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 Committee on Commerce and Tourism

BILL: SB 666

INTRODUCER: Senator Mayfield

SUBJECT: Florida Development Finance Corporation

DATE: January 17, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 666 modifies the governance and administration of the Florida Development Finance Corporation (FDFC) by:

- Requiring the FDFC and Department of Economic Opportunity (DEO) to provide additional annual reporting on the FDFC's activities;
- Redesigning the FDFC's board of directors to include the executive director of the DEO, who will serve as the chair of the board, and the director of the State Board of Administration's Division of Bond Finance;
- Making all officers, employees, and staff of the FDFC employees of the DEO; and
- Instituting a sunset repeal, effective October 1, 2022, and every four years thereafter, unless reviewed and saved from repeal by the Legislature.

This bill takes effect on July 1, 2020.

II. Present Situation:

Florida Development Finance Corporation

Operation

The FDFC is a statewide development financing authority created by the Legislature in 1993.[1] The original purpose of the FDFC was to foster the growth of manufacturing and other strong job-creating businesses in Florida by brokering private-activity bond financing through inter-local agreements with counties, municipalities, and other local political subdivisions.[2] In the 2010 legislative session, the FDFC's responsibilities were broadened to allow it to participate in

[1] Chapter 288, Part X, F.S. The corporation was created as a "public body corporate and politic" meaning that it is a legal entity or corporation with a public function. Ch. 93-187, ss. 24-45, Laws of Fla.

[2] Section 288.9602, F.S., generally expresses the legislative intent of the FDFC.

a federal Department of Energy guaranteed loan program for the development of renewable energy infrastructure projects, and related energy projects that may be eligible under federal law.[3] The FDFC has the power to function within the corporate limits of any public agency including local governments with which it enters into an inter-local agreement.[4]

Pursuant to s. 288.9605, F.S., the FDFC operates as a conduit bond issuer that issues bonds on behalf of borrowers.[5] While the FDFC functions as a mechanism to help borrowers access capital markets, it does not take on responsibility of debt repayment, even when a borrower fails to repay.[6] Conversely, the FDFC does not guarantee the bonds it issues but certain borrowers may opt in to the guaranty fund established by the FDFC pursuant to s. 288.9607, F.S., which guarantees that the bonds issued will be repaid. This guaranty fund consists of premiums paid by businesses that wish to participate in the fund and by a property interest in the infrastructure built with the insured bond's proceeds.[7]

A majority of the FDFC's financial assistance results from the issuance of municipal bonds, of which it may issue either a taxable revenue bond or a tax-exempt bond.[8] The bonds issued can provide financing for projects that further public purposes and are issued on behalf of a range of organizations.

Tax exempt bonds, known also as Private Activity Bonds, require additional borrower qualification processes, including approval pursuant to the Tax Equity and Fiscal Responsibility Act of 1986 (TEFRA) and allocation from the Florida State Board of Administration's Division of Bond Finance. These bonds are more lucrative financing options because they tend to have a lower interest rate than bank loans or taxable fixed-income securities, and investors benefit by not paying income taxes on interest payments.[9] The FDFC helps its borrowers pursue Private Activity Bonds by assisting them with the additional qualification processes.[10]

In the fiscal year ending June 30, 2019, the FDFC facilitated the issuance of $2,885,710,000 in eight new money bonds. The borrowers served by these bonds include two charter schools, one solid waste disposal, two surface transportation, one healthcare, one student housing, and one not-for-profit business.[11]

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[3] Sections 2-10, ch. 2010-139, Laws of Fla.

[4] Section 288.9605(2)(e), F.S.

[5] "[The] FDFC facilitated the issuance of debt obligations…[t]hese bonds do not constitute a general debt, liability or obligation of FDFC, the state, or any local government." Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, 12 (on file with the Senate Committee on Commerce and Tourism). *See also*, Florida Development Finance Corporation, *Bond Financing*, https://www.fdfcbonds.com/traditional-bonds (last visited Jan. 17, 2020).

[6] *Id*.

[7] The guaranty may not exceed 5 percent of the aggregate principal amount of bonds or other indebtedness relating to any capital project. Section 288.9607, F.S.

