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Committee on Commerce and Consumer Services

Senator James E. "Jim" King, Jr., Chair

REVIEW OF THE FLORIDA BLACK BUSINESS INVESTMENT BOARD AND THE BLACK BUSINESS INVESTMENT CORPORATIONS

SUMMARY

The FBBIB/BBIC capitalization program was created by the Legislature to assist qualified black-owned businesses in obtaining capital that may not be available to them in the private market. For a number of reasons, the BBICs have not received annually appropriated capitalization program funds. In addition, contractual certification for past capitalization program funds and statutory certification for future participation in the program is at an impasse.

This report offers recommendations for resolving this impasse and offers options for restructuring the program for the Legislature to consider.

BACKGROUND

In the early 1980s, the Florida Legislature enacted a number of laws to encourage state agencies to contract with minority-owned businesses for goods and services. In 1985, the Florida Black Business Investment Board (FBBIB) was created to develop black-owned enterprises, providing both the capital and management support.

In addition to establishing the FBBIB, the Legislature appropriated \$4,950,000 through a capitalization program to invest in regional Black Business Investment Corporations (BBIBs), which is defined as not-for-profit subsidiaries of financial institutions or a consortium of financial institutions investing in or lending to black business enterprises.

The objective of this report is to review the responsibilities of the FBBIB, the BBICs, and the Office of Tourism, Trade and Economic Development (OTTED) in implementing the

FBBIB/BBIC capitalization program; to summarize legislative changes to the program; to identify relevant findings from the 2003 audit of the FBBIC / BBIC by the Chief Inspector General in the Executive Office of the Governor; to review the recent BBIC recertification efforts; and to offer recommendations to resolve the recertification impasse and restructure the program.

METHODOLOGY

To accomplish these objectives, staff of the Senate Committees on Commerce and Consumer Services and Transportation and Economic Development Appropriations, and staff of the Legislative Auditing Committee reviewed FBBIB and BBICs program documents, the 2003 audit of the FBBIB and BBICs by the Governor's Chief Inspector General, and documents relating to recent recertification efforts. Staff also interviewed staff of OTTED, FBBIB and BBICs. Reference material used in this report may be reviewed in the long report.

FINDINGS

Florida Black Business Investment Board

Initially created within the Florida Department of Commerce, the FBBIB now contracts with OTTED to promote the creation and growth of black business enterprises. The board consists of twelve members.

The 1985 act granted the FBBIB broad powers, to include:

- Encourage financial institutions to participate in consortiums for the purpose of investing in black business enterprises;
- Ensure that capitalization funds available to the board are disbursed on a statewide basis and are not concentrated in one geographical area;

- Provide and pay for such advisory services and technical assistance as may be necessary or desirable to carry out the purposes of this act;
- Engage in special programs to enhance the development of black business enterprises as authorized by this act; and
- Do any and all things necessary or convenient to carry out the purposes of, and exercise the powers given and granted to the board and exercise any other powers, rights, or responsibilities of a corporation.

In addition, the 1985 act authorized the FBBIB to invest, under conditions made by law or contract, in black business investment corporations which agree to conduct programs of assisting the development of black business enterprises. All investments must be used to develop black business enterprises.

The FBBIB is authorized to appoint a president to be the chief administrative and operational officer of the board to direct and supervise the administrative affairs and general management of the FBBIB. The board may delegate appropriate powers and responsibilities except for appointment of the president.

Over the past twenty years, the mission of the FBBIB has evolved. Initially, the FBBIB served “as a catalyst for the development of competitive black-owned businesses in Florida.” Today, the FBBIB has expanded its services to include other minorities in an attempt to broaden its partners. The board also retains its historical commitment to serve the needs of the black-business community.

The capitalization program is the legislative mechanism for appropriating funds to be invested in the regional BBICs and the FBBSC, which is the statewide BBIC. Capitalization program funds are appropriated to the FBBIB through OTTED. Unless otherwise specified in the General Appropriations Act proviso, the FBBIB has the discretion to allocate the funds to the regional BBICs, under the conditions specified by contract.

