

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.)

Prepared By: Commerce and Consumer Services Committee

BILL: PCB 7092

INTRODUCER: Committee on Commerce and Consumer Services

SUBJECT: Economic Development

DATE: February 14, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Earlywine	Cooper	CM	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This proposed committee bill revises provisions related to the Florida Black Business Investment Board (FBBIB), to:

- Amend the mission and duties of the FBBIB, to include
 - requiring the board implement a loan guarantee program,
 - serve as a clearinghouse for information and technical assistance to black-owned businesses,
 - develop strategies to increase financial institution investment black business enterprises,
 - provide a 5-year projection of the need for capital by black business Enterprises, and
 - specify that the primary mission of the FBBIB is to assist in the development and expansion of black business enterprises;
- Expand, from one each to two, the Senate and House appointments to the board;
- Prohibit a board member from being an officer, a director, or a share-holder of an entity that contracts or receives any funds form the FBBIB or its subsidiaries;
- Increase the FBBIBs current reporting requirements to OTTED;
- Require the Office of Program Policy and Government Accountability (OPPAGA) to review the implementation of this bill by the board;
- Require the Auditor General to audit the FBBIBs investment activity for the fiscal year period 2001-02 through 2005-06;
- Repeal obsolete provisions; and
- Provide an appropriation for operating expenses (\$451,210) and (\$1.2 million) to the FBBIB, which is consistent with the FY 2005/6 appropriations.

As to the Regional Black Business Investment Corporations (BBICs), the proposed bill:

- Deletes the BBIC's representation on the board;
- Deletes the board's responsibility to recertify regional BBICs and annually report on how the BBICs are using previously distributed capitalization funds; and
- Requires BBICs to annually provide OTTED with an operating statement delineating the return on investment for past appropriations and an explanation of their organization's administrative costs.

This proposed committee bill substantially amends sections 288.706, 288.707, 288.708, 288.709, 288.7091, 288.7092, 288.71, 288.714, and 288.9015 of the Florida Statutes and repeals sections 288.7095, 288.7101, 288.711, 288.712, and 288.713 of the Florida Statutes.

II. Present Situation:

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.¹

In March 1984, Governor Graham created the Governor's Advisory Council on Minority Enterprise Development to advise the Governor on matters affecting minority business enterprises and minority economic development.² The council's report identified "several impediments to black business development in Florida: limited access to capital, limited access to technical assistance, and limited access to business opportunities."³ One recommendation of the council was that the state create a program to develop black-owned enterprises, providing both capital and management support. Specifically, the council recommended that capital be provided to an authority governed by a board with substantial commercial or financial expertise, and that the authority should invest in "financial consortiums of regulated financial institutions designed to aid minority enterprises..."⁴ In addition, the council stated that initial non-recurring needs for the authority are estimated at \$15 million.⁵

In response to the council's report, the Legislature enacted the Florida Small and Minority Business Assistance Act.⁶ This act found that there were economic disparities between blacks and other minorities and the general population caused primarily by "the vestiges of racial discrimination" and that

¹ Chapters 82-196, 83-3, and 83-333, L.O.F.

² Executive Order 84-58.

³ June 17, 2005; <http://www.fbbib.com/about/history.htm>

⁴ pp. 33-34, *Initial Report of the Governor's Advisory Council on Minority Enterprise Development* (Draft), December, 1984.

⁵ pp. 38, *Initial Report of the Governor's Advisory Council on Minority Enterprise Development* (Draft), December, 1984.

⁶ Ch. 85-104, L.O.F., which became Part IV, ch. 288, F.S., and reenacted by s. 28, ch. 94-322, L.O.F.

