ~~challenges to its certification decisions pursuant to subsection~~  
633 ~~(4) from other organizations that are executors to the statewide~~  
634 ~~and interlocal agreement, shall be subject to a review by the~~  
635 ~~office, as provided in paragraphs (a) and (b), of the~~  
636 ~~organization's capacity to perform under such agreement and in~~  
637 ~~accordance with the core criteria established by the task force.~~  
638 ~~The office shall submit a report to the secretary of the~~  
639 ~~Department of Management Services regarding the results of the~~  
640 ~~review.~~

641 ~~(f) The office shall maintain a directory of all executors~~  
642 ~~of the statewide and interlocal agreement. The directory should~~  
643 ~~be communicated to the general public.~~

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644 (4) A certification may be challenged by any executor to  
645 the statewide and interlocal agreement upon the grounds of  
646 failure by the certifying organization to adhere to the adopted  
647 criteria or to the certifying organization's rules and  
648 procedures, or on the grounds of a misrepresentation or fraud by  
649 the certified minority business enterprise. The challenge shall  
650 proceed according to procedures specified in the agreement.

651 (5) ~~(a)~~ The secretary of the Department of Management  
652 Services shall execute the statewide and interlocal agreement  
653 established under s. 287.09431 on behalf of the state. ~~The~~  
654 ~~office shall certify minority business enterprises in accordance~~  
655 ~~with the laws of this state and, by affidavit, shall recertify~~  
656 ~~such minority business enterprises not less than once each year.~~

657 ~~(b) The office shall contract with parties to the~~  
658 ~~statewide and interlocal agreement to perform onsite visits~~  
659 ~~associated with state certifications.~~

660 (6) ~~(a) The office shall maintain up-to-date records of all~~  
661 ~~certified minority business enterprises, as defined in s.~~  
662 ~~288.703, and of applications for certification that were denied~~  
663 ~~and shall make this list available to all agencies. The division~~  
664 ~~office shall, for statistical purposes, collect and track~~  
665 subgroupings of gender and nationality status for each certified  
666 minority business enterprise. Agency spending shall also be  
667 tracked for these subgroups. The records may include information  
668 about minority business enterprises that provide legal services,  
669 auditing services, and health services. Agencies shall use this  
670 list in efforts to meet the minority business enterprise  
671 procurement goals set forth in s. 287.09451.



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672       ~~(b) The office shall establish and administer a~~  
673 ~~computerized data bank to carry out the requirements of~~  
674 ~~paragraph (a), to be available to all executors of the statewide~~  
675 ~~and interlocal agreement. Data maintained in the data bank shall~~  
676 ~~be sufficient to allow each executor to reasonably monitor~~  
677 ~~certifications it has issued.~~

678       ~~(7) The office shall identify minority business~~  
679 ~~enterprises eligible for certification in all areas of state~~  
680 ~~services and commodities purchasing. The office may contract~~  
681 ~~with a private firm or other agency, if necessary, in seeking to~~  
682 ~~identify minority business enterprises for certification.~~  
683 ~~Agencies may request the office to identify certifiable minority~~  
684 ~~business enterprises that are in the business of providing a~~  
685 ~~given service or commodity; the office shall respond to such~~  
686 ~~requests and seek out such certifiable minority business~~  
687 ~~enterprises.~~

688       ~~(8) The office shall adopt rules necessary to implement~~  
689 ~~this section.~~

690       (7)~~(9)~~ State agencies shall comply with this act except to  
691 the extent that the requirements of this act are in conflict  
692 with federal law.

693       (8)~~(10)~~ Any transfer of ownership or permanent change in  
694 the management and daily operations of a certified minority  
695 business enterprise which may affect certification must be  
696 reported to the original certifying jurisdiction or entity ~~and~~  
697 ~~to the office~~ within 14 days of the transfer or change taking  
698 place. In the event of a transfer of ownership, the transferee  
699 seeking to do business with the state as a certified minority

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700 business enterprise is responsible for such reporting. ~~In the~~  
701 ~~event of a permanent change in the management and daily~~  
702 ~~operations, owners seeking to do business with the state as a~~  
703 ~~certified minority business enterprise are responsible for~~  
704 ~~reporting such change to the office.~~ Any person violating the  
705 provisions of this subsection commits ~~shall be guilty of a~~  
706 misdemeanor of the first degree, punishable as provided in s.  
707 775.082 or s. 775.083.

708 (9) ~~(11)~~ To deter fraud in the program, the Auditor General  
709 may review the criteria by which a business became certified as  
710 a certified minority business enterprise.

711 (10) ~~(12)~~ Any executor of the statewide and interlocal  
712 agreement may revoke the certification or recertification of a  
713 firm doing business as a certified minority business enterprise  
714 if the minority business enterprise does not meet the  
715 requirements of the jurisdiction or certifying entity that  
716 certified or recertified the firm as a certified minority  
717 business enterprise, or the requirements of subsection (2), s.  
718 288.703, and any rule of the division ~~office~~ or the Department  
719 of Management Services or if the business acquired certification  
720 or recertification by means of falsely representing any entity  
721 as a minority business enterprise for purposes of qualifying for  
722 certification or recertification.

723 (11) ~~(13)~~ Unless permanently revoked, a certified minority  
724 business enterprise for which certification or recertification  
725 has been revoked may not apply or reapply for certification or  
726 recertification for a minimum of 36 months after the date of the  
727 notice of revocation.

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728           ~~(12)-(14)~~ (a) ~~Except for certification decisions issued by~~  
729 ~~the Office of Supplier Diversity,~~ An executor to the statewide  
730 and interlocal agreement shall, in accordance with its rules and  
731 procedures:

732           1. Give reasonable notice to affected persons or parties  
733 of its decision to deny certification based on failure to meet  
734 eligibility requirements of the statewide and interlocal  
735 agreement of s. 287.09431, together with a summary of the  
736 grounds therefor.

737           2. Give affected persons or parties an opportunity, at a  
738 convenient time and place, to present to the agency written or  
739 oral evidence in opposition to the action or of the executor's  
740 refusal to act.

741           3. Give a written explanation of any subsequent decision  
742 of the executor overruling the objections.

