

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 1720

INTRODUCER: Commerce Committee and Senator Smith

SUBJECT: The Black Business Investment Board

DATE: April 10, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Fav/CS
2.	McKay	Wilson	GO	Favorable
3.	_____	_____	TA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill transfers most of the Florida Black Business Investment Board’s (FBBIB) responsibilities relating to the administration of the Black Business Loan Program to the Governor’s Office of Tourism, Trade, and Economic Development (OTTED), reduces the grant eligibility requirements of the existing recipients (currently the eight regional Black Business Investment Corporations, or BBICs, and the Florida Black Business Support Corporation, doing business as Access Florida), reduces the time-frame for certifying and distributing the annual grants, and increases the portion of the grants which may be used for technical support and administration.

The bill also authorizes the FBBIB to elect a chair and vice-chair, and authorizes the board to remove the chair by two-thirds vote of the board. Current law authorizes the Governor to appoint the chair, who serves at the pleasure of the Governor. In addition, the number of board appointments by the Governor is reduced from five to four, and the designation of the chair of the Florida Development Finance Corporation as a board member is deleted. Instead, the FBBIB is authorized to select two at-large members. The vice-chair of Enterprise Florida, Inc., is retained, but as an ex-officio, non-voting member.

The bill amends ss. 288.707, 288.709, 288.7091, 288.7102, 288.71025, 288.712, and 288.714, F.S.

II. Present Situation:

Creation of the FBBIB¹

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.²

In March 1984, then-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.³ 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." 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 response to the council's report, the Legislature, in 1985, enacted the Florida Small and Minority Business Assistance Act.⁵ A 12-member FBBIB was created to promote the creation and growth of black business enterprises. Among the FBBIB's duties were to facilitate procurement opportunities for minority businesses and allocate capitalization funds appropriated by the Legislature to regional black business investment corporations (BBICs).⁶ Later, a statewide investment corporation was created to receive state capitalization loans that would assist black businesses in areas not served by the BBICs.⁷

¹ The background information for this analysis is taken primarily from six sources: the Office of Program Policy Analysis & Government Accountability Report 09-41 (Stronger Reporting Needed for the Black Business Loan Program); Report 08-65 (Black Business Investment Act Is Being Implemented, But Progress Was Slow in Distributing Loan Program Funding); and Report 07-05 (Legislature Should Consider Options for the Role of the Florida Black Business Investment Board); all available at <http://www.oppaga.state.fl.us/ReportMain.aspx>; Senate Committee on Commerce and Consumer Services Report Number 2006-105 (Review of the Florida Black Business Investment Board and Black Business Investment Corporations), available at http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-105cmlong.pdf; and a Senate analysis of the 2007 legislation, available at <http://www.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s2860.ta.pdf>; and the FBBIB webpage, <http://www.fbbib.com/history.html>.

² Chapters 82-196, 83-3, and 83-333, L.O.F.

³ Executive Order 84-58.

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

⁵ 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.

⁶ Currently, the eight regional BBICs are: BACFC, Inc. (Miami); BBIF of Central Florida (Orlando); East Central Florida BBIC (Daytona Beach); First Coast BBIC (Jacksonville); Metro-Broward EDC (Ft. Lauderdale); NW Florida BBIC (Tallahassee); Palm Beach County BBIC (Riviera Beach); and Tampa Bay BBIC (Tampa).

⁷ Now incorporated as the Florida Black Business Support Corporation doing business as Access Florida.

During the period from FY 85-86 through FY 05-06, the FBBIB allocated approximately \$10 million in state capitalization funds to the BBICs to provide loans and loan guarantees to black business owners.