“assisting qualified blacks in obtaining adequate capital and management skills for business ventures, as well as eradicating existing market barriers, are essential elements of a strategy to advance business development among black Floridians.”⁷

This act created various mechanisms to assist small and minority businesses, including creation of the Florida Black Business Investment Board (FBBIB).⁸ The act found that the public interest was served 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; and
- strengthening the economy of the state by increasing the number of qualified black business enterprises and improving the welfare of economically depressed neighborhoods.⁹

This finding was later expanded to include:

- establishing a partnership between the public and private sector to leverage state funds resources from the private sector;¹⁰ and
- taking measures to increase access of black businesses to both debt and equity capital.¹¹

In addition to establishing the FBBIB, the Legislature appropriated \$4,950,000 through a capitalization program to invest in regional Black Business Investment Corporations (BBICs), which are defined as not-for-profit subsidiaries of financial institutions or a consortium of financial institutions investing in or lending to black business enterprises.¹²

The 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.¹³ The board consists of twelve members, which includes:¹⁴

⁷ Preamble, ch. 85-104, L.O.F.

⁸ Additional mechanisms created by this act include establishing a Small and Minority Business Advisory Council within the Department of Commerce; requiring state agencies to consider the impact of proposed rules on Florida small and minority businesses; required the Division of Purchasing within the Department of General Services (DGS) to establish a system to record and measure the use of minority business enterprises in state contracting; requiring DGS to certify minority business enterprises; authorizing state agencies to reserve contracts for competitive bidding to minority business enterprises; and establishing the Minority Business Enterprise Assistance Office within DGS.

⁹ Section 9, ch. 85-104, L.O.F., which became s. 288.704, F.S.

¹⁰ Section 1 of ch. 2002-180, L.O.F.

¹¹ Section 47, ch. 99-251, L.O.F.

¹² Section 9 of ch. 85-104, L.O.F., which became s. 288.707(2)(b), F.S.

¹³ A “black business enterprise” is defined as a business that is at least 51 percent owned by Black Americans and managed and controlled by such persons. Section 288.707(2)(a), F.S.

¹⁴ Section 288.707(3)(a), F.S.

- Six members appointed by the Governor and subject to confirmation by the Senate, who must be experienced in investment finance and business development;
- One member each from the private sector appointed by the President of the Senate and the Speaker of the House of Representatives, who must be experienced in investment finance and business development;
- Three representatives of BBICs, who must be selected from among and by the chairs of the BBICs;
- The vice chair of Enterprise Florida, Inc., or his or her designee, as an ex officio, nonvoting member; and
- The chair of the Florida Development Finance Corporation, as an ex officio, nonvoting member of the board.

The board is also authorized to appoint two at-large members to the board from the private sector, each of whom may serve a 1-year term. However, such members may not serve on an executive committee.¹⁵

One member of the board is appointed by the Governor as the chairperson of the board, and serves at the pleasure of the Governor. The board is required to meet at least four times each year, upon the call of the chair or the vice chair or at the request of a majority of the membership. Board members serve without compensation, but members, the president of the board, and other board employees may be reimbursed for all reasonable, necessary, and actual expenses as determined by the board.¹⁶

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 to its president those powers and responsibilities it deems appropriate, except for appointment of the president.”¹⁷ The board is authorized to adopt bylaws for the regulation of its affairs and the conduct of its business and adopt policies to implement the provisions of law conferring duties upon it.¹⁸

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.”¹⁹ Today, the FBBIB has expanded its “base of activities and services to include other minorities in order to connect diverse communities and grow the network of business partnerships and alliances.”²⁰

¹⁵ Section 288.707(3)(h), F.S.

¹⁶ Section 288.707(3), F.S.

¹⁷ Section 288.708(1), F.S.

¹⁸ Section 288.709(1), F.S.

¹⁹ Page 1, 2003 Annual Report of the FBBIB.

²⁰ Page 1, 2003 Annual Report of the FBBIB. In 2002, the Legislature required the FBBIB to study the feasibility of including other minority business enterprises within the programs, services, and activities of the FBBIB and the regional BBICs. Section 11, ch. 2002-180, L.O.F. Over the past two years, the FBBIB has expanded services to other minorities through a strategic partnership with the Florida State Hispanic Chamber of Commerce – Access Florida, the Preferred Lender Financing Program (pilot), and its purchase of a controlling interest in Indigo Key, Inc.

