

**STORAGE NAME:** h1081.ccc.doc  
**DATE:** February 22, 2002

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY  
COUNCIL FOR COMPETITIVE COMMERCE  
ANALYSIS**

**BILL #:** HB 1081  
**RELATING TO:** Florida Black Business Investment Board  
**SPONSOR(S):** Representative(s) Jennings

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) ECONOMIC DEVELOPMENT & INTERNATIONAL TRADE YEAS 8 NAYS 0
  - (2) TRANSPORTATION & ECONOMIC DEVELOPMENT COMMITTEE YEAS 14 NAYS 0
  - (3) COUNCIL FOR COMPETITIVE COMMERCE
  - (4)
  - (5)
- 

I. SUMMARY:

This bill transforms the Black Business Investment Board (BBIB or board) into a public-private partnership similar to other such partnerships under the Office of Tourism, Trade, and Economic Development. The bill establishes a partnership between the public sector and the private sector that seeks to leverage the provision of state funds with funds and other resources from private-sector businesses and other non-state sources. The BBIB would become a not-for-profit corporation and would enter into a performance-based contract with OTTED.

This bill provides for board membership; requires BBIB to provide a return on investment report; requires BBIB to adopt an operating budget that includes private sector support that increases each year until the amount of private sector support is equal to the state's investment; and requires Enterprise Florida, Inc. (EFI), where practicable and consistent with the expertise of the board, to contract with the board for the delivery of services in fulfillment of the responsibilities of EFI relating to small and minority businesses.

This bill provides that the Department of Management Services shall establish a lease-agreement program under which an employee of the board may elect to retain status as a state employee, including the right to participate in the Florida Retirement System, until June 30, 2004. Any employee who participates in the lease agreement must work under the direct supervision of the board.

This bill appropriates the sum of \$17.5 million from the General Revenue Fund in FY 2002-2003.

This bill provides an effective date of July 1, 2002.

**The Committee on Economic Development & International Trade adopted one technical amendment which is traveling with the bill. The Committee on Transportation & Economic Development Appropriations adopted a remove everything after the enacting clause amendment which is traveling with the bill. See section VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES for details.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Florida Black Business Investment Board (BBIB or board) was established by the Florida Legislature under the Small Business Assistance Act of 1985. It is created within the Governor's Office of Tourism, Trade, and Economic Development (OTTED) under chapter 288, Florida Statutes.

The board consists of seven members appointed by the Governor, six of whom need to be experienced in investment finance and business development, and one a member of a Black Business Investment Corporation (BBIC). The chair of the Florida Development Finance Corporation is an ex-officio member of the board (section 288.707(3), F.S.).

The legislature created the BBIB under s. 288.707, F.S. to be a catalyst for the development of competitive black business enterprises in the state of Florida by:

- increasing opportunities for employment of blacks, as well as the population in general;
- providing role models and establishing business networks for the benefit of future generations of aspiring black entrepreneurs;
- strengthening the economy of the state by increasing the number of qualified black business enterprises; and
- increasing access to both debt and equity capital for black business enterprises.

Since the BBIB is created within and administered by the Governor's office, it operates differently from the other public-private partnerships under OTTED. While overseen by a board comprised of private sector individuals, the Governor's office employs the BBIB's six person staff supporting the corporation. Section 501(c)(3) of the Internal Revenue Code qualifies the Florida Black Business Support Corporation as a non-profit corporation administering technical assistance programs and coordinating events to promote the flow of information to BBIB program participants and the Florida business community at large. It was established as a nonprofit organization to allow it to receive tax-deductible contributions that defray a portion of its operating costs and lessen its reliance on public funding. The BBIB is the sole shareholder/member of the support corporation. The Governor's office manages BBIB financial transactions and keeps records of BBIB expenditures. Section 288.707, F.S., requires the board to submit an annual report by March 31, of each year.