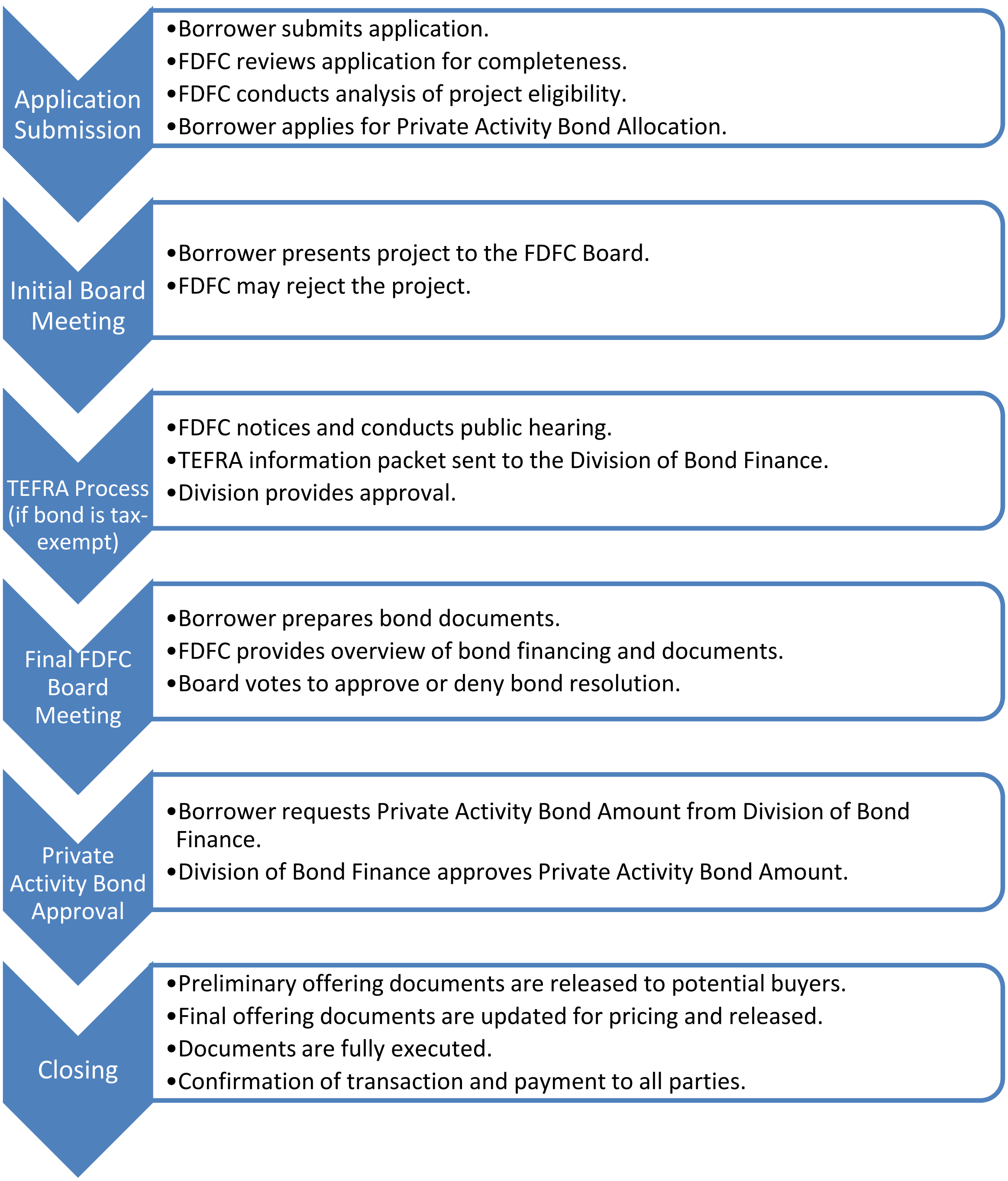
[8] Florida Development Finance Corporation, *About Us*, https://www.fdfcbonds.com/copy-of-about-us (last visited Jan. 17, 2020).

[9] Steven Maguire and Joseph Hughes, Congressional Research Service, *Private Activity Bonds: An Introduction* (July 13, 2018), available at https://fas.org/sgp/crs/misc/RL31457.pdf (last visited Jan. 17, 2020).

[10] Florida Development Finance Corporation, *Bond Financing*, note 5.

[11] Florida Development Finance Corporation *Financial Statements for the Year Ended June 30, 2019*, *supra* note 5 at 3.

More generally, an applicant who wishes to work with the FDFC must submit an application, meet board approval for its project, and in cases of tax-exempt bonds, undergo a public hearing and receive approval from the State Board of Administration's Division of Bond Finance, and then have bonds issued for its project. (See exhibit below).[12]



[12] OPPAGA, *Florida Development Finance Corporation has Recently Taken Steps to Improve Accountability* (Nov. 15, 2017) (on file with the Senate Committee on Commerce and Tourism).