The board also retains its historical commitment to serve the needs of the black-business community.²¹

FBBIB/BBIC Capitalization Program

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:²²

- 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;²³
- Facilitate the formation of BBICs in under-served communities and establish in these areas memoranda of understanding with local financial institutions that will provide loan guarantees for loans to black business enterprises;²⁴
- 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;²⁵ 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.²⁶

²¹ The 2002 FBBIB resolution to expand services to other minorities reiterated this commitment. October 24, 2002 FBBIB Minutes.

²²Section 288.7091, F.S.

²³ As established by the Workforce Estimating Conference. See s. 216.136(9), F.S.

²⁴ FBBIB staff reports that the FBBIB Support Corporation, a subsidiary of FBBIB that operates as a state-wide BBIC, serves rural counties that are not served by regional BBICs and, statewide, provides franchise lending and other financing that the regional BBICs are incapable of providing.

²⁵ The annual report is compiled from information submitted by the regional BBICs. Section 288.714, F.S., created by the 1985 act, also requires the FBBIB to submit an annual report to the Governor and Legislature on the operation and accomplishments of the FBBIB, "including the specified outcome measures reporting the results of the service efforts of entities involved in accomplishing board goals and objectives." See page 33, Report No. 12393, State of Florida, Office of the Auditor General.

²⁶ The substance of the ch. 8K-2, F.A.C., was last adopted as recertification criteria on June 29, 2004. FBBIB staff indicate that subsequent to the dissolution of the Department of Commerce in 1996, the FBBIB continued to rely on the provisions of

Since 1985, the Legislature has appropriated \$9.2 million in operating funds to FBBIB.²⁷ Over this same period, \$18.6 million has been appropriated through the capitalization program, \$10.85 million of which has been distributed to regional BBICs.

The FBBIB has additional obligations through an annual contract with OTTED.²⁸ 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.

Black Business and 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.²⁹ BBICs provide loans, loan guarantees, and technical assistance to black business enterprises.³⁰ 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.³¹ 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.

The only duties of the BBICs prescribed in the Florida Statutes is the requirement that they coordinate with Enterprise Florida, Inc., and OTTED to avoid duplication and to develop local business and the necessary infrastructure to support each BBIC.³²

the rule to guide FBBIB policy. This rule was also adopted by reference in the 1995 version of the contract between the FBBIB and the regional BBICs. However, it was not referenced in the 2002 version of the contract.

²⁷ The latest annual appropriation for operations was \$451,210. Specific Appropriation 2496, ch. 2005-70, L.O.F. Section 288.7092(4)(a), F.S., provides that the state's operation investment in the FBBIB is the budget contracted by OTTED, "less funding that is directed by the Legislature to be subcontracted to a specific recipient."

²⁸ 2005 contract between OTTED and the FBBIB. Also see s. 288.7092(6), F.S., which requires the FBBIB to "comply with the performance measures, standards, and sanctions in its contracts" with OTTED.

²⁹ Section 288.707(2)(b), F.S. Until 2003, the Metro-Broward BBIC was a for-profit corporation.

³⁰ Some of the BBICs also provide additional economic development related services to their communities.

³¹ These contracts are also referred to as "Membership Agreements."

³² Section 288.7095, F.S.