743           (b) An applicant that is denied minority business  
744 enterprise certification based on failure to meet eligibility  
745 requirements of the statewide and interlocal agreement pursuant  
746 to s. 287.09431 may not reapply for certification or  
747 recertification until at least 6 months after the date of the  
748 notice of the denial of certification or recertification.

749           ~~(13)-(15)~~ The division ~~office~~ shall adopt rules in  
750 compliance with this part.

751           Section 9. Section 287.09431, Florida Statutes, is amended  
752 to read:

753           287.09431 Statewide and interlocal agreement on  
754 certification of business concerns for the status of minority  
755 business enterprise.—The statewide and interlocal agreement on

756 certification of business concerns for the status of minority  
 757 business enterprise is hereby enacted and entered into with all  
 758 jurisdictions or organizations legally joining therein. If,  
 759 within 2 years from the date that the certification core  
 760 criteria are approved by the Department of Labor and Employment  
 761 Security, the agreement included herein is not executed by a  
 762 majority of county and municipal governing bodies that  
 763 administer a minority business assistance program on the  
 764 effective date of this act, then the Legislature shall review  
 765 this agreement. It is the intent of the Legislature that if the  
 766 agreement is not executed by a majority of the requisite  
 767 governing bodies, then a statewide uniform certification process  
 768 should be adopted, and that said agreement should be repealed  
 769 and replaced by a mandatory state government certification  
 770 process.

771 ARTICLE I

772 PURPOSE, FINDINGS, AND POLICY.—

773 (1) The parties to this agreement, desiring by common  
 774 action to establish a uniform certification process in order to  
 775 reduce the multiplicity of applications by business concerns to  
 776 state and local governmental programs for minority business  
 777 assistance, declare that it is the policy of each of them, on  
 778 the basis of cooperation with one another, to remedy social and  
 779 economic disadvantage suffered by certain groups, resulting in  
 780 their being historically underutilized in ownership and control  
 781 of commercial enterprises. Thus, the parties seek to address  
 782 this history by increasing the participation of the identified  
 783 groups in opportunities afforded by government procurement.

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784 (2) The parties find that the State of Florida presently  
785 certifies firms for participation in the minority business  
786 assistance programs of the state. The parties find further that  
787 some counties, municipalities, school boards, special districts,  
788 and other divisions of local government require a separate, yet  
789 similar, and in most cases redundant certification in order for  
790 businesses to participate in the programs sponsored by each  
791 government entity.

792 (3) The parties find further that this redundant  
793 certification has proven to be unduly burdensome to the  
794 minority-owned firms intended to benefit from the underlying  
795 purchasing incentives.

796 (4) The parties agree that:

797 (a) They will facilitate integrity, stability, and  
798 cooperation in the statewide and interlocal certification  
799 process, and in other elements of programs established to assist  
800 minority-owned businesses.

801 (b) They shall cooperate with agencies, organizations, and  
802 associations interested in certification and other elements of  
803 minority business assistance.

804 (c) It is the purpose of this agreement to provide for a  
805 uniform process whereby the status of a business concern may be  
806 determined in a singular review of the business information for  
807 these purposes, in order to eliminate any undue expense, delay,  
808 or confusion to the minority-owned businesses in seeking to  
809 participate in the minority business assistance programs of  
810 state and local jurisdictions.

811 ARTICLE II

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812 DEFINITIONS.—As used in this agreement and contracts made  
 813 pursuant to it, unless the context clearly requires otherwise:

814 (1) "Awarding organization" means any political  
 815 subdivision or organization authorized by law, ordinance, or  
 816 agreement to enter into contracts and for which the governing  
 817 body has entered into this agreement.

818 (2) "Department" means the Department of Labor and  
 819 Employment Security.

820 (3) "Minority" means a person who is a lawful, permanent  
 821 resident of the state, having origins in one of the minority  
 822 groups as described and adopted by the Department of Labor and  
 823 Employment Security, hereby incorporated by reference.

824 (4) "Minority business enterprise" means any small  
 825 business concern as defined in subsection (6) that meets all of  
 826 the criteria described and adopted by the Department of Labor  
 827 and Employment Security, hereby incorporated by reference.

828 (5) "Participating state or local organization" means any  
 829 political subdivision of the state or organization designated by  
 830 such that elects to participate in the certification process  
 831 pursuant to this agreement, which has ~~been approved according to~~  
 832 ~~s. 287.0943(3) and has~~ legally entered into this agreement.

833 (6) "Small business concern" means an independently owned  
 834 and operated business concern which is of a size and type as  
 835 described and adopted by vote related to this agreement of the  
 836 commission, hereby incorporated by reference.

837 ARTICLE III

838 STATEWIDE AND INTERLOCAL CERTIFICATIONS.—

839 (1) All awarding organizations shall accept a

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840 certification granted by any participating organization which  
841 has ~~been approved according to s. 287.0943(3) and~~ has entered  
842 into this agreement, as valid status of minority business  
843 enterprise.

844 (2) A participating organization shall certify a business  
845 concern that meets the definition of minority business  
846 enterprise in this agreement, in accordance with the duly  
847 adopted eligibility criteria.

848 (3) All participating organizations shall issue notice of  
849 certification decisions granting or denying certification to all  
850 other participating organizations within 14 days of the  
851 decision. Such notice may be made through electronic media.

852 (4) No certification will be granted without an onsite  
853 visit to verify ownership and control of the prospective  
854 minority business enterprise, unless verification can be  
855 accomplished by other methods of adequate verification or  
856 assessment of ownership and control.

857 (5) The certification of a minority business enterprise  
858 pursuant to the terms of this agreement shall not be suspended,  
859 revoked, or otherwise impaired except on any grounds which would  
860 be sufficient for revocation or suspension of a certification in  
861 the jurisdiction of the participating organization.

862 (6) The certification determination of a party may be  
863 challenged by any other participating organization by the  
864 issuance of a timely written notice by the challenging  
865 organization to the certifying organization's determination  
866 within 10 days of receiving notice of the certification  
867 decision, stating the grounds therefor.

868 (7) The sole accepted grounds for challenge shall be the  
 869 failure of the certifying organization to adhere to the adopted  
 870 criteria or the certifying organization's rules or procedures,  
 871 or the perpetuation of a misrepresentation or fraud by the firm.

