

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The bill creates new oversight responsibilities and authorizes rulemaking for the Department of Community Affairs and creates new application, review and eligibility criteria for participants to the program. It also provides an unspecified appropriation.

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 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, 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."⁴ 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..."⁵ In addition, the council stated that initial non-recurring needs for the authority are estimated at \$15 million.⁶

In response to the council's report, the Legislature enacted the Florida Small and Minority Business Assistance Act.⁷ 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

"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."⁸

This act created various mechanisms to assist small and minority businesses, including creation of the Florida Black Business Investment Board (FBBIB).⁹ The act found that the public interest was served by:

¹ The background information for this analysis is taken from the Senate Committee on Commerce and Consumer Services Interim Project Report No. 2006-105, "Review of the Florida Black Business Investment Board and Black Business Investment Corporations."

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

³ Executive Order 84-58.

⁴ June 17, 2005; <http://www.fbbib.com/about/history.htm>

⁵ pp. 33-34, *Initial Report of the Governor's Advisory Council on Minority Enterprise Development* (Draft), December, 1984.

⁶ pp. 38, *Initial Report of the Governor's Advisory Council on Minority Enterprise Development* (Draft), December, 1984.

⁷ 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.

⁸ Preamble, ch. 85-104, L.O.F.

⁹ 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;

- 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.¹⁰

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;¹¹ and
- Taking measures to increase access of black businesses to both debt and equity capital.¹²

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.¹³

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.¹⁴ The board consisted of the following members:¹⁵

- 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.¹⁶

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

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.

¹⁰ Section 9, ch. 85-104, L.O.F., which became s. 288.704, F.S.

¹¹ Section 1 of ch. 2002-180, L.O.F.

¹² Section 47, ch. 99-251, L.O.F.

¹³ Section 9 of ch. 85-104, L.O.F., which became s. 288.707(2)(b), F.S.

¹⁴ 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.

¹⁵ Section 288.707(3)(a), F.S.

¹⁶ Section 288.707(3)(h), F.S.

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.¹⁷

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.”¹⁸ 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.¹⁹

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.”²⁰ 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.”²¹ The board also retains its historical commitment to serve the needs of the black-business community.²²

FBBIB/BBIC Capitalization Program

The capitalization program is the legislative mechanism for appropriating funds to be invested in the regional BBICs and the FBBSC, a subsidiary of the FBBIB, 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:²³

- 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;²⁴
- 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;²⁵
- 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,²⁶ and

¹⁷ Section 288.707(3), F.S.

¹⁸ Section 288.708(1), F.S.

¹⁹ Section 288.709(1), F.S.

²⁰ Page 1, 2003 Annual Report of the FBBIB.

²¹ 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.

²² The 2002 FBBIB resolution to expand services to other minorities reiterated this commitment. October 24, 2002 FBBIB Minutes.

²³ Section 288.7091, F.S.

²⁴ As established by the Workforce Estimating Conference. See s. 216.136(9), F.S.

²⁵ 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.

- 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.²⁷

Since 1985, the Legislature has appropriated \$9.2 million in operating funds to FBBIB.²⁸ 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.²⁹ 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.³⁰ BBICs provide loans, loan guarantees, and technical assistance to black business enterprises.³¹ 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.³² 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.

²⁶ 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.

²⁷ 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 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.

²⁸ 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."

²⁹ 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.

³⁰ Section 288.707(2)(b), F.S. Until 2003, the Metro-Broward BBIC was a for-profit corporation.

³¹ Some of the BBICs also provide additional economic development related services to their communities.

³² These contracts are also referred to as "Membership Agreements."

The only duty of the BBICs prescribed in the Florida Statutes is 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.³³

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.³⁴

State capitalization funding to the BBICs is provided through contracts with the FBBIB.³⁵ 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.³⁶

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...”³⁷ In response to commission recommendations, the 1994 Legislature abrogated the scheduled repeal of the program,³⁸ thereby maintaining the provisions in the act.³⁹ The Legislature also created a new statutory section to set forth specific duties of the FBBIB, including.⁴⁰

³³ Section 288.7095, F.S.

³⁴ 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.

³⁵ Between 1985 and early 2002, \$9,150,000 in Capitalization Program funds have been distributed to BBICs for investment in local black business enterprises.

³⁶ These are as specified in the 2002 version of the contract between the FBBIB and the regional BBICs.

³⁷ Section 1 of ch. 93-290, L.O.F.

³⁸ 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.

- 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;⁴¹
- 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;⁴² and
- Adopt rules that prescribe criteria used by the board to evaluate applications for financial assistance to black business enterprises.⁴³

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's responsibilities, including oversight of the FBBIB.⁴⁴ 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.⁴⁵ 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.⁴⁶

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.⁴⁷ Additionally, board responsibilities were expanded to include:

- 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.⁴⁸

³⁹ 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.

⁴⁰ Chapter 94-271, L.O.F.

⁴¹ In 1995, the FBBIB's rule, Chapter 8K-2, F.A.C., was amended to include certification criteria.

⁴² 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.

⁴³ See ch. 8K-2, F.A.C.

