

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 386

SPONSOR: Commerce and Economic Opportunities Committee and Senator Holzendorf

SUBJECT: Florida Black Business Investment Board

DATE: February 7, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	CM	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute removes the Florida Black Business Investment Board (BBIB or board) from the Office of Tourism, Trade, and Economic Development and mandates that the board become a non-profit corporation. Membership on the board is expanded, and the membership appointment process is diversified. The committee substitute directs that the board and black business investment corporations (BBICs) include all minority business enterprises within the scope of their duties. Directory instructions are given to Enterprise Florida, Inc., to contract with the board for the delivery of economic development services relating to black business enterprises. The committee substitute provides criteria to measure Florida's return on investment from activities of the board. The committee substitute requires the board to seek private sector support that will equal the state's support by July 1, 2007. After privatization, the board is authorized to lease its employees who are employed prior to the effective date of the committee substitute from the Department of Management Services until June 30, 2004.

This committee substitute substantially amends the following sections of the Florida Statutes: 288.707, 288.708, 288.709, 288.7091, 288.711, 288.712, 288.714, and 288.9015. The committee substitute also creates ss. 288.7075 and 288.7092, F.S.

II. Present Situation:

The Florida Black Business Investment Board (BBIB or board) was created by ch. 85-104, L.O.F., to encourage the growth of small and minority businesses by removing unnecessary burdens imposed upon these businesses and by aggressively promoting an atmosphere conducive to their development.¹ The provisions of ch. 85-104, L.O.F., relating to the BBIB were codified in part IV of ch. 288, F.S.

¹ Preamble to ch. 85-104, L.O.F.

The BBIB is located within the Office of Tourism, Trade, and Economic Development to promote the creation and growth of black business enterprises, defined as businesses that are at least 51 percent owned by black Americans and managed and controlled by such persons.² Working in concert with the BBIB are the Black Business Investment Corporations (BBICs) and the Florida Black Business Support Corporation (BBSC). The BBICs are subsidiaries of financial institutions or a consortium of financial institutions investing in or lending to black business enterprises.³ Specifically, BBICs provide loan guarantees and direct lending products to black business enterprises.⁴ The BBIB has a non-voting investment interest in all of the regional BBICs.⁵ There are eight regional BBICs.

The BBSC is a non-profit corporation pursuant to s. 501(c)(3), Internal Revenue Code, that administers technical assistance programs and coordinates events to promote the flow of information to BBIB program participants.⁶ The BBSC was established as a non-profit organization to allow it to receive tax-deductible contributions.⁷ The BBIB is the sole shareholder of the BBSC. The BBSC is also the statewide BBIC, which serves areas not served by the eight regional BBICs.⁸

The board consists of seven members appointed by the Governor and confirmed by the Senate for staggered four-year terms.⁹ Six of the board members must be experienced in investment finance and business development.¹⁰ One board member must be a member of a BBIC.¹¹

The board is authorized to appoint an executive director to be the chief administrative and operational officer of the board, who directs and supervises the administrative affairs and general management of the board. The executive director and the board's employees are state employees subject to the Senior Management System and the Selected Exempt Service System respectively.¹²

The board is authorized to adopt administrative rules pursuant to the Administrative Procedures Act to implement the provisions of law conferring duties upon it.¹³ The board is further broadly empowered with the rights and responsibilities of a corporation, with the power to do all things necessary and convenient to promote black business enterprises.¹⁴ The board is also authorized to

² s. 288.707(2)(a) & (3), F.S.

³ s. 288.707(2)(b), F.S.

⁴ Office of Program Policy Analysis and Government Accountability (OPPAGA), "Profile No. 6126," *Florida Government Accountability Report*, at <http://www.oppaga.state.fl.us/profiles/6126/>, (updated June 27, 2001)

⁵ *id.*

⁶ *supra*, note 4

⁷ *id.*

⁸ *id.*

⁹ s. 288.707(3)(a), F.S.