The Florida Contractor's Cooperative was established to promote an increase in the number of viable disadvantaged business enterprises that are engaged in construction contracting, and to

promote the general welfare and the capitalization of those businesses. Initially, this program was operated by the BBIB, but in 1997, the BBIB expanded the target market of this program and outsourced the administration of the program to the National Council of Contractors Association (NCCA). Following the expiration of the NCCA agreement in March 1998, the management contract for BBIB binding and surety services was awarded to First Coast Black Business Investment Corporation, Inc.

### **Black Business Investment Corporations**

The Black Business Investment Corporations (BBICs or corporations) are defined as a subsidiary of a financial institution or a consortium of financial institutions investing in, or lending to, black business enterprises. Under s. 288.7091, F.S., the board must create certification criteria for BBICs to include administrative capacity, fiduciary controls, and, in the case of existing BBICs, solvency and soundness of prior loan decisions. The board must establish, in communities that are not currently served by an existing black business investment corporation, memoranda of understanding with local financial institutions that will provide loan guarantees for loans to black business enterprises. The duties of the BBICs are provided under s. 288.7095, F.S., and require the corporations to coordinate with Enterprise Florida, Inc., and OTTED to avoid duplication, and to develop local business and the necessary infrastructure for business support.

The statewide BBIC was established to service black business enterprises in the 37 counties located outside of the service areas of the regional BBICs, as well as to supplement the activity of the regional BBICs.

#### **C. EFFECT OF PROPOSED CHANGES:**

This bill transforms the Black Business Investment Board (BBIB or board) into a public-private partnership similar to other such partnerships under the Office of Tourism, Trade, and Economic Development (OTTED). The bill establishes a partnership between the public sector and the private sector that seeks to leverage the provision of state funds with funds and other resources from private-sector businesses and other non-state sources. As a public-private partnership, the six BBIB staff positions would be transferred out of the Executive Office of the Governor's budget and the board would enter into a performance-based contract with OTTED. The BBIB would become a not-for-profit corporation and would enter into a performance-based contract with OTTED.

This bill provides a legislative finding that the business-development needs of black business enterprises are shared by other minority business enterprises and, therefore, provides the intent of the Legislature that the board and the Black Business Investment Corporations (BBICs or corporations) must include minority business enterprises within the scope of their duties, responsibilities, and activities and report to the Governor and the Legislature on their progress in assisting black business enterprises and minority business enterprises. The bill further requires that the board report by January 1, 2004, to the Legislature on what efforts were made to include all minorities within the scope of activities overseen by the board and the BBICs.

This bill requires Enterprise Florida, Inc. (EFI), where practicable and consistent with the expertise of the board, to contract with the board for the delivery of services in fulfillment of the responsibilities of EFI relating to small and minority businesses.

This bill provides the membership of the board to include:

- Six appointees by the Governor who shall serve terms of 4 years;

- One private sector appointee by the President of the Senate, who must be experienced in investment finance and business development and who shall serve a term of 2 years;
- One private sector appointee by the Speaker of the House of Representatives who must be experienced in investment finance and business development and who shall serve a term of 2 years;
- Three representatives of BBICs who are to be selected from among and by the chairmen of the BBICs and who will serve for a term of two years but shall be eligible for reappointment;
- The vice chairman of EFI or his or her designee, who shall be an ex-officio, non-voting member, and who shall provide information, advice, and guidance designed to enhance the coordination of activities of EFI and the board; and
- The chair of the Florida Development Finance Corporation, who shall be an ex-officio, non-voting member of the board.

Additionally, the board may, by resolution appoint two at-large members to the board from the private sector. Such members would have the powers and duties of other board members but could not serve on an executive committee. These appointees serve terms of 1 year and are eligible for reappointment.

This bill changes the title of the "executive director" to the "president," requires the president to serve at the pleasure of the board, and provides the board with the power to establish and adjust the compensation of the president. The board may also delegate to its president those powers and responsibilities it deems appropriate, except for the appointment of the president. The board and its officers shall be responsible for the prudent use of all public and private funds and shall ensure that the use of such funds is in accordance with all applicable laws, bylaws, or contractual requirements. Employees of the board may not receive compensation that exceeds the salary of the Governor unless the board and the employees have executed a contract that provides the basis for incentive payments based upon performance.

