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1 A bill to be entitled
 2 An act relating to the Minority Business Certification
 3 Task Force; amending s. 287.0943, F.S.; deleting
 4 provisions establishing the Minority Business
 5 Certification Task Force; renumbering subsections,
 6 correcting references to subsections, and deleting
 7 references to the Minority Business Certification Task
 8 Force in the section; amending s. 287.09431, F.S.;
 9 correcting cross-references; amending s. 288.073, F.S.;
 10 removing a cross-reference; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsections (2), (3), and (12) of section
 15 287.0943, Florida Statutes, are amended, and present subsections
 16 (4) through (11) and (13) through (15) are renumbered as
 17 subsections (3) through (10) and (12) through (14),
 18 respectively, to read:

19 287.0943 Certification of minority business enterprises.—

20 ~~(2)(a) The office is hereby directed to convene a~~
 21 ~~"Minority Business Certification Task Force." The task force~~
 22 ~~shall meet as often as necessary, but no less frequently than~~
 23 ~~annually.~~

24 ~~(b) The task force shall be regionally balanced and~~
 25 ~~comprised of officials representing the department, counties,~~
 26 ~~municipalities, school boards, special districts, and other~~
 27 ~~political subdivisions of the state who administer programs to~~
 28 ~~assist minority businesses in procurement or development in~~

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29 ~~government sponsored programs. The following organizations may~~
 30 ~~appoint two members each of the task force who fit the~~
 31 ~~description above:~~

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

40
 41 ~~In addition, the Office of Supplier Diversity shall appoint~~
 42 ~~seven members consisting of three representatives of minority~~
 43 ~~business enterprises, one of whom should be a woman business~~
 44 ~~owner, two officials of the office, and two at-large members to~~
 45 ~~ensure balance. The chairperson of the Legislative Committee on~~
 46 ~~Intergovernmental Relations or a designee shall be a member of~~
 47 ~~the task force, ex officio. A quorum shall consist of one third~~
 48 ~~of the current members, and the task force may take action by~~
 49 ~~majority vote. Any vacancy may only be filled by the~~
 50 ~~organization or agency originally authorized to appoint the~~
 51 ~~position.~~

52 ~~(c) The purpose of the task force will be to propose~~
 53 ~~uniform criteria and procedures by which participating entities~~
 54 ~~and organizations can qualify businesses to participate in~~
 55 ~~procurement or contracting programs as certified minority~~
 56 ~~business enterprises in accordance with the certification~~

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57 ~~criteria established by law.~~

58 ~~(d) A final list of the criteria and procedures proposed~~
 59 ~~by the task force shall be considered by the secretary. The task~~
 60 ~~force may seek technical assistance from qualified providers of~~
 61 ~~technical, business, and managerial expertise to ensure the~~
 62 ~~reliability of the certification criteria developed.~~

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

65 ~~1. Link ownership by a minority person, as defined in s.~~
 66 ~~288.703(3), or as dictated by the legal obligations of a~~
 67 ~~certifying organization, to day-to-day control and financial~~
 68 ~~risk by the qualifying minority owner, and to demonstrated~~
 69 ~~expertise or licensure of a minority owner in any trade or~~
 70 ~~profession that the minority business enterprise will offer to~~
 71 ~~the state when certified. Businesses must comply with all state~~
 72 ~~licensing requirements prior to becoming certified as a minority~~
 73 ~~business enterprise.~~

74 ~~2. If present ownership was obtained by transfer, require~~
 75 ~~the minority person on whom eligibility is based to have owned~~
 76 ~~at least 51 percent of the applicant firm for a minimum of 2~~
 77 ~~years, when any previous majority ownership interest in the firm~~
 78 ~~was by a nonminority who is or was a relative, former employer,~~
 79 ~~or current employer of the minority person on whom eligibility~~
 80 ~~is based. This requirement shall not apply to minority persons~~
 81 ~~who are otherwise eligible who take a 51 percent or greater~~
 82 ~~interest in a firm that requires professional licensure to~~
 83 ~~operate and who will be the qualifying licenseholder for the~~
 84 ~~firm when certified. A transfer made within a related immediate~~