872 (8) The certifying organization shall reexamine its  
 873 certification determination and submit written notice to the  
 874 applicant and the challenging organization of its findings  
 875 within 30 days after the receipt of the notice of challenge.

876 (9) If the certification determination is affirmed, the  
 877 challenging agency may subsequently submit timely written notice  
 878 to the firm of its intent to revoke certification of the firm.

879 ARTICLE IV

880 APPROVED AND ACCEPTED PROGRAMS.—Nothing in this agreement  
 881 shall be construed to repeal or otherwise modify any ordinance,  
 882 law, or regulation of a party relating to the existing minority  
 883 business assistance provisions and procedures by which minority  
 884 business enterprises participate therein.

885 ARTICLE V

886 TERM.—The term of the agreement shall be 5 years, after  
 887 which it may be reexecuted by the parties.

888 ARTICLE VI

889 AGREEMENT EVALUATION.—The designated state and local  
 890 officials may meet from time to time as a group to evaluate  
 891 progress under the agreement, to formulate recommendations for  
 892 changes, or to propose a new agreement.

893 ARTICLE VII

894 OTHER ARRANGEMENTS.—Nothing in this agreement shall be  
 895 construed to prevent or inhibit other arrangements or practices



896 | of any party in order to comply with federal law.

897 | ARTICLE VIII

898 | EFFECT AND WITHDRAWAL.—

899 | (1) This agreement shall become effective when properly  
 900 | executed by a legal representative of the participating  
 901 | organization, when enacted into the law of the state and after  
 902 | an ordinance or other legislation is enacted into law by the  
 903 | governing body of each participating organization. Thereafter it  
 904 | shall become effective as to any participating organization upon  
 905 | the enactment of this agreement by the governing body of that  
 906 | organization.

907 | (2) Any party may withdraw from this agreement by enacting  
 908 | legislation repealing the same, but no such withdrawal shall  
 909 | take effect until one year after the governing body of the  
 910 | withdrawing party has given notice in writing of the withdrawal  
 911 | to the other parties.

912 | (3) No withdrawal shall relieve the withdrawing party of  
 913 | any obligations imposed upon it by law.

914 | ARTICLE IX

915 | FINANCIAL RESPONSIBILITY.—

916 | (1) A participating organization shall not be financially  
 917 | responsible or liable for the obligations of any other  
 918 | participating organization related to this agreement.

919 | (2) The provisions of this agreement shall constitute  
 920 | neither a waiver of any governmental immunity under Florida law  
 921 | nor a waiver of any defenses of the parties under Florida law.  
 922 | The provisions of this agreement are solely for the benefit of  
 923 | its executors and not intended to create or grant any rights,

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924 contractual or otherwise, to any person or entity.

925 ARTICLE X

926 VENUE AND GOVERNING LAW.—The obligations of the parties to  
 927 this agreement are performable only within the county where the  
 928 participating organization is located, ~~and statewide for the~~  
 929 ~~Office of Supplier Diversity,~~ and venue for any legal action in  
 930 connection with this agreement shall lie, for any participating  
 931 organization ~~except the Office of Supplier Diversity,~~  
 932 exclusively in the county where the participating organization  
 933 is located. This agreement shall be governed by and construed in  
 934 accordance with the laws and court decisions of the state.

935 ARTICLE XI

936 CONSTRUCTION AND SEVERABILITY.—This agreement shall be  
 937 liberally construed so as to effectuate the purposes thereof.  
 938 The provisions of this agreement shall be severable and if any  
 939 phrase, clause, sentence, or provision of this agreement is  
 940 declared to be contrary to the State Constitution or the United  
 941 States Constitution, or the application thereof to any  
 942 government, agency, person, or circumstance is held invalid, the  
 943 validity of the remainder of this agreement and the  
 944 applicability thereof to any government, agency, person, or  
 945 circumstance shall not be affected thereby. If this agreement  
 946 shall be held contrary to the State Constitution, the agreement  
 947 shall remain in full force and effect as to all severable  
 948 matters.

949 Section 10. Section 287.09451, Florida Statutes, is  
 950 amended to read:

951 287.09451 Division ~~Office of Supplier Diversity,~~ powers,

952 duties, and functions.—

953 (1) The Legislature finds that there is evidence of a  
 954 systematic pattern of past and continuing racial discrimination  
 955 against minority business enterprises and a disparity in the  
 956 availability and use of minority business enterprises in the  
 957 state procurement system. It is determined to be a compelling  
 958 state interest to rectify such discrimination and disparity.  
 959 Based upon statistical data profiling this discrimination, the  
 960 Legislature has enacted race-conscious and gender-conscious  
 961 remedial programs to ensure minority participation in the  
 962 economic life of the state, in state contracts for the purchase  
 963 of commodities and services, and in construction contracts. The  
 964 purpose and intent of this section is to increase participation  
 965 by minority business enterprises accomplished by encouraging the  
 966 use of minority business enterprises and the entry of new and  
 967 diversified minority business enterprises into the marketplace.

968 ~~(2) The Office of Supplier Diversity is established within~~  
 969 ~~the Department of Management Services to assist minority~~  
 970 ~~business enterprises in becoming suppliers of commodities,~~  
 971 ~~services, and construction to state government.~~

972 ~~(3) The secretary shall appoint an executive director for~~  
 973 ~~the Office of Supplier Diversity, who shall serve at the~~  
 974 ~~pleasure of the secretary.~~

975 (2)~~(4)~~ The division ~~Office of Supplier Diversity~~ shall  
 976 have the following powers, duties, and functions:

977 (a) To adopt rules to determine what constitutes a "good  
 978 faith effort" for purposes of state agency compliance with the  
 979 minority business enterprise procurement goals set forth in s.

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980 287.042. Factors which shall be considered ~~by the Minority~~  
 981 ~~Business Enterprise Assistance Office~~ in determining good faith  
 982 effort shall include, but not be limited to:

983 1. Whether the agency scheduled presolicitation or prebid  
 984 meetings for the purpose of informing minority business  
 985 enterprises of contracting and subcontracting opportunities.

986 2. Whether the contractor advertised in general  
 987 circulation, trade association, or minority-focus media  
 988 concerning the subcontracting opportunities.