This bill removes the board's power to adopt rules but provides it with the power to adopt policies or bylaws. The duties of the board are expanded to ensure that any appropriations by the Legislature on behalf of the BBICs are provided to the corporations in the manner or amount prescribed by the Legislature, and the board is required to work with EFI and local economic development organizations to promote the retention and expansion of existing black business enterprises and to promote the formation and recruitment of new black business enterprises.

This bill requires the board to maximize the return on investment of public funds and to maximize private sector support. The board must adopt for each upcoming fiscal year an operating budget for the organization that specifies the intended uses of the state's operating investment, other sources of income, and a plan for securing private sector support to the board. Each fiscal year private sector support to the board shall increase as follows:

- 50 percent of the state's investment by July 1, 2003;
- 60 percent of the state's investment by July 1, 2004;
- 70 percent of the state's investment by July 1, 2005;
- 80 percent of the state's investment by July 1, 2006; and
- 100 percent of the state's investment by July 1, 2007.

This private sector support in operating the board includes: cash; cash jointly raised by the board and other organizations; cash generated by products or services of the board; or in-kind contributions directly to the board. The board must fully comply with performance measures, standards, and sanctions in its contracts with OTTED. As part of its annual report, the board must provide the Legislature with return-on-investment information and may hire a private accounting firm

or an economic analysis firm to develop the methodology for establishing and reporting return on investment and to certify whether the applicable statements in the annual report comply with these provisions. The due date of the annual report is moved from March 31, to February 1, and a copy must be submitted to OTTED.

This bill provides that the Department of Management Services (DMS) shall establish a lease-agreement program (similar to that maintained with Enterprise Florida, Inc.) under which an employee of the BBIB may elect to retain status as a state employee, including the right to participate in the Florida Retirement System, until June 30, 2004. Any employee who participates in the lease agreement must work under the direct supervision of the board and DMS must establish the terms and conditions of this lease program.

This bill appropriates the sum of \$17.5 million from the General Revenue Fund in FY 2002-2003 for use by the board as follows:

- \$16 million shall be divided equally among, and distributed by the board to, the black business investment corporations existing in this state on the effective date of this act;
- \$1 million shall be for use by the board for capitalizing programs of the board in support of black business enterprises and for facilitating the creation of black business investment corporations in communities that are not currently served by an existing black business investment corporation; and
- \$500,000 shall be for use by the board for its operations.

This bill provides an effective date of July 1, 2002.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1** Transforms the Black Business Investment Board into a public-private partnership similar to other such partnerships under OTTED. Establishes a partnership between the public sector and the private sector that seeks to leverage the provision of state funds with funds and other resources from private-sector businesses and other nonstate sources. Provides for membership of the board to include: six appointees by the Governor who shall serve terms of 4 years; one private sector appointee by the President of the Senate, who must be experienced in investment finance and business development and who shall serve a term of 2 years; one private sector appointee by the Speaker of the House of Representatives who must be experienced in investment finance and business development and who shall serve a term of 2 years; three representatives of BBICs who are to be selected from among and by the chairmen of the BBICs and who will serve for a term of two years but shall be eligible for reappointment; the vice chairman of EFI or his or her designee, who shall be an ex-officio, non-voting member, and who shall provide information, advice, and guidance designed to enhance the coordination of activities of EFI and the board; and the chair of the Florida Development Finance Corporation, who shall be an ex-officio, non-voting member of the board. Additionally, the board may, by resolution appoint two at-large members to the board from the private sector. Such members would have the powers and duties of other board members but could not serve on an executive committee. These appointees serve terms of 1 year and are eligible for reappointment.

