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# **Committee on Economic Development**

**Tuesday, March 20, 2007  
5:00 p.m. – 6:00 p.m.  
Reed Hall**

**Marco Rubio  
Speaker**

**Rep. Don Davis  
Chair**

**COMMITTEE ON ECONOMIC DEVELOPMENT**

**Tuesday, March 20, 2007**

**5:00 pm – 6:00 pm**

**Reed Hall**

**I. Call to Order**

**II. Remarks by Chairman**

**III. Consideration of the following bills:**

- HB 1543 – Relating to Child Care Services  
Representative Cusack

*1 AMENDMENT*

- HB 1283 – Relating to Black Business Investment  
Representative Carroll

*3 AMENDMENTS*

- HB 1487 – Relating to Insurance Premium and Corporate Income Tax  
Credits  
Representative Schenck

*1 AMENDMENT*

**IV. ADJOURN**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1543

Child Care Services

**SPONSOR(S):** Cusack

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2400

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	_____	<u>Downes</u>	<u>Croom</u>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

HB 1543 ensures that children under the jurisdiction of the circuit courts receive priority consideration for placement in quality child care centers.

If an approved child care center cannot accommodate the child due to limited capacity, the program is responsible for immediately notifying the child's legal guardians to inform them of the current situation and the estimated enrollment date for the child.

Each local agency who is responsible for the licensing of child care centers must submit a quarterly report to the community-based care lead agency for the district. The report will describe the current licensed capacity for each quality child care center in the district.

The bill may change how current state expenditures on early learning programs are spent.

The bill provides that the act will take effect July 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

None.

#### B. EFFECT OF PROPOSED CHANGES:

##### **PRESENT SITUATION:**

Studies have shown that children's social, emotional, and learning abilities are influenced by the quality of care they receive. The amount of time children participate in high-quality learning environments directly influences a child's outcome. Children obtain the most benefit when they receive an education from knowledgeable teachers who are able to provide one-on-one interaction. Child care centers have trained staff who are equipped to address the unique needs of children pulled from their homes due to neglect, abuse, or abandonment.

Currently under s. 411.01(6), F.S. first priority for participation in the school readiness program is given to children ages 3 years to school entry who are served by the Family Safety Program Office (FSPO) of the Department of Children and Family Services or a community-based lead agency under chapter 39 and for whom child care is needed to minimize risk of further abuse, neglect, or abandonment. Furthermore, s. 411.01(6)(a)1, F.S., expands services to include all children under the age of kindergarten eligibility who are determined to be at risk of abuse, neglect, or exploitation who are currently clients of the FSPO, but who are not otherwise given priority under this subsection.

##### Gold Seal Quality Care Programs

In 1996, the Legislature created the Gold Seal Quality Care Program designation to acknowledge child care facilities and family day care homes that are accredited by nationally recognized agencies whose standards reflect a high quality of care for children. In 1999, the Legislature provided tax incentives for educational materials purchased by programs under this designation through s. 212.08, F.S., and in 2004, they approved accreditation for Gold Seal Quality Care programs to participate in VPK.

Under s. 402.281, F.S., the Gold Seal Quality Care Programs must be accredited by a national recognized accrediting association whose standards meet or exceed the National Association for the Education of Young Children (NAEYC), the National Association of Family Child Care, and the National Early Childhood Program Accreditation Commission. The Department of Children and Families have since increased the list of approved accrediting agencies to 14. These additions include the following:

- Association of Christian Schools International;
- Association of Christian Teachers and Schools;
- Accredited Professional Preschool Learning Environment;
- Council On Accreditation (multi-site, multi-program organizations only);
- Montessori School Accreditation Commission;
- National After-School Association;
- National Accreditation Commission;
- National Association for the Education of Young Children;
- National Association for Family Child Care;
- National Council for Private School Accreditation;
- National Early Childhood Program Accreditation;
- Southern Association of Colleges and Schools;
- United Methodist Association of Preschools; and
- National Accreditation Council for Early Childhood Professional Personnel and Programs.

According to summary data provided by the Department of Children and Family's website, there are currently 2,380 Gold Seal Programs in the state of Florida. Public schools, religious facilities, nonpublic schools, Large Family Day Care Home (LFDCH), Large Family Child Care Homes (LFCCH), and Facilities are the six program types that have received this designation.<sup>1</sup>

These programs must meet the following criteria as set forth in s. 402.281(3), F.S.

