

1 A bill to be entitled

2 An act relating to black business investment; amending s.
3 14.2015, F.S.; requiring the Office of Tourism, Trade, and
4 Economic Development to administer the Black Business Loan
5 Program; providing purposes; amending s. 288.702, F.S.;
6 revising a short title; amending s. 288.703, F.S.;
7 revising the definition of "minority person"; amending s.
8 288.706, F.S.; deleting references to the Florida Black
9 Business Investment Board, Inc., and black business
10 investment corporations from a list of certain financial
11 institutions maintained by the Department of Management
12 Services; requiring the Department of Management Services
13 to collaborate with the Florida Black Business Investment
14 Board, Inc., and the Office of Tourism, Trade, and
15 Economic Development for certain purposes; creating s.
16 288.7065, F.S.; providing a short title; amending s.
17 288.707, F.S.; revising provisions creating the Florida
18 Black Business Investment Board, Inc.; revising
19 legislative findings; creating the board; requiring the
20 board to contract with the Office of Tourism, Trade, and
21 Economic Development for certain purposes; specifying
22 application of public records and public meetings
23 requirements; providing for appointment of a board of
24 directors; specifying terms of office and experience
25 requirements of board members; providing for filling of
26 board vacancies; requiring the Governor to appoint a
27 chair; providing for meetings; requiring members to serve
28 without compensation; providing for reimbursement of

29 expenses; requiring members to file a statement of
30 financial interests; amending s. 288.708, F.S.; providing
31 for appointment and duties of the president of the board;
32 deleting a provision specifying prudent use of certain
33 funds and requiring use of funds according to applicable
34 laws, bylaws, or contracts; applying certain salary
35 limitation provisions to employees of the board; requiring
36 the Department of Management Services to establish a
37 lease-agreement program for board employees; amending s.
38 288.709, F.S.; revising the powers of the board; amending
39 s. 288.7091, F.S.; revising the duties of the board;
40 creating s. 288.7094, F.S.; providing a definition;
41 specifying eligibility of certain black business
42 investment corporations to participate in the Black
43 Business Loan Program; requiring the Office of Tourism,
44 Trade, and Economic Development to give priority
45 consideration to such corporations for participation in
46 the program; creating s. 288.7102, F.S.; establishing the
47 Black Business Loan Program in the Office of Tourism,
48 Trade, and Economic Development; requiring the office to
49 disburse funds appropriated by the Legislature, through
50 certified eligible recipients, to certain black business
51 enterprises; providing duties and responsibilities of the
52 office and the board in administering the program;
53 establishing a competitive application and annual
54 certification process for eligible recipients for funds to
55 provide loans, loan guarantees, and investments to black
56 business enterprises; requiring an allocation policy for

57 equitable distribution throughout the state; providing
58 eligibility requirements for recipients to receive funds
59 and to provide loans, loan guarantees, or investments;
60 requiring annual certification of eligibility; providing
61 for award agreements and reimbursement of funds under
62 certain circumstances; requiring the office to adopt
63 rules; requiring the board to adopt policies and
64 procedures; providing restrictions for the use of funds by
65 black business investment corporations; providing
66 legislative intent if an investment mechanism is held
67 invalid; providing for reasonable profit for a black
68 business investment corporation; creating s. 288.71025,
69 F.S.; providing a prohibited act; providing for filing of
70 a civil complaint, imposition of a fine, and the payment
71 of court costs and reasonable attorney's fees; creating s.
72 288.7103, F.S.; providing black business enterprise
73 eligibility requirements for receiving loans, loan
74 guarantees, or investments; amending s. 288.712, F.S.;
75 revising provisions relating to guarantor funds to assist
76 qualified black business enterprises obtain surety bonds
77 and other credit instruments; authorizing the board to
78 contract with regulated surety companies; revising uses of
79 the Black Contractors Bond Trust Fund; eliminating the
80 Black Business Loan Guaranty Trust Fund and the Black
81 Contractors Bond Program Administrative and Loss Reserve
82 Fund; revising board exceptions to laws and rules related
83 to a guaranty company; requiring board adoption of
84 policies and procedures relating to board guarantee of

