



December 2008

Report No. 08-65

## Black Business Investment Act Is Being Implemented, But Progress Was Slow in Distributing Loan Program Funding

### *at a glance*

The 2007 Legislature passed the Florida Black Business Investment Act, which recreated the Florida Black Business Investment Board as a not-for-profit public-private partnership to aid in the development of black business enterprises. To accomplish this mission, the board has established partnerships with entities such as the Florida Department of Management Services' Office of Supplier Diversity, the Bank of America, and the Florida Small Business Development Center Network. In addition, the board is working to address challenges faced by black contractors in obtaining surety bonds.

The act also established the Black Business Loan Program within the Governor's Office of Tourism, Trade, and Economic Development to provide loans, loan guarantees, and investments through eligible recipients, such as regional black business investment corporations. Progress was slow in adopting rules for the loan program. As a result, funding was distributed to regional black investment corporations in October 2008, 15 months after the act's effective date of July 1, 2007.

### Scope

As directed by Chapter [2007-157](#), *Laws of Florida*, OPPAGA reviewed the progress made by the Florida Black Business Investment Board; Black Business Loan Program funding recipients, and the Governor's Office of Tourism, Trade, and Economic Development in implementing the Florida Black Business Investment Act.<sup>1</sup>

### Background

Florida Black Business Investment Board Prior to 2007 Act. The Legislature created the Florida Black Business Investment Board in 1985 to support the creation and expansion of black-owned enterprises in Florida.<sup>2</sup> To accomplish this goal, the board performed various activities, including facilitating procurement opportunities for minority businesses, and allocating capitalization funds appropriated by the Legislature to eight regional black business investment corporations and a statewide investment corporation. During the period from Fiscal Year 1985-86 through Fiscal Year 2005-06, the board allocated approximately \$10 million in capitalization funds to the regional investment corporations to provide loans and loan guarantees to black business owners.

<sup>1</sup> Chapter [2007-157](#), *Laws of Florida*, directs OPPAGA to prepare a status report on the initial implementation of the Black Business Investment Act. The law also directs OPPAGA to conduct a review of the program's performance and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2009.

<sup>2</sup> Chapter 85-104, *Laws of Florida*.

2007 OPPAGA report. In a 2007 report, OPPAGA concluded that the Florida Black Business Support Corporation and the regional investment corporations appeared to have developed and implemented reasonable control processes for providing loans and loan guarantees to black-owned businesses.<sup>3</sup> However, we also found that there had been considerable ongoing controversy between the board and the regional investment corporations.

- From Fiscal Year 2002-03 through Fiscal Year 2004-05, the board did not release appropriated capitalization funds to the regional investment corporations. It withheld the funds because it contended that the regional investment corporations had not reported required performance information. However, some regional investment corporation presidents asserted they had provided the board with the contractually required performance information during this period.
- The board and the regional investment corporations disagreed over the board’s decision to provide funding to black-owned businesses through the Florida Black Business Support Corporation, which was a subsidiary of the board. Some regional corporation presidents expressed concern that the board’s decision to withhold state funding from the investment corporations from 2002 through 2005 could have been due to the board’s desire to retain funds for the Support 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.)
- Regional investment corporation presidents asserted that the board sought to exercise supervisory control over their corporations, which it did not have statutory authority to do.

Our 2007 report also concluded that the best combination of options the Legislature should consider would be to:

- keep the board but change its role to serving as a statewide advocacy and networking entity for the various entities that assist black-owned businesses; and
- make either the Department of Community Affairs or the Governor’s Office of Tourism, Trade, and Economic Development (OTTED) responsible for competitively awarding grants, distributing funds, and monitoring grant recipient performance.