As it relates to the capitalization program, the duties of the FBBIB include:

- Establish certification criteria for BBICs and certify at least once every 5 years, each of the BBICs. Certification criteria must include administrative capacity, fiduciary controls,

and, in the case of existing black business investment corporations, solvency and soundness of prior loan decisions;

- Ensure that any appropriations by the Legislature to the FBBIB on behalf of the BBICs are provided in the manner and amount prescribed by the Legislature;
- Include in the criteria for loan decisions, occupational forecasting results which target high growth jobs;
- Facilitate the formation of BBICs in underserved communities and establish in these areas memoranda of understanding with local financial institutions that will provide loan guarantees for loans to black business enterprises;
- Annually, prepare a report detailing the performance of each BBIC, addressing the number of jobs created and/or retained, success and failure rates among loan recipients, and the amount of funds leveraged from other sources; and
- Annually, provide for a financial audit of its accounts and records by an independent certified public accountant.

FBBIB certification criteria, application and allocation process for capitalization program funds, and minimum contract specifications with the BBICs are set forth in ch. 8K-2, F.A.C., which, subsequent to the dissolution of the Department of Commerce, has been adopted as policy by the FBBIB.

Since 1985, the Legislature has appropriated \$9.2 million in operating funds to FBBIB. Over this same period, \$18.6 million has been appropriated through the capitalization program, \$9.15 million of which has been distributed, through early 2002, to regional BBICs.

The FBBIB has additional obligations through an annual contract with OTTED. The FBBIB must provide an annual report and a Quarterly Performance Measure Report that contains details of the performance of each BBIC and all other performance criteria required by the contract. These measures include:

- Number of jobs created or retained by regional and statewide BBICs;
- Dollar amount and procurement opportunities generated for black businesses;
- Matching dollars leveraged by the FBBIB; and

- Number of businesses provided assistance through the statewide BBIC.

Florida Black Business Investment Corporations

Since 1985, the eight regional BBICs have worked independently and in concert with the FBBIB to advance business development among black Floridians. The BBICs are not-for-profit subsidiaries of financial institutions or consortia of financial institutions investing in or lending to black business enterprises. BBICs provide loans, loan guarantees, and technical assistance to black business enterprises. They are each governed by a board of directors consisting of representatives of participating financial institutions, local governments, and other members of the community.

Pursuant to contracts, the FBBIB has a non-voting investment interest in all of the regional BBICs. This interest was established, and is periodically expanded, through the purchase of membership certificates, with state appropriated capitalization program funds. This purchase is conditioned upon matching investments made by local financial institutions, and the provision of technical assistance and loans or loan guarantees to local black businesses in the counties served by the BBICs, as provided by contract.

BBICs are accountable to their respective boards and to the FBBIB by contract. In addition, four BBICs are certified as Community Development Financial Institutions (CDFIs) by the US Department of the Treasury.

State capitalization funding to the BBICs is provided through contracts with the FBBIB. These contracts require the BBICs to:

- Repay to the FBBIB a pro-rata share of all capital, not to exceed the aggregate contribution, upon dissolution of the corporation;
- Maintain books, records, documents and other evidence according to Generally Accepted Accounting Principles (GAAP);
- Make available for inspection by the FBBIB all records and accounts of the BBICs relating in any manner to the FBBIB's contribution or the contract;
- Establish procedures and maintain records, documents, and other evidence to demonstrate that the businesses assisted meet

the requirements of law for financial assistance from the corporation;

- Report to the FBBIB at each quarter and annually its operations and accomplishments; and
- Offer products and services to businesses in surrounding areas.

The contract between the FBBIB and the individual BBICs may be terminated under the following circumstances:

- Upon surrender of the corporate charter of the BBIC;
- By repurchase of the investment certificate by the BBIC for the initial amount invested by the FBBIB and a pro-rata share of any earnings by, or profits of, the BBIC during the time of the contract;
- Upon failure (in whole or in part) by the BBIC to perform any of the obligations under the contract and such failure is not cured within 30 days from the FBBIB notice of such failure; or
- If it is in the best interest of the FBBIB to terminate the contract.

If the contract is terminated, the BBIC must repay any amount contributed by FBBIB and not actively invested within 15 days of written demand by FBBIB. Additionally, the BBIC must repay any amount contributed by the FBBIB and actively invested within 30 days of written demand by FBBIB to the extent that the repayment of the outstanding investment is actually received back by the BBIC from the loan recipient.

Initially, capitalization by the state was contingent upon local match by private financial institutions. The 1995 contract allowed the BBICs up to one year to secure the private match for new capitalization funds. In 1998, the Legislature reiterated, through the General Appropriations Act proviso, this requirement. However, in 2000 OTTED amended the contract with the FBBIB to allow for in-kind contributions to qualify as "matching dollars for loans or loan guarantees to be made from the Statewide Black Business Investment Fund" and instructed the FBBIB to use this allowance to determine the private match for BBICs.

