

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The bill creates new oversight responsibilities and authorizes rulemaking for OTTED and creates new application, review and eligibility criteria for participants to the program.

Safeguard Individual Liberty: The bill should provide increased options for the owners of black business enterprises who seek access to capital.

B. EFFECT OF PROPOSED CHANGES:

Background:¹

In 1985, the Legislature created the Florida Black Business Investment Board (the board) to support the creation and expansion of black-owned enterprises in Florida.² The board is a non-profit corporation that operates under a contract with the Governor's Office of Tourism, Trade, and Economic Development (OTTED).

The board's goals are to:

- Increase the number of qualified black business enterprises;
- Increase employment opportunities;
- Establish networks for black entrepreneurs; and
- Increase the access of black businesses to capital.

To accomplish these goals, the board performs various activities, including facilitating procurement opportunities for minority businesses through a subsidiary company, Indigo Key, Inc., and sponsoring forums.³

The board also disburses capitalization funds appropriated by the Legislature to assist black-owned businesses in obtaining capital that may not be available to them in the private market. The board allocates this funding among eight regional black business investment corporations and a statewide investment corporation.

The board currently consists of the following members:

- 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 from the private sector appointed 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 member from the private sector appointed 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 black business investment corporations, who must be selected from among and by the chairs of the black business investment corporations. A representative from a black business investment corporation shall serve for a term of 2 years but is eligible for

¹ The background information for this analysis is taken from the Office of Program Policy Analysis & Government Accountability Report No. 07-05, "Legislature Should Consider Options for the Role of the Florida Black Business Investment Board."

² Chapter 85-104, Laws of Florida.

³ Indigo Key, Inc., provides Internet-based matchmaking between minority business firms and potential customers.

reappointment on a rotating basis with other representatives from black business investment corporations.

- The vice chair of Enterprise Florida, Inc., or his or her designee, who shall be an ex officio, nonvoting member, and who shall provide information, advice, and guidance designed to enhance the coordination of activities of Enterprise Florida, Inc., and the corporation.
- The chair of the Florida Development Finance Corporation, created pursuant to s. 288.9604, F.S., who shall be an ex officio, nonvoting member of the board.

Black Business Investment Corporations

The board contracted with eight regional black business investment corporations to provide services to black-owned businesses in 31 of the state's 67 counties. The investment corporations are located in Daytona Beach, Fort Lauderdale, Jacksonville, Miami, Orlando, Riviera Beach, Tallahassee, and Tampa. Each investment corporation operates independently of the board, and has its own board of directors, president and staff, service networks, business plans, and organizational priorities.

The investment corporations provide black-owned and managed companies with financial assistance, primarily in the form of direct loans or loan guarantees. They also provide companies with business training and various types of technical assistance. Some investment corporations also are involved in community development activities, such as providing affordable housing. Three of the eight investment corporations are federally certified community development financial institutions.⁴

In addition, the Florida Black Business Support Corporation, which previously operated as a subsidiary of the board, serves as a statewide investment corporation. This corporation mostly provides products and services, such as loans, loan guarantees, and technical assistance, in the 36 counties not covered by the regional investment corporations. In May 2006, the board voted to divest itself of the Florida Black Business Support Corporation. As of January 1, 2007, the Florida Black Business Support Corporation operates as an independent organization with its own board of directors and staff.

From July 1, 2002, through June 30, 2005, the board did not release capitalization funds to the regional investment corporations. According to board and OTTED managers, these funds were not released for various reasons, such as incomplete and untimely performance reporting. However, in September 2005, the board, in consultation with OTTED, agreed to release approximately \$1.8 million to the regional investment corporations, which represented the amount of capitalization funds appropriated, but not released to them during the three-year period. The board released these funds in December 2005.

The board was not appropriated any state funds in Fiscal Year 2006-07. Proviso language in the appropriations conference report made state funding for the board contingent on passage of certain legislation.⁵ This proviso also specified that in the event the legislation did not pass, the appropriated funds were to be transferred to Department of Community Affairs for the Front Porch Florida Program.

As this legislation did not pass, no state funds were appropriated for the board. Further, as a result of the Governor vetoing the appropriation and the proviso, funds were not transferred to the Department of Community Affairs. In the absence of state appropriations, the board has continued to operate using funds from other sources, including cash reserves, fees, and interest earnings.

Board Staffing

⁴ A community development financial institution (CDFI) is an organization certified by the U.S. Department of the Treasury, whose primary mission is community development and the development of programs and strategies to meet the needs of low-income communities. CDFIs make loans to entities unable to get approved by traditional banking institutions. CDFIs also provide comprehensive credit, investment, banking, and development services.

⁵ Fiscal Year 2006-07 appropriations for the Florida Black Business Investment Board were contingent on the passage of Senate Bill 2096 or House Bill 1553. These bills did not pass.