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85 ~~family group from a nonminority person to a minority person in~~
 86 ~~order to establish ownership by a minority person shall be~~
 87 ~~deemed to have been made solely for purposes of satisfying~~
 88 ~~certification criteria and shall render such ownership invalid~~
 89 ~~for purposes of qualifying for such certification if the~~
 90 ~~combined total net asset value of all members of such family~~
 91 ~~group exceeds \$1 million. For purposes of this subparagraph, the~~
 92 ~~term "related immediate family group" means one or more children~~
 93 ~~under 16 years of age and a parent of such children or the~~
 94 ~~spouse of such parent residing in the same house or living unit.~~

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

111 ~~(f) When a business receives payments or awards exceeding~~
 112 ~~\$100,000 in one fiscal year, a review of its certification~~

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113 ~~status or an audit will be conducted within 2 years. In~~
 114 ~~addition, random reviews or audits will be conducted as deemed~~
 115 ~~appropriate by the Office of Supplier Diversity.~~

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

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

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

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141 ~~certified in accordance with the statewide and interlocal~~
 142 ~~agreement of s. 287.09431, and that business shall also be~~
 143 ~~deemed a "certified minority business enterprise" as defined in~~
 144 ~~s. 288.703. However, any governmental jurisdiction or~~
 145 ~~organization that administers a minority business purchasing~~
 146 ~~program may reserve the right to establish further certification~~
 147 ~~procedures necessary to comply with federal law.~~

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

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

158 (2)~~(3)~~ (a) The office shall review and evaluate the
 159 certification programs and procedures of all prospective
 160 executors of the statewide and interlocal agreement to determine
 161 if their programs exhibit the capacity to meet the standards of
 162 the agreement.

163 (b) The evaluations shall, at a minimum, consider: the
 164 certifying entity's capacity to conduct investigations of
 165 applicants seeking certification under the designated criteria;
 166 the ability of the certifying entity to collect the requisite
 167 data and to establish adequate protocol to store and exchange
 168 said information among the executors of the agreement and to

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169 provide adequate security to prevent unauthorized access to
 170 information gathered during the certification process; and the
 171 degree to which any legal obligations or supplemental
 172 requirements unique to the certifying entity exceed the capacity
 173 of that entity to conduct certifications.

174 (c) Any firms certified by organizations or governmental
 175 entities determined not to meet the state certification criteria
 176 shall not be eligible to participate as certified minority
 177 business enterprises in the minority business assistance
 178 programs of the state. For a period of 1 year from the effective
 179 date of this legislation, the executor of the statewide and
 180 interlocal agreement may elect to accept only minority business
 181 enterprises certified pursuant to criteria in place at the time
 182 the agreement was signed. After the 1-year period, either party
 183 may elect to withdraw from the agreement without further notice.

184 (d) Any organizations or governmental entities determined
 185 by the office not to meet the standards of the agreement shall
 186 not be eligible to execute the statewide and interlocal
 187 agreement as a participating organization until approved by the
 188 office.

189 (e) Any participating program receiving three or more
 190 challenges to its certification decisions pursuant to subsection
 191 (3)~~(4)~~ from other organizations that are executors to the
 192 statewide and interlocal agreement, shall be subject to a review
 193 by the office, as provided in paragraphs (a) and (b), of the
 194 organization's capacity to perform under such agreement and in
 195 accordance with the core criteria established by the task force.
 196 The office shall submit a report to the secretary of the

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197 Department of Management Services regarding the results of the
198 review.

199 (f) The office shall maintain a directory of all executors
200 of the statewide and interlocal agreement. The directory should
201 be communicated to the general public.

202 (11)~~(12)~~ Any executor of the statewide and interlocal
203 agreement may revoke the certification or recertification of a
204 firm doing business as a certified minority business enterprise
205 if the minority business enterprise does not meet the
206 requirements of the jurisdiction or certifying entity that
207 certified or recertified the firm as a certified minority
208 business enterprise, ~~or the requirements of subsection (2),~~ s.
209 288.703, and any rule of the office or the Department of
210 Management Services or if the business acquired certification or
211 recertification by means of falsely representing any entity as a
212 minority business enterprise for purposes of qualifying for
213 certification or recertification.