Provides that the board shall meet at least four times each year, upon the call of the chair or vice chair, or at the request of a majority of the membership. A majority vote of members present is required for official action of the board. Provides that the members shall serve without compensation and authorizes reasonable, necessary, and actual expenses for members and employees of the board. Requires each member of the board who is not otherwise required to file

financial disclosure pursuant to S. 8, Art. II of the State Constitution or s. 112.3144, F.S., to file financial disclosure. Amends s. 288.707, F.S.

**Section 2** Provides a legislative finding that the business-development needs of black business enterprises are shared by other minority business enterprises and, therefore, provides the intent of the Legislature that the board and the Black Business Investment Corporations (BBICs or corporations) must include minority business enterprises within the scope of their duties, responsibilities, and activities and report to the Governor and the Legislature on their progress in assisting black business enterprises and minority business enterprises. Creates s. 288.7075, F.S.

**Section 3** Changes the title of the "executive director" to the "president," requires the president to serve at the pleasure of the board, and provides the board with the power to establish and adjust the compensation of the president. The board may also delegate to its president those powers and responsibilities it deems appropriate, except for the appointment of the president. The board and its officers shall be responsible for the prudent use of all public and private funds and shall ensure that the use of such funds is in accordance with all applicable laws, bylaws, or contractual requirements. Employees of the board may not receive compensation that exceeds the salary of the Governor unless the board and the employees have executed a contract that provides the basis for incentive payments based upon performance. Amends s. 288.708, F.S.

**Section 4** Removes the board's power to adopt rules but provides it with the power to adopt policies or bylaws. Amends s. 288.709, F.S.

**Section 5** Expands the duties of the board to ensure that any appropriations by the Legislature on behalf of the BBICs are provided to the corporations in the manner or amount prescribed by the Legislature, and the board is required to work with EFI and local economic development organizations to promote the retention and expansion of existing black business enterprises and to promote the formation and recruitment of new black business enterprises. Directs the board to facilitate the formation of black business investment corporations in communities not currently served by such organizations; to increase the number of franchises owned by black businesses; and to provide emphasis on government construction contracts with black business enterprises. Corrects a reference to the Department of Labor & Employment Security and includes references to the Department of Community Affairs and Workforce Florida, Inc., with regard to memoranda of understanding. Amends s. 288.7091, F.S.

**Section 6** Requires the board to maximize the return on investment of public funds and to maximize private sector support and to work with EFI and local economic development organizations to maximize the state and local return on investment to create jobs for Floridians. The board must adopt for each upcoming fiscal year an operating budget for the organization that specifies the intended uses of the state's operating investment, other sources of income, and a plan for securing private sector support to the board. Each fiscal year private sector support to the board shall increase as follows:

- 50 percent of the state's investment by July 1, 2003;
- 60 percent of the state's investment by July 1, 2004;
- 70 percent of the state's investment by July 1, 2005;
- 80 percent of the state's investment by July 1, 2006; and
- 100 percent of the state's investment by July 1, 2007.

This private sector support in operating the board includes: cash; cash jointly raised by the board and other organizations; cash generated by products or services of the board; or in-kind contributions directly to the board. In kind contributions include: private-sector equipment

contributed as part of technical assistance; goods and services, including time donated by loan officers, advertising or marketing support, and items used to promote the board; business expenditures; business services provided; business support; and other business contributions that augment the operations, program, activities, or assets of the board, including, but not limited to, an individual's time and expertise, sponsored publications, private-sector staff services, payment for advertising placements, sponsorship of events, sponsored or joint research, discounts on leases or purchases, mission or program sponsorship, co-payments, stock, warrants, royalties, or other private resources dedicated to the board, low-interest loans, participations, investment income, equity investments, and the economic impact of board investments and job creation and retention.

The board must fully comply with performance measures, standards, and sanctions in its contracts with OTTED. As part of its annual report, the board must provide the Legislature with return-on-investment information and may hire a private accounting firm or an economic analysis firm to develop the methodology for establishing and reporting return on investment and to certify whether the applicable statements in the annual report comply with these provisions. Amends s. 288.7092, F.S.