For most of Fiscal Year 2005-06, the board had four employees, including a president who served as the chief operating officer for both the board and the Florida Black Business Support Corporation and three other staff who supported both the board's and the corporation's operations. However, the board currently only employs a president.⁶

Recent Audits

In October 2003, the Office of Chief Inspector General issued its audit revealing "a breakdown in accountability" and finding that the Black Business Investment Corporations were not meeting program objectives.⁷ Audit findings included, in part, that:

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

In January 2003, OPPAGA issued a report that found:

- The black business investment corporations have implemented reasonable controls for providing loans and loan guarantees. However, there has been considerable ongoing controversy regarding the relationship between the board and the investment corporations.
- To address this controversy, the Legislature should consider several options including maintaining the board's current role; refocusing its role to serving as a statewide advocacy and networking entity; or eliminating the board.
- If the Legislature continues to provide financial assistance for black businesses, it could earmark funds for the investment corporations or provide grants to minority business development organizations.

OPPAGA stated the best combination of options would be to:

- Change the board's role to serving as a statewide advocacy and networking entity for the various entities that assist qualified black-owned businesses.
- Make the Department of Community Affairs or OTTED responsible for awarding grants to minority business development organizations, distributing funds, and monitoring grant recipient performance.

Effect of Proposed Changes:

The bill provides OTTED oversight for administering the Black Business Loan Program. The purpose of the program is to leverage state, local, and private funds to provide loans, loan guarantees, and investments to black business enterprises that cannot obtain capital through conventional lending institutions but that otherwise could compete successfully in the private sector.

Black Business Investment Board

It revises the mission of the board to assist in the development and expansion of black business enterprises by: advising OTTED in its oversight of the Black Business Loan Program; evaluating the amount of unmet need for capital by black business enterprises in Florida; creating partnerships with

⁶ Following the board's decision to divest itself of Florida Black Business Support Corporation, two of its employees transferred to the corporation.

⁷ Audit Number 2003-1, *Florida Black Business Investment Board/Black Business Investment Corporations Audit*, October 13, 2003.

state and local governments and private enterprise; and providing a network of information resources and technical assistance for black business enterprises.

The bill revises the membership requirements for the board to include:

- Five members appointed by the Governor who will serve terms of 4 years each, except that in making initial appointments, the Governor must appoint three members to serve for terms of 2 years each and two members to serve for terms of 3 years each.
- One member appointed by the President of the Senate who will serve a term of 2 years.
- One member appointed by the Speaker of the House of Representatives who will serve a term of 2 years.
- The vice chair of Enterprise Florida, Inc., or his or her designee.
- The chair of the Florida Development Finance Corporation created pursuant to s. 288.9604, F.S.
- Four presidents of participating black business investment corporations who will be appointed by the Executive Director of OTTED upon the recommendation of the Florida Consortium of Black Business Investment Corporations, Inc., to serve for terms of 3 years each. Each is eligible for reappointment to one additional term of 3 years.

The bill provides the members of the board must have experience in business, including financial services, banking, or economic development, and at least one of the Governor's appointees must have experience in venture capitalism.

The bill amends s. 288.709, F.S., to revise the powers of the board to be consistent with its limited advisory mission. The revised powers of the board include the authority to:

- Adopt bylaws.
- Enter into agreements or other transactions with any federal, state, local agency, or private entity.
- Invest any funds held in reserves not required for immediate disbursement as authorized by law.
- Appear on its own behalf before other local, state, or federal government agencies.
- Apply for, accept, and disburse from any state or nonstate source grants, loans, or advances for, or in aid of, the purposes of the Florida Black Business Investment Act, and to receive and accept contributions from any source of either money, property, labor, or other things of value, to be held, used, and applied for said purposes.
- Provide and pay for advisory services and technical assistance as may be necessary or desirable to carry out the purposes of the Florida Black Business Investment Act.
- Engage in special programs to enhance the development of black business enterprises as authorized by the act.
- Indemnify, purchase and maintain insurance on behalf of, directors, officers, and employees of the board and its boards against any personal liability or accountability by reason of actions taken while acting within the scope of their authority.
- Provide in its bylaws that, upon the dissolution of the board, all of its assets acquired through the use of state funds, after payment of all legal debts and liabilities, revert to the state.

The bill revises the duties of the board to require it to serve as an advisory board to OTTED by contract and to:

- Leverage state, local and private funds to benefit the program consistent with law.
- Serve as the clearinghouse for information and technical assistance.
- Market the Black Business Loan Program.
- Collaborate with key state, local and education entities.
- Develop strategies to increase financial institution investment in black business enterprises.
- Provide a 5 year projection of the need for capital, through contract with a third party, once every 5 years.