214 Section 2. Section 287.09431, Florida Statutes, is amended
215 to read:

216 287.09431 Statewide and interlocal agreement on
217 certification of business concerns for the status of minority
218 business enterprise.—The statewide and interlocal agreement on
219 certification of business concerns for the status of minority
220 business enterprise is hereby enacted and entered into with all
221 jurisdictions or organizations legally joining therein. If,
222 within 2 years from the date that the certification core
223 criteria are approved by the Department of Labor and Employment
224 Security, the agreement included herein is not executed by a

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225 majority of county and municipal governing bodies that
 226 administer a minority business assistance program on the
 227 effective date of this act, then the Legislature shall review
 228 this agreement. It is the intent of the Legislature that if the
 229 agreement is not executed by a majority of the requisite
 230 governing bodies, then a statewide uniform certification process
 231 should be adopted, and that said agreement should be repealed
 232 and replaced by a mandatory state government certification
 233 process.

234 ARTICLE I

235 PURPOSE, FINDINGS, AND POLICY.—

236 (1) The parties to this agreement, desiring by common
 237 action to establish a uniform certification process in order to
 238 reduce the multiplicity of applications by business concerns to
 239 state and local governmental programs for minority business
 240 assistance, declare that it is the policy of each of them, on
 241 the basis of cooperation with one another, to remedy social and
 242 economic disadvantage suffered by certain groups, resulting in
 243 their being historically underutilized in ownership and control
 244 of commercial enterprises. Thus, the parties seek to address
 245 this history by increasing the participation of the identified
 246 groups in opportunities afforded by government procurement.

247 (2) The parties find that the State of Florida presently
 248 certifies firms for participation in the minority business
 249 assistance programs of the state. The parties find further that
 250 some counties, municipalities, school boards, special districts,
 251 and other divisions of local government require a separate, yet

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252 similar, and in most cases redundant certification in order for
 253 businesses to participate in the programs sponsored by each
 254 government entity.

255 (3) The parties find further that this redundant
 256 certification has proven to be unduly burdensome to the
 257 minority-owned firms intended to benefit from the underlying
 258 purchasing incentives.

259 (4) The parties agree that:

260 (a) They will facilitate integrity, stability, and
 261 cooperation in the statewide and interlocal certification
 262 process, and in other elements of programs established to assist
 263 minority-owned businesses.

264 (b) They shall cooperate with agencies, organizations, and
 265 associations interested in certification and other elements of
 266 minority business assistance.

267 (c) It is the purpose of this agreement to provide for a
 268 uniform process whereby the status of a business concern may be
 269 determined in a singular review of the business information for
 270 these purposes, in order to eliminate any undue expense, delay,
 271 or confusion to the minority-owned businesses in seeking to
 272 participate in the minority business assistance programs of
 273 state and local jurisdictions.

274 ARTICLE II

275 DEFINITIONS.—As used in this agreement and contracts made
 276 pursuant to it, unless the context clearly requires otherwise:

277 (1) "Awarding organization" means any political
 278 subdivision or organization authorized by law, ordinance, or

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306 enterprise.

307 (2) A participating organization shall certify a business
 308 concern that meets the definition of minority business
 309 enterprise in this agreement, in accordance with the duly
 310 adopted eligibility criteria.

311 (3) All participating organizations shall issue notice of
 312 certification decisions granting or denying certification to all
 313 other participating organizations within 14 days of the
 314 decision. Such notice may be made through electronic media.

315 (4) No certification will be granted without an onsite
 316 visit to verify ownership and control of the prospective
 317 minority business enterprise, unless verification can be
 318 accomplished by other methods of adequate verification or
 319 assessment of ownership and control.

320 (5) The certification of a minority business enterprise
 321 pursuant to the terms of this agreement shall not be suspended,
 322 revoked, or otherwise impaired except on any grounds which would
 323 be sufficient for revocation or suspension of a certification in
 324 the jurisdiction of the participating organization.

325 (6) The certification determination of a party may be
 326 challenged by any other participating organization by the
 327 issuance of a timely written notice by the challenging
 328 organization to the certifying organization's determination
 329 within 10 days of receiving notice of the certification
 330 decision, stating the grounds therefor.

331 (7) The sole accepted grounds for challenge shall be the
 332 failure of the certifying organization to adhere to the adopted
 333 criteria or the certifying organization's rules or procedures,

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334 or the perpetuation of a misrepresentation or fraud by the firm.