989 3. Whether the agency effectively used services and  
 990 resources of available minority community organizations;  
 991 minority contractors' groups; local, state, and federal minority  
 992 business assistance offices; and other organizations that  
 993 provide assistance in the recruitment and placement of minority  
 994 business enterprises or minority persons.

995 4. Whether the agency provided written notice to a  
 996 reasonable number of minority business enterprises that their  
 997 interest in contracting with the agency was being solicited in  
 998 sufficient time to allow the minority business enterprises to  
 999 participate effectively.

1000 (b) To adopt rules to determine what constitutes a "good  
 1001 faith effort" for purposes of contractor compliance with  
 1002 contractual requirements relating to the use of services or  
 1003 commodities of a minority business enterprise under s.

1004 287.094(2). Factors which shall be considered by the division  
 1005 ~~Office of Supplier Diversity~~ in determining whether a contractor  
 1006 has made good faith efforts shall include, but not be limited  
 1007 to:

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1008 1. Whether the contractor attended any presolicitation or  
1009 prebid meetings that were scheduled by the agency to inform  
1010 minority business enterprises of contracting and subcontracting  
1011 opportunities.

1012 2. Whether the contractor advertised in general  
1013 circulation, trade association, or minority-focus media  
1014 concerning the subcontracting opportunities.

1015 3. Whether the contractor provided written notice to a  
1016 reasonable number of specific minority business enterprises that  
1017 their interest in the contract was being solicited in sufficient  
1018 time to allow the minority business enterprises to participate  
1019 effectively.

1020 4. Whether the contractor followed up initial  
1021 solicitations of interest by contacting minority business  
1022 enterprises or minority persons to determine with certainty  
1023 whether the minority business enterprises or minority persons  
1024 were interested.

1025 5. Whether the contractor selected portions of the work to  
1026 be performed by minority business enterprises in order to  
1027 increase the likelihood of meeting the minority business  
1028 enterprise procurement goals, including, where appropriate,  
1029 breaking down contracts into economically feasible units to  
1030 facilitate minority business enterprise participation.

1031 6. Whether the contractor provided interested minority  
1032 business enterprises or minority persons with adequate  
1033 information about the plans, specifications, and requirements of  
1034 the contract or the availability of jobs.

1035 7. Whether the contractor negotiated in good faith with

1036 interested minority business enterprises or minority persons,  
 1037 not rejecting minority business enterprises or minority persons  
 1038 as unqualified without sound reasons based on a thorough  
 1039 investigation of their capabilities.

1040 8. Whether the contractor effectively used the services of  
 1041 available minority community organizations; minority  
 1042 contractors' groups; local, state, and federal minority business  
 1043 assistance offices; and other organizations that provide  
 1044 assistance in the recruitment and placement of minority business  
 1045 enterprises or minority persons.

1046 (c) To adopt rules and do all things necessary or  
 1047 convenient to guide all state agencies toward making  
 1048 expenditures for commodities, contractual services,  
 1049 construction, and architectural and engineering services with  
 1050 certified minority business enterprises in accordance with the  
 1051 minority business enterprise procurement goals set forth in s.  
 1052 287.042.

1053 (d) To monitor the degree to which agencies procure  
 1054 services, commodities, and construction from minority business  
 1055 enterprises in conjunction with the Department of Financial  
 1056 Services as specified in s. 17.11.

1057 (e) To receive and disseminate information relative to  
 1058 procurement opportunities, availability of minority business  
 1059 enterprises, and technical assistance.

1060 (f) To advise agencies on methods and techniques for  
 1061 achieving procurement objectives.

1062 ~~(g) To provide a central minority business enterprise~~  
 1063 ~~certification process which includes independent verification of~~

1064 ~~status as a minority business enterprise.~~

1065 ~~(h) To develop procedures to investigate complaints~~

1066 ~~against minority business enterprises or contractors alleged to~~

1067 ~~violate any provision related to this section or s. 287.0943,~~

1068 ~~that may include visits to worksites or business premises, and~~

1069 ~~to refer all information on businesses suspected of~~

1070 ~~misrepresenting minority status to the Department of Management~~

1071 ~~Services for investigation. When an investigation is completed~~

1072 ~~and there is reason to believe that a violation has occurred,~~

1073 ~~the Department of Labor and Employment Security shall refer the~~

1074 ~~matter to the office of the Attorney General, Department of~~

1075 ~~Legal Affairs, for prosecution.~~

1076 ~~(i) To maintain a directory of all minority business~~

1077 ~~enterprises which have been certified and provide this~~

1078 ~~information to any agency or business requesting it.~~

1079 ~~(j) To encourage all firms which do more than \$1 million~~

1080 ~~in business with the state within a 12-month period to develop,~~

1081 ~~implement, and submit to this office a minority business~~

1082 ~~development plan.~~

1083 ~~(k) To communicate on a monthly basis with the Small and~~

1084 ~~Minority Business Advisory Council to keep the council informed~~

1085 ~~on issues relating to minority enterprise procurement.~~

1086 ~~(l) To serve as an advocate for minority business~~

1087 ~~enterprises, and coordinate with the small and minority business~~

1088 ~~ombudsman, as defined in s. 288.703, which duties shall include:~~

1089 ~~1. Ensuring that agencies supported by state funding~~

1090 ~~effectively target the delivery of services and resources, as~~

1091 ~~related to minority business enterprises.~~

1092           ~~2. Establishing standards within each industry with which~~  
 1093 ~~the state government contracts on how agencies and contractors~~  
 1094 ~~may provide the maximum practicable opportunity for minority~~  
 1095 ~~business enterprises.~~

1096           ~~3. Assisting agencies and contractors by providing~~  
 1097 ~~outreach to minority businesses, by specifying and monitoring~~  
 1098 ~~technical and managerial competence for minority business~~  
 1099 ~~enterprises, and by consulting in planning of agency procurement~~  
 1100 ~~to determine how best to provide opportunities for minority~~  
 1101 ~~business enterprises.~~

1102           ~~4. Integrating technical and managerial assistance for~~  
 1103 ~~minority business enterprises with government contracting~~  
 1104 ~~opportunities.~~

