

By Senator Smith

29-01710-11

20111374__

1 A bill to be entitled
 2 An act relating to the Black Business Loan Program;
 3 amending s. 288.7102, F.S.; revising the
 4 recertification and audit periods for eligible
 5 recipients of the Black Business Loan Program;
 6 authorizing existing recipients to submit certain
 7 information to the Office of Tourism, Trade, and
 8 Economic Development instead of financial audits under
 9 certain circumstances; authorizing recipients to
 10 redress audit findings within a specified period;
 11 providing term of and revising requirements for
 12 funding agreements between recipients and the office;
 13 revising the entities with whom the office must
 14 consult before adopting rules; revising limits on the
 15 use of funds for technical support to black business
 16 enterprises and direct administrative costs;
 17 conforming provisions; reenacting s. 288.7094(2),
 18 F.S., relating to black business investment
 19 corporations, to incorporate changes made by the act
 20 in a reference thereto; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 288.7102, Florida Statutes, is amended
 25 to read:

26 288.7102 Black Business Loan Program.—

27 (1) The Black Business Loan Program is established in the
 28 Office of Tourism, Trade, and Economic Development. Under the
 29 program, the office shall ~~annually~~ certify eligible recipients

29-01710-11

20111374

30 for a period of 5 years, recertify existing eligible recipients
31 once every 5 years, and ~~subsequently~~ disburse funds annually or
32 as appropriated by the Legislature, through such eligible
33 recipients, to black business enterprises that cannot obtain
34 capital through conventional lending institutions but that could
35 otherwise compete successfully in the private sector.

36 (2) The office shall establish an application and ~~annual~~
37 certification process for entities seeking funds to participate
38 in providing loans, loan guarantees, or investments in black
39 business enterprises pursuant to the Florida Black Business
40 Investment Act. The office shall process all applications and
41 recertifications submitted by June 1 on or before July 31 of the
42 same calendar year.

43 (3) If the Black Business Loan Program is appropriated any
44 funding in a fiscal year, the office shall distribute an equal
45 amount of the appropriation, calculated as the total annual
46 appropriation divided by the total number of program recipients
47 certified on or before July 31 of that fiscal year.

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

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

51 (b) For an existing recipient during the 1st through 4th
52 years of the recipient's recertification period, annually submit
53 to the office a financial audit or compilation of the
54 recipient's financial statement information for the most
55 recently completed fiscal year and a copy of the office's most
56 recent letter certifying the recipient as qualified for the
57 award of funds.

58 (c) For an existing recipient during the 5th year of the

29-01710-11

20111374

59 recipient's recertification period, submit to the office a
60 recertification application and a financial audit performed by
61 an independent certified public account for the most recently
62 completed fiscal year, which audit does not reveal any material
63 weaknesses or instances of material noncompliance that the
64 recipient does not substantially redress within 60 days after
65 receipt of the audit report.

66 (d)-(e) For a new recipient:

67 1. Demonstrate that its board of directors includes
68 citizens of the state experienced in the development of black
69 business enterprises.

70 2. Demonstrate that the recipient has a business plan that
71 allows the recipient to operate in a manner consistent with ss.
72 288.707-288.714 and the rules of the office.

73 3. Demonstrate that the recipient has the technical skills
74 to analyze and evaluate applications by black business
75 enterprises for loans, loan guarantees, or investments.

76 4. Demonstrate that the recipient has established viable
77 partnerships with public and private funding sources, economic
78 development agencies, and workforce development and job referral
79 networks.

80 5. Demonstrate that the recipient can provide a private
81 match equal to 20 percent of the amount of funds provided by the
82 office.

83 (e)-(d) For an existing or new recipient, agree to maintain
84 the recipient's books and records relating to funds received by
85 the office according to generally accepted accounting principles
86 and in accordance with the requirements of s. 215.97(7) and to
87 make those books and records available to the office for

29-01710-11

20111374

88 inspection upon reasonable notice.

89 (5) Each eligible recipient must meet the provisions of ss.
90 288.707-288.714, the terms of the agreement ~~contract~~ between the
91 recipient and the office, and any other applicable state or
92 federal laws. An entity may not receive funds under ss. 288.707-
93 288.714 unless the entity meets ~~annual~~ certification
94 requirements.

95 (6) ~~Upon approval by the office and~~ Before release of the
96 funds as provided in this section, the office shall issue a
97 letter certifying the eligible recipient ~~applicant~~ as qualified
98 for an award. The office and the eligible recipient ~~applicant~~
99 shall enter into an annual agreement that sets forth the
100 conditions for award of the funds. The term of any agreement
101 between the office and an eligible recipient may not exceed 1
102 year. The agreement must include the total amount of funds
103 awarded; the performance conditions that must be met once the
104 funding is ~~has been~~ awarded, including, but not limited to,
105 compliance with all ~~of the~~ requirements of this section for
106 eligible recipients of funds under this section; and sanctions
107 for failure to meet performance conditions, including any
108 provisions to recover awards. The agreement may not require any
109 reporting of or obligation for appropriated funds beyond the 1-
110 year term of the agreement, except that appropriated funds
111 remaining unexpended at the end of the 1-year agreement must be
112 reported until the funds are expended.

113 (7) The office, in consultation with the presidents of the
114 black business investment corporations ~~board~~, shall adopt rules
115 pursuant to ss. 120.536(1) and 120.54 to implement this section.

116 (8) A black business investment corporation certified by

29-01710-11

20111374

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

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

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

125 (c) Technical support to black business enterprises, ~~not to~~
126 ~~exceed 9 percent of the funds received,~~ and direct
127 administrative costs, not to exceed 27 ~~12~~ percent of the funds
128 received.

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

132 (10) All loans, loan guarantees, and investments, and any
133 income related thereto, shall be used to carry out the public
134 purpose of ss. 288.707-288.714, which is to develop black
135 business enterprises. This subsection does not preclude a
136 reasonable profit for the participating black business
137 investment corporation or for return of equity developed to the
138 state and participating financial institutions upon any
139 distribution of the assets or excess income of the investment
140 corporation.

141 Section 2. For the purpose of incorporating the amendment
142 made by this act to section 288.7102, Florida Statutes, in a
143 reference thereto, subsection (2) of section 288.7094, Florida
144 Statutes, is reenacted to read:

145 288.7094 Black business investment corporations.-

29-01710-11

20111374__

146 (2) A black business investment corporation that meets the
147 requirements of s. 288.7102(4) is eligible to participate in the
148 Black Business Loan Program and shall receive priority
149 consideration by the Office of Tourism, Trade, and Economic
150 Development for participation in the program.

151 Section 3. This act shall take effect July 1, 2011.