In a 2007 report, the Office of Program Policy Analysis & Government Accountability (OPPAGA) concluded that the corporation and the BBICs appeared to have developed and implemented reasonable control processes for providing loans and loan guarantees to black-owned businesses. However, OPPAGA also found that there had been considerable friction between the FBBIB and the BBICs. For example:

- From FY 02-03 through FY 04-05, the FBBIB did not release appropriated capitalization funds to the BBICs. According to OPPAGA's research, the FBBIB explained that it withheld the funds because the BBICs had not reported required performance information. However, some BBIC presidents asserted they had provided the contractually required performance information during this period.
- The FBBIB and the BBICs disagreed over the FBBIB's decision to provide funding to black-owned businesses through the corporation, which is a subsidiary of the FBBIB. Some BBIC presidents expressed concern that the FBBIB's decision to withhold state funding from them in 2002 through 2005 could have been due to the board's desire to retain funds for the corporation, which they viewed as a competing entity. (In January 2007, the statewide support corporation began operating as an independent organization with its own board of directors and staff.)

Florida Black Business Investment Act

In 2007, the Legislature passed the Florida Black Business Investment Act, which recreated the FBBIB as a not-for-profit public-private partnership to evaluate the needs of black business enterprises and aid in their development.⁸

The act directed the FBBIB to assist in the development and expansion of black business enterprises by:

- Creating partnerships and leveraging state, local, and private funds to aid in the development and expansion of black business enterprises; and
- Serving as a clearinghouse for information and sources of technical assistance for black business enterprises.

The Florida Black Business Investment Act specified that the FBBIB's primary mission is to assist in the development and expansion of black business enterprises. To accomplish this mission, the FBBIB has been establishing partnerships with the the Department of Management Services and several other public and private entities, and seeking funds to implement a surety bond premium finance program.⁹

The act also established the Black Business Loan Program within OTTED to provide grants to eligible recipients, who in turn would provide loans and loan guarantees to, and invest in,

⁸ Chapter 2007-157, Laws of Florida.

⁹ The surety bond program is currently inactive due to a lack of funds, according to a conversation with Paula Duncan, FBBIB interim president, on April 1, 2010.

qualified black business enterprises that cannot otherwise obtain capital through conventional lending institutions. The FBBIB was directed to advise OTTED in implementing the program, and was required to receive the grant applications and make recommendations for certification of grant recipients.

For FY 09-10, the FBBIB was allocated \$350,000 for operations and administration, and OTTED was allocated \$48,000 for the administration of the Black Business Loan Program.

Since 2007, \$7.477 million has been appropriated to the Black Business Loan Program for grants to eligible recipients: the eight regional Black Business Investment Corporations, or BBICs, and the Florida Black Business Support Corporation, doing business as Access Florida.

Composition of the FBBIB Board of Directors

The board currently consists of the following 13 members:¹⁰

- Five members appointed by the Governor who will serve terms of 4 years each;
- One member appointed by the President of the Senate to a 2-year term;
- One member appointed by the Speaker of the House of Representatives, to serve a 2-year term;
- The vice chair of Enterprise Florida, Inc. (EFI),¹¹ or his or her designee;
- The chair of the Florida Development Finance Corporation (FDFC); and¹²
- 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 Governor appoints a member of the board as chair of the board, who serves at the pleasure of the Governor, and the full board annually elects one of its members as vice chair.

III. Effect of Proposed Changes:

The bill transfers most of the FBBIB's current responsibilities relating to the administration of the Black Business Loan Program to OTTED, reduces the eligibility requirements of the existing recipients for annual grants from the program, reduces the time-frame for certifying and distributing the annual grants, and increases the portion of the grants which may be used for technical support and administration. The bill also revises the composition and voting status of membership of the FBBIB.

Section 1 amends s. 288.707, F.S., to make technical and clarifying changes to the general responsibilities of the FBBIB, and makes changes to the composition of the board of directors. Specifically, this section:

¹⁰ There currently are only eight board members, according to a list provided April 1, 2010, by the FBBIB's Paula Duncan.

¹¹ EFI is a public-private entity under contract with OTTED to manage the state's business-recruitment activities. Its enabling statutes are in part VII of ch. 288, F.S.

¹² The FDFC creates a process for EFI and local governments to enter into agreements to issue revenue bonds for projects of significant economic importance regionally and statewide. The FDFC's enabling statutes are in part IX of ch. 288, F.S.

