

CHAPTER 2010-39

Committee Substitute for House Bill No. 1551

An act relating to the Black Business Investment Board, Inc.; amending s. 288.707, F.S.; deleting a description of the board as a public-private entity; requiring the board to assist the Office of Tourism, Trade, and Economic Development in creating a long-range strategic policy for the Black Business Loan Program; revising the entities with whom the board may create partnerships for the development and expansion of black business enterprises; revising the membership of the board of directors; providing for certain members to be ex officio, nonvoting members; revising requirements for the selection, removal, and terms of the chair and vice chair; amending s. 288.709, F.S.; requiring that upon dissolution of the board, an asset that was not acquired through the use of state funds be returned to the donor who provided the asset or the funding or resources to acquire the asset; amending s. 288.7091, F.S.; requiring the board to aid the development and expansion of black business enterprises by leveraging federal, state, local, and private funds; requiring the board to collaborate with agencies of the federal, state, and local governments, private entities, nonprofit organizations, and national organizations; amending s. 288.7102, F.S.; revising the dates by which applications for loans from the Black Business Loan Program must be received and processed by the Office of Tourism, Trade, and Economic Development; revising eligibility requirements for new and existing program recipients; revising the date by which the Office of Tourism, Trade, and Economic Development must distribute appropriations to program recipients; deleting provisions providing for the board to recommend the certification of eligible recipients for loans; revising the percentages of program funds that a program recipient may use for technical support for black business enterprises or direct administrative costs; amending s. 288.71025, F.S.; authorizing the Office of Tourism, Trade, and Economic Development to bring a civil action against an entity that unlawfully holds itself out as a black business investment corporation; amending s. 288.712, F.S.; deleting a provision relating to the black contractors bonding program, which requires the board to provide assistance to the Office of Supplier Diversity within the Department of Management Services; amending s. 288.714, F.S.; requiring that recipients of loans from the Black Business Loan Program provide quarterly reports to the Office of Tourism, Trade, and Economic Development; requiring that the Office of Tourism, Trade, and Economic Development compile a summary of quarterly reports from loan recipients and provide a copy of the summary to the board; requiring that the Office of Tourism, Trade, and Economic Development and the board provide annual reports to the Governor and Legislature by a certain date; providing an effective date.

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

Section 1. Subsections (1), (2), (3), and (6) of section 288.707, Florida Statutes, are amended to read:

288.707 Florida Black Business Investment Board, Inc.; findings; creation; membership; organization; meetings; disclosure.—

(1) The Legislature finds that the public interest of the state will be served by the creation of a not-for-profit corporation, ~~public-private entity~~ the primary mission of which ~~is shall be~~ to assist in the development and expansion of black business enterprises by:

(a) Advising the Office of Tourism, Trade, and Economic Development in its oversight of the Black Business Loan Program and assisting in the creation of a ~~creating~~ long-range strategic policy for the program.

(b) Evaluating the unmet need for capital by black business enterprises in the state.

(c) Creating partnerships between federal, state, and local governments, and private enterprises, and national organizations to aid in the development and expansion of black business enterprises.

(d) Providing a network of information resources for black business enterprises and providing technical assistance through this network.

(2)(a) There is created a not-for-profit corporation to be known as the “Florida Black Business Investment Board, Inc.,” referred to in ss. 288.707-288.714 as the board, which shall be registered, incorporated, organized, and operated in compliance with chapter 617 and which must shall not be a unit or entity of state government. The Legislature determines, however, that public policy dictates that the board operate in the most open and accessible manner consistent with its public purpose. Therefore, the Legislature specifically declares that the board and its advisory committees or similar groups created by the board, including any subsidiaries, are subject to the provisions of chapter 119, relating to public records, and the provisions of chapter 286, relating to public meetings and records.

(b) The board shall contract with the Office of Tourism, Trade, and Economic Development to implement the provisions of ss. 288.707-288.714.

(3) The board shall be governed by a board of directors chosen as follows:

(a) ~~Four~~ Five members appointed by the Governor who shall serve terms of 4 years each, except that in making initial appointments, the Governor shall appoint three members to serve for terms of 2 years each and two members to serve for terms of 3 years each.

(b) One member appointed by the President of the Senate who shall serve a term of 2 years.

(c) One member appointed by the Speaker of the House of Representatives who shall serve a term of 2 years.

(d) The vice chair of Enterprise Florida, Inc., or his or her designee, who shall be an ex officio, nonvoting member.