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.³³

State capitalization funding to the BBICs is provided through contracts with the FBBIB.³⁴ 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), procedures and practices which “sufficiently and properly” reflect all costs of any nature expended in the performance of the contract and all investments, loans, or loan guarantees made with proceeds from the capitalization program funds;
- 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 (standards set forth in s. 288.71, F.S.);
- Report to the FBBIB at each quarter and annually its operations and accomplishments which must include the number of black business enterprises which have participated in the BBICs programs, the status of back enterprises, and the total number of jobs; and
- Offer products and services to businesses in surrounding areas.³⁵

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...”³⁶ In response to commission

³³ The four BBICs are Metro Broward Capital Corporation, BAC Funding Consortium, Inc., BBIF of Central Florida, and Tampa Bay BBIC. (<http://www.cdfifund.gov/docs/certification/cdfi/CDFI-state.pdf>)

CDFI certification is important because it provides access to financial and technical assistance from the program. To date, three BBICs have received funding: Tampa Bay BBIC (\$47,600, 1999); BAC (\$1m, 1999); and Metro-Broward (\$200,000, 2001). CDFI certification is also important because it attracts financial investments from banks, as they can obtain CRA credit that may not be available to them if they invest in non-CDFI certified institutions.

³⁴ Between 1985 and early 2002, \$9,150,000 in Capitalization Program funds have been distributed to BBICs for investment in local black business enterprises.

³⁵ These are as specified in the 2002 version of the contract between the FBBIB and the regional BBICs.

³⁶ Section 1 of ch. 93-290, L.O.F.

recommendations, the 1994 Legislature abrogated the scheduled repeal of the program,³⁷ thereby maintaining the provisions in the act.³⁸ The Legislature also created a new statutory section to set forth specific duties of the FBBIB, including:³⁹

- 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;⁴⁰
- Establish, in communities that are not currently served by an existing BBIC, 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;⁴¹ and
- Adopt rules that prescribe criteria used by the board to evaluate applications for financial assistance to black business enterprises.⁴²

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.⁴³ 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.⁴⁴ 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.⁴⁵

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. The law provided criteria to measure Florida's return on investment from activities of the board. The law required the board to seek private sector support that will equal the state's support by July 1, 2007, and prescribed items constituting private sector support.⁴⁶ Additionally, board responsibilities were expanded to include:

³⁷ Section 32 of ch. 85-104, L.O.F. With the scheduled repeal of the act, there would also be no mechanism to continue monitoring or funding the regional BBICs.

³⁸ Section 28 of ch. 94-322, L.O.F. Also see recommendations from the Florida Commission on Minority Economic and Business Development, "Final Report", February 1994, and the House of Representatives Committee on Tourism and Economic Development, as presented in their "Report on Florida's Small and Minority Business Assistance Act," February 1994.

³⁹ Chapter 94-271, L.O.F.

⁴⁰ In 1995, the FBBIB's rule, Chapter 8K-2, F.A.C., was amended to include certification criteria.

⁴¹ Some of these performance requirements were also required, indirectly, in s. 288.714, F.S., and pursuant to the contracts between the FBBIB and the regional BBICs. In 1993 and 1994, audits by the Office of the Auditor General criticized the quality of the reporting by the BBICs to the FBBIB. See Reports No. 12066 and 12393, State of Florida, Office of the Auditor General.

⁴² See ch. 8K-2, F.A.C.

⁴³ ch. 96-320, L.O.F.

⁴⁴ Section 64 of ch. 96-320, L.O.F.

⁴⁵ Section 65 of ch. 96-320, L.O.F. This provision was repealed by ch. 2003-268, L.O.F.

⁴⁶ Chapter 2002-180, L.O.F.

- Facilitating the formation of BBICs in communities not currently served by such corporations;
- Ensuring that any appropriations by the Legislature to FBBIB on behalf of the BBICs are provided to FBBIB in the manner and amount prescribed by the Legislature;
- Providing for an annual financial audit report of its accounts and records to be conducted by an independent certified public accountant;
- Complying with the performance measures, standards, and sanctions in its contract with OTTED; and
- Reporting to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2003, on the feasibility of including all minority business enterprises within the scope of its duties.⁴⁷

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.⁴⁸

Governor's Chief Inspector General's Audit of the 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.”⁴⁹

In October 2003, the IG issued its audit revealing “a breakdown in accountability” and finding that the BBICs were not meeting program objectives.⁵⁰

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.