85 | loss and to required payment of premiums; authorizing
86 | contracting with a private entity to administer a black
87 | contractors bonding program; delineating board use of a
88 | surety bond company; delineating board requirements for
89 | implementing the black contractors bonding program;
90 | amending s. 288.714, F.S.; requiring recipients to provide
91 | quarterly and annual reports; specifying report
92 | requirements; requiring the board to provide a summary of
93 | such reports to the office; requiring the board to submit
94 | an annual program report to the Governor and Legislature;
95 | specifying report requirements; amending s. 288.9015,
96 | F.S.; requiring Enterprise Florida, Inc., to collaborate
97 | with the Florida Black Business Investment Board, Inc.,
98 | and the Office of Tourism, Trade, and Economic Development
99 | for certain purposes; requiring the Office of Program
100 | Policy Analysis and Government Accountability to submit a
101 | status report to the Governor and Legislature on the
102 | implementation of the Florida Black Business Investment
103 | Act by the Office of Tourism, Trade, and Economic
104 | Development, the Florida Black Business Investment Board,
105 | Inc., and program fund recipients; requiring the Office of
106 | Program Policy Analysis and Government Accountability to
107 | conduct a program review of the performance of the Office
108 | of Tourism, Trade, and Economic Development, the Florida
109 | Black Business Investment Board, Inc., and program fund
110 | recipients in meeting goals of the Florida Black Business
111 | Investment Act and to submit a program review report to
112 | the Governor and Legislature; amending ss. 17.11, 287.055,

113 288.90151, 625.3255, 657.042, and 658.67, F.S.; conforming
 114 references to changes made by the act; repealing s.
 115 288.7092, F.S., relating to return on investment from
 116 activities of the corporation; repealing s. 288.7095,
 117 F.S., relating to duties of black business investment
 118 corporations; repealing s. 288.71, F.S., relating to
 119 conditions for board action; repealing s. 288.7101, F.S.,
 120 relating to the state employee leasing program of the
 121 Department of Management Services for employees of the
 122 Florida Black Business Investment Board, Inc.; repealing
 123 s. 288.711, F.S., relating to the Florida Investment
 124 Incentive Trust Fund; repealing s. 288.713, F.S., relating
 125 to capital participation instruments; providing a
 126 legislative finding regarding use of state funds received
 127 by the board through fiscal year 2005-2006; providing an
 128 effective date.

129
 130 Be It Enacted by the Legislature of the State of Florida:
 131

132 Section 1. Paragraphs (g), (h), (i), and (j) of subsection
 133 (2) of section 14.2015, Florida Statutes, are redesignated as
 134 paragraphs (h), (i), (j), and (k), respectively, and a new
 135 paragraph (g) is added to that subsection to read:

136 14.2015 Office of Tourism, Trade, and Economic
 137 Development; creation; powers and duties.--

138 (2) The purpose of the Office of Tourism, Trade, and
 139 Economic Development is to assist the Governor in working with
 140 the Legislature, state agencies, business leaders, and economic

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141 development professionals to formulate and implement coherent
142 and consistent policies and strategies designed to provide
143 economic opportunities for all Floridians. To accomplish such
144 purposes, the Office of Tourism, Trade, and Economic Development
145 shall:

146 (g) Administer the Black Business Loan Program, the
147 purpose of which is to leverage state, local, and private funds
148 to provide loans and loan guarantees to black business
149 enterprises that cannot obtain capital through conventional
150 lending institutions but that otherwise could compete
151 successfully in the private sector.

152 Section 2. Section 288.702, Florida Statutes, is amended
153 to read:

154 288.702 Short title.--This section and sections 288.703-
155 288.706 ~~This act shall be known and~~ may be cited as the "Florida
156 Small and Minority Business Assistance Act ~~of 1985.~~"

157 Section 3. Paragraph (a) of subsection (3) of section
158 288.703, Florida Statutes, is amended to read:

159 288.703 Definitions.--As used in this act, the following
160 words and terms shall have the following meanings unless the
161 content shall indicate another meaning or intent:

162 (3) "Minority person" means a lawful, permanent resident
163 of Florida who is:

164 (a) An African American, a person having origins in any of
165 the black racial groups of the African Diaspora, regardless of
166 cultural origin.

167 Section 4. Subsection (11) of section 288.706, Florida
168 Statutes, is amended, and subsection (12) is added to that

169 section, to read:

170 288.706 Florida Minority Business Loan Mobilization
171 Program.--

172 (11) The Department of Management Services shall maintain
173 a listing of financial institutions willing to participate in
174 the Florida Minority Business Loan Mobilization Program, ~~which~~
175 ~~may include the Florida Black Business Investment Board, Inc.,~~
176 ~~and black business investment corporations.~~ This list of
177 financial institutions shall not be exclusive. A minority
178 business enterprise vendor who has a working relationship with a
179 financial institution is encouraged to request that the
180 financial institution apply to participate as a financial
181 institution for the program.