2007 Florida Black Business Investment Act. The 2007 Legislature passed the Florida Black Business Investment Act, Ch. [2007-157](#), *Laws of Florida*, which recreated the Florida Black Business Investment Board as a not-for-profit public-private partnership to evaluate the needs of black business enterprises and aid in their development. The act directed the board 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 act also established the Black Business Loan Program within OTTED to provide loans, loan guarantees, and investments through eligible recipients, such as regional black business investment corporations, to black business enterprises that cannot otherwise obtain capital through conventional lending institutions. The board was to advise OTTED in implementing the program.

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<sup>3</sup> *Legislature Should Consider Options for the Role of the Florida Black Business Investment Board*, OPPAGA Report No. [07-05](#), January 2007.

In Fiscal Year 2007-08, the Legislature appropriated \$3 million to implement the act: \$300,000 to the board for its administration and operations, \$25,000 to OTTED for administering the Black Business Loan Program, and \$2,675,000 to the Black Business Loan Program to provide financial assistance to black business enterprises. In Fiscal Year 2008-09, the Legislature appropriated \$2,750,000: \$250,000 to the board, \$50,000 to OTTED, and \$2,450,000 for the loan program.<sup>4</sup> The funds for both fiscal years were disbursed to certified recipients in October 2008.<sup>5</sup>

## Implementation Status

### *The Black Business Investment Board is transitioning to a statewide networking and advocacy entity*

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

The board has formed partnerships and leveraged resources to aid in the development and expansion of black business enterprises. The board is statutorily directed to collaborate and form partnerships to create a network of information and to identify available resources to enhance the development and expansion of black business enterprises.

To accomplish this goal, the board is working with the Department of Management Services' Office of Supplier Diversity to inform black businesses owners about procurement opportunities with the state. Specifically, the board has

- provided recommendations to the Office of Supplier Diversity regarding the Florida Minority Business Loan Mobilization Program, which was created to assist certified minority

and female-owned businesses in obtaining funding when starting a state-funded project;

- planned conferences that are intended to build relationships among minority, women, and service-disabled veteran businesses and state agency purchasing specialists and non-minority vendors; and
- held workshops for state agencies on how to increase black business enterprises' participation in procurement opportunities.

The board also has met with representatives of the Bank of America to look for ways for stakeholders to take advantage of venture capital opportunities such as those established by the Florida Opportunity Fund.<sup>6</sup> These activities included an educational workshop on equity financing held in July 2008 that was co-sponsored by the board and the Bank of America.

The board is also partnering with the National Football League, the Hispanic Business Investment Fund of Tampa Bay, the Small Business Development Center at University of South Florida, and the Tampa Bay Black Business Investment Corporation to host three professional development workshops for small, minority, and female-owned businesses. The workshop topics include financing, marketing, branding, procurement, business planning, and networking. The workshops will be held in December 2008 and January 2009 in anticipation of Super Bowl XLIII, which will be played in Tampa in February 2009. The National Football League is covering the cost of the workshops (approximately \$9,000).

Finally, the board is working on developing a memorandum of understanding with the Florida Small Business Development Center Network to develop training for corporation employees that will enhance their skills in providing technical assistance.

<sup>4</sup> This appropriation was reduced by a 4% holdback in October 2008.

<sup>5</sup> Each entity received a total of \$558,533 in October 2008 (\$297,200 for Fiscal Year 2007-08 and \$261,333 for Fiscal Year 2008-09).

<sup>6</sup> The 2007 Legislature passed Ch. [2007-189](#), *Laws of Florida*, that created the Florida Opportunity Fund to invest in seed capital and early stage venture capital funds. The fund cannot make direct investments in individual businesses, and must invest in private seed and early stage venture capital funds. These funds must invest in Florida-based companies.