The 2002 contract does not directly address whether in-kind contributions qualify for the private match requirement, only specifying that the capitalization

funds may not exceed the amount of private membership.

Capitalization Program Funding to BBICs

The Legislature appropriated capitalization program funds in FYs 1985/6, 1994/5, 1995/6, and in every year from FY 1998/9 through FY 2005/6. However, since FY 1998/9, the regional BBICs received capitalization funds only in 1998/9 and 2001/02. Between 1985 and 2001, \$9,000,000, in state funds, was distributed to the BBICs for investment in local black business enterprises.

In 2002, the Legislature appropriated \$1.2 million to the FBBIB and Statewide Black Business Investment Corporation Capitalization Program. While FBBIB records indicate that \$700,000 was allocated to the BBICs, no funds were distributed.

In 2003, the Legislature appropriated an additional \$1.2 million to the FBBIB and Statewide Black Business Investment Corporation Capitalization Program. These funds were not allocated by the FBBIB to the BBICs. The FBBIB reports that it informed the BBICs that distribution of these funds was contingent on completion of the IG audit.

In 2004, the Legislature appropriated \$1.56 million to the capitalization program, with the condition that the release of the funds is contingent on certification by OTTED that the corporation is meeting contractual obligations.

In 2005 the Legislature appropriated \$1.2 million to the capitalization program under similar conditions.

Major Legislative Changes

In an effort to improve program accountability and address emerging issues, since 1994 the Legislature has made changes to the provisions governing the FBBIB, with implications for the BBICs and the capitalization program.

In 1993, the Legislature created the Florida Commission on Minority Economic and Business Development to affirm the purpose, accomplishments, and benefits of the Florida Small and Minority Business Assistance Act, and to recommend measures to increase the number of minority businesses and to ensure the “integrity, competency, and efficiency in the administration of ...business development services...” In response to commission recommendations, the 1994 Legislature abrogated the scheduled repeal of the program,

thereby maintaining the provisions in the act. The Legislature also created a new statutory section to set forth specific duties of the FBBIB, including:

- Establish certification criteria for the BBICs, encompassing such issues as administrative capacity, fiduciary controls, and, in the case of existing BBICs, solvency and soundness of prior loan decisions; and
- Annually, prepare a report detailing the performance of each BBIC, addressing the number of jobs created and/or retained, success and failure rates among loan recipients, and the amount of funds leveraged from other sources.

In 1996, the Legislature abolished the Department of Commerce and created OTTED within the Executive Office of the Governor to assume many of the department responsibilities, including oversight of the FBBIB. The Legislature also changed the composition of the FBBIB to require that at least one member of the FBBIB be a member of a BBIC. In addition, the statute was amended to require that any proposed rules affecting the operation or administration of financial well being of any of the BBICs must first be approved by a majority of the BBICs.

In 2002, the Legislature substantially amended provisions relating to the FBBIB by establishing the board as a not-for-profit corporation in public/private partnership with the state. The membership appointment process was diversified and expanded to include three board chairs of regional BBICs and the vice chair of Enterprise Florida, Inc.

In 2003, the Legislature removed the requirement that bylaws of policies affecting the BBICs be approved by the majority of the BBICs, and required BBICs to be certified by the FBBIB every 5 years.

Governor’s Chief Inspector General’s Audit of FBBIB/BBIC

In 2002, the FBBIB requested that the Office of Chief Inspector General (IG) conduct an audit of the FBBIB/BBICs to “assess the overall effectiveness and efficiency of the FBBIB and the BBICs operations and to determine whether the organizations were operating in accordance with the purposes for which they were statutorily created.”

In October 2003, the IG issued its audit revealing “a breakdown in accountability” and finding that the BBICs were not meeting program objectives.

Audit findings included, in part, that:

- The organizational structure of the FBBIB and BBICs should be restructured to provide more effective and efficient delivery of services;
- The BBICs performance measurement data was not reliable, properly collected, documented, verified, and reported;
- BBIC loan and loan guarantee portfolios could not be accurately determined and loan files frequently did not contain adequate documentation; and
- The FBBIB and BBICs did not adequately monitor sub-recipient auditing and reporting activities.

The FBBIB generally agreed with the IG's findings.

In response to the IG's report, FBBIB acknowledged that the program had deficiencies and was willing to implement reforms to address IG report findings.