⁴⁷ In response to this requirement, the FBBIB contracted with KPMG to conduct the feasibility study. In response to the study, the FBBIB expanded services to the minority community through a strategic partnership with the Florida State Hispanic Chamber of Commerce – Access Florida, the Preferred Lender Financing Program (pilot), and its purchase of a controlling interest in Indigo Key, Inc.

⁴⁸ Chapter 2003-268, L.O.F.

⁴⁹ *Current Issues Related to the Florida Black Business Investment Board*, FBBIB, January, 2005.

⁵⁰ Audit Number 2003-1, *Florida Black Business Investment Board/Black Business Investment Corporations Audit*, October 13, 2003. Executive Office of the Governor, Office of the Inspector General.

Recertification of BBICs

In 1994, the Legislature mandated that the FBBIB establish certification criteria for BBICs.⁵¹ 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.”⁵² In 2003, this section was amended to require the FBBIB to certify each BBIC at least every 5 years.⁵³

In 2003, the annual contract between the FBBIB and OTTED contained the following provision:

Pursuant to the terms of the Contract and, in particular, the terms of Article 5, FBBIB agrees to assist in the creation and growth of black business enterprises and in furtherance of such role agrees to ... establishment of the criteria for BBIC certification and recertification and initiation of the process mandated in Section 288.7091(1), Florida Statutes.⁵⁴

In response, the FBBIB formed a special task force to develop recertification criteria⁵⁵ and review each of the regional BBICs to determine whether to recommend each BBIC for statutory recertification.⁵⁶ Additional documents state that the task force was formed to address “both legislative mandates and problems discovered in the IG audit.”⁵⁷

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 ss. 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

⁵¹ Section 1, ch. 94-271, L.O.F. In 1995, the FBBIB’s rule, ch. 8K-2, F.A.C., was amended to include certification criteria.

⁵² Section 288.7091(1), F.S.

⁵³ Section 3, ch. 2003-268, L.O.F. Arguably, this provision requires recertification of all BBICs under contract with the FBBIB by 2008. Also, rule 8K-2.009(3), F.A.C., was amended in 1995 to require BBICs to “seek and receive recertification every five years for as long as the Board has an investment in the corporation.”

⁵⁴ Exhibit A to the Funding and Program Agreement, STATEMENT OF WORK, 2003/2004 Funding and Program Agreement between the FBBIB and OTTED, July 1, 2003.

⁵⁵ *Current Issues Related to the Florida Black Business Investment Board*, FBBIB, January, 2005.

⁵⁶ Also see FBBIB minutes for 2/5/04. It should be noted that the FBBIB’s Statewide Investment Corporation was not made subject to recertification.

⁵⁷ *Current Issues Related to the Florida Black Business Investment Board*, FBBIB, January, 2005. Additionally, in their response to the IG Report, the FBBIB stated that they would pursue recertification of the BBICs in response to the IG’s finding that the organizational structure of the FBBIB and regional BBICs should be restructured to provide more effective and efficient delivery of services.

- The expanded mission of the FBBIB to serve other minorities.⁵⁸

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, 2004.⁵⁹

The task force met on December 7, 2004, to review the applications and provided the following recommendation to FBBIB:

At the December 2004 Task Force meeting the quality of the applications submitted was discussed. The Task Force resolved that based on the recertification application and supporting documents submitted by the BBICs and reviewed and evaluated by the Task Force against the recertification criteria and other related considerations, it was unanimously recommended 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.⁶⁰