The FDFC also administers the Property Assessed Clean Energy (PACE) program, for which it also may issue bonds and other financial assistance that supports energy conservation.[13] The PACE Program was launched June 29, 2017 and allows a property owner to use equity accrued from the original purchase as the basis for an extension of credit.[14] The PACE Program facilitated $19,353,886 in five taxable residential bonds for the 2019 fiscal year.[15]

FDFC's revenues are generated exclusively by fees it charges for the issuance of bonds.[16] The fees assessed are a $1,500 application fee and a tiered issuance fee due at the time of closing (sale of bonds). The tiered issuance fee is based on the face value of the bond issued: bonds valued from $0 -$2.5 million pay 75 basis points (0.75%); bonds valued from $2.5-$32.5 million pay 25 basis points (0.25%); and bonds valued over $32.5 million pay 10 basis points (0.10%).[17]

Governance and Administration

The FDFC is governed by a five-member board of directors who are appointed by the Governor and confirmed by the Senate for four-year terms.[18] At least three of the FDFC's directors must be bankers selected from a list of candidates nominated by the Enterprise Florida, Inc. (EFI), and one must be an economic development specialist.[19] The directors are vested with the FDFC's powers, and may take action on behalf of the corporation by a vote of a majority of the directors present at a meeting, unless otherwise required by the FDFC's bylaws.[20] The directors do not receive compensation for their service, but are entitled to necessary expenses, including travel expenses.[21] Lastly, the board is empowered to employ a staff to facilitate the FDFC's functions.[22]

The FDFC must provide an annual report to the Governor, the Legislature, the Auditor General, and the governing body of each public entity with which it has an interlocal agreement which details:

- The FDFC's activities, operations, and accomplishments, including the specific number of businesses that the FDFC assisted;
- The FDFC's assets, liabilities, income, and operating expenses, including a description of all outstanding revenue bonds; and
- Any findings made by the Auditor General in an audit conducted pursuant to s. 11.45, F.S.

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[13] Florida Development Finance Corporation, *Property Assessed Clean Energy "PACE"- Commercial PACE*, https://www.fdfcbonds.com/pace-commerical (last visited Jan. 17, 2020). See also, s. 288.9606(7), F.S.
[14] *Id*.
[15] Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, *supra* note 5 at 3.
[16] Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, *supra* note 5 at 6.
[17] Florida Development Finance Corporation, *Conduit Issuance Policy*, 6-7 (Feb. 26, 2019), *available at* https://ca5cce56-0e6c-4988-82a7-74892bf1d07e.filesusr.com/ugd/b1b27e_0b227d45ff2b4e139bb36f2846f70b4b.pdf (last visited Jan. 17, 2020).
[18] Section 288.9604(2), F.S.
[19] Section 288.9604(2), F.S.
[20] Section 288.9604(3), F.S.
[21] Section 288.9604(3)(a)1., F.S.
[22] Section 288.9604(3)(c), F.S.

Department of Economic Opportunity

The Department of Economic Opportunity (DEO) was created to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.[23] Within the DEO, the Division of Strategic Business Development evaluates business prospects; administers tax refund, tax credit, and grant programs; develops performance measures for state incentive programs and contracted entities; and develops and updates a 5-year statewide strategic plan for business expansion and economic development, consulting with EFI and CareerSource Florida, Inc. (CareerSource). The Division of Community Development assists local governments with community planning, administers state and federal community development grant programs, and assists in the development of the 5-year statewide strategic plan. The Division of Workforce Services submits a unified budget request for workforce development in conjunction with CareerSource, ensures that the state appropriately administers federal and state workforce funding, implements the state's reemployment assistance program, and assists in developing the 5-year statewide strategic plan.[24]

The DEO, with assistance from EFI, must, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state. The report must include the identification of problems, a prioritized list of recommendations, and the annual reports of specified other programs.[25] The DEO must establish annual performance standards for EFI, CareerSource, VISIT FLORIDA, and Space Florida, and report annually on how these performance measures are being met in the annual report.[26]

The head of the DEO is the executive director, who is appointed by the Governor, subject to confirmation by the Senate. The executive director serves at the pleasure of and reports to the Governor.[27] The executive director manages all activities and responsibilities of the DEO, and serves as the manager for the state with respect to contracts with EFI, and all applicable direct-support organizations.[28]