The FBBIB also noted that it has no authority to enforce the practices of the BBICs. In addition, the FBBIB stated that the current organizational configuration presents an impediment to achieving the program objectives.

Specifically, FBBIB indicated that it would develop uniform lending policies and uniform reporting procedures for use by all of the BBICs. The FBBIB also stated that it would define the contract requirements with more specificity so that the BBICs better understand what kind of information should be reported. Further, FBBIB stated that it would "enforce the agreement" if the BBICs failed to fulfill their requirements under the contract.

The BBICs collectively disagreed with the IG's findings. Generally, the BBICs disputed the assumptions and standards that the IG used to evaluate the BBIC practices and program responsibilities. In response, the BBICs stated that the corporations were created to be independent organizations to address the specific economic needs of their respective communities, and the audit did not evaluate the BBICs based on the respective policies and procedures of each individual corporation. According to the BBICs, auditors lacked the historical perspective and knowledge of their respective business plans and general banking practices. In addition, each BBIC has established "its own unique way of collecting, documentation,

verifying, and reporting data" in response to local needs and availability of resources.

The BBICs also disputed the IG's findings related to the required matching of state funds. The IG found that some of the corporations did not meet the required private membership support. According to the BBICs, the IG did not take into consideration private in-kind services, citing the directive in 2000 by OTTED to authorize the inclusion of in-kind services in the private match requirement.

Although the BBICs disputed the IG's findings, they recognized that their operations could be improved and stated that they were willing to work with the FBBIB to effect those changes. In recent interviews, the BBICs indicated that they were pursuing uniform lending policies and applications to be used by all eight of the BBICs.

Recertification of BBICs

To date, recertification for past capitalization program funds and future participation in the program is at an impasse. A series of actions by the FBBIB and the regional BBICs have created obstacles to a resolution between the FBBIB and the regional BBICs.

In 1994, the Legislature mandated that the FBBIB establish certification criteria for BBICs. The criteria must include "administrative capacity, fiduciary controls, and, in the case of existing Black Business Investment Corporations, solvency and soundness of prior loan decisions." In 2003, this section was amended to require the FBBIB to certify each BBIC at least every 5 years.

In 2003, the annual contract between the FBBIB and OTTED required FBBIB to establish criteria for BBIC certification and recertification and to initiate the process mandated in s. 288.7091(1), F.S.

In response, the FBBIB formed a special task force to develop recertification criteria and review each of the regional BBICs to determine whether to recommend each BBIC for statutory recertification. Additional documents state that the task force was formed to address legislative mandates and the IG audit.

The task force, which included accountants, bankers, economic developers, consultants, and an FBBIB member, met three times in March and April of 2004. The task force was provided a mission and goals statement to guide them in developing the

recertification criteria. The mission of the task force was to evaluate each BBIC and “determine the ability of each of them to receive additional investments” from the FBBIB. In establishing the criteria, the task force was instructed to consider:

- The administrative capacity, fiduciary controls, financial solvency and soundness of prior loan decisions as outlined in s. 288.7091(1), F.S.;
- Chapter 8K-2, Florida Administrative Code;
- The October 2003 audit findings and recommendations of the Office of the Chief Inspector General;
- The contract terms and conditions between the FBBIB and the BBICs; and
- The expanded mission of the FBBIB to serve other minorities.

On June 29, 2004, the FBBIB adopted the task force recertification criteria and set a timeline for the recertification process with a deadline of July 31, 2004. In part, the criteria the task force adopted included ch. 8K-2, F.A.C., which was a Department of Commerce rule formerly used to regulate the FBBIB and BBICs. The board also approved the related Recertification Application, which incorporated the rule requirements as well as the other considerations evaluated by the task force in the development of the recertification criteria. In addition, the recertification criteria were amended to expressly provide the BBICs with a right to appeal an unfavorable recertification decision to the FBBIB.

In early July, FBBIB sent recertification applications to the BBICs, and scheduled a workshop for the BBIC presidents to review the application and the recertification process. In addition, the BBICs were notified that the FBBIB staff would review the applications for a “determination of completeness” before submission to the task force members.

At the same time the BBICs were pursuing recertification, the coalition of BBIC presidents conveyed by letter to the FBBIB that “some BBICs believe it is time to move on and not request or accept any more dollars from the state...” It was also requested that the FBBIB adopt a resolution to “write off” previous state contributions to those BBICs that chose to give up future state capitalization funding. The letter also offered that the BBICs would continue to submit annual audits and reports to show that the funds continue to be used to support qualified black-owned businesses. In this same letter,

the BBICs requested an extension of the application deadline.