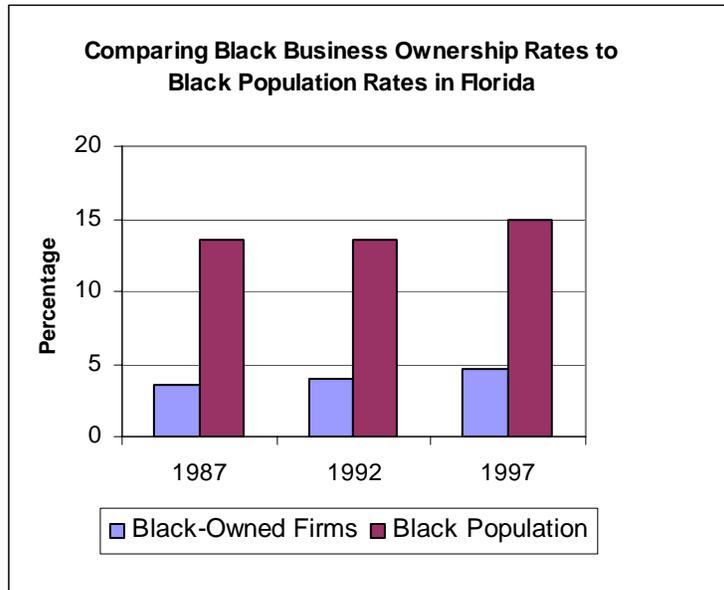
Persistence of Disparity

Although the number of black-owned firms continues to increase, and in fact grow at a faster rate than all other businesses in Florida, the disparity between the proportion of black-owned and non-black-owned businesses persists. The chart below illustrates this disparity by comparing the percentage of total firms in Florida that are owned by blacks and the percentage of Florida's population that is black. While blacks historically make up around 14-15 percent of Florida's population, they own only between 3.5 percent and 4.5 percent of the businesses in Florida. The magnitude of the disparity gap has remained approximately the same since 1987.

⁵⁸ *Recertification Task Force Mission and Goals*, FBBIB, March 23, 2004.

⁵⁹ FBBIB Minutes, June 29, 2004, and e-mail from Hilmon Sorey to BBICs Presidents, July 1, 2004.

⁶⁰ Memo from James Carras, Consultant to FBBIB Recertification Task Force, to Hilmon Sorey, dated July 15, 2005, regarding FBBIB Recertification Process. A recording from the task force meeting indicates that the "other considerations" were the BBICs efforts to terminate or amend their contractual relationship with the FBBIB.



Source: The chart is based on data from the U.S. Census Bureau; the Census Bureau conducts a survey of minority business ownership every five years. The most recent data available is for 1997. The 2002 data is scheduled to be released in late 2005.

Interim Project 2006-105

In September 2005, the Senate Commerce and Consumer Services staff issued an interim project which reviewed the Florida Black Business Investment Board and the eight regional Black Business Investment Corporations. The objective of this report was 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.

In response to the report, committee staff was directed to develop recommendations intended to improve the program and allow, but not require, the FBBIB and BBICs to continue to work together to increase access to capital for black-owned businesses.

III. Effect of Proposed Changes:

Section 1 amends s. 288.706, F.S., to delete an unnecessary reference to the FBBIB and the regional corporations and requires the Department of Management Services (DMS) to collaborate with the FBBIB to assist in the development and enhancement of black business enterprises.

Section 2 amends s. 288.707, F.S., to address the mission and membership of and restrictions on the FBBIB. Specific changes include:

- Changing the Legislative findings to address the primary responsibilities of the FBBIB, which are:
 - to assist in the development of black businesses;
 - to provide a network of resources and technical assistance to black businesses; and
 - to create partnerships with the public and private sector to aid in the development of black businesses.
- Restricts board members to mirror that of Enterprise Florida, to include prohibiting a board member from having a financial interest in an entity that contracts or receives any funds from the FBBIB;
- Expand the Senate and House board appointments from one each to two;
- Prohibits any board member from having a financial interest in any entity that contracts with or receives funds from the FBBIB; and
- Delete the regional board's representation on the board.

Section 3 amends s. 288.708, F.S., to transfer a provision from s. 288.7101, F.S., which includes the employee leasing provision that applies to two FBBIB employees.