⁴⁴ ch. 96-320, L.O.F.

⁴⁵ Section 64 of ch. 96-320, L.O.F.

⁴⁶ Section 65 of ch. 96-320, L.O.F. This provision was repealed by ch. 2003-268, L.O.F.

⁴⁷ Chapter 2002-180, L.O.F.

⁴⁸ 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.

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.⁴⁹

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."⁵⁰

In October 2003, the IG issued its audit revealing "a breakdown in accountability" and finding that the BBICs were not meeting program objectives.⁵¹

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.

Recertification of BBICs

In 1994, the Legislature mandated that the FBBIB establish certification criteria for BBICs.⁵² 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."⁵³ In 2003, this section was amended to require the FBBIB to certify each BBIC at least every 5 years.⁵⁴

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.⁵⁵

In response, the FBBIB formed a special task force to develop recertification criteria⁵⁶ and review each of the regional BBICs to determine whether to recommend each BBIC for statutory recertification.⁵⁷

⁴⁹ Chapter 2003-268, L.O.F.

⁵⁰ *Current Issues Related to the Florida Black Business Investment Board*, FBBIB, January, 2005.

⁵¹ 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.

⁵² 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.

⁵³ Section 288.7091(1), F.S.

⁵⁴ 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."

⁵⁵ 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.

⁵⁶ *Current Issues Related to the Florida Black Business Investment Board*, FBBIB, January, 2005.

⁵⁷ 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.

Additional documents state that the task force was formed to address “both legislative mandates and problems discovered in the IG audit.”⁵⁸

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
- The expanded mission of the FBBIB to serve other minorities.⁵⁹

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, 2004.⁶⁰

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.⁶¹

Persistence of Disparity

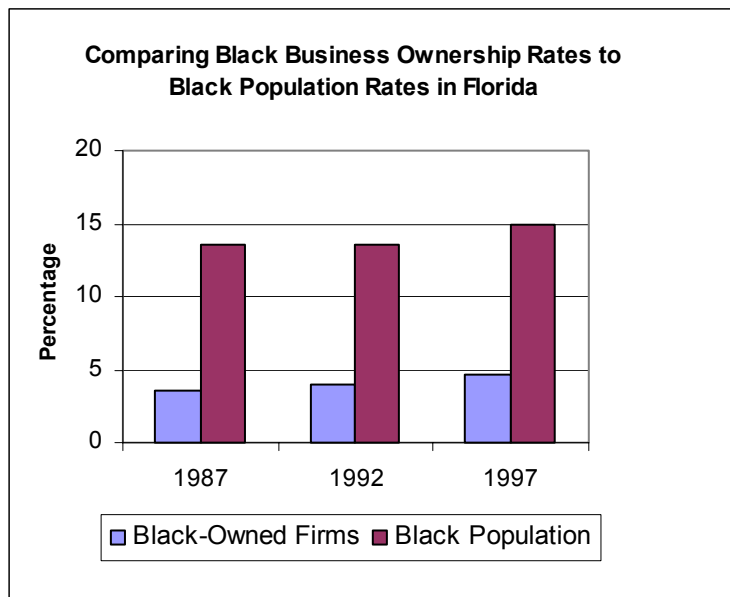
Although the number of black-owned firms continues to increase, and in fact grow at a faster rate than all other businesses in Florida, the disparity between the proportion of black-owned and non-black-owned businesses persists. The chart below illustrates this disparity by comparing the percentage of 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 has remained approximately the same since 1987.

⁵⁸ *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.

⁵⁹ *Recertification Task Force Mission and Goals*, FBBIB, March 23, 2004.

⁶⁰ FBBIB Minutes, June 29, 2004, and e-mail from Hilmon Sorey to BBICs Presidents, July 1, 2004.

⁶¹ 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: U.S. Census Bureau

Effect of Proposed Changes:

Office of Urban Opportunity

The bill expands the power of the Office of Urban Opportunity (OUO) within the Department of Community Affairs (DCA) to include managing the Black Business Loan Program (BBLP).

Black Business Investment Board

It revises the mission of the Florida Black Business Investment Board (FBBIB) to assist in the development and expansion of black business enterprises (BBE) by advising the Department of Community Affairs in its oversight of the Black Business Loan Program; evaluating the amount of unmet need for capital by BBEs in Florida; creating partnerships with state and local governments and private enterprise; and providing a network of information resources and technical assistance for BBEs.

The bill revises the membership requirements for the FBBIB to include three members who represent Black Business Investment Corporations (BBIC) and requires all members to have business or related experience. Importantly, the bill terminates existing board memberships and requires appointment of new members by October 1, 2007.

The bill revises the powers of the FBBIB to be consistent with its limited advisory mission.

The bill revises the duties of the FBBIB to require it to serve as an advisory board to DCA by contract with the department; to leverage state, local and private funds to benefit the program consistent with law; to serve as the clearinghouse for information and technical assistance; to market the BBLP; to collaborate with key state, local and education entities; to develop strategies to increase financial institution investment in BBEs and to 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 restates the current legal definition of a BBIC and gives BBICs that meet the eligibility provisions of the revised laws priority consideration for participation in the BBLP.