182 (12) The Department of Management Services shall
183 collaborate with the Florida Black Business Investment Board,
184 Inc., and the Office of Tourism, Trade, and Economic Development
185 to assist in the development and enhancement of black business
186 enterprises.

187 Section 5. Section 288.7065, Florida Statutes, is created
188 to read:

189 288.7065 Short title.--This section and sections 288.707-
190 288.714 may be cited as the "Florida Black Business Investment
191 Act."

192 Section 6. Section 288.707, Florida Statutes, is amended
193 to read:

194 (Substantial rewording of section. See
195 s. 288.707, F.S., for present text.)

196 288.707 Florida Black Business Investment Board, Inc.;

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197 findings; creation; membership; organization; meetings;
198 disclosure.--

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

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

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

209 (c) Creating partnerships between state and local
210 governments and private enterprises to aid in the development
211 and expansion of black business enterprises.

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

215 (2) (a) There is created a not-for-profit corporation to be
216 known as the "Florida Black Business Investment Board, Inc.,"
217 referred to in ss. 288.707-288.714 as the board, which shall be
218 registered, incorporated, organized, and operated in compliance
219 with chapter 617 and shall not be a unit or entity of state
220 government. The Legislature determines, however, that public
221 policy dictates that the board operate in the most open and
222 accessible manner consistent with its public purpose. Therefore,
223 the Legislature specifically declares that the board and its
224 advisory committees or similar groups created by the board,

225 including any subsidiaries, are subject to the provisions of
 226 chapter 119, relating to public records, and the provisions of
 227 chapter 286, relating to public meetings and records.

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

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

233 (a) Five members appointed by the Governor who shall serve
 234 terms of 4 years each, except that in making initial
 235 appointments, the Governor shall appoint three members to serve
 236 for terms of 2 years each and two members to serve for terms of
 237 3 years each.

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

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

242 (d) The vice chair of Enterprise Florida, Inc., or his or
 243 her designee.

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

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

253 (4) Members of the board must have experience in business,
254 including financial services, banking, or economic development.
255 At least one of the Governor's appointees must have experience
256 in venture capitalism.

257 (5) Any person appointed to fill a vacancy on the board
258 shall be appointed in a like manner and shall serve for only the
259 remainder of the unexpired term. Any member shall be eligible
260 for reappointment.

261 (6) The Governor shall appoint the chairperson, who shall
262 be a member of the board and shall serve at the pleasure of the
263 Governor. The board shall annually elect one of its members as
264 vice chairperson.

265 (7) The board shall meet at least four times annually upon
266 the call of the chair or vice chair or at the request of a
267 majority of the membership. A majority of the total number of
268 current members of the board shall constitute a quorum. The
269 board may take official action by a majority vote of the members
270 present at any meeting at which a quorum is present.

271 (8) Members of the board shall serve without compensation,
272 but members, the president of the board, and other board
273 employees may be reimbursed for all reasonable, necessary, and
274 actual expenses as determined and approved by the board pursuant
275 to s. 112.061.

276 (9) Each member of the board who is not otherwise required
277 to disclose financial interests pursuant to s. 8, Art. II of the
278 State Constitution or s. 112.3144 shall file a statement of
279 financial interests pursuant to s. 112.3145.

280 Section 7. Section 288.708, Florida Statutes, is amended

281 to read:

282 288.708 President; employees.--

283 (1) The president of the board ~~corporation~~, who may also
 284 be designated as secretary-treasurer, shall be appointed by the
 285 board and shall serve at the pleasure of the board. The board
 286 shall establish and adjust the compensation of the president.
 287 The president shall be the chief administrative and operational
 288 officer of the board ~~corporation~~ and shall direct and supervise
 289 administrative affairs and the general management of the board
 290 ~~corporation~~. The board may delegate to its president those
 291 powers and responsibilities it deems appropriate, except for
 292 appointment of the president. The president:

293 (a) May contract with or employ legal and technical
 294 experts and such other employees, permanent and temporary, as
 295 shall be authorized by the board;

296 (b) Shall attend meetings of the board; and

297 (c) Shall cause copies to be made of all minutes and other
 298 records and documents of the board and shall certify that such
 299 copies are true copies. All persons dealing with the ~~corporation~~
 300 ~~or~~ board may rely upon such certification.