335 (8) The certifying organization shall reexamine its
 336 certification determination and submit written notice to the
 337 applicant and the challenging organization of its findings
 338 within 30 days after the receipt of the notice of challenge.

339 (9) If the certification determination is affirmed, the
 340 challenging agency may subsequently submit timely written notice
 341 to the firm of its intent to revoke certification of the firm.

342 ARTICLE IV

343 APPROVED AND ACCEPTED PROGRAMS.—Nothing in this agreement
 344 shall be construed to repeal or otherwise modify any ordinance,
 345 law, or regulation of a party relating to the existing minority
 346 business assistance provisions and procedures by which minority
 347 business enterprises participate therein.

348 ARTICLE V

349 TERM.—The term of the agreement shall be 5 years, after
 350 which it may be reexecuted by the parties.

351 ARTICLE VI

352 AGREEMENT EVALUATION.—The designated state and local
 353 officials may meet from time to time as a group to evaluate
 354 progress under the agreement, to formulate recommendations for
 355 changes, or to propose a new agreement.

356 ARTICLE VII

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357 OTHER ARRANGEMENTS.—Nothing in this agreement shall be
 358 construed to prevent or inhibit other arrangements or practices
 359 of any party in order to comply with federal law.

360 ARTICLE VIII

361 EFFECT AND WITHDRAWAL.—

362 (1) This agreement shall become effective when properly
 363 executed by a legal representative of the participating
 364 organization, when enacted into the law of the state and after
 365 an ordinance or other legislation is enacted into law by the
 366 governing body of each participating organization. Thereafter it
 367 shall become effective as to any participating organization upon
 368 the enactment of this agreement by the governing body of that
 369 organization.

370 (2) Any party may withdraw from this agreement by enacting
 371 legislation repealing the same, but no such withdrawal shall
 372 take effect until one year after the governing body of the
 373 withdrawing party has given notice in writing of the withdrawal
 374 to the other parties.

375 (3) No withdrawal shall relieve the withdrawing party of
 376 any obligations imposed upon it by law.

377 ARTICLE IX

378 FINANCIAL RESPONSIBILITY.—

379 (1) A participating organization shall not be financially
 380 responsible or liable for the obligations of any other
 381 participating organization related to this agreement.

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382 (2) The provisions of this agreement shall constitute
 383 neither a waiver of any governmental immunity under Florida law
 384 nor a waiver of any defenses of the parties under Florida law.
 385 The provisions of this agreement are solely for the benefit of
 386 its executors and not intended to create or grant any rights,
 387 contractual or otherwise, to any person or entity.

388 ARTICLE X

389 VENUE AND GOVERNING LAW.—The obligations of the parties to
 390 this agreement are performable only within the county where the
 391 participating organization is located, and statewide for the
 392 Office of Supplier Diversity, and venue for any legal action in
 393 connection with this agreement shall lie, for any participating
 394 organization except the Office of Supplier Diversity,
 395 exclusively in the county where the participating organization
 396 is located. This agreement shall be governed by and construed in
 397 accordance with the laws and court decisions of the state.

398 ARTICLE XI

399 CONSTRUCTION AND SEVERABILITY.—This agreement shall be
 400 liberally construed so as to effectuate the purposes thereof.
 401 The provisions of this agreement shall be severable and if any
 402 phrase, clause, sentence, or provision of this agreement is
 403 declared to be contrary to the State Constitution or the United
 404 States Constitution, or the application thereof to any
 405 government, agency, person, or circumstance is held invalid, the
 406 validity of the remainder of this agreement and the

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407 applicability thereof to any government, agency, person, or
 408 circumstance shall not be affected thereby. If this agreement
 409 shall be held contrary to the State Constitution, the agreement
 410 shall remain in full force and effect as to all severable
 411 matters.

412 Section 3. Subsection (4) of section 288.703, Florida
 413 Statutes, is amended to read:

414 288.703 Definitions.—As used in this act, the following
 415 words and terms shall have the following meanings unless the
 416 content shall indicate another meaning or intent:

417 (4) "Certified minority business enterprise" means a
 418 business which has been certified by the certifying organization
 419 or jurisdiction in accordance with s. 287.0943(1) ~~and (2)~~.

420 Section 4. This act shall take effect July 1, 2010.