**Section 7** Makes technical, conforming amendments. Amends s. 288.711, F.S.

**Section 8** Makes technical, conforming amendments. Amends s. 288.712, F.S.

**Section 9** Changes the due date of the annual report from March 31, to February 1, and requires that a copy must be submitted to OTTED. Amends s. 288.714, F.S.

**Section 10** Provides that the Department of Management Services shall establish a lease-agreement program (similar to that maintained with Enterprise Florida, Inc.) under which an employee of the BBIB may elect to retain status as a state employee, including the right to participate in the Florida Retirement System, until June 30, 2004. Any employee who participates in the lease agreement must work under the direct supervision of the board and DMS must establish the terms and conditions of this lease program.

**Section 11** This bill requires Enterprise Florida, Inc., where practicable and consistent with the expertise of the board, to contract with the board for the delivery of services in fulfillment of the responsibilities of EFI relating to small and minority businesses. Amends s. 288.9015, F.S.

**Section 12** Requires that the board report by January 1, 2004, to the Legislature on what efforts were made to include all minorities within the scope of activities overseen by the board and the BBICs.

**Section 13** Appropriates the sum of \$17.5 million from the General Revenue Fund in FY 2002-2003 for use by the board as follows:

- \$16 million shall be divided equally among, and distributed by the board to, the black business investment corporations existing in this state on the effective date of this act;
- \$1 million shall be for use by the board for capitalizing programs of the board in support of black business enterprises and for facilitating the creation of black business investment corporations in communities that are not currently served by an existing black business investment corporation; and
- \$500,000 shall be for use by the board for its operations.

**Section 14** Provides an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

This bill appropriates the sum of \$17.5 million from the General Revenue Fund in FY 2001-2002.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The bill appropriates the sum of \$17.5 million from the General Revenue Fund in FY 2002-2003 for use by the board as follows:

- \$16 million shall be divided equally among, and distributed by the board to, the black business investment corporations existing in this state on the effective date of this act;
- \$1 million shall be for use by the board for capitalizing programs of the board in support of black business enterprises and for facilitating the creation of black business investment corporations in communities that are not currently served by an existing black business investment corporation; and
- \$500,000 shall be for use by the board for its operations.

The House proposed General Appropriations Act deletes the six existing full-time positions associated with the current Black Business Investment Board and transfers the corresponding salaries and benefits funding to a lump sum for the operations of the new public-private partnership. The proposed House General Appropriations Act provides funding of \$451,210 for operations and \$1.2 million for capitalization of the new public-private Black Business Investment Board.

The amendment adopted by the Committee on Transportation & Economic Development Appropriations on February 19, 2002 removes the appropriations from the bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its February 6 meeting, the Committee on Economic Development & International Trade adopted a technical amendment which is traveling with the bill. The amendment corrects language regarding terms of members appointed to the BBIB board by the Governor by making the numbers of terms consistent with the number of appointments.

At its February 19 meeting, the Committee on Transportation & Economic Development Appropriations adopted a remove everything after the enacting clause amendment. The amendment: 1) removes appropriations of \$17.5 million; 2) clarifies that the new entity is a corporation 3) clarifies that trust fund termination bills take precedence over any trust fund changes in this legislation; 4) changes the requirements regarding what can be claimed as matching in-kind contributions; 5) requires the corporate bylaws to include open government requirements; 6) requires annual compliance and financial audits; 7) requires all property of the board to revert to the state upon dissolution; 8) authorizes the board to purchase indemnity insurance; and 9) removes the provision of the original bill that stated the Chair "shall serve at the pleasure of the Governor".

VII. SIGNATURES:

COMMITTEE ON ECONOMIC DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Staff Director:

J Paul Whitfield Jr

J Paul Whitfield Jr

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AS REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT  
COMMITTEE:

Prepared by:

Staff Director:

Kurt Hamon

Eliza Hawkins

AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Council Director:

Benjamin G. Snipes

Matthew Carter