301 (2) ~~The corporation and its officers and board members are~~
 302 ~~responsible for the prudent use of all public and private funds~~
 303 ~~and shall ensure that the use of such funds is in accordance~~
 304 ~~with all applicable laws, bylaws, or contractual requirements.~~

305 An employee of the board ~~corporation~~ may not receive
 306 compensation for employment that exceeds the salary paid to the
 307 Governor, unless the board ~~corporation~~ and the employee have
 308 executed a contract that prescribes specific and measurable

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309 performance outcomes for the employee, the satisfaction of which
 310 provides the basis for the award of incentive payments that
 311 increase the employee's total compensation to a level above the
 312 salary paid to the Governor. The Department of Management
 313 Services shall establish a lease-agreement program under which
 314 an employee of the board, as of June 30, 2002, retains his or
 315 her status as a state employee until the employee voluntarily or
 316 involuntarily terminates his or her status with the board.
 317 Status as a state employee shall include the right to
 318 participate in the Florida Retirement System.

319 Section 8. Section 288.709, Florida Statutes, is amended
 320 to read:

321 288.709 Powers of the Florida Black Business Investment
 322 Board, Inc.--The board shall have all the powers granted under
 323 chapter 617 and any powers necessary or convenient to carry out
 324 and effectuate the purposes and provisions of ss. 288.707-
 325 288.714, including, but not limited to, the power to:

326 (1) Adopt bylaws for the regulation of its affairs and the
 327 conduct of its business and adopt policies to implement the
 328 provisions of law conferring duties upon it. The ~~Such~~ bylaws
 329 shall provide that the board ~~corporation~~ is subject to the
 330 requirements of s. 24, Art. I of the State Constitution and
 331 chapter 119 and s. 286.011.

332 ~~(2) Adopt an official seal.~~

333 ~~(3) Sue and be sued in its own name.~~

334 ~~(4) Make and execute contracts and other instruments~~
 335 ~~necessary or convenient for the exercise of its power and~~
 336 ~~functions.~~

337 ~~(5) Acquire, hold, and dispose of personal property for~~
338 ~~its corporate purposes.~~

339 (2)~~(6)~~ Enter into agreements or other transactions with
340 any federal, state, or local agency or private entity.

341 ~~(7) Encourage financial institutions to participate in~~
342 ~~consortia for the purpose of investing in black business~~
343 ~~enterprises.~~

344 ~~(8) Ensure that funds available to the board for purposes~~
345 ~~set forth in ss. 288.707-288.714 are disbursed on a statewide~~
346 ~~basis and are not concentrated in one geographical area.~~

347 (3)~~(9)~~ Invest any funds held in reserves or sinking funds,
348 or any funds not required for immediate disbursement, in such
349 investments as may be authorized for trust funds under s.
350 215.47; however, such investments will be made on behalf of the
351 board by the Chief Financial Officer or by another trustee
352 appointed for that purpose.

353 (4)~~(10)~~ Appear in its own behalf before boards,
354 commissions, departments, or other agencies of municipal,
355 county, state, or Federal Government.

356 ~~(11) Procure insurance or require bond against any loss in~~
357 ~~connection with its property in such amounts and from such~~
358 ~~insurers as may be necessary or desirable.~~

359 (5)~~(12)~~ Apply for, accept, and disburse from any state or
360 nonstate source ~~Receive and accept from any federal, state, or~~
361 ~~local agency grants, loans, or advances for, or in aid of, the~~
362 ~~purposes of ss. 288.707-288.714, and to receive and accept~~
363 ~~contributions from any source of either money, property, labor,~~
364 ~~or other things of value, to be held, used, and applied for said~~

365 purposes.

366 ~~(13) Create, issue, and buy and sell stock, evidences of~~
 367 ~~indebtedness, and other capital participation instruments; to~~
 368 ~~hold such stock, evidences of indebtedness, and capital~~
 369 ~~participation instruments; and to underwrite the creation of a~~
 370 ~~capital market for these securities in a manner designed to~~
 371 ~~enhance development of capital ownership in the target group.~~

372 (6)~~(14)~~ Provide and pay for ~~such~~ advisory services and
 373 technical assistance as may be necessary or desirable to carry
 374 out the purposes of this act.

375 (7)~~(15)~~ Engage in special programs to enhance the
 376 development of black business enterprises as authorized by this
 377 act.

378 ~~(16) Promote black ownership of financial institutions in~~
 379 ~~Florida.~~

380 ~~(17) Take, hold, and improve property, including real~~
 381 ~~property.~~

382 ~~(18) Do any and all things necessary or convenient to~~
 383 ~~carry out the purposes of, and exercise the powers given and~~
 384 ~~granted in, ss. 288.707-288.714, and exercise any other powers,~~
 385 ~~rights, or responsibilities of a corporation.~~

386 (8)~~(19)~~ In addition to any indemnification available under
 387 chapter 617, indemnify, and purchase and maintain insurance on
 388 behalf of, directors, officers, and employees of the board
 389 ~~corporation~~ and its boards against any personal liability or
 390 accountability by reason of actions taken while acting within
 391 the scope of their authority.