FBBIB minutes for the August 5, 2004, board meeting indicate that a representative of the coalition and FBBIB members discussed the coalition’s letter and that board members were interested in modification of the FBBIBs and BBICs structure and relationship. The FBBIB requested the BBICs further outline their proposal for this changed relationship structure. The coalition responded with a resolution that all existing investment contracts between the BBICs and the FBBIB have an expiration date of December 31, 2004. Further, the resolution stated that new contracts contain expiration dates. Hilmon Sorey, President of the FBBIB responded with concerns that the resolution “does not address the feasibility of your proposed structure in relation to” current statutory and contractual requirements.

Concurrent with this dialogue, all eight BBICs submitted recertification applications. On October 4, 2004, the FBBIB requested additional information from the BBICs. On October 14, 2004, the FBBIB mailed the recertification materials submitted by the BBICs to the task force for review.

The task force met on December 7, 2004, to review the applications and recommended to the FBBIB that the Board of Directors of FBBIB not to recertify any of the eight BBICs. FBBIB subsequently informed each of the BBIC presidents and the FBBIB board of the task force’s action.

On December 9, 2004, FBBIB staff gave preliminary notice to all BBICs that the task force did not recommend recertification. On December 14, 2004, one task force member and FBBIB staff met with the BBIC presidents to discuss the task force recommendations and a process to allow the BBICs to terminate their contractual obligations for past capitalization fund investments by the FBBIB.

On January 20, 2005, FBBIB wrote to BBICs and recommended termination and waiver of the FBBIBs right to recover past investments, pursuant to the current contract, with the eight following conditions:

- BBICs adopt resolutions accepting termination;
- BBICs agree to surrender their charters;
- BBICs agree to use all capitalization money in a manner consistent with law;

- BBICs continue to provide FBBIB quarterly reports and annual audits;
- That there will be no additional FBBIB contributions to BBICs;
- FBBIB and BBICs may work together in the future only on an individual and case-by-case basis;
- That OTTED must approve these conditions; and
- That failure to comply with the above conditions will trigger termination rights of the FBBIB under section 5.2 of the Agreement.

On January 27, 2005, the BBICs responded to the FBBIBs letter regarding termination of the contracts, stating that the BBICs desired expiration dates in the investment agreements with FBBIB but not termination of the relationship altogether. On January 31, 2005, FBBIB staff responded to the BBICs, stating that it was not in the FBBIB's best interest to modify the contracts to include expiration dates and that membership agreements "by their very nature do not expire." The letter also stated that FBBIB staff was withdrawing their offer of January 20th and planned to recommend to the FBBIB to terminate the contracts and invoke the termination provision in the contracts, which would require the return of all past investments. On February 1, the coalition sent Raoul Sinclat, FBBIB chair, a letter requesting the board intervene on behalf of the BBICs.

On February 15, 2005, FBBIB staff reiterated its recommendation to terminate contracts and recover state investments. In addition, the General Counsel to the FBBIB sent the BBICs a memo outlining a process for the BBICs to present a collective or individual "position statement supporting or objecting to the board making a determination that it is in the board's best interest to terminate the agreements with the BBICs" prior to the March FBBIB meeting. The memo further stated that the FBBIB would consider such submission prior to the meeting. The FBBIB chair later reported that the BBICs did not collectively or individually provide written position statements.

On March 10, 2005, the FBBIB voted to terminate the membership agreements with the BBICs, but deferred invoking the recovery provision in contracts. The FBBIB minutes show that there were five specific reasons that the FBBIB management

recommended termination of the BBIB/BBIC contracts:

- The current organizational structure and operations of the BBICs and their lack of accountability to the FBBIB impede the FBBIB's ability to meet its statutory and programmatic objectives.
- The contractual provisions do not provide the FBBIB with any mechanism to effectuate meaningful reforms in response to deficiencies identified in the IG's report.
- The FBBIB has stated its desire to change its strategic direction consistent with what was represented in the response to the audit, including moving toward a single statewide loan portfolio, a more centralized loan approval committee and a more centralized loan servicing and improved quality controls. The terms of the agreements do not provide the tools necessary to make such changes.
- The current relationship between the FBBIB and the BBICs under the contracts provides a less than optimum impact to the target communities in terms of growth of business enterprises required to fulfill the statutory and programmatic purposes of the FBBIB.
- Over the past several months, the BBICs have expressed dissatisfaction with the current relationship between the FBBIB and the BBICs.