- a.) The child care program must not have received any class I violations within the 2 years preceding its application for designation as a Gold Seal Quality Care Program provider. If current Gold Seal Quality Care Program providers receive any class 1 violations, their designation will be immediately terminated and may not be reconsidered until the provider has no class I violations for a period of 2 years.
- b.) The child care program must not have 3 or more class II violations within the 2 years preceding its application for designation as a Gold Seal Quality Care Program provider. If current Gold Seal Quality Care Program providers receive 3 or more class II violations, their designation will be immediately terminated and may not be reconsidered until the provider has no class II violations for a period of 1 year.
- c.) The child care provider must not have been cited for the same class III violation three or more times within the two years preceding its application for designation as a Gold Seal Quality Care Program provider. If current Gold Seal Quality Care Program providers receive 3 or more class III violations, their designation will be immediately terminated and may not be reconsidered until the provider has no class III violations for a period of 1 year.

#### Quality Rating Systems (QRS)

The purpose of administering a quality rating to licensed child care providers is to promote high-quality care for our children. It holds each child care provider accountable for their services and gives parents and guardians an easier way to determine the quality and legitimacy of each provider. Currently, the rating systems are independently administered. Early learning coalitions are implementing various quality rating systems (QRS) in eight counties: Broward, Duval, Hillsborough, Leon, Miami-Dade, Orange, Palm Beach, and Pinellas.<sup>2</sup> Participating counties are responsible for the criteria and grading scale of their own professional rating system, which allows for inconsistencies when they are compared.

#### Children under the jurisdiction of the circuit courts

The following is the general process that must be taken by the Department of Children and Families (DCF) before a child is considered under the jurisdiction of the circuit courts.<sup>3</sup>

- 1) Someone must phone the abuse hotline and report a possible case of abuse or neglect. The hotline will go through a list of criteria with the caller to determine the legitimacy of their claim.
- 2) The Department of Children and Families then send an agent to investigate the situation and can immediately take the child into custody if they find substantial evidence of abuse or neglect.
- 3) It is then required that a court hearing take place within 24 hours to determine whether the child will be released back to their home, placed with other family members, or remain under the custody of the state.
- 4) If they remain with the state, it is then considered that the child is under the jurisdiction of the circuit courts, and therefore, under this new section, the child receives priority consideration for placement in the qualified child care centers.

### **EFFECT OF PROPOSED CHANGES**

<sup>1</sup> Information available online at <http://www.dcf.state.fl.us/childcare/goldseal.shtml>.

<sup>2</sup> Information was found in the July 2006 QRS Matrix Report generated by the Office of Early Learning.

<sup>3</sup> Information available online at <http://www.dcf.state.fl.us/childabuseprevention>.

This bill ensures that children under the jurisdiction of the circuit courts receive priority consideration for placement in quality child care centers. The term "Quality Child Care Center" is a program that meets the following criteria:

- a) Holds a current Gold Seal Quality Care designation from the Department of Children and Families (DCF) if they substantially meet or exceed the standards of the National Association for the Education of Young Children (NAEYC), the National Association of Family Child Care, and the National Early Learning Childhood Program Accreditation Commission, OR
- b) Has been designated as a high quality program with at least a rating of 3 by professional quality rating system if the county in which the child is located has such a system.

If an approved child care center cannot accommodate the child due to limited capacity, the program is responsible for immediately notifying the child's legal guardians to inform them of the current situation and the estimated enrollment date for the child.

Currently under s. 411.01(6), F.S., priority for participation in the school readiness program is given to children ages 3 years to school entry who are served by the Family Safety Program Office of the Department of Children and Family Services or a community-based lead agency under chapter 39 and for whom child care is needed to minimize risk of further abuse, neglect, or abandonment.

This bill does not state where the new language will be inserted into current statute, which raises the question of how these priorities will be administered. Also, the bill does not define which ages of the children within the jurisdiction of the circuit courts that this priority applies to. By giving priority for placement into quality child care centers to any child under the jurisdiction of the circuit courts, regardless of age, the bill would contradict the current state priority of providing program eligibility to children under the age of kindergarten eligibility.

In fiscal year 2005-2006, 164,848 children were enrolled in school readiness programs. During that year, 48,078 were on the waiting list to receive services.<sup>4</sup> Funding provided by the Florida Legislature for this program during this year was \$659.1 million in which \$172.5 million was appropriated from the General Revenue fund. Expanding priority to older children will likely place more children on the waiting list.

Additionally, the current bill does not define "legal guardian" of a child under the jurisdiction of a circuit court. Without a clear definition, the quality child care center could not ensure that notification was given to the proper person or entity.

#### C. SECTION DIRECTORY:

**Section 1.** – Provides legislative intent that children under the jurisdiction of the circuit courts receive priority consideration for placement into quality child care centers. This section also requires quality child care centers to notify legal guardians if they are unable to accept the child into the program due to limited capacity. Last, it requires district child care agencies to provide a quarterly report regarding the capacity of quality child care centers.

**Section 2** – Providing an effective date of July 1, 2007

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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<sup>4</sup> Information available online at [www.floridajobs.org/earlylearning/SRS.html](http://www.floridajobs.org/earlylearning/SRS.html).