392 ~~(9)-(20)~~ Provide in its bylaws that, upon the dissolution
 393 of the board corporation, all of its assets acquired through the
 394 use of state funds, after payment of all legal debts and
 395 liabilities, revert to the ~~this~~ state.

396 Section 9. Section 288.7091, Florida Statutes, is amended
 397 to read:

398 (Substantial rewording of section. See
 399 s. 288.7091, F.S., for present text.)

400 288.7091 Duties of the Florida Black Business Investment
 401 Board, Inc.--The board shall:

402 (1) Serve as an advisory board to the Office of Tourism,
 403 Trade, and Economic Development, through contract with the
 404 office, to assist the office with the implementation of ss.
 405 288.707-288.714.

406 (2) Aid the development and expansion of black business
 407 enterprises by leveraging state, local, and private funds to be
 408 held by the board for use according to the provisions of ss.
 409 288.707-288.714.

410 (3) Serve as the clearinghouse for information and sources
 411 of technical assistance that will enhance the development and
 412 expansion of black business enterprises and facilitate the
 413 provision of technical assistance in communities in which such
 414 services are otherwise underserved.

415 (4) Aggressively market the Black Business Loan Program
 416 and related services to black business enterprises through all
 417 appropriate media outlets, including media targeting the
 418 African-American community.

419 (5) Collaborate with Enterprise Florida, Inc., or its

420 affiliates to develop and expand black business enterprises.

421 (6) Collaborate with the Department of Transportation, the
 422 Department of Management Services, including the Florida
 423 Minority Business Loan Mobilization Program, Workforce Florida,
 424 Inc., and other state agencies and partners, the State
 425 University System, including the Florida Agricultural and
 426 Mechanical University's Institute of Urban Policy and Commerce,
 427 school boards, and local governments to create a network of
 428 information and to identify available resources to enhance the
 429 development and expansion of black business enterprises.

430 (7) Develop strategies to increase financial institution
 431 investment in black business enterprises.

432 (8) Provide a 5-year projection of the need for capital by
 433 black business enterprises. The board may contract with an
 434 independent entity to prepare the projection once every 5 years.

435 (9) Annually provide for a financial audit, as defined in
 436 s. 11.45, of the board's accounts and records by an independent
 437 certified public accountant. The audit shall include an
 438 explanation of all investments made by the board and an
 439 explanation of administrative costs. Within 6 months after the
 440 end of the fiscal year, the audit report shall be provided to
 441 the Governor, the President of the Senate, the Speaker of the
 442 House of Representatives, and the Auditor General.

443 Section 10. Section 288.7094, Florida Statutes, is created
 444 to read:

445 288.7094 Black business investment corporations.--

446 (1) The term "black business investment corporation" means
 447 a corporation that provides loans, loan guarantees, or

448 investments to black business enterprises under s. 288.7102.

449 (2) A black business investment corporation that meets the
 450 requirements of s. 288.7102(3) is eligible to participate in the
 451 Black Business Loan Program and shall receive priority
 452 consideration by the Office of Tourism, Trade, and Economic
 453 Development for participation in the program.

454 Section 11. Section 288.7102, Florida Statutes, is created
 455 to read:

456 288.7102 Black Business Loan Program.--The Black Business
 457 Loan Program is established in the Office of Tourism, Trade, and
 458 Economic Development. Under the program, the office shall
 459 annually certify eligible recipients and subsequently disburse
 460 funds appropriated by the Legislature, through such eligible
 461 recipients, to black business enterprises that cannot obtain
 462 capital through conventional lending institutions but that could
 463 otherwise compete successfully in the private sector.

464 (1) The office shall establish a uniform, open, and
 465 competitive application and annual certification process for
 466 eligible recipients who seek funds to provide loans, loan
 467 guarantees, or investments in black business enterprises
 468 pursuant to the Florida Black Business Investment Act. The board
 469 shall receive the applications and make recommendations for
 470 certification to the office.

471 (2) The office, in consultation with the board, shall
 472 develop an allocation policy to ensure that services provided
 473 under ss. 288.707-288.714 for the benefit of black business
 474 enterprises are disbursed equitably throughout the state. The
 475 board shall facilitate the formation of black business

476 investment corporations in communities that are not served by
477 such corporations.

