

Committee Substitute for House Bill No. 1323

An act relating to the Florida Minority Business Loan Mobilization Program; creating s. 288.706, F.S.; providing legislative findings and intent; creating the Florida Minority Business Loan Mobilization Program for certain purposes; providing for program administration by the Department of Management Services; authorizing state agencies to disburse a certain amount of a contract award to assist certain minority business enterprise vendors in obtaining working capital financing; authorizing professional services vendors to apply for a specified percentage of a base contract amount; specifying procedures for the program; providing for working capital agreements and lines of credit; providing requirements and limitations; providing requirements for prime contract vendors; providing requirements for subcontract vendors; providing contracting state agency requirements and limitations; authorizing the department to adopt rules; requiring the department to maintain a listing of participating financial institutions; providing an effective date.

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

Section 1. Section 288.706, Florida Statutes, is created to read:

288.706 Florida Minority Business Loan Mobilization Program.—

(1) The Legislature finds that it is in the interest of the public welfare to meaningfully assist minority business enterprises that are vital to the overall economy of this state. It is the intent of the Legislature to promote diversity in state contracting by eliminating barriers to minority business enterprises providing goods and services to this state. Finally, the Legislature recognizes the contribution of minority business enterprises to employment opportunities in this state.

(2) The Florida Minority Business Loan Mobilization Program is created to promote the development of minority business enterprises, as defined in s. 288.703(2), increase the ability of minority business enterprises to compete for state contracts, and sustain the economic growth of minority business enterprises in this state. The goal of the program is to assist minority business enterprises by facilitating working capital loans to minority business enterprises that are vendors on state agency contracts. The Department of Management Services shall administer the program.

(3) Notwithstanding ss. 215.422(14) and 216.181(16), and pursuant to s. 216.351, under the Florida Minority Business Loan Mobilization Program, a state agency may disburse up to 10 percent of the base contract award amount to assist a minority business enterprise vendor that is awarded a state agency contract for goods or services in obtaining working capital financing as provided in subsection (5).

(4) Notwithstanding ss. 215.422(14) and 216.181(16), and pursuant to s. 216.351, in lieu of applying for participation in the Florida Minority Busi-

ness Loan Mobilization Program, a minority business enterprise vendor awarded a state agency contract for the performance of professional services may apply with that contracting state agency for up to 5 percent of the base contract award amount. The contracting state agency may award such advance in order to facilitate the performance of that contract.

(5) The following Florida Minority Business Loan Mobilization Program procedures apply to minority business enterprise vendors for contracts awarded by a state agency for construction or professional services or for the provision of goods or services:

(a) Upon receipt of an award of a prime contract or subcontract, a minority business enterprise vendor may seek to obtain working capital financing from a participating financial institution. The minority business enterprise vendor shall complete all the necessary requirements of the participating financial institution in order to obtain a working capital agreement. A minority business enterprise vendor shall only be entitled to participate in the program if a working capital agreement is established with a participating financial institution.

(b) The working capital agreement may provide for a line of credit that is no less than 125 percent and no more than 200 percent of the designated loan mobilization payment described in paragraph (c).

(c) The designated loan mobilization payment is that portion of the base contract award amount that is to be disbursed by the agency under this section. The actual amount of the designated loan mobilization payment shall be no less than \$5,000 and no greater than \$250,000. The amount of the designated loan mobilization payment shall be:

1. No less than 5 percent and no more than 10 percent of the base contract award amount between the minority business enterprise prime contract vendor and the contracting state agency; or

2. No less than 5 percent and no more than 10 percent of the base contract award amount between a minority business enterprise subcontract vendor and a minority business enterprise or nonminority business enterprise prime contract vendor.

(d) The designated loan mobilization payment shall be disbursed pursuant to the working capital agreement and this subsection and shall be made payable by the contracting state agency to the minority business enterprise prime contract vendor and the participating financial institution using the tax identification number of the minority business enterprise vendor that is the debtor under the working capital agreement.

(e) The following procedures shall apply when the minority business enterprise is the prime contract vendor to the contracting state agency:

1. Pursuant to s. 216.351, the provisions of ss. 215.422(14) and 216.181(16) do not apply to this paragraph.

2. For construction contracts, the designated loan mobilization payment shall be disbursed when:

a. The minority business enterprise prime contract vendor requests disbursement in the first application for payment.

b. The contracting state agency has issued a notice to proceed and has approved the first application for payment.

3. For contracts other than construction contracts, the designated loan mobilization payment shall be disbursed when:

a. The minority business enterprise prime contract vendor requests disbursement by letter delivered to the contracting state agency after the execution of the contract but prior to the commencement of work.

b. The contracting state agency has approved the minority business enterprise prime contract vendor's letter of request.

4. The designated loan mobilization payment may be paid by the contracting state agency prior to the commencement of work. In order to ensure that the contract time provisions do not commence until the minority business enterprise prime contract vendor has adequate working capital, the contract documents may provide that the contract shall commence at such time as the contracting state agency releases the designated loan mobilization payment to the minority business enterprise prime contract vendor and participating financial institution pursuant to the working capital agreement.

(f) The following procedures shall apply when the minority business enterprise is the subcontract vendor:

1. For purposes of this paragraph, the term "minority business enterprise subcontract vendor" is limited to subcontractors and suppliers to prime contract vendors that contract with a state agency.

2. A designated loan mobilization payment for a minority business enterprise subcontract vendor shall be made:

a. Upon approval by the contracting state agency of a letter from the minority business enterprise subcontract vendor and prime contract vendor that requests the designated loan mobilization payment and that indicates that the prime contract vendor is on notice of the request.

b. Payable to the prime contract vendor and the participating financial institution, which shall pay these funds to the minority business enterprise subcontract vendor within 10 business days after the receipt of the funds from the state.

3. No prime contract vendor shall retain more than 5 percent of the amount earned by a minority business enterprise subcontract vendor participating in this program, except that if the prime contract vendor is also participating in this program, the amount the prime contract vendor retains shall be subject to the provisions governing prime contract vendors.

(6) All prime contract vendors shall be required to incorporate the designated loan mobilization payment procedures in subcontract agreements or

purchase orders with minority business enterprise vendors participating in this program and to cooperate in the release of designated loan mobilization payments to achieve the objective of providing working capital for minority business enterprise subcontract vendors.

(7) The contracting state agency shall encourage prime contract vendors to make weekly or biweekly payments to minority business enterprise subcontract vendors participating in this program.

(8) The contracting state agency shall monitor compliance with this section. Nothing contained in this section shall be construed to limit the contracting state agency's right to insist upon strict compliance with the requirements of the contract documents.

(9) The contracting state agency shall not be a party to a working capital agreement between a participating financial institution and a participating minority business enterprise vendor. The participating financial institution shall notify the contracting state agency head of vendor program applications received by such institution.

(10) The Department of Management Services may adopt rules to implement the provisions of this section.

(11) The Department of Management Services shall maintain a listing of financial institutions willing to participate in the Florida Minority Business Loan Mobilization Program. This list of financial institutions shall not be exclusive. A minority business enterprise vendor who has a working relationship with a financial institution is encouraged to request that the financial institution apply to participate as a financial institution for the program.

Section 2. This act shall take effect October 1, 2002.

Approved by the Governor June 6, 2002.

Filed in Office Secretary of State June 6, 2002.