- Directs the FBBIB to assist, rather than advise, OTTED in creating the loan program’s long-range plan;
- Adds federal agencies and national organizations to the existing group of state and local governments and private enterprises with whom the FBBIB should create partnerships;
- Changes the composition of the 13-member board [See Table 1]; and
- Authorizes the FBBIB to elect a chair and vice-chair, and remove the chair by two-thirds vote of the board. Current law authorizes the Governor to appoint the chair, who serves as a member of the board and serves at the pleasure of the Governor.

Table 1. Comparison of Current FBBIB board of directors and CS/SB 1720

Current Law (s. 288.707, F.S.)	CS/SB 1720
Governor appoints 5 members to 4-year terms	Governor appoints 4 members to 4-year terms
President of the Senate and Speaker of the House Representatives each appoints 1 member to a 2- year term	Unchanged
EFI’s vice chair or designee	Retained, but as an ex officio, non-voting member
Chairperson of the FDFC	Removed from the board
4 presidents of participating BBICs appointed by OTTED’s executive director, as recommended by the Florida Consortium of Black Business Investment Corporations, Inc. These persons serve 3-year terms, with eligibility for one additional term each.	Unchanged
Not applicable	Two at-large members selected by the board who are nationally known for their achievements in finance, small business development, or economic development
Total Members: 13	Total Members: 13

Section 2 amends s. 288.709, F.S., to specify that assets not acquired with state funds must be returned to the donor who provided the asset or funding for the asset, upon dissolution of the FBBIB. This is intended to reflect other changes in the bill to broaden the FBBIB’s ability to partner with the federal government and national organizations.

Section 3 amends s. 288.7091, F.S., to allow the FBBIB to leverage federal funds it may receive for the purposes of providing financial assistance to black businesses. It also replaces the names of specific government agencies and universities with whom it must collaborate with the more general descriptive terms of “agencies of the federal, state, and local governments, private entities, nonprofit organizations, and national organizations.”

Section 4 amends s. 288.7102, F.S., to transfer certain responsibilities related to the Black Business Loan Program from the FBBIB to OTTED, and reduces the time-frame for certifying and distributing the annual grants. Specifically, the bill:

- Deletes the FBBIB's responsibility to receive applications for the loan program and recommend to OTTED which ones should be certified;
- Requires applications be submitted by June 1, rather than July 1;
- Directs OTTED to process all applications and certifications on or before July 1, rather than by September 30, if submitted by June 1;
- Directs OTTED to distribute the state funds for the loan program to all certified BBICs on or before July 31, rather than September 30; and
- Deletes the FBBIB's responsibility to adopt policies and procedures to implement the loan program.

The bill also reduces the eligibility requirements of the "existing recipients" (who are the eight regional Black Business Investment Corporations, or BBICs, and the Florida Black Business Support Corporation, doing business as Access Florida) for annual grants from the Black Business Loan Program. Current law requires recipients to:

- Be a corporation registered in the state;
- Demonstrate that its board of directors includes citizens of the state experienced in the development of black business enterprises;
- Demonstrate that the recipient has a business plan that allows the recipient to operate in a manner consistent with the Florida Black Business Investment Act [ss. 288.707-288.714, F.S.] and the rules of the OTTED;
- Demonstrate that the recipient has the technical skills to analyze and evaluate applications by black business enterprises for loans, loan guarantees, or investments;
- Demonstrate that the recipient has established viable partnerships with public and private funding sources, economic development agencies, and workforce development and job referral networks;
- Demonstrate that the recipient can provide a private match equal to 20 percent of the amount of funds provided by OTTED; and
- Agree to maintain the recipient's books and records relating to funds received by OTTED according to generally accepted accounting principles and in accordance with the requirements of the Florida Single Audit Act [s. 215.97(7), F.S.] and to make those books and records available to OTTED for inspection upon reasonable notice.

All of these conditions will be required of a "new recipient" of the Black Business Investment Corporations grant.