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

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

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

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

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

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

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

498 (g) Agree to maintain the recipient's books and records
499 relating to funds received by the office according to generally
500 accepted accounting principles and in accordance with the
501 requirements of s. 215.97(7) and to make those books and records
502 available to the office for inspection upon reasonable notice.

503 (4) The board shall annually recommend to the office

504 certification of each eligible recipient, who must meet the
505 provisions of ss. 288.707-288.714, the terms of the contract
506 between the recipient and the office, and any other applicable
507 state or federal laws. An entity may not receive funds under ss.
508 288.707-288.714 unless the entity meets annual certification
509 requirements.

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

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

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

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

531 (a) Purchases of stock, preferred or common, voting or

532 nonvoting; however, no more than 40 percent of the funds may be
 533 used for direct investments in black business enterprises;

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

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

540 (8) It is the intent of the Legislature that if any one
 541 type of investment mechanism authorized in subsection (7) is
 542 held to be invalid, all other valid mechanisms remain available.

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

552 Section 12. Section 288.71025, Florida Statutes, is
 553 created to read:

554 288.71025 Prohibited acts; penalties.--

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

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

566 Section 13. Section 288.7103, Florida Statutes, is created
567 to read:

568 288.7103 Eligibility for loan, loan guarantee, or
569 investment.--A black business enterprise is not eligible to
570 receive a loan, loan guarantee, or investment from funds
571 disbursed pursuant to s. 288.7102 unless the black business
572 enterprise demonstrates that:

573 (1) The proposed loan, loan guarantee, or investment is
574 economically sound and will assist the black business enterprise
575 in entering the conventional lending market, increasing
576 opportunities for employment, and strengthening the economy of
577 the state.

578 (2) The black business enterprise will be able to compete
579 successfully in the private sector if the black business
580 enterprise obtains the requested financial assistance and has
581 obtained or will obtain appropriate and credible technical or
582 managerial support through an organization approved by the
583 corporation.

584 Section 14. Section 288.712, Florida Statutes, is amended
585 to read:

586 (Substantial rewording of section. See

587 s. 288.712, F.S., for present text.)
 588 288.712 Guarantor funds.--
 589 (1) The board is authorized to establish, with or without
 590 public or private partners, guarantor funds to assist qualified
 591 black business enterprises in obtaining surety bonds and other
 592 credit instruments when required.
 593 (2) The board may contract with a regulated surety company
 594 to conduct a surety bond program for black business enterprises.
 595 (3) For purposes of this section, the board may utilize
 596 the Black Contractors Bond Trust Fund, consisting of moneys
 597 deposited or credited to the Black Contractors Bond Trust Fund
 598 pursuant to any appropriation made by law; any grants, gifts,
 599 and contributions received pursuant to ss. 288.707-288.714; all
 600 moneys recovered following defaults; all premiums charged and
 601 collected in accordance with this section and any interest
 602 earned; and any other moneys obtained by the board for this
 603 purpose. The fund shall be administered by the board in trust
 604 for the purposes of this section and shall at no time be part of
 605 general public funds under the following procedures:
 606 (a) Any claims against the state arising from defaults
 607 shall be payable from the Black Contractors Bond Trust Fund.
 608 Nothing in this section grants or pledges to any obligee or
 609 other person any state moneys other than the moneys in the Black
 610 Contractors Bond Trust Fund.
 611 (b) The board may guarantee bonds executed by sureties for
 612 black business enterprises under this section as principals on
 613 contracts with the state, any political subdivision or
 614 instrumentality, or any person as the obligee. The board, as

615 guarantor, may exercise all the rights and powers of a company
 616 authorized by the Department of Financial Services to guarantee
 617 bonds under chapter 624, but otherwise is not subject to any
 618 laws related to a guaranty company under chapter 624 or to any
 619 rules of the department.

620 (c) The board shall adopt policies and procedures for the
 621 application for bond guarantees and for the review and approval
 622 of applications for bond guarantees submitted by sureties that
 623 execute bonds eligible for guarantees under this section.

624 (d) In accordance with the policies and procedures adopted
 625 pursuant to this section, the board may guarantee up to 90
 626 percent of the loss incurred and paid by sureties on bonds
 627 guaranteed under this section.

628 (e) The policies and procedures of the board shall require
 629 the black business enterprise to pay a premium in advance for
 630 the bond to be established by the board. All premiums paid by
 631 the black business enterprise shall be paid into the Black
 632 Contractors Bond Trust Fund.