Black Business Investment Corporations

The bill creates s. 288.7094, F.S., defining a “black business investment corporation” as a corporation that provides loans, loan guarantees, or investments to black business enterprises. The bill provides black business investment corporations will receive priority consideration by OTTED for participation in the Black Business Loan Program.

Black Business Loan Program

The bill creates the Black Business Loan Program within OTTED and requires OTTED to provide loans and loan guarantees, or investments through eligible recipients such as Black Business Investment Corporations or others, to black business enterprises that cannot otherwise obtain capital through conventional lending institutions but who could otherwise compete successfully in the private sector. The bill requires the board to establish an open, competitive, and uniform application and annual certification process; and to develop an equitable allocation policy.

The bill provides eligibility requirements for potential program funding recipients, including Black Business Investment Corporations, that seek to provide loans, loan guarantees, or investment to black business enterprises under the Black Business Loan Program. A recipient must be a Florida corporation and have the experience and capacity to provide services under the program. A recipient must agree to meet all statutory requirements and demonstrate that it can provide a private match of 20 percent of state funds it receives.

Each recipient must be certified by the board each year as meeting the requirements of law and applicable contracts. No recipient may receive funds absent such annual certification.

The bill further provides it is unlawful for any person to claim to be a Black Business Investment Corporation without being certified by the board as eligible to participate in the Florida Black Business Loan Program. The BBIB is authorized by the bill to file a civil complaint and impose a \$500 fine on the violator.

Black Business Enterprise Eligibility

The bill requires that a black business enterprise demonstrate the any proposed loan or loan guarantee is economically sound and will assist it in entering the conventional lending market, increasing opportunities for employment in Florida and strengthening the state’s economy. In addition, the black business enterprise must demonstrate that it can compete successfully in the private sector and has or will obtain approved technical or managerial support.

Black Business Loan Program Trust Fund

The bill revises the existing Black Business Investment Incentive Trust Fund created by s. 288.711, F.S., as the Black Business Loan Program Trust Fund under OTTED for providing loans and loan guarantees, or investments under the Black Business Loan Program. The bill authorizes a Black Business Investment Corporation to use funds received from the loan program to: purchase stock in a black business enterprise, but the bill specifically states that no more than 40 percent of the funds may be used for direct investments in black business enterprises; provide loans or loan guarantees; and provide technical support to black business enterprises, not to exceed seven percent of the funds received, and direct administrative costs, not to exceed ten percent of the funds received.

Black Contractors Bond Program

The bill authorizes the board to contract with a regulated surety company to establish guarantor funds to assist qualified black business enterprises in obtaining surety bonds and other credit instruments.

The board is currently authorized to execute a similar program, but it has not been utilized in recent years. The bill creates the Black Contractors Bond Trust Fund which will hold funds deposited pursuant to any appropriation, gifts, grants and contributions, and funds recovered following defaults. The trust fund is to be administered by the board for the purposes of helping black business enterprises obtain credit instruments. The funds in this trust fund may be used to guarantee bonds or to contract with a regulated surety company to conduct a surety bond program for black business enterprises.

The bill also creates the Black Contractors Bond Program Administrative and Loss Reserve Fund which will hold premiums charged and collected in accordance with the bond program and any interest income earned in the Black Contractors Bond Trust Fund. The bill requires a black business enterprise to pay a premium in advance for the board to establish the surety bond. This trust fund is to be used to pay any claims against the state arising from defaults.

The bill provides the board may guarantee up to 90 percent of the loss incurred and paid by sureties on bonds guaranteed under this program.

Quarterly and Annual Reports

The bill revises reporting requirements for recipients of funds, including Black Business Investment Corporations, the board and the Department, consistent with their duties, eligibility requirements and program goals, to provide unambiguous information on a quarterly basis (to OTTED) and an annual basis (from OTTED to the Governor, Senate and House of Representatives) regarding the program's performance.

OPPAGA Report

The bill requires The Office of Program Analysis and Government Accountability (OPPAGA) to conduct an interim implementation review of the implementation of the bill's provisions, with a report due December 1, 2008, and a full program review, with a report due December 1, 2009. Each report will be provided to the Governor, President of the Senate, and Speaker of the House of Representatives.

Repeals

The bill repeals ss. 288.7092 (return on investment by the board), 288.7095 (duties of Black Business Investment Corporations), 288.71 (conditions for the board action), 288.7101 (the board state employee leasing program), 288.712 (guarantor of funds provisions), and 288.713 (capital participation instruments), F.S.

Appropriation

The bill provides for a \$8.5 million appropriation to OTTED from the General Revenue Fund for implementation and administration of the Black Business Loan Program, and three full-time equivalent positions and \$500,000 for operations.

C. SECTION DIRECTORY:

Section 1. Amends s. 14.2015, F.S., to include the Black Business Loan Program within OTTED.