Black Business Loan Program

The bill creates the BBLP within DCA and requires DCA to provide loans and loan guarantees, through eligible recipients such as BBICs or others, to BBEs that cannot otherwise obtain capital through conventional lending institutions but who could otherwise compete successfully in the private sector. The bill requires DCA to promulgate rules; to establish an open, competitive and uniform application and annual certification process; and to develop an equitable allocation policy. The bill requires FBBIB and BBICs to adopt uniform underwriting guidelines and interest rates.

The bill authorizes the use of state funds, up to 7 percent of funds received by an eligible recipient, for administrative expenses directly related to state accountability requirements, so that recipients can cover costs of such requirements.

The bill provides eligibility requirements for potential program recipients, including BBICs, that seek to provide loans or loan guarantees under the BBLP. A recipient must be a Florida non-profit 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 75 percent of state funds it receives.

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

Black Business Enterprise Eligibility

The bill requires that a BBE 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 BBE 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 DCA.

Quarterly and Annual Reports

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

OPPAGA and Auditor General Reports

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, 2007, and a full program review, with a report due December 1, 2008. Each report will be provided to the Governor, President of the Senate and Speaker of the House of Representatives.

It also requires the Auditor General to audit the investments made by the FBBIB for the period 2001-2002 through 2005-2006 and report to the Governor, President of the Senate and Speaker of the House of Representatives by January 1, 2007.

Repeals

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

Appropriation

The bill provides for an appropriation to DCA for implementation of the act and for personnel costs at an approved salary rate. The amount of the appropriation and salary rate have not been determined to date.

C. SECTION DIRECTORY:

Section 1. Amends s. 288.702, F.S., to revise a title.

Section 2. Amends s. 20.18, F.S., to include the Black Business Loan Program within the Office of Urban Opportunity of the Department of Community Affairs.

Section 3. Amends s. 288.706, F.S., to require collaboration between the Department of Management Services, the BBIB and the Department of Community Affairs.

Section 4. Creates s. 288.7065, F.S., to provide a short title.

Section 5. Substantially amends s. 288.707, F.S., relating to the creation of the FBBIB, board membership, meetings, financial disclosure and to terminate existing board memberships.

Section 6. Amends s. 288.708, F.S., to remove redundant language.

Section 7. Amends s. 288.709, F.S., to revise the powers of the FBBIB consistent with its advisory mission.

Section 8. Substantially amends s. 288.7091, F.S., to revise the duties of the FBBIB consistent with its advisory mission.

Section 9. Creates s. 288.710, 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 10. Creates s. 288.7102, F.S., creating the Black Business Loan Program within the Department of Community Affairs. Requires the Department, FBBIB and BBICs to establish application and review processes, uniform loan policies and other criteria for the program. Sets eligibility requirements for program recipients. Requires the Department to annually certify each program participant as eligible to continue in the program and to adopt rules to implement the law.

Section 11. 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 12. Amends s. 288.711, F.S., to revise the Black Business Incentive Trust Fund and place it within the Department of Community Affairs.

Section 13. Substantially amends s. 288.714, F.S., to conform reporting requirements to the new duties imposed by the bill on program participants and the Department of Community Affairs.

Section 14. Amends. s. 288.9015, F.S., to require Enterprise Florida, Inc., to collaborate with the FBBIB and Department of Community Affairs.

Section 15. 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 16. Requires the Auditor General to conduct an audit of the FBBIB's investment activity and make a report.

Section 17. Repeals ss. 288.7092, 288.7095, 288.71, 288.7101, 288.712, and 288.713, F.S.

Section 18. Provides an appropriation and approved salary rate for staff to the Department of Community Affairs.

Section 19. 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 will require an appropriation to the Department of Community Affairs under its new authority. The Department has not estimated the cost and staffing needs associated with the bill to date.

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 Fund

The bill revises the Black Business Investment Incentive Trust Fund as the Black Business Loan Program Trust Fund within the Department of Community Affairs to implement the provisions of the Black Business Loan Program. It may be creating a new trust fund in the bill, which is prohibited by s. 19 of art. III of the State Constitution. The creation of a new trust fund must be in a separate bill and be passed by a three-fifths vote of the House.

Racial Discrimination

The law expressly classifies the ultimate program recipients on the basis of race, limiting program benefits to black business enterprises. Such a racial classification is suspect under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.⁶² A government classification based on race must be based on a compelling state interest and narrowly tailored to meet that interest to withstand strict scrutiny analysis.⁶³ A minority set-aside intended to remedy past or present discrimination is a compelling government interest but must be based on specific evidence of past discrimination to withstand constitutional scrutiny.⁶⁴

B. RULE-MAKING AUTHORITY: The bill requires the Department of Community Affairs to promulgate rules to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁶² See *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 494-494 (1989).

⁶³ *Id.*

⁶⁴ See *Fla. A.G.C. Council, Inc., v. Florida*, 303 F.Supp.2d 1307, 1315 (N.D. Fla. 2004).