

By Senator Altman

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

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

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

17 287.0943 Certification of minority business enterprises.—

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

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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. A quorum shall consist of one-third of the~~
43 ~~current members, and the task force may take action by majority~~
44 ~~vote. Any vacancy may only be filled by the organization or~~
45 ~~agency originally authorized to appoint the position.~~

46 ~~(c) The purpose of the task force will be to propose~~
47 ~~uniform criteria and procedures by which participating entities~~
48 ~~and organizations can qualify businesses to participate in~~
49 ~~procurement or contracting programs as certified minority~~
50 ~~business enterprises in accordance with the certification~~
51 ~~criteria established by law.~~

52 ~~(d) A final list of the criteria and procedures proposed by~~
53 ~~the task force shall be considered by the secretary. The task~~
54 ~~force may seek technical assistance from qualified providers of~~
55 ~~technical, business, and managerial expertise to ensure the~~
56 ~~reliability of the certification criteria developed.~~

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

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59 1. Link ownership by a minority person as defined in s.
60 288.703, or as dictated by the legal obligations of a certifying
61 organization, to day-to-day control and financial risk by the
62 qualifying minority owner, and to demonstrated expertise or
63 licensure of a minority owner in any trade or profession that
64 the minority business enterprise will offer to the state when
65 certified. Businesses must comply with all state licensing
66 requirements before becoming certified as a minority business
67 enterprise.

68 2. If present ownership was obtained by transfer, require
69 the minority person on whom eligibility is based to have owned
70 at least 51 percent of the applicant firm for a minimum of 2
71 years, when any previous majority ownership interest in the firm
72 was by a nonminority who is or was a relative, former employer,
73 or current employer of the minority person on whom eligibility
74 is based. This requirement does not apply to minority persons
75 who are otherwise eligible who take a 51-percent-or-greater
76 interest in a firm that requires professional licensure to
77 operate and who will be the qualifying licenseholder for the
78 firm when certified. A transfer made within a related immediate
79 family group from a nonminority person to a minority person in
80 order to establish ownership by a minority person is ~~shall be~~
81 deemed to be ~~have been~~ made solely for purposes of satisfying
82 certification criteria and renders ~~shall render~~ such ownership
83 invalid for purposes of qualifying for such certification if the
84 combined total net asset value of all members of such family
85 group exceeds \$1 million. For purposes of this subparagraph, the
86 term "related immediate family group" means one or more children
87 under 16 years of age and a parent of such children or the

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88 spouse of such parent residing in the same house or living unit.

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

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

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

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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 of~~
132 the statewide and interlocal agreement is ~~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 is ~~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~~

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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, is ~~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, 2012.