633 (f) The penal sum amounts of all outstanding bonds issued
 634 by the board shall not exceed the amount of moneys in the Black
 635 Contractors Bond Trust Fund.

636 (g) Any funds to the credit of the Black Contractors Bond
 637 Trust Fund in excess of the amount necessary to fund the
 638 appropriation authority for the fund shall be held as a loss
 639 reserve to pay claims arising from defaults on surety bonds
 640 guaranteed in accordance with this section.

641 (4) Nothing in this section shall be construed to prohibit
 642 or restrict the board from entering into a joint venture or

643 other contractual agreement with a private insurer or to invest
644 in a private entity to handle all or part of a black contractors
645 bonding program for black business enterprises. The board is
646 authorized and encouraged to contract with a regulated surety
647 company to conduct a surety bond program for black business
648 enterprises. Moneys from the Black Contractors Bond Trust Fund
649 may be used for these purposes. The board may approve one
650 application per fiscal year from each surety company to support
651 one fiscal year of that company's activities under this section.
652 A surety bond company that applies for a bond guarantee under
653 this section, regardless of whether the guarantee is approved,
654 is not restricted from also applying for individual bond
655 guarantees under this section.

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

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

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

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

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

671 the program.

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

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

680 Section 15. Section 288.714, Florida Statutes, is amended
681 to read:

682 (Substantial rewording of section. See
683 s. 288.714, F.S., for present text.)

684 288.714 Quarterly and annual reports.--

685 (1) Each recipient of state funds under s. 288.7102 shall
686 provide to the board a quarterly report within 15 days after the
687 end of each calendar quarter that includes a detailed summary of
688 the recipient's performance of the duties imposed by s.
689 288.7102, including, but not limited to:

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

694 (b) Loan performance information.

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

697 (d) The amount and nature of technical assistance provided
698 to black business enterprises, including technical assistance

699 services provided in areas in which such services are otherwise
 700 unavailable.

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

704 (f) A summary of all services provided to non-black
 705 business enterprises, including the dollar value and nature of
 706 such services and the names and identification of the types of
 707 businesses served.

708 (g) Any other information as required by policies adopted
 709 by the board.

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

714 (3) By May 1 of each year, the board shall provide to the
 715 Governor, the President of the Senate, and the Speaker of the
 716 House of Representatives a detailed report of the performance of
 717 the Black Business Loan Program, including:

718 (a) A cumulative summary of quarterly report data required
 719 by subsection (1).

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

723 (c) A summary of the board's performance of its duties
 724 under ss. 288.707-288.712.

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

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

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

732 Section 16. Subsection (4) of section 288.9015, Florida
 733 Statutes, is amended to read:

734 288.9015 Enterprise Florida, Inc.; purpose; duties.--

735 (4) Enterprise Florida, Inc., shall incorporate the needs
 736 of small and minority businesses into the economic-development,
 737 international-trade and reverse-investment, and workforce-
 738 development responsibilities assigned to the organization by
 739 this section. ~~Where practicable and consistent with the~~
 740 ~~expertise of the Black Business Investment Board, Inc.,~~
 741 Enterprise Florida, Inc., shall collaborate ~~contract~~ with the
 742 Florida Black Business Investment Board, Inc., and the Office of
 743 Tourism, Trade, and Economic Development ~~corporation~~ for the
 744 delivery of services in fulfillment of the responsibilities of
 745 Enterprise Florida, Inc., relating to small and minority
 746 businesses.

747 Section 17. The Office of Program Policy Analysis and
 748 Government Accountability shall prepare a status report on the
 749 initial implementation of the Florida Black Business Investment
 750 Act by the Office of Tourism, Trade, and Economic Development,
 751 the Florida Black Business Investment Board, Inc., and the
 752 recipients of funds disbursed pursuant to s. 288.7102, Florida
 753 Statutes, and shall provide the report to the Governor, the
 754 President of the Senate, and the Speaker of the House of

755 Representatives by December 1, 2008. The office shall conduct a
 756 program review of the performance of the Office of Tourism,
 757 Trade, and Economic Development, the Florida Black Business
 758 Investment Board, Inc., and the recipients of funds disbursed
 759 pursuant to s. 288.7102, Florida Statutes, in meeting the goals
 760 of the Florida Black Business Investment Act and shall provide a
 761 report to the Governor, the President of the Senate, and the
 762 Speaker of the House of Representatives by December 1, 2009.