(e) Two at-large members selected by the board of directors who are nationally known for their achievements in finance, small business development, or economic development.

~~(e) The chair of the Florida Development Finance Corporation created pursuant to s. 288.9604.~~

(f) Four presidents of participating black business investment corporations who shall be appointed by the Executive Director of the Office of Tourism, Trade, and Economic Development upon the recommendation of the Florida Consortium of Black Business Investment Corporations, Inc., to serve for terms of 3 years each. Each shall be eligible for reappointment to one additional term of 3 years.

(6) The board shall elect a chair and vice chair from among its members for a term of 2 years. The chair may be removed by a two-thirds vote of the membership of the board. The Governor shall appoint the chair, who shall be a member of the board and shall serve at the pleasure of the Governor. The board shall annually elect one of its members as vice chair.

Section 2. Subsection (9) of section 288.709, Florida Statutes, is amended to read:

288.709 Powers of the Florida Black Business Investment Board, Inc. The board shall have all the powers granted under chapter 617 and any powers necessary or convenient to carry out and effectuate the purposes and provisions of ss. 288.707-288.714, including, but not limited to, the power to:

(9) Provide in its bylaws that, upon the dissolution of the board, all of its assets acquired through the use of state funds, after payment of all legal debts and liabilities, revert to the state. However, an asset that is not acquired through the use of state funds, or the funding or resources necessary to acquire the asset, shall be returned to the donor who provided the asset.

Section 3. Subsections (2) and (6) of section 288.7091, Florida Statutes, are amended to read:

288.7091 Duties of the Florida Black Business Investment Board, Inc. The board shall:

(2) Aid the development and expansion of black business enterprises by leveraging federal, state, local, and private funds to be held by the board for use according to the provisions of ss. 288.707-288.714.

~~(6) Collaborate with agencies of the federal, state, and local governments, private entities, nonprofit organizations, and national organizations the Department of Transportation, the Department of Management Services, including the Florida Minority Business Loan Mobilization Program, Workforce Florida, Inc., and other state agencies and partners, the State University System, including the Florida Agricultural and Mechanical University's Institute of Urban Policy and Commerce, school boards, and local governments to create a network of information and to identify available resources to enhance the development and expansion of black business enterprises.~~

Section 4. Section 288.7102, Florida Statutes, is amended to read:

288.7102 Black Business Loan Program.—

(1) The Black Business Loan Program is established in the Office of Tourism, Trade, and Economic Development. Under the program, the office shall annually certify eligible recipients and subsequently disburse funds appropriated by the Legislature, through such eligible recipients, to black business enterprises that cannot obtain capital through conventional lending institutions but that could otherwise compete successfully in the private sector.

(2) The office shall establish an application and annual certification process for entities seeking funds to participate in providing loans, loan guarantees, or investments in black business enterprises pursuant to the Florida Black Business Investment Act. ~~The board shall receive the applications and make recommendations for certification to the office.~~ The office shall process all applications and recertifications submitted by June 1 July 1 on or before July 31 September 30.

(3) If the Black Business Loan Program is appropriated any funding in a fiscal year, the office shall distribute an equal amount of the appropriation, calculated as the total annual appropriation divided by the total number of program recipients certified on or before July 31 September 30 of that fiscal year.

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

(a) Be a corporation registered in the state.

(b) For an existing recipient, annually submit to the office a financial audit performed by an independent certified public account for the most recently completed fiscal year, which audit does not reveal any material weaknesses or instances of material noncompliance.

(c) For a new recipient:

1.(b) Demonstrate that its board of directors includes citizens of the state experienced in the development of black business enterprises.

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

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

4.(e) Demonstrate that the recipient has established viable partnerships with public and private funding sources, economic development agencies, and workforce development and job referral networks.

5.(f) Demonstrate that the recipient can provide a private match equal to 20 percent of the amount of funds provided by the office.

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

(5) ~~The board shall annually recommend to the office certification of Each eligible recipient, who must meet the provisions of ss. 288.707-288.714, the terms of the contract between the recipient and the office, and any other applicable state or federal laws. An entity may not receive funds under ss. 288.707-288.714 unless the entity meets annual certification requirements.~~

(6) Upon approval by the office and before ~~prior to~~ release of the funds as provided in this section, the office shall issue a letter certifying the applicant as qualified for an award. The office and the applicant shall enter into an agreement that sets forth the conditions for award of the funds. The agreement must include the total amount of funds awarded; the performance conditions that must be met once the funding has been awarded, including, but not limited to, compliance with all of the requirements of this section for eligible recipients of funds under this section; and sanctions for failure to meet performance conditions, including any provisions to recover awards.