FBBIB minutes indicate that the BBICs were allowed to raise their objections to the board's action.

On March 18, 2005, the chairperson of the FBBIB informed the coalition that the FBBIB had voted to terminate the FBBIB/BBIC contracts, and that the FBBIB wanted to establish a new relationship with the BBICs. The letter stated that this new relationship would have "measurable goals and objectives with an eye toward self-sustainability by your organization." The letter also requested the BBICs "provide a business plan outlining your organization's viability and capacity to assist the Board in serving Florida black businesses and how your organization can participate in the Board's Preferred Lender Financing Program." In response, the BBICs agreed to work with the FBBIB, but also stated that "under no circumstances will the BBICs voluntarily agree to permit the FBBIB to receive back its investment."

After the FBBIB terminated their contracts with the BBICs, the communication shifted to address the

unallocated, undistributed capitalization program funds. On June 17, the FBBIB decided that these funds could be distributed to the BBICs if the current statutory and 2004/5 and 2005/6 General Appropriations Act proviso requirements were met.

Through mid-July 2005, negotiations over a plan to distribute these funds continued between the FBBIB and the BBICs, with no resolution. OTTED staff also participated in these negotiations.

CONCLUSIONS

The FBBIB/BBIC capitalization program was created by the Legislature to assist qualified black-owned businesses in obtaining capital that may not be available to them in the private market. In an effort to improve program accountability and address emerging issues, since 1994 the Legislature has made changes to the provisions governing the FBBIB, with implications for the BBICs and the capitalization program.

Since 1987, \$9.15 million of capitalization program funds have been invested by the FBBIB in regional BBICs, with a contractual requirement that such funds be matched by private investments. The BBICs have a contractual responsibility to report to the FBBIB on the performance of these investments. Since 2002, the BBICs have not received annually appropriated capitalization program funds, due to decisions made by the Legislature, the FBBIB, and most recently due to unmet conditions imposed by the Legislature.

The FBBIB has a fiduciary responsibility to the state to monitor and enforce the investment contracts with the BBICs, and to periodically recertify BBICs as eligible for such investments. Recertification of the BBICs was initiated to address the unfavorable audit findings by the Governor's Inspector General and directives from OTTED in their contract with the FBBIB. The audit also recommended the relationship be restructured to provide more effective and efficient delivery of services.

To date, recertification for past capitalization program funds and future participation in the program is at an impasse. A series of actions by the FBBIB and the regional BBICs have created obstacles to a resolution between the FBBIB and the regional BBICs.

While OTTED is responsible for contracting with the FBBIB, and monitors the activities of the BBICs through the submission of activity reports through the FBBIB, and OTTED staff has been involved in the recent negotiations between the FBBIB and the BBICs, they have not proposed a specific resolution to the impasse. However, OTTED staff have represented that the Governor would support a proposal which "increases accountability and adds value to the program."

RECOMMENDATIONS

Fiscal Year 2004/05 General Appropriations Act proviso requires certification that the BBICs are meeting their contractual obligations. To be eligible to receive available appropriations from previous years, we recommend that the FBBIB, by October 31, 2006, evaluate whether each BBIC has met the terms of the 2002 contractual obligations. If any BBIC is deemed eligible for capitalization funds, the FBBIB should be required to negotiate measurable performance measures and standards, approved by OTTED, for inclusion in individualized contracts with the respective BBIC. If these measures and standards are not met, the capitalization funds would be required to be returned to the FBBIB.

Whether or not any of the BBICs are deemed to qualify for available appropriations from previous years, the BBICs should continue to be subject to contractual reporting requirements. In addition, the FBBIB should retain ownership of the membership certificates granted by the respective BBICs when capitalization funds were provided.

Section 288.7091(1), F.S., requires certification at least once every 5 years. To participate prospectively in the capitalization program, the Legislature should require OTTED to develop recertification criteria and contract with an appropriate independent entity to certify that the BBICs have the administrative capacity and fiduciary controls to operate as a viable financial institution, and evaluate the solvency and soundness of their prior loan decisions. Future participation in the capitalization program should be contingent upon recertification. This recertification could be funded through an application fee. Likewise, to qualify for future capitalization funding, the FBBIB Statewide BBIC should undergo the same certification process.

If any of the BBICs are recertified for future participation in the capitalization program, the Legislature should consider restructuring the capitalization program to address the potential conflict of interest that allows the chairs of entities that participate in the capitalization program. See long report for details.