The Division of Bond Finance

The Division of Bond Finance (Division) was created by the Legislature in 1969 to issue bonds on behalf of local governments and agencies of the State of Florida. It assumed the powers of its predecessor, the Florida Development Commission. The Division has been administratively housed within the State Board of Administration since 1992, and operates under the control of a governing board which consists of the Governor and Cabinet.[29] The Division has the power to:

- Sue and be sued;
- Issue any bonds of the state, and to issue bonds on behalf of any state agency;

[23] Section 20.60(4), F.S.
[24] Section 20.60(5), F.S.
[25] Section 20.60(10), F.S.
[26] Section 20.60(11), F.S.
[27] Section 20.60(2), F.S.
[28] Section 20.60(9), F.S.
[29] Information from https://www.sbafla.com/bond/Home/About-the-Division-of-Bond-Finance, last visited January 17, 2020.

- Exercise all of the powers relating to the issuance of bonds of any state agency;
- Employ a director of the division to be designated by the Governor;
- Employ or retain persons, firms, or corporations;
- Prepare resolutions and other necessary proceedings relating to the issuance and sale of bonds;
- Sell all state bonds authorized by law;
- Request assistance related to bond issuance from any state agency;
- Exercise the power of eminent domain;
- Remit the proceeds of any bonds sold for any state agency;
- Exercise control over the state's arbitrage compliance program; and
- Undertake investigations.[30]

The Division also determines the allocations for private activity bonds permitted to be issued in Florida under the Internal Revenue Code.[31]

III. Effect of Proposed Changes:

Board of Directors

The bill reconstructs the FDFC board to add two new seats that will be filled by the DEO's executive director, or his or her designee, who will serve as chair of the board, and the State Board of Administration's director of the Division of Bond Finance, or his or her designee, who will serve as a board member. The bill makes conforming changes to s. 288.9604, F.S., to transition the remaining five board seats, which are filled by gubernatorial appointees, to board director roles exclusively. Specifically, those members who serve as the chair and vice chair of the FDFC's board of directors as of June 30, 2020, will lose their titles and serve as regular members beginning on July 1, 2020.

The bill also broadens the board member eligibility requirement to allow three of the appointed board directors to be either a banker, or an individual with experience in finance.

Additionally, the bill removes the role of the EFI from the appointment process, thereby allowing individuals to apply directly to the Governor or FDFC to serve as board members, rather than going through a nomination process that involves the EFI.

Reporting Requirements

The bill requires the FDFC to furnish a copy of its annual report to the DEO on or before 90 days after the close of its fiscal year. Additionally, the bill amends the DEO's annual reporting requirement in s. 20.60, F.S., to require the Department to include both a summary of the FDFC's annual report and an additional detailed report on the FDFC's performance in its own annual report, due on November 1 of each year to the Governor, Senate President, and Speaker of the House of Representatives.

[30] Section 215.64, F.S.
[31] Section 159.804, F.S. See also, Division of Bond Finance, *Tax Equity and Fiscal Responsibility Act (TEFRA) Approval*, https://www.sbafla.com/bondfinance/Other-Functions/TEFRA, last visited Jan. 17, 2020.

Effective Date and Sunset Provision

The bill takes effect on July 1, 2020, and is subject to sunset on October 1, 2022, and every fourth year thereafter, unless reviewed and saved from repeal by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DEO may incur costs associated with the creation of additional full-time employee positions related to the absorption of the FDFC's employees.

VI. Technical Deficiencies:

The bill uses inconsistent terminology to refer to its board members. While the members of the FDFC's board of directors are referred to as "directors," the director of the State Board of Administration's Division of Bond Finance is referred to as a "member."

VII. Related Issues:

Lines 112-114 of the bill provide that all officers, employees, and staff of the FDFC will become employees of the DEO. Consequently, it would appear that those employees would be subject to requirements relating to state employment in Ch. 110, F.S., public officers and employees in Ch. 112, F.S., and the Florida Retirement System in Ch. 121, F.S. The DEO would be responsible for providing and paying for the benefits available to state employees, and the employees would have associated costs related to the provision of health insurance and retirement benefits. The bill does not address how the agency costs associated with providing the benefits will be born, specifically whether the DEO must pay for the benefits out of department appropriations, or whether the DEO may recoup those costs from the fees generated by the FDFC.

The bill deletes a provision specifying that board members must annually elect a chair and vice chair. The bill provides that the executive director of the DEO, or his or her designee, will serve as the chair, but there is no provision for designating a vice chair.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.60, 288.9604, and 288.9610. The bill also creates an unnumbered section of law.

IX. Additional Information:

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

None.

B. Amendments:

None.