

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~~  
 19           ~~"Minority Business Certification Task Force." The task force~~  
 20           ~~shall meet as often as necessary, but no less frequently than~~  
 21           ~~annually.~~

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

29 ~~description above:~~

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

38

39 ~~In addition, the Office of Supplier Diversity shall appoint~~

40 ~~seven members consisting of three representatives of minority~~

41 ~~business enterprises, one of whom should be a woman business~~

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

43 ~~ensure balance. A quorum shall consist of one-third of the~~

44 ~~current members, and the task force may take action by majority~~

45 ~~vote. Any vacancy may only be filled by the organization or~~

46 ~~agency originally authorized to appoint the position.~~

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

48 ~~uniform criteria and procedures by which participating entities~~

49 ~~and organizations can qualify businesses to participate in~~

50 ~~procurement or contracting programs as certified minority~~

51 ~~business enterprises in accordance with the certification~~

52 ~~criteria established by law.~~

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

54 ~~by the task force shall be considered by the secretary. The task~~

55 ~~force may seek technical assistance from qualified providers of~~

56 ~~technical, business, and managerial expertise to ensure the~~

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57 ~~reliability of the certification criteria developed.~~

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

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

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

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

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

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

113 Diversity.

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

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

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

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

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

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

156 (3)

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

167 Section 2. This act shall take effect July 1, 2012.