1105           ~~(m) To certify minority business enterprises, as defined~~  
 1106 ~~in s. 288.703, and as specified in ss. 287.0943 and 287.09431,~~  
 1107 ~~and shall recertify such minority businesses at least once every~~  
 1108 ~~2 years. Minority business enterprises must be recertified at~~  
 1109 ~~least once every 2 years by affidavit.~~

1110           (g)~~(n)~~1. To develop procedures to be used by an agency in  
 1111 identifying commodities, contractual services, architectural and  
 1112 engineering services, and construction contracts, except those  
 1113 architectural, engineering, construction, or other related  
 1114 services or contracts subject to the provisions of chapter 339,  
 1115 that could be provided by minority business enterprises. Each  
 1116 agency is encouraged to spend 21 percent of the moneys actually  
 1117 expended for construction contracts, 25 percent of the moneys  
 1118 actually expended for architectural and engineering contracts,  
 1119 24 percent of the moneys actually expended for commodities, and



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1120 50.5 percent of the moneys actually expended for contractual  
 1121 services during the previous fiscal year, except for the state  
 1122 university construction program which shall be based upon public  
 1123 education capital outlay projections for the subsequent fiscal  
 1124 year, and reported to the Legislature pursuant to s. 216.023,  
 1125 for the purpose of entering into contracts with certified  
 1126 minority business enterprises as defined in s. 288.703(2), or  
 1127 approved joint ventures. However, in the event of budget  
 1128 reductions pursuant to s. 216.221, the base amounts may be  
 1129 adjusted to reflect such reductions. The overall spending goal  
 1130 for each industry category shall be subdivided as follows:

1131 a. For construction contracts: 4 percent for black  
 1132 Americans, 6 percent for Hispanic-Americans, and 11 percent for  
 1133 American women.

1134 b. For architectural and engineering contracts: 9 percent  
 1135 for Hispanic-Americans, 1 percent for Asian-Americans, and 15  
 1136 percent for American women.

1137 c. For commodities: 2 percent for black Americans, 4  
 1138 percent for Hispanic-Americans, 0.5 percent for Asian-Americans,  
 1139 0.5 percent for Native Americans, and 17 percent for American  
 1140 women.

1141 d. For contractual services: 6 percent for black  
 1142 Americans, 7 percent for Hispanic-Americans, 1 percent for  
 1143 Asian-Americans, 0.5 percent for Native Americans, and 36  
 1144 percent for American women.

1145 2. For the purposes of commodities contracts for the  
 1146 purchase of equipment to be used in the construction and  
 1147 maintenance of state transportation facilities involving the

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1148 Department of Transportation, "minority business enterprise" has  
1149 the same meaning as provided in s. 288.703. "Minority person"  
1150 has the same meaning as in s. 288.703(3). In order to ensure  
1151 that the goals established under this paragraph for contracting  
1152 with certified minority business enterprises are met, the  
1153 department, ~~with the assistance of the Office of Supplier~~  
1154 ~~Diversity~~, shall make recommendations to the Legislature on  
1155 revisions to the goals, based on an updated statistical  
1156 analysis, at least once every 5 years. Such recommendations  
1157 shall be based on statistical data indicating the availability  
1158 of and disparity in the use of minority businesses contracting  
1159 with the state. ~~The results of the first updated disparity study~~  
1160 ~~must be presented to the Legislature no later than December 1,~~  
1161 ~~1996.~~

1162 3. In determining the base amounts for assessing  
1163 compliance with this paragraph, the division ~~Office of Supplier~~  
1164 ~~Diversity~~ may develop, by rule, guidelines for all agencies to  
1165 use in establishing such base amounts. These rules must include,  
1166 but are not limited to, guidelines for calculation of base  
1167 amounts, a deadline for the agencies to submit base amounts, a  
1168 deadline for approval of the base amounts by the division ~~Office~~  
1169 ~~of Supplier Diversity~~, and procedures for adjusting the base  
1170 amounts as a result of budget reductions made pursuant to s.  
1171 216.221.

1172 4. To determine guidelines for the use of price  
1173 preferences, weighted preference formulas, or other preferences,  
1174 as appropriate to the particular industry or trade, to increase  
1175 the participation of minority businesses in state contracting.

1176 These guidelines shall include consideration of:

1177       a. Size and complexity of the project.

1178       b. The concentration of transactions with minority  
 1179 business enterprises for the commodity or contractual services  
 1180 in question in prior agency contracting.

1181       c. The specificity and definition of work allocated to  
 1182 participating minority business enterprises.

1183       d. The capacity of participating minority business  
 1184 enterprises to complete the tasks identified in the project.

1185       e. The available pool of minority business enterprises as  
 1186 prime contractors, either alone or as partners in an approved  
 1187 joint venture that serves as the prime contractor.

1188       5. To determine guidelines for use of joint ventures to  
 1189 meet minority business enterprises spending goals. For purposes  
 1190 of this section, "joint venture" means any association of two or  
 1191 more business concerns to carry out a single business enterprise  
 1192 for profit, for which purpose they combine their property,  
 1193 capital, efforts, skills, and knowledge. The guidelines shall  
 1194 allow transactions with joint ventures to be eligible for credit  
 1195 against the minority business enterprise goals of an agency when  
 1196 the contracting joint venture demonstrates that at least one  
 1197 partner to the joint venture is a certified minority business  
 1198 enterprise as defined in s. 288.703, and that such partner is  
 1199 responsible for a clearly defined portion of the work to be  
 1200 performed, and shares in the ownership, control, management,  
 1201 responsibilities, risks, and profits of the joint venture. Such  
 1202 demonstration shall be by verifiable documents and sworn  
 1203 statements and may be reviewed by the division ~~Office of~~

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1204 ~~Supplier Diversity~~ at or before the time a contract bid,  
 1205 proposal, or reply is submitted. An agency may count toward its  
 1206 minority business enterprise goals a portion of the total dollar  
 1207 amount of a contract equal to the percentage of the ownership  
 1208 and control held by the qualifying certified minority business  
 1209 partners in the contracting joint venture, so long as the joint  
 1210 venture meets the guidelines adopted by the division office.

