

By Senator Braynon

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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 Department of Economic Opportunity  
8       instead of financial audits under certain  
9       circumstances; authorizing recipients to redress audit  
10      findings within a specified period; providing term of  
11      and revising requirements for funding agreements  
12      between recipients and the department; revising the  
13      entities with whom the department must consult before  
14      adopting rules; revising limits on the use of funds  
15      for technical support to black business enterprises  
16      and direct administrative costs; conforming  
17      provisions; reenacting s. 288.7094(2), F.S., relating  
18      to black business investment corporations, to  
19      incorporate changes made by the act in a reference  
20      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 department, which shall ~~annually~~ certify eligible recipients for  
29 a period of 5 years, recertify existing eligible recipients once

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

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

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

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

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

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

57 (c) For an existing recipient during the 5th year of the  
58 recipient's recertification period, submit to the department a

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

65 (d)~~(e)~~ For a new recipient:

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

69 2. Demonstrate that the recipient has a business plan that  
70 allows the recipient to operate in a manner consistent with this  
71 section and the rules of the department.

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

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

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

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

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88 (5) Each eligible recipient must meet the requirements of  
89 this section, the terms of the agreement ~~contract~~ between the  
90 recipient and the department, and any other applicable state or  
91 federal laws. An entity may not receive funds unless the entity  
92 meets ~~annual~~ certification requirements.

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

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

115 (8) A black business investment corporation certified by  
116 the department as an eligible recipient under this section is

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117 authorized to use funds appropriated for the Black Business Loan  
118 Program in any of the following forms:

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

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

124 (c) Administrative costs and technical support to black  
125 business enterprises, which combined may not ~~to~~ exceed 27 9  
126 percent of the funds received, and direct administrative costs,  
127 not to exceed 12 percent of the funds received.

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

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

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

143 288.7094 Black business investment corporations.—

144 (2) A black business investment corporation that meets the  
145 requirements of s. 288.7102(4) is eligible to participate in the

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146 Black Business Loan Program and shall receive priority  
147 consideration by the department for participation in the  
148 program.

149 Section 3. This act shall take effect July 1, 2012.