¹⁰ *id.*

¹¹ s. 288.707(2)(b) & (3)(a), F.S.

¹² s. 288.708(2); part III, ch. 110; part V, ch. 110, F.S.

¹³ s. 288.709(1), F.S.

¹⁴ s. 288.709(1) through (19), F.S.

acquire and dispose of real property without regard to chapters 253 and 270, governing the acquisition and disposition of state lands generally.¹⁵

The duties of the board include the following: establish certification criteria for BBICs; establish loan criteria that targets high growth jobs; increase the number of black business enterprises participating in government-financed construction projects; and prepare an annual report on the performance of black business investment corporations. The board is also required to develop memoranda of understanding with: Enterprise Florida, Inc., to collaborate on various programs; financial institutions that will provide loan guarantees to black business enterprises located in areas not served by a BBIC; and various government agencies to collaborate in areas of common interest.¹⁶

III. Effect of Proposed Changes:

The committee substitute removes the Florida Black Business Investment Board (BBIB or board) from the Office of Tourism, Trade, and Economic Development and mandates that the board become a non-profit corporation. Membership on the board is expanded, and the membership appointment process is diversified. The committee substitute directs that the board and black business investment corporations (BBICs) include all minority business enterprises within the scope of their duties, notwithstanding language to the contrary in part IV, ch. 288, F.S., limiting BBIB programs to black business enterprises. Directory instructions are given to Enterprise Florida, Inc., to contract with the board for the delivery of economic development services relating to black business enterprises. The committee substitute provides criteria to measure Florida's return on investment from activities of the board. The committee substitute requires the board to seek private sector support that will equal the state's support by July 1, 2007. After privatization, the board is authorized to lease its employees who are employed prior to the effective date of the committee substitute from the Department of Management Services until June 30, 2004.

Structure and Membership of the BBIB (Section 1)

The committee substitute removes the BBIB from the Office of Tourism, Trade, and Economic Development and directs the BBIB to become a non-profit corporation. The membership of the board is expanded, and the authority to appoint members is diversified. The committee substitute provides for appointments to the board as follows: six members appointed by the Governor; one member appointed by the President of the Senate; one member appointed by the Speaker of the House; three chairmen of black business investment corporations selected by the chairmen of the black business investment corporations; the vice chairman of Enterprise Florida, Inc., serving as an ex officio non-voting member; the chair of the Florida Development Finance Corporation serving as an ex officio non-voting member; and two at-large members, who may be appointed by a board resolution.

¹⁵ s. 288.709(9), F.S.

¹⁶ s. 288.7091, F.S.

Board Duties to Minority Business Enterprises (Section 2)

Despite contrary language in ss. 288-707-288.714, F.S., limiting assistance from the board and BBICs to black business enterprises, the committee substitute requires the board and the BBICs to include businesses 51 percent or more owned by Hispanic Americans, Asian Americans, Native Americans, and American women within the scope of their duties. The committee substitute also redefines the term "black business enterprise" as a business owned 51 percent or more by an African-American, rather than a business owned 51 percent or more by a black American. The board and BBICs are required to submit an annual report to the Governor and the Legislature detailing their progress in assisting black business enterprises and the aforementioned minority business enterprises.

Management and Employees of the Board (Sections 3 & 10)

The committee substitute provides that the position of the executive director of the board is retitled as the president. The president is appointed by and serves at the pleasure of the board. No salaries for board employees may exceed the Governor's salary unless the employee achieves certain performance measures specified in the employee's employment contract providing the basis for incentive payments that will increase the employee's compensation above the Governor's. The president and the employees of the board will no longer be state employees subject to the Senior Management System and Selected Exempt Service Systems respectively. The board is authorized to lease its employees who are employed prior to the effective date of the committee substitute from the Department of Management Services until June 30, 2004. Under the employee leasing program, board employees maintain their status as state employees including the right to participate in the Florida Retirement System.