1211 (h) ~~(e)~~1. To establish a system to record and measure the  
 1212 use of certified minority business enterprises in state  
 1213 contracting. This system shall maintain information and  
 1214 statistics on certified minority business enterprise  
 1215 participation, awards, dollar volume of expenditures and agency  
 1216 goals, and other appropriate types of information to analyze  
 1217 progress in the access of certified minority business  
 1218 enterprises to state contracts and to monitor agency compliance  
 1219 with this section. Such reporting must include, but is not  
 1220 limited to, the identification of all subcontracts in state  
 1221 contracting by dollar amount and by number of subcontracts and  
 1222 the identification of the utilization of certified minority  
 1223 business enterprises as prime contractors and subcontractors by  
 1224 dollar amounts of contracts and subcontracts, number of  
 1225 contracts and subcontracts, minority status, industry, and any  
 1226 conditions or circumstances that significantly affected the  
 1227 performance of subcontractors. Agencies shall report their  
 1228 compliance with the requirements of this reporting system at  
 1229 least annually and at the request of the division office. All  
 1230 agencies shall cooperate with the division office in  
 1231 establishing this reporting system. Except in construction

1232 contracting, all agencies shall review contracts costing in  
 1233 excess of CATEGORY FOUR as defined in s. 287.017 to determine if  
 1234 such contracts could be divided into smaller contracts to be  
 1235 separately solicited and awarded, and shall, when economical,  
 1236 offer such smaller contracts to encourage minority  
 1237 participation.

1238 2. To report agency compliance with the provisions of  
 1239 subparagraph 1. for the preceding fiscal year to the Governor  
 1240 and Cabinet, the President of the Senate, and the Speaker of the  
 1241 House of Representatives, ~~and the secretary of the Department of~~  
 1242 ~~Labor and Employment Security~~ on or before February 1 of each  
 1243 year. The report must contain, at a minimum, the following:

1244 a. Total expenditures of each agency by industry.

1245 b. The dollar amount and percentage of contracts awarded  
 1246 to certified minority business enterprises by each state agency.

1247 c. The dollar amount and percentage of contracts awarded  
 1248 indirectly to certified minority business enterprises as  
 1249 subcontractors by each state agency.

1250 d. The total dollar amount and percentage of contracts  
 1251 awarded to certified minority business enterprises, whether  
 1252 directly or indirectly, as subcontractors.

1253 e. A statement and assessment of good faith efforts taken  
 1254 by each state agency.

1255 f. A status report of agency compliance with subsection  
 1256 (4) ~~(6)~~, ~~as determined by the Minority Business Enterprise~~  
 1257 ~~Office.~~

1258 (3) ~~(5)~~ (a) Each agency shall, at the time the  
 1259 specifications or designs are developed or contract sizing is

1260 determined for any proposed procurement costing in excess of  
 1261 CATEGORY FOUR, as defined in s. 287.017, forward a notice to the  
 1262 division ~~Office of Supplier Diversity~~ of the proposed  
 1263 procurement and any determination on the designs of  
 1264 specifications of the proposed procurement that impose  
 1265 requirements on prospective vendors, no later than 30 days prior  
 1266 to the issuance of a solicitation, except that this provision  
 1267 shall not apply to emergency acquisitions. The 30-day notice  
 1268 period shall not toll the time for any other procedural  
 1269 requirements.

1270 (b) If the division ~~Office of Supplier Diversity~~  
 1271 determines that the proposed procurement will not likely allow  
 1272 opportunities for minority business enterprises, the division  
 1273 ~~office~~ may, within 20 days after it receives the information  
 1274 specified in paragraph (a), propose the implementation of  
 1275 minority business enterprise utilization provisions or submit  
 1276 alternative procurement methods that would significantly  
 1277 increase minority business enterprise contracting opportunities.

1278 (c) Whenever the agency and the division ~~Office of~~  
 1279 ~~Supplier Diversity~~ disagree, the matter shall be submitted for  
 1280 determination to the head of the agency or the senior-level  
 1281 official designated pursuant to this section as liaison for  
 1282 minority business enterprise issues.

1283 (d) If the proposed procurement proceeds to competitive  
 1284 solicitation, the division ~~office~~ is hereby granted standing to  
 1285 protest, pursuant to this section, in a timely manner, any  
 1286 contract award during competitive solicitation for contractual  
 1287 services and construction contracts that fail to include

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1288 minority business enterprise participation, if any responsible  
 1289 and responsive vendor has demonstrated the ability to achieve  
 1290 any level of participation, or, any contract award for  
 1291 commodities where, a reasonable and economical opportunity to  
 1292 reserve a contract, statewide or district level, for minority  
 1293 participation was not executed or, an agency failed to adopt an  
 1294 applicable preference for minority participation. The bond  
 1295 requirement shall be waived for the division ~~office~~ purposes of  
 1296 this subsection.

1297 (e) An agency may presume that a vendor offering no  
 1298 minority participation has not made a good faith effort when  
 1299 other vendors offer minority participation of firms listed as  
 1300 relevant to the agency's purchasing needs in the pertinent  
 1301 locality or statewide to complete the project.

1302 (f) Paragraph (a) will not apply when the division ~~Office~~  
 1303 ~~of Supplier Diversity~~ determines that an agency has established  
 1304 a work plan to allow advance consultation and planning with  
 1305 minority business enterprises and where such plan clearly  
 1306 demonstrates:

1307 1. A high level of advance planning by the agency with  
 1308 minority business enterprises.

1309 2. A high level of accessibility, knowledge, and  
 1310 experience by minority business enterprises in the agency's  
 1311 contract decisionmaking process.

1312 3. A high quality of agency monitoring and enforcement of  
 1313 internal implementation of minority business utilization  
 1314 provisions.

1315 4. A high quality of agency monitoring and enforcement of

1316 contractor utilization of minority business enterprises,  
 1317 especially tracking subcontractor data, and ensuring the  
 1318 integrity of subcontractor reporting.

1319 5. A high quality of agency outreach, agency networking of  
 1320 major vendors with minority vendors, and innovation in  
 1321 techniques to improve utilization of minority business  
 1322 enterprises.

1323 6. Substantial commitment, sensitivity, and proactive  
 1324 attitude by the agency head and among the agency minority  
 1325 business staff.

