

1                   A bill to be entitled  
 2           An act relating to the certification of minority business  
 3           enterprises; amending s. 287.0943, F.S.; deleting  
 4           provisions establishing the Minority Business  
 5           Certification Task Force, requiring that criteria for the  
 6           certification of minority business enterprises be approved  
 7           by the task force, and authorizing the task force to amend  
 8           the statewide and interlocal agreement for the  
 9           certification of minority business enterprises; conforming  
 10          provisions; providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Subsection (2) and paragraph (e) of subsection  
 15           (3) of section 287.0943, Florida Statutes, are amended to read:  
 16           287.0943 Certification of minority business enterprises.-

17           ~~(2)(a) The office is hereby directed to convene a~~  
 18           ~~"Minority Business Certification Task Force." The task force~~  
 19           ~~shall meet as often as necessary, but no less frequently than~~  
 20           ~~annually.~~

21           ~~(b) The task force shall be regionally balanced and~~  
 22           ~~comprised of officials representing the department, counties,~~  
 23           ~~municipalities, school boards, special districts, and other~~  
 24           ~~political subdivisions of the state who administer programs to~~  
 25           ~~assist minority businesses in procurement or development in~~  
 26           ~~government-sponsored programs. The following organizations may~~  
 27           ~~appoint two members each of the task force who fit the~~  
 28           ~~description above:~~

- 29 | ~~1. The Florida League of Cities, Inc.~~
- 30 | ~~2. The Florida Association of Counties.~~
- 31 | ~~3. The Florida School Boards Association, Inc.~~
- 32 | ~~4. The Association of Special Districts.~~
- 33 | ~~5. The Florida Association of Minority Business Enterprise~~
- 34 | ~~Officials.~~
- 35 | ~~6. The Florida Association of Government Purchasing~~
- 36 | ~~Officials.~~

37 |

38 | ~~In addition, the Office of Supplier Diversity shall appoint~~

39 | ~~seven members consisting of three representatives of minority~~

40 | ~~business enterprises, one of whom should be a woman business~~

41 | ~~owner, two officials of the office, and two at-large members to~~

42 | ~~ensure balance. The chairperson of the Legislative Committee on~~

43 | ~~Intergovernmental Relations or a designee shall be a member of~~

44 | ~~the task force, ex officio. A quorum shall consist of one-third~~

45 | ~~of the current members, and the task force may take action by~~

46 | ~~majority vote. Any vacancy may only be filled by the~~

47 | ~~organization or agency originally authorized to appoint the~~

48 | ~~position.~~

49 | ~~(c) The purpose of the task force will be to propose~~

50 | ~~uniform criteria and procedures by which participating entities~~

51 | ~~and organizations can qualify businesses to participate in~~

52 | ~~procurement or contracting programs as certified minority~~

53 | ~~business enterprises in accordance with the certification~~

54 | ~~criteria established by law.~~

55 | ~~(d) A final list of the criteria and procedures proposed~~

56 | ~~by the task force shall be considered by the secretary. The task~~

57 ~~force may seek technical assistance from qualified providers of~~  
58 ~~technical, business, and managerial expertise to ensure the~~  
59 ~~reliability of the certification criteria developed.~~

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

62 1. Link ownership by a minority person, as defined in s.  
63 288.703(3), or as dictated by the legal obligations of a  
64 certifying organization, to day-to-day control and financial  
65 risk by the qualifying minority owner, and to demonstrated  
66 expertise or licensure of a minority owner in any trade or  
67 profession that the minority business enterprise will offer to  
68 the state when certified. Businesses must comply with all state  
69 licensing requirements prior to becoming certified as a minority  
70 business enterprise.

71 2. If present ownership was obtained by transfer, require  
72 the minority person on whom eligibility is based to have owned  
73 at least 51 percent of the applicant firm for a minimum of 2  
74 years, when any previous majority ownership interest in the firm  
75 was by a nonminority who is or was a relative, former employer,  
76 or current employer of the minority person on whom eligibility  
77 is based. This requirement shall not apply to minority persons  
78 who are otherwise eligible who take a 51-percent-or-greater  
79 interest in a firm that requires professional licensure to  
80 operate and who will be the qualifying licenseholder for the  
81 firm when certified. A transfer made within a related immediate  
82 family group from a nonminority person to a minority person in  
83 order to establish ownership by a minority person shall be  
84 deemed to have been made solely for purposes of satisfying

HB 7029

2010

85 certification criteria and shall render such ownership invalid  
86 for purposes of qualifying for such certification if the  
87 combined total net asset value of all members of such family  
88 group exceeds \$1 million. For purposes of this subparagraph, the  
89 term "related immediate family group" means one or more children  
90 under 16 years of age and a parent of such children or the  
91 spouse of such parent residing in the same house or living unit.