Section 2. Amends s. 288.702, F.S., to revise a title.

Section 3. Amends s. 288.703, F.S., to revise the definition of a "minority person."

Section 4. Amends s. 288.706, F.S., to require collaboration between the Department of Management Services, the board and OTTED.

Section 5. Creates s. 288.7065, F.S., to provide a short title.

Section 6. Substantially amends s. 288.707, F.S., relating to the creation of the board, board membership, meetings, and financial disclosure.

Section 7. Amends s. 288.708, F.S., to remove redundant language and to provide the Department of Management Services must establish a lease-agreement program to provide state employee status to an employee of the board.

Section 8. Amends s. 288.709, F.S., to revise the powers of the board consistent with its advisory mission.

Section 9. Substantially amends s. 288.7091, F.S., to revise the duties of the board consistent with its advisory mission.

Section 10. Creates s. 288.7094, F.S., to define a "Black Business Investment Corporation" and to give the corporations priority consideration for participation in the Black Business Loan Program.

Section 11. Creates s. 288.7102, F.S., to create the Black Business Loan Program within OTTED. Requires the board to establish application and review processes, uniform loan policies and other criteria for the program. Sets eligibility requirements for program recipients. Requires the board to annually certify each program participant as eligible to continue in the program and to adopt rules to implement the law.

Section 12. Creates s 288.71025, to provide for prohibited acts and penalties.

Section 13. Creates s. 288.7103, F.S., to set eligibility requirements that black business enterprises must meet to qualify for a loan or loan guarantee.

Section 14. Amends s. 288.711, F.S., to revise the Black Business Incentive Trust Fund and place it within OTTED.

Section 15. Substantially amends s. 288.712, F.S., creating the Black Contractors Bond Program.

Section 16. Substantially amends s. 288.714, F.S., to conform reporting requirements to the new duties imposed by the bill on program participants and OTTED.

Section 17. Amends. s. 288.9015, F.S., to require Enterprise Florida, Inc., to collaborate with the board and OTTED.

Section 18. Requires the Office of Program Policy Analysis and Government Accountability to conduct a review of the initial implementation of the bill and a full program review and make reports.

Section 19. Amends s. 288.90151, F.S., to provide conforming changes.

Section 20. Repeals ss. 288.7092, 288.7095, 288.71, 288.7101, 288.712, and 288.713, F.S.

Section 21. Provides an appropriation and staff to OTTED.

Section 22. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides for a \$8.5 million appropriation to OTTED from the General Revenue Fund for implementation and administration of the Black Business Loan Program. The bill also provides three full-time equivalent positions and \$500,000 for operations.

It is not clear if the \$500,000 provided for operations within OTTED is for salaries, which would cover the salary costs and related expenses, however the bill does not appear to provide the related salary and rate necessary for the three positions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should result in additional capital investments in black business enterprises in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

Creation of Trust Funds

The bill revises the Black Business Investment Incentive Trust Fund as the Black Business Loan Program Trust Fund within OTTED to implement the provisions of the Black Business Loan Program. The bill also revises the Black Contractors Bond Trust Fund which will hold funds deposited pursuant to any appropriation, gifts, grants and contributions, and funds recovered following defaults.

The bill also creates the Black Contractors Bond Program Administrative and Loss Reserve Fund (renaming a current trust fund) which will hold premiums charged and collected in accordance with the bond program and any interest income earned in the Black Contractors Bond Trust Fund. This trust fund is to be used to pay any claims against the state arising from defaults.

This bill may be creating new trust funds, which is prohibited by s. 19 of art. III of the State Constitution. However, the trust funds were created in a substantial rewording of a section of the bill and serve a similar purpose as in current law. The creation of a new trust fund must be in a separate bill and be passed by a three-fifths vote of the House.

B. RULE-MAKING AUTHORITY:

The bill requires OTTED to promulgate rules to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Tuesday March 20, 2007, the Committee on Economic Development reported the bill favorably with three amendments.

Amendment one provides that the Economic Development Trust Fund in the Office of Tourism, Trade, and Economic Development will be used for the purpose of providing loans, loan guarantees, or investments under the Black Business Loan Program.

Amendment two provides that the Black Business Investment Board may utilize the Black Contractors Bond Trust Fund for the purposes of the Black Contractors Bond Program.

Amendment three provides an appropriation of \$6 million from the Department of Community Affairs Operating Trust Fund to the Office of Tourism, Trade, and Economic Development for the 2007-2008 fiscal year for purposes of implementing and administering the Black Business Loan Program. Of those funds, \$400,000 will be used for operations. The amendment also authorizes three full-time equivalent positions and the associated salary and rate from such operating funds for the Office of Tourism, Trade, and Economic Development to administer the provisions of this bill.