Direction to Work with Similar Organizations (Sections 5, 6, & 11)

Sections 5 and 6 of the committee substitute provide additional directory instructions to the board to work with organizations having similar goals of promoting the expansion and formation of black business enterprises. Section 5 of the committee substitute also directs the board to expand its focus to include the formation of BBICs in areas not currently served by such corporations and to intensify its efforts to increase the number of franchises owned by black Americans. Because section 2 of the committee substitute requires the board to include all minority business enterprises within the scope of its duties, the board is directed by sections 5 and 6 of the committee substitute to work with similar organizations to promote minority business enterprises and work to increase the number of franchises owned by all minorities. Sections 5 and 11 of the committee substitute provide specific instructions for Enterprise Florida, Inc., to contract with the board for the delivery of economic development services to small and minority-owned business.

Return on Investment (Section 6)

The committee substitute provides that funds appropriated by the Legislature shall form the basis for determining the state's return on investment. The committee substitute further provides that the board seek private-sector support for the board that will match the state's annual investment by July 1, 2007. Private-sector support includes cash given to the board; cash jointly raised by

the board with other organizations; and cash generated from the board's products or services and in-kind contributions. The board is required to hire an accounting firm in consultation with the Office of Program Policy Analysis and Government Accountability to develop a methodology for determining the state's return on investment and the value of in-kind contributions. The board is required to quantify the state's return on investment in its annual report to the Legislature.

Financial Responsibility of the Board (Section 3)

Section 3 of the committee substitute provides that the board and its officers shall ensure that the board's funds are used in compliance with applicable laws and that funds appropriated by the Legislature for the black business investment corporations are distributed as directed.

Technical and Conforming Changes

Throughout the committee substitute references to ss. 9-21, ch. 85-104, L.O.F., are replaced with a reference to ss. 288.707-288.714, F.S. This change is not a substantive change because ss. 9-21, ch. 85-104, L.O.F., was codified as ss. 288.707-288.714, F.S.

Throughout the committee substitute technical and conforming changes are made to the BBIB program to account for its change in status from a government entity to a private corporation. These changes include: an authorization to the board to adopt policies instead of administrative rules; repeal of s. 288.709(9), F.S., as lands acquired by the BBIB as a private corporation will not be public lands; an authorization to reimburse board members and employees for actual expenses instead of reimbursement in accordance with s. 112.061, F.S.; and a requirement for board members to make a disclosure of their financial interests pursuant to s. 112.3145, F.S., unless otherwise required to do so pursuant to s. 8, Art. II of the State Constitution.

Appropriation

The committee substitute appropriates the sum of \$17.5 million from the General Revenue Fund in FY 2002-2003. See the "Government Sector Impact" discussion in Section V of this analysis for more details.

Effective Date

The committee substitute takes effect on July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute transforms the Black Business Investment Board (BBIB or board) into a public-private partnership, with the BBIB becoming a non-profit corporation. A number of changes to the board will have indeterminate effects on the private businesses that make use of the services and funding that are developed and provided by the board to the Black Business Support Corporation and the eight regional black business investment corporations. The committee substitute requires the board to seek private-sector support that will equal the state's support by July 1, 2007.

C. Government Sector Impact:

The committee substitute appropriates the sum of \$17.5 million from the General Revenue Fund in FY 2002-2003 for use by the BBIB 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 committee substitute transforms the BBIB into a public-private partnership similar to other partnerships under the Office of Tourism, Trade, and Economic Development (OTTED). 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 committee substitute requires the Department of Management Services to establish an employee leasing program under which employees of the BBIB who are employed prior to the effective date of the committee substitute may retain their status as state employees until June 30, 2004.

The committee substitute requires Enterprise Florida, Inc. (EFI), where practicable and consistent with the expertise of the BBIB, to contract with the board for the delivery of

services in fulfillment of the responsibilities of EFI relating to small and minority businesses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