92 3. Require that prospective certified minority business  
93 enterprises be currently performing or seeking to perform a  
94 useful business function. A "useful business function" is  
95 defined as a business function which results in the provision of  
96 materials, supplies, equipment, or services to customers. Acting  
97 as a conduit to transfer funds to a nonminority business does  
98 not constitute a useful business function unless it is done so  
99 in a normal industry practice. As used in this section, the term  
100 "acting as a conduit" means, in part, not acting as a regular  
101 dealer by making sales of material, goods, or supplies from  
102 items bought, kept in stock, and regularly sold to the public in  
103 the usual course of business. Brokers, manufacturer's  
104 representatives, sales representatives, and nonstocking  
105 distributors are considered as conduits that do not perform a  
106 useful business function, unless normal industry practice  
107 dictates.

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

HB 7029

2010

113        (c) ~~(g)~~ The certification criteria ~~approved by the task~~  
114 ~~force and~~ adopted by the Department of Management Services shall  
115 be included in a statewide and interlocal agreement as defined  
116 in s. 287.09431 and, in accordance with s. 163.01, shall be  
117 executed according to the terms included therein.

118        (d) ~~(h)~~ The certification procedures should allow an  
119 applicant seeking certification to designate on the application  
120 form the information the applicant considers to be proprietary,  
121 confidential business information. As used in this paragraph,  
122 "proprietary, confidential business information" includes, but  
123 is not limited to, any information that would be exempt from  
124 public inspection pursuant to the provisions of chapter 119;  
125 trade secrets; internal auditing controls and reports; contract  
126 costs; or other information the disclosure of which would injure  
127 the affected party in the marketplace or otherwise violate s.  
128 286.041. The executor in receipt of the application shall issue  
129 written and final notice of any information for which  
130 noninspection is requested but not provided for by law.

131        (e) ~~(i)~~ A business that is certified under the provisions  
132 of the statewide and interlocal agreement shall be deemed a  
133 certified minority enterprise in all jurisdictions or  
134 organizations where the agreement is in effect, and that  
135 business is deemed available to do business as such within any  
136 such jurisdiction or with any such organization statewide. All  
137 state agencies must accept minority business enterprises  
138 certified in accordance with the statewide and interlocal  
139 agreement of s. 287.09431, and that business shall also be  
140 deemed a "certified minority business enterprise" as defined in

141 s. 288.703. However, any governmental jurisdiction or  
 142 organization that administers a minority business purchasing  
 143 program may reserve the right to establish further certification  
 144 procedures necessary to comply with federal law.

145 ~~(j) The statewide and interlocal agreement shall be guided~~  
 146 ~~by the terms and conditions found therein and may be amended at~~  
 147 ~~any meeting of the task force and subsequently adopted by the~~  
 148 ~~secretary of the Department of Management Services. The amended~~  
 149 ~~agreement must be enacted, initialed, and legally executed by at~~  
 150 ~~least two-thirds of the certifying entities party to the~~  
 151 ~~existing agreement and adopted by the state as originally~~  
 152 ~~executed in order to bind the certifying entity.~~

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

155 (3)

156 (e) Any participating program receiving three or more  
 157 challenges to its certification decisions pursuant to subsection  
 158 (4) from other organizations that are executors to the statewide  
 159 and interlocal agreement, shall be subject to a review by the  
 160 office, as provided in paragraphs (a) and (b), of the  
 161 organization's capacity to perform under such agreement and in  
 162 accordance with the certification core criteria ~~established by~~  
 163 ~~the task force~~. The office shall submit a report to the  
 164 secretary of the Department of Management Services regarding the  
 165 results of the review.

166 Section 2. This act shall take effect July 1, 2010.