The board is working to address challenges faced by black contractors in obtaining surety bonds. The Black Business Investment Act also authorized the board to contract with a regulated surety company to establish guarantor funds to assist black business enterprises in obtaining surety bonds. To address this matter, the board reviewed two surety bonding programs currently available to black contractors in Florida, the U.S. Small Business Administration's Surety Bond Guaranty Program and the Florida A & M University Small Business Development Center's Surety Bond Guaranty Program; and met with other stakeholders, including the Florida Surety Association. Through these activities, the board identified three impediments that black contractors experience in obtaining surety bonds. Specifically,

- the U.S. Small Business Administration's Surety Bond Guaranty Program provides surety bond guarantees for 70 to 90% of the bond, leaving a gap that must be filled by other sources,
- black contractors often lack the ability to make the upfront payments needed to obtain surety bond coverage, and
- black contractors often lack of training in how to enhance their ability to obtain surety bonds.

To address these impediments, the board is seeking sources to help finance surety bond premium payments and provide a guaranty for surety bonds not covered by the U.S. Small Business Administration's Surety Bond Guaranty Program. The board also signed a memorandum of understanding with the Florida State Conference of the National Association for the Advancement of Colored People (NAACP) to develop training and technical assistance opportunities for black entrepreneurs to increase their surety bonding capacity.

### ***Progress has been slow in implementing the Black Business Loan Program***

The act established the Black Business Loan Program within OTTED to provide loans, loan guarantees, and investments through eligible recipients, such as regional black business investment corporations, to black business

enterprises that cannot otherwise obtain capital through conventional lending institutions. To implement the program, the office was directed to adopt rules, in consultation with the board, for establishing a uniform, open, and competitive application and an annual certification process for eligible recipients who seek funds to provide loans, loan guarantees, or investments in black business enterprises.

Progress was slow in adopting rules for the program. As a result, funding was distributed to regional black investment corporations in October 2008, 15 months after the Act's effective date of July 1, 2007.

Several factors delayed OTTED in developing program rules. The office did not initiate the rule promulgation process until January 2008. In February, the office held its first rule development workshop and published its proposed rules in the *Florida Administrative Weekly*. In March, the Joint Administrative Procedures Committee notified the office that there were some problems with the proposed rule.<sup>7</sup> In May, the office published its proposed changes to the rule to address the committee's concerns in the *Florida Administrative Weekly*.

Also in May 2008, the Legislature amended the Act to delete the requirement for the office to establish a competitive award process for the Black Business Loan Program and instead provide an equal amount of funds to each of the certified recipients on or before September 30.<sup>8</sup> To reflect these changes in the law, the office revised the administrative rules, which took effect on September 1, 2008. The office then distributed the funds in October.

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<sup>7</sup> The Joint Administrative Procedures Committee is responsible for reviewing proposed rule for technical and substantive errors. The committee must certify that the agency has responded to all of the committee's written comments before the rule can be adopted.

<sup>8</sup> Chapter [2008-140](#), *Laws of Florida*.

### ***Major challenge remains for the Black Business Loan Program***

While OTTED has distributed state funding for the program to the regional black business investment corporations, the program faces a major challenge. Regional black business investment corporations have concerns regarding the statewide support corporation overlapping their entities by providing similar services in the same areas.

Regional investment corporations question OTTED's decision to certify the statewide support corporation. OTTED certified eight regional black business investment corporations and the statewide investment corporation as being eligible to participate in the loan and receive state funding support.

In April 2008, the board recommended that the office certify eight regional black business investment corporations, but not the black business support corporation. The board contended that the support corporation was ineligible due to its inability to meet the requirement to have a 20% private funding match.

However, the office decided to certify the statewide support corporation after the corporation demonstrated that it had sufficient retained earnings from non-state sources to meet the 20% match of the state contribution for Fiscal Year 2007-08. However, the regional investment corporations have raised concerns that the statewide support corporation overlaps their entities by providing similar services in the same geographical areas. Prior to passage of the Black Business Act in 2007, the regional investment

corporations provided services in 31 counties while the statewide support corporation served the remaining 36 counties. However, regional corporation presidents assert that following the act's passage, their corporations amended their service areas to cover all counties in the state. They reported these changes in service areas in transmittal letters that accompanied their applications to the office to participate in the Black Business Loan Program in 2008. The office decided that the potential overlap was not an issue because only one of the eight regional corporations addressed how it would provide services to the counties in the expanded service area.