1326 (4) ~~(6)~~ Each state agency shall coordinate its minority  
 1327 business enterprise procurement activities with the division  
 1328 ~~Office of Supplier Diversity~~. At a minimum, each agency shall:

1329 (a) Adopt a minority business enterprise utilization plan  
 1330 for review and approval by the division ~~Office of Supplier~~  
 1331 ~~Diversity~~ which should require meaningful and useful methods to  
 1332 attain the legislative intent in assisting minority business  
 1333 enterprises.

1334 (b) Designate a senior-level employee in the agency as a  
 1335 minority enterprise assistance officer, responsible for  
 1336 overseeing the agency's minority business utilization  
 1337 activities, and who is not also charged with purchasing  
 1338 responsibility. A senior-level agency employee and agency  
 1339 purchasing officials shall be accountable to the agency head for  
 1340 the agency's minority business utilization performance. The  
 1341 division ~~Office of Supplier Diversity~~ shall advise each agency  
 1342 on compliance performance.

1343 (c) If an agency deviates significantly from its



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1344 utilization plan in 2 consecutive or 3 out of 5 total fiscal  
1345 years, the division ~~Office of Supplier Diversity~~ may review any  
1346 and all solicitations and contract awards of the agency as  
1347 deemed necessary until such time as the agency meets its  
1348 utilization plan.

1349 Section 11. Subsections (4) and (6) of section 288.703,  
1350 Florida Statutes, are amended to read:

1351 288.703 Definitions.—As used in this act, the following  
1352 words and terms shall have the following meanings unless the  
1353 content shall indicate another meaning or intent:

1354 (4) "Certified minority business enterprise" means a  
1355 business which has been certified by the certifying organization  
1356 or jurisdiction in accordance with s. 287.0943~~(1) and (2)~~.

1357 (6) "Ombudsman" means an office or individual whose  
1358 responsibilities include coordinating with the Division of State  
1359 Purchasing ~~Office of Supplier Diversity~~ for the interests of and  
1360 providing assistance to small and minority business enterprises  
1361 in dealing with governmental agencies and in developing  
1362 proposals for changes in state agency rules.

1363 Section 12. Subsection (5) of section 288.712, Florida  
1364 Statutes, is amended to read:

1365 288.712 Guarantor funds.—

1366 (5) The board shall do all of the following to implement  
1367 the black contractors bonding program:

1368 (a) Conduct outreach, marketing, and recruitment of black  
1369 contractors.

1370 ~~(b) Provide assistance to the Office of Supplier Diversity~~  
1371 ~~within the Department of Management Services, as needed, to~~

1372 ~~certify new black business enterprises and to train appropriate~~  
 1373 ~~department staff.~~

1374 (b)~~(e)~~ Provide business development services to black  
 1375 business enterprises in the developmental and transitional  
 1376 stages of the program, including financing and bonding  
 1377 assistance and management and technical assistance.

1378 (c)~~(d)~~ Develop a mentor program to bring businesses into a  
 1379 working relationship with black contractors in a way that  
 1380 commercially benefits both entities and serves the purpose of  
 1381 the program.

1382 (d)~~(e)~~ No later than December 31, 2007, prepare and submit  
 1383 to the Governor a detailed report outlining and evaluating the  
 1384 progress made in implementing the black contractors bonding  
 1385 program.

1386 (e)~~(f)~~ Establish a process by which black contractors may  
 1387 apply for contract assistance, financial and bonding assistance,  
 1388 management and technical assistance, and mentoring  
 1389 opportunities.

1390 Section 13. Paragraphs (k), (l), and (m) of subsection (9)  
 1391 of section 288.955, Florida Statutes, are amended to read:

1392 288.955 Scripps Florida Funding Corporation.—

1393 (9) PERFORMANCE EXPECTATIONS.—In addition to the  
 1394 provisions prescribed in subsection (8), the contract between  
 1395 the corporation and the grantee shall include a provision that  
 1396 the grantee, in cooperation with the Office of Tourism, Trade,  
 1397 and Economic Development, shall report to the corporation on  
 1398 performance expectations that reflect the aspirations of the  
 1399 Governor and the Legislature for the benefits accruing to this

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1400 state as a result of the funds appropriated pursuant to this  
 1401 section. These shall include, but are not limited to,  
 1402 performance expectations addressing:

1403 (k) The establishment and implementation of policies to  
 1404 promote supplier diversity by complying ~~using the guidelines~~  
 1405 ~~developed by the Office of Supplier Diversity under s. 287.09451~~  
 1406 ~~and to comply~~ with the ordinances, including any small business  
 1407 ordinances, enacted by the county and which are applicable to  
 1408 the biomedical research institution and campus located in this  
 1409 state.

1410 ~~(l) The designation by the grantee of a representative to~~  
 1411 ~~coordinate with the Office of Supplier Diversity.~~

1412 (l) ~~(m)~~ The establishment and implementation of a program  
 1413 to conduct workforce recruitment activities at public and  
 1414 private colleges and universities and community colleges in this  
 1415 state which request the participation of the grantee.

1416  
 1417 The contract shall require the grantee to provide information to  
 1418 the corporation on the progress in meeting these performance  
 1419 expectations on an annual basis. It is the intent of the  
 1420 Legislature that, in fulfilling its obligation to work with  
 1421 Florida's public and private colleges and universities, Scripps  
 1422 Florida work with such colleges and universities regardless of  
 1423 size.

1424 Section 14. Section 287.05721, Florida Statutes, is  
 1425 amended to read:

1426 287.05721 Definitions.—As used in ss. 287.0571-287.0574,  
 1427 the term:

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1428 ~~(1) "Council" means the Council on Efficient Government.~~

1429 ~~(2)~~ "outsource" means the process of contracting with a  
 1430 vendor to provide a service as defined in s. 216.011(1)(f), in  
 1431 whole or in part, or an activity as defined in s.  
 1432 216.011(1)(rr), while a state agency retains the responsibility  
 1433 and accountability for the service or activity and there is a  
 1434 transfer of management responsibility for the delivery of  
 1435 resources and the performance of those resources.