763 Section 18. Subsection (2) of section 17.11, Florida
 764 Statutes, is amended to read:

765 17.11 To report disbursements made.--

766 (2) The Chief Financial Officer shall also cause to have
 767 reported from the Florida Accounting Information Resource
 768 Subsystem no less than quarterly the disbursements which
 769 agencies made to small businesses, as defined in the Florida
 770 Small and Minority Business Assistance Act ~~of 1985~~; to certified
 771 minority business enterprises in the aggregate; and to certified
 772 minority business enterprises broken down into categories of
 773 minority persons, as well as gender and nationality subgroups.
 774 This information shall be made available to the agencies, the
 775 Office of Supplier Diversity, the Governor, the President of the
 776 Senate, and the Speaker of the House of Representatives. Each
 777 agency shall be responsible for the accuracy of information
 778 entered into the Florida Accounting Information Resource
 779 Subsystem for use in this reporting.

780 Section 19. Paragraph (d) of subsection (3) of section
 781 287.055, Florida Statutes, is amended to read:

782 287.055 Acquisition of professional architectural,

783 engineering, landscape architectural, or surveying and mapping
 784 services; definitions; procedures; contingent fees prohibited;
 785 penalties.--

786 (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.--

787 (d) Each agency shall evaluate professional services,
 788 including capabilities, adequacy of personnel, past record,
 789 experience, whether the firm is a certified minority business
 790 enterprise as defined by the Florida Small and Minority Business
 791 Assistance Act of 1985, and other factors determined by the
 792 agency to be applicable to its particular requirements. When
 793 securing professional services, an agency must endeavor to meet
 794 the minority business enterprise procurement goals under s.
 795 287.09451.

796 Section 20. Subsection (6) of section 288.90151, Florida
 797 Statutes, is amended to read:

798 288.90151 Return on investment from activities of
 799 Enterprise Florida, Inc.--

800 (6) Enterprise Florida, Inc., shall fully comply with the
 801 performance measures, standards, and sanctions in its contracts
 802 with the Office of Tourism, Trade, and Economic Development
 803 under s. 14.2015(2) (i) ~~(h)~~ and (7). The Office of Tourism, Trade,
 804 and Economic Development shall ensure, to the maximum extent
 805 possible, that the contract performance measures are consistent
 806 with performance measures that the office is required to develop
 807 and track under performance-based program budgeting.

808 Section 21. Section 625.3255, Florida Statutes, is amended
 809 to read:

810 625.3255 Capital participation instrument.--An insurer may
 811 invest in any capital participation instrument or evidence of
 812 indebtedness issued by the Florida Black Business Investment
 813 Board pursuant to the Florida Small and Minority Business
 814 Assistance Act ~~of 1985~~.

815 Section 22. Paragraph (b) of subsection (4) of section
 816 657.042, Florida Statutes, is amended to read:

817 657.042 Investment powers and limitations.--A credit union
 818 may invest its funds subject to the following definitions,
 819 restrictions, and limitations:

820 (4) INVESTMENT SUBJECT TO LIMITATION OF ONE PERCENT OF
 821 CAPITAL OF THE CREDIT UNION.--Up to 1 percent of the capital of
 822 the credit union may be invested in any of the following:

823 (b) Any capital participation instrument or evidence of
 824 indebtedness issued by the Florida Black Business Investment
 825 Board pursuant to the Florida Small and Minority Business
 826 Assistance Act ~~of 1985~~.

827 Section 23. Paragraph (g) of subsection (4) of section
 828 658.67, Florida Statutes, is amended to read:

829 658.67 Investment powers and limitations.--A bank may
 830 invest its funds, and a trust company may invest its corporate
 831 funds, subject to the following definitions, restrictions, and
 832 limitations:

833 (4) INVESTMENTS SUBJECT TO LIMITATION OF TEN PERCENT OR
 834 LESS OF CAPITAL ACCOUNTS.--

835 (g) Up to 10 percent of the capital accounts of a bank or
 836 trust company may be invested in any capital participation
 837 instrument or evidence of indebtedness issued by the Florida

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2007

838 Black Business Investment Board pursuant to the Florida Small
839 and Minority Business Assistance Act ~~of 1985~~.

840 Section 24. Sections 288.7092, 288.7095, 288.71, 288.7101,
841 288.711, and 288.713, Florida Statutes, are repealed.

842 Section 25. The Legislature finds that the public interest
843 of the state has been served with respect to the use of any
844 state funds received by the Florida Black Business Investment
845 Board, Inc., and any black business investment corporation prior
846 to and through the 2005-2006 fiscal year.

847 Section 26. This act shall take effect July 1, 2007.