While the act does not preclude the existence of a statewide support corporation, the office should monitor its activities and those of the regional investment corporations to determine the extent to which they are providing similar services in the same geographical areas. Given the limited resources available to the program, overlapping services should be minimized or eliminated.

## **Agency Response**—————

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the director of the Governor's Office of Tourism, Trade, and Economic Development, the president of the Florida Black Business Investment Board, and the presidents of the regional investment corporations. The written responses are reproduced in their entirety in Appendix A.

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OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

**Florida Monitor:** [www.oppaga.state.fl.us](http://www.oppaga.state.fl.us)

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Gary R. VanLandingham, Ph.D., OPPAGA Director

**Appendix A**

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November 24, 2008

Mr. Gary Vanlandingham  
Office of Program Policy Analysis & Government Accountability  
111 West Madison Street, Room 312  
Tallahassee, Florida

Dear Mr. Vanlandingham:

Thank you for the opportunity to review and comment on OPPAGA's draft report on implementation of the Black Business Investment Act.

The Office of Tourism, Trade and Economic Development does not take exception to any component of the report and will follow OPPAGA's recommendation to monitor the activities of the statewide support corporation and those of the regional investment corporations to determine the extent to which they are providing similar services in the same geographical areas.

If you have any further questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Brill".

Dale A. Brill, PHD, Director  
Office of Tourism, Trade, and Economic Development



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**VIA HAND DELIVERY**

November 25, 2008

Gary R. VanLandingham, Ph.D., Director  
Office of Program Policy Analysis  
and Government Accountability  
111 West Madison Street – Room 312  
Tallahassee, Florida 32399-1475

Dear Dr. VanLandingham:

The Board of Directors of the Florida Black Business Investment Board, Inc. (FBBIB) has met to review the draft report of OPPAGA titled, "Black Business Investment Act Being Implemented, But Progress Was Slow in Distributing Loan Program Funding." This letter serves as the FBBIB's written response to that report.


With the exception of some minor clarifying changes that FBBIB staff has previously pointed out to OPPAGA staff, the FBBIB does not object to the findings of the report and is generally pleased with the report's conclusion that the organization was transitioning into a statewide networking and advocacy entity (as recommended by OPPAGA in a 2007 report) and satisfying its obligations under the Black Business Investment Act. The FBBIB is also pleased that the report outlines efforts undertaken by the organization to address challenges faced by black contractors in obtaining surety bonds. It is important to note that although the legislature authorized the organization to address these challenges during the 2007 legislative session, no legislative appropriations have been provided. The FBBIB believes that future legislative appropriations, leveraged with private sector funds and other funds (such as the available under the U.S. Small Business Administration's Surety Bond Guaranty Program), would allow the organization to implement its legislative charge of creating a Black Contractors Surety Bond Program.

Lastly, the report does not mention the status of the current relationship between the FBBIB and the regional black business investment corporations (BBICs). As you know, conflicts in this relationship were cited in OPPAGA's 2007 audit. The FBBIB believes it is important to note that thanks to legislative clarification of the roles of the FBBIB and the BBICs, and perhaps more importantly, the ongoing efforts by both groups to work harmoniously to aid in the development of black business enterprises, past conflicts have dissipated.

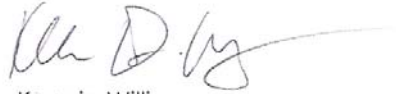
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Thank you for the opportunity to respond to the draft report and please feel free to contact either of us at [mnembar@bcnassociates.com](mailto:mnembar@bcnassociates.com) or 352.377.9669, ext. 102 or [keevin.williams@fbbib.com](mailto:keevin.williams@fbbib.com) or 850.878.4566.

Sincerely,



Mortlake Nembhard  
Chairman



Keevin Williams  
President