In lieu of these eligibility requirements, "existing recipients" will be required to comply with the first and last of these conditions, and "[a]nnually submit to the office a financial audit performed by an independent certified public account for the most recently completed fiscal year, which audit does not reveal any material weaknesses or instances of material noncompliance."

Subsection (8)(c) is also amended to increase the portion of Black Business Loan Program grants which may be used for technical support from 9 to 12 percent, and administration from 7 to 10 percent.

Section 5 amends s. 288.71025, F.S., to allow OTTED, rather than the FBBIB, to bring civil actions against persons who unlawfully identify themselves as black business investment corporations for the purpose of participating in the state's funding program.

Section 6 amends s. 288.712, F.S., to remove the requirement that the FBBIB provide assistance to the Office of Supplier Diversity within the Department of Management Services, as needed, to certify new black business enterprises and to train appropriate department staff. In addition, an obsolete reporting requirement is deleted.

Section 7 amends s. 288.714, F.S., to require OTTED, rather than the FBBIC, to prepare quarterly and annual reports that include a detailed summary of Black Business Loan Program grants recipients performance of the duties required by program.

It also creates a new annual report to be prepared by the FBBIC, for the Governor and the Legislature, which incorporates information currently required. It also changes the due dates of the annual reports, from May 1 to August 31 of each year.

Section 8 specifies that this act takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate, but likely minimal.

The CS amends s. 288.7102(8)(c), F.S., to increase the portion of Black Business Loan Program grants which may be used for technical support from 9 to 12 percent, and administration from 7 to 10 percent.

To the extent that grant recipients use these funds for the authorized expenditures, less capital will be available for loans or loan guarantees to qualified black businesses.

Conversely, more resources will be available to provide technical support and fund administrative costs.

C. Government Sector Impact:

Most of the FBBIB's current responsibilities relating to the administration of the Black Business Loan Program are transferred to OTTED. While the bill does not address any additional funding for OTTED, at this time both the Senate and House proposed general appropriations bills for FY 10-11 include additional funding for OTTED to manage the black business loan program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The phrase "nationally known" on line 115 of the bill lends itself to any number of interpretations.

In December 2009, OPPAGA issued a report related to the Black Business Loan Program, entitled "Report 09-41: Stronger Reporting Needed for the Black Business Loan Program."¹³ The report concluded that:

- The 2007 Legislature passed the Florida Black Business Investment Act, ch. 2007-157, L.O.F., which recreated the Florida Black Business Investment Board as a public-private partnership to evaluate the needs of black business enterprises and aid in their development. The act also established the Black Business Loan Program within the Governor's Office of Tourism, Trade, and Economic Development (OTTED).
- Stronger reporting is needed for the loan program. Black business investment corporations did not use consistent methods to develop performance information reported to OTTED and were not required to report on the extent to which key program goals were being achieved. Further, outdated provisions in the act resulted in duplicative performance reporting by black business investment corporations.
- To address these issues, OTTED should work with the investment corporations to ensure they are reporting reliable information for critical performance measures in their reports and require them to report on their achievement of key program goals. In addition, the Legislature should consider amending the statutes to direct the investment corporations to submit their performance reports to the office rather than the Black Business Investment Board.

¹³ Report available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0941rpt.pdf>.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce Committee on April 7, 2010:

The CS differs from the bill as filed in the following ways:

- Reduces the eligibility requirements of the existing recipients (currently the eight regional Black Business Investment Corporations, or BBICs, and the Florida Black Business Support Corporation, doing business as Access Florida) for annual grants from the Black Business Loan Program;
- Increases the portion of the grants which may be used for technical support and administration;
- Authorizes the FBBIB to elect a chair and authorizes the board to remove the chair by two-thirds vote of the board – current law (and the bill as filed) authorizes the Governor to appoint the chair, who serves as a member of the board and serves at the pleasure of the Governor.
- Reduces the board appointments by the Governor from five to four;
- Removes the designation of the chair of the Florida Development Finance Corporation as a board member; and
- Authorizes the FBBIB to select two at-large members.

- B. **Amendments:**

None.