1436 Section 15. Section 287.0573, Florida Statutes, is  
 1437 repealed.

1438 Section 16. Subsections (1) through (4) of section  
 1439 287.0574, Florida Statutes, are amended to read:

1440 287.0574 Business cases to outsource; review and analysis;  
 1441 requirements.—

1442 (1) A business case to outsource having a projected cost  
 1443 exceeding \$10 million in any fiscal year shall require:

1444 (a) An initial business case analysis conducted by the  
 1445 state agency and submitted to ~~the council,~~ the Governor, the  
 1446 President of the Senate, and the Speaker of the House of  
 1447 Representatives at least 60 days before a solicitation is  
 1448 issued. ~~The council shall evaluate the business case analysis~~  
 1449 ~~and submit an advisory report to the state agency, the Governor,~~  
 1450 ~~the President of the Senate, and the Speaker of the House of~~  
 1451 ~~Representatives when the advisory report is completed, but at~~  
 1452 ~~least 30 days before the agency issues the solicitation.~~

1453 (b) A final business case analysis conducted by the state  
 1454 agency and submitted after the conclusion of any negotiations,  
 1455 at least 30 days before execution of a contract, to ~~the council,~~

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1456 the Governor, the President of the Senate, and the Speaker of  
 1457 the House of Representatives.

1458 (2) A proposal to outsource having a projected cost that  
 1459 ranges from \$1 million to \$10 million in any fiscal year shall  
 1460 require:

1461 (a) An initial business case analysis conducted by the  
 1462 state agency and submission of the business case, at least 30  
 1463 days before issuing a solicitation, to ~~the council,~~ the  
 1464 Governor, the President of the Senate, and the Speaker of the  
 1465 House of Representatives.

1466 (b) A final business case analysis conducted by the state  
 1467 agency and submitted after the conclusion of any negotiations,  
 1468 at least 30 days before execution of a contract, to ~~the council,~~  
 1469 the Governor, the President of the Senate, and the Speaker of  
 1470 the House of Representatives.

1471 (3) A business case to outsource having a projected cost  
 1472 that is less than \$1 million in any fiscal year shall require a  
 1473 final business case analysis conducted by the state agency after  
 1474 the conclusion of any negotiations ~~and provided at least 30 days~~  
 1475 ~~before execution of a contract to the council. The council shall~~  
 1476 ~~provide such business cases in its annual report to the~~  
 1477 ~~Legislature.~~

1478 (4) For any proposed outsourcing, the state agency shall  
 1479 develop a business case that justifies the proposal to  
 1480 outsource. In order to reduce any administrative burden, the  
 1481 ~~council may allow a~~ state agency shall ~~to~~ submit the business  
 1482 case in the form and manner required by the budget instructions  
 1483 issued pursuant to s. 216.023 (1), (2), and (4)(a)7., augmented

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1484 with additional information if necessary, to ensure that the  
1485 requirements of this section are met. The business case is not  
1486 subject to challenge or protest pursuant to chapter 120. The  
1487 business case must include, but need not be limited to:

1488 (a) A detailed description of the service or activity for  
1489 which the outsourcing is proposed.

1490 (b) A description and analysis of the state agency's  
1491 current performance, based on existing performance metrics if  
1492 the state agency is currently performing the service or  
1493 activity.

1494 (c) The goals desired to be achieved through the proposed  
1495 outsourcing and the rationale for such goals.

1496 (d) A citation to the existing or proposed legal authority  
1497 for outsourcing the service or activity.

1498 (e) A description of available options for achieving the  
1499 goals. If state employees are currently performing the service  
1500 or activity, at least one option involving maintaining state  
1501 provision of the service or activity shall be included.

1502 (f) An analysis of the advantages and disadvantages of  
1503 each option, including, at a minimum, potential performance  
1504 improvements and risks.

1505 (g) A description of the current market for the  
1506 contractual services that are under consideration for  
1507 outsourcing.

1508 (h) A cost-benefit analysis documenting the direct and  
1509 indirect specific baseline costs, savings, and qualitative and  
1510 quantitative benefits involved in or resulting from the  
1511 implementation of the recommended option or options. Such

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1512 analysis must specify the schedule that, at a minimum, must be  
1513 adhered to in order to achieve the estimated savings. All  
1514 elements of cost must be clearly identified in the cost-benefit  
1515 analysis, described in the business case, and supported by  
1516 applicable records and reports. The state agency head shall  
1517 attest that, based on the data and information underlying the  
1518 business case, to the best of his or her knowledge, all  
1519 projected costs, savings, and benefits are valid and achievable.  
1520 As used in this section, the term "cost" means the reasonable,  
1521 relevant, and verifiable cost, which may include, but is not  
1522 limited to, elements such as personnel, materials and supplies,  
1523 services, equipment, capital depreciation, rent, maintenance and  
1524 repairs, utilities, insurance, personnel travel, overhead, and  
1525 interim and final payments. The appropriate elements shall  
1526 depend on the nature of the specific initiative. As used in this  
1527 section, the term "savings" means the difference between the  
1528 direct and indirect actual annual baseline costs compared to the  
1529 projected annual cost for the contracted functions or  
1530 responsibilities in any succeeding state fiscal year during the  
1531 term of the contract.

1532 (i) A description of differences among current state  
1533 agency policies and processes and, as appropriate, a discussion  
1534 of options for or a plan to standardize, consolidate, or revise  
1535 current policies and processes, if any, to reduce the  
1536 customization of any proposed solution that would otherwise be  
1537 required.

1538 (j) A description of the specific performance standards  
1539 that must, at a minimum, be met to ensure adequate performance.

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1540 (k) The projected timeframe for key events from the  
 1541 beginning of the procurement process through the expiration of a  
 1542 contract.

1543 (l) A plan to ensure compliance with the public records  
 1544 law.

1545 (m) A specific and feasible contingency plan addressing  
 1546 contractor nonperformance and a description of the tasks  
 1547 involved in and costs required for its implementation.

1548 (n) A state agency's transition plan for addressing  
 1549 changes in the number of agency personnel, affected business  
 1550 processes, employee transition issues, and communication with  
 1551 affected stakeholders, such as agency clients and the public.  
 1552 The transition plan must contain a reemployment and retraining  
 1553 assistance plan for employees who are not retained by the state  
 1554 agency or employed by the contractor.

1555 (o) A plan for ensuring access by persons with  
 1556 disabilities in compliance with applicable state and federal  
 1557 law.

1558 (p) A description of legislative and budgetary actions  
 1559 necessary to accomplish the proposed outsourcing.

1560 Section 17. This act shall take effect July 1, 2010.