Section 4 amends 288.709, F.S., to revise the powers of the FBBIB by deleting the power to encourage financial institutions to participate in consortia for the purpose of investing in black businesses. This power is re-designated and reconfigured as a duty in s. 288.7091, F.S.

Section 5 amends s. 288.7091, F.S., to reword the provision addressing the duties of the FBBIB to incorporate a loan guarantee program into the mission of the board. Specific duties deleted include:

- The responsibility to recertify of the regional BBICs;
- The requirement to include occupational forecasting results in the criteria for loan decisions;
- The specific responsibility to “intensify efforts” to increase the number of franchises owned by black businesses; and
- The responsibility to annually prepare a report detailing the performance of each BBIC.

New duties include:

- Aid the development and expansion of black business enterprises through partnerships with the private sector that leverage state and private funds to provide loan guarantees, up to 50 percent of a loan, or other financial services that may be authorized by the General Appropriations Act to black business enterprises;
- Serve as the clearinghouse for information and sources of technical assistance that will enhance the development and expansion of black business enterprises;
- Market its services through media outlets including those that target the African-American community;
- Develop strategies to increase financial institution investment black business enterprises; and
- Provide a 5-year projection of the need for capital by black business Enterprises.

Section 6 amends s. 288.7092, F.S., to provide for a semi-annual distribution of capitalization funds from OTTED to the board. This section requires the FBBIB to report to OTTED the amount of non-operating funds. With OTTED's approval, FBBIB may use excess funds to implement its other duties in s. 288.7091, F.S. In addition, this section deletes the schedule for complete private support of the board and related provisions defining what constitutes "in-kind" contributions.

Section 7 amends s. 288.71, F.S., to require the FBBIB to make sure that the entity receiving a loan guarantee or other financial assistance to demonstrate that:

- The proposed loan guarantee or other financial service is economically sound and will assist the black business enterprise in entering the conventional lending market; and
- The black business enterprise seeking assistance will be able to compete successfully in the private sector if it obtains the requested financial assistance and has, or will obtain, appropriate and credible technical or managerial support through an organization approved by FBBIB.

This section also requires the FBBIB to adopt uniform policies for application and approval for black business enterprises seeking financial assistance, including policies for evaluating and approving providers of technical assistance for black business enterprises.

Section 8 amends s. 288.714, F.S., to increase accountability by expanding the reporting requirements of FBBIB to include quarterly and annual reports to OTTED. The quarterly reports include:

- The dollar amount of all loan guarantees made to black business enterprises, the percentages of the loans guaranteed and the name and identification of the types of businesses served;
- Loan performance information;
- The amount and nature of all other financial assistance provided by the corporation to black business enterprises;
- The amount and nature of technical assistance provided to black business enterprises, including technical services provided in areas where it is otherwise unavailable;
- A balance sheet for FBBIB, including an explanation of all investments, administrative and operational expenses; and
- A summary of all services provided to non-black business enterprises, including the dollar value and nature of such services and the name and identification of the types of business served.

The annual reports to OTTED must include:

- A cumulative summary of quarterly report data required by subsection (1);
- A description of the strategies implemented by FBBIB to increase private investment in black business enterprises;
- A description of the FBBIB's collaborative efforts with the entities identified in ss. 288.7091(6) and (7), F.S.;
- The most recent 5-year projection of the need for capital by black business enterprises;

- A copy of all policies adopted by FBBIB pursuant to ss. 288.707-288.714, F.S.;
- Recommendations for legislative or other changes to enhance the development and expansion of black business enterprises in the state; and
- A projection of the FBBIBs business activities over the next 12 months.

This section also requires the eight regional BBICs to submit to OTTED information required in the current contracts with the FBBIB. In addition, the BBICs must also annually submit to OTTED an operating statement delineating the return on investment for past appropriations and an explanation of their organization's administrative costs.