(7)(a) The office, in consultation with the board, shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

~~(b) The board shall adopt policies and procedures necessary to implement this section.~~

(8) A black business investment corporation certified by the office as an eligible recipient under this section is authorized to use funds appropriated for the Black Business Loan Program in any of the following forms:

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

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

(c) Technical support to black business enterprises, not to exceed 9 7 percent of the funds received, and direct administrative costs, not to exceed 12 10 percent of the funds received.

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

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

Section 5. Section 288.71025, Florida Statutes, is amended to read:

288.71025 Prohibited acts; penalties.—

(1) It is unlawful for any person to hold itself out as a black business investment corporation without being certified by the board as eligible to participate in the Florida Black Business Loan Program.

(2) In addition to any other penalties or remedies provided under law, the office board may bring a civil action in any court of competent jurisdiction against any person for a knowing or willful violation of this section. Upon an adverse adjudication, the court may impose a civil penalty of up to \$500 and payment of court costs and reasonable attorney’s fees incurred by the plaintiff.

Section 6. Subsection (5) of section 288.712, Florida Statutes, is amended to read:

288.712 Guarantor funds.—

(5) The board shall do all of the following to implement the black contractors bonding program:

(a) Conduct outreach, marketing, and recruitment of black contractors.

~~(b) Provide assistance to the Office of Supplier Diversity within the Department of Management Services, as needed, to certify new black business enterprises and to train appropriate department staff.~~

~~(b)(c)~~ Provide business development services to black business enterprises in the developmental and transitional stages of the program, including financing and bonding assistance and management and technical assistance.

~~(c)~~(d) Develop a mentor program to bring businesses into a working relationship with black contractors in a way that commercially benefits both entities and serves the purpose of the program.

~~(e) No later than December 31, 2007, prepare and submit to the Governor a detailed report outlining and evaluating the progress made in implementing the black contractors bonding program.~~

(d)(f) Establish a process by which black contractors may apply for contract assistance, financial and bonding assistance, management and technical assistance, and mentoring opportunities.

Section 7. Section 288.714, Florida Statutes, is amended to read:

288.714 Quarterly and annual reports.—

(1) Each recipient of state funds under s. 288.7102 shall provide to the ~~office board~~ a quarterly report within 15 days after the end of each calendar quarter that includes a detailed summary of the recipient's performance of the duties imposed by s. 288.7102, including, but not limited to:

(a) The dollar amount of all loans or loan guarantees made to black business enterprises, the percentages of the loans guaranteed, and the names and identification of the types of businesses served.

(b) Loan performance information.

(c) The amount and nature of all other financial assistance provided to black business enterprises.

(d) The amount and nature of technical assistance provided to black business enterprises, including technical assistance services provided in areas in which such services are otherwise unavailable.

(e) A balance sheet for the recipient, including an explanation of all investments and administrative and operational expenses.

(f) A summary of all services provided to nonblack business enterprises, including the dollar value and nature of such services and the names and identification of the types of businesses served.

(g) Any other information as required by policies adopted by the ~~office board~~.

(2) The ~~office board~~ must compile ~~and provide to the office~~ a summary of all quarterly reports ~~and provide a copy of the summary to the board~~ within 30 days after the end of each calendar quarter that includes a detailed summary of the recipient's performance of the duties imposed by s. 288.7102.

(3) By ~~August 31~~ May 1 of each year, the ~~office board~~ shall provide to the Governor, the President of the Senate, and the Speaker of the House of

Representatives a detailed report of the performance of the Black Business Loan Program. ~~The report must include, including:~~

~~(a)~~ a cumulative summary of quarterly report data required by subsection (1).

(4) By August 31 of each year, the board shall provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed report of the board's performance, including:

~~(a)(b)~~ A description of the strategies implemented by the board to increase private investment in black business enterprises.

~~(b)(e)~~ A summary of the board's performance of its duties under ss. 288.707-288.712.

~~(c)(d)~~ The most recent 5-year projection of the need for capital by black business enterprises.

~~(d)(e)~~ Recommendations for legislative or other changes to enhance the development and expansion of black business enterprises in the state.

~~(e)(f)~~ A projection of the program's activities during the next 12 months.

Section 8. This act shall take effect upon becoming a law.

Approved by the Governor May 7, 2010.

Filed in Office Secretary of State May 7, 2010.