Section 9 amends s. 288.9015, F.S., to amend the responsibilities of Enterprise Florida, Inc. (EFI) with the FBBIB to require that EFI collaborate with the FBBIB to create and expand black businesses.

Section 10 requires OPPAGA to review the implementation of this bill by the FBBIB.

Section 11 requires the Auditor General to audit the FBBIBs investment activity for the fiscal year period 2001-02 through 2005-06.

Section 12 repeals the following obsolete provisions relating to the FBBIB: ss. 288.7095, 288.7101, 288.711, 288.712, and 288.713, F.S., relating to the FBBIB.

Section 13 provides an appropriation for operating expenses of \$451,210 and \$1.2 million in capitalization funds to the FBBIB.

Section 14 provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Equal Protection Clause of the 14th amendment of the U.S. Constitution prohibits states from denying any person within its jurisdiction the equal protection of the laws. Generally, the question of whether the equal protection clause has been violated arises when a state grants a particular class of individuals the right to engage in activity yet denies other individuals the same right. Racial classifications reviewed under the

Equal Protection Clause are subject to strict scrutiny constitutional standard.⁶¹ Strict scrutiny requires that race based programs, to not violate the Equal Protection Clause, must be based on a compelling governmental interest and is narrowly tailored to achieve that interest.⁶²

Courts have further held that the compelling interest must be supported by “significant statistical disparity.”⁶³ In *Croson*, the Supreme Court struck down the City of Richmond’s affirmative action contracting program. The City required contractors to subcontract at least 30 percent of the value of each contract to one or more “Minority Business Enterprises.” Instead, the court said the correct statistical evaluation would be to compare the percentage of MBEs in the relevant market that are qualified to bid for city subcontracting work with the percentage of total city construction dollars awarded to minority subcontractors at the time. A general assertion that there has been past discrimination provides no guidance to determine the scope of the injury that the race classification seeks to remedy so there is no logical end to the program.⁶⁴

When racial classifications are determined permissible, the program must still be narrowly tailored to meet the specific objectives of the program to ensure that the means chosen to meet the objectives have little or no possible “illegitimate racial prejudice or stereotype.”⁶⁵ Although this does not require exhaustion of all race neutral alternatives, narrowly tailoring does require a good faith consideration of whether alternatives could serve the governmental interest.⁶⁶ If no such alternatives are available then some form of discrimination may be permissible. However, the discriminatory act may only be permissible to the extent that it directly redresses the specific instance of discrimination the state identified as a compelling interest.

If this program is challenged as violating the Equal Protection Clause, it is unclear whether the courts will uphold the program. However, it should be noted that although the number of black-owned firms continues to increase, and in fact grow at a faster rate than all other businesses in Florida, the disparity between the proportion of black-owned and non-black-owned businesses persists.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁶¹ *Adarand Constructors, Inc., v. Peña*, 515 U.S. 200, 227, 115 S.Ct. 2097 (1995); *Grutter v. Bollinger*, 539 U.S.244, 123 S.Ct. 2325 (2003); *City of Richmond v. J.A. Croson*, 488 U.S. 469, 109 S.Ct. 706 (1989).

⁶² *Grutter*, 539 U.S. at 308.

⁶³ *Croson*, 488 U.S. at 509.

⁶⁴ *Croson*, 488 U.S. at 497.

⁶⁵ *Croson*, 488 U.S. at 493.

⁶⁶ *Croson*, 488 U.S. at 509-10; *Grutter*, 539 U.S. at 339.

C. Government Sector Impact:

This proposed committee bill appropriates \$451,210 from the General Revenue Fund to OTTED for deposit in the Economic Development Trust Fund to be used for the purpose of implementing the operations of the FBBIB, for fiscal year 2006-2007. In addition, this proposed committee bill appropriates the sum of \$1.2 million from the General Revenue Fund to OTTED, which shall be used by the FBBIB to provide capitalization funds for black business development for the 2006-2007 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

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