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may change how current state expenditures on early learning programs are spent.

There may also be small expenses incurred by the agency in each district responsible for licensing child care centers due to the increase in time and effort to generate a quarterly report on each child care center in the district.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not state where the new language will be inserted into current statute, which raises the question of how these priorities will be administered. Also, the bill does not define which ages of the children within the jurisdiction of the circuit courts that this priority applies to. By giving priority for placement into quality child care centers to any child under the jurisdiction of the circuit courts, regardless of age, the bill would contradict the current state priority of providing program eligibility to children under the age of kindergarten eligibility.

D. STATEMENT OF THE SPONSOR



No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

1                                    A bill to be entitled  
 2            An act relating to child care services; providing  
 3            legislative intent that a child under jurisdiction of the  
 4            circuit court receive priority consideration for placement  
 5            into a quality child care center; defining the term  
 6            "quality child care center"; requiring a quality child  
 7            care center to immediately notify the legal guardian of a  
 8            child if the child care center is unable to accept a child  
 9            into its program due to the center's limited capacity;  
 10           requiring district child care licensing agencies to  
 11           provide a report to community-based care lead agencies  
 12           regarding capacity of quality child care centers;  
 13           providing an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17            Section 1. (1) It is the intent of the Legislature that a  
 18 child under the jurisdiction of the circuit court receive  
 19 priority consideration for placement into a quality child care  
 20 center pursuant to s. 411.01, Florida Statutes, the School  
 21 Readiness Act.

22            (2) As used in this section, the term "quality child care  
 23 center" means a child care center that:

24            (a) Holds a current Gold Seal Quality Care designation  
 25 under s. 402.281, Florida Statutes; or

26            (b) Has been designated as a high-quality program with at  
 27 least a quality rating of 3 by a professional quality rating  
 28 system if such a system exists in the county in which the child

HB 1543

2007

29 is being served. A quality child care center must maintain  
30 accreditation or designation as a high-quality program  
31 throughout the year in order to be an approved provider.

32 (3) If a quality child care center is unable to accept a  
33 child into its program due to the child care center's limited  
34 capacity, the center must immediately notify the legal guardian  
35 of the child of this fact and the estimated enrollment date for  
36 the child.

37 (4) The agency in each district that is responsible for  
38 licensing child care centers shall provide the community-based  
39 care lead agency for the district with a quarterly report of the  
40 licensed capacity for each quality child care center in the  
41 district.

42 Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.01 (for drafter's use only)

Bill No.1543

COUNCIL/COMMITTEE ACTION

ADOPTED                                    \_\_\_ (Y/N)  
ADOPTED AS AMENDED                    \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION                \_\_\_ (Y/N)  
FAILED TO ADOPT                         \_\_\_ (Y/N)  
WITHDRAWN                                \_\_\_ (Y/N)  
OTHER                                        \_\_\_\_\_

1 Council/Committee hearing bill: Committee on Economic  
2 Development  
3 Representative Cusack offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 402.301(8), Florida Statutes, is added  
to read: (1) It is further the intent of the Legislature that a  
public child care facility designated as a "Gold Seal Quality  
Care" facility under s. 402.281 provides children receiving  
services under s. 411.01(6)(a)1., first priority for placement  
upon request of the service.

Section 2. This act shall take effect July 1, 2007.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.01 (for drafter's use only)

23 An act relating to child care services; providing  
24 legislative intent that a child receive priority for  
25 placement and services at a public child care center  
26 designated as Gold Seal; providing an effective date.  
27

**February 2007 Gold Seal Quality Care  
Child Care Setting Roll Up Report**

D	County	Facility	LFCC	LFDCH	Nonpublic School	Public School	Religious Facility	Grand Total	
01	Escambia		31	6	4	3	11	55	
	Okaloosa		7		4	4	16	31	
	Santa Rosa		4	2			6	13	
	Walton		1		1		4	6	
01 Total		43	8	9	7	37	1	105	
02	Bay		11	2	1	3	21	38	
	Calhoun						4	4	
	Franklin		4			1	1	6	
	Gadsden		2				8	10	
	Gulf		1					1	
	Holmes		4				4	8	
	Jackson		2				6	8	
	Jefferson						1	1	
	Leon		29			1	20	2	52
	Madison		1	1		1		3	
	Taylor		1					1	
	Wakulla						2	2	
	Washington		5				2	7	
02 Total		60	3	1	6	69	2	141	
03	Alachua		16	1	6		11	34	
	Bradford		2		1		3	7	
	Columbia		7			2	6	15	
	Dixie						2	2	
	Gilchrist		3				2	5	
	Hamilton		1				3	4	
	Lafayette						1	1	
	Levy		4				3	7	
	Putnam		5		2		9	16	
	Suwannee		3				2	5	
	Union		1				1	2	
	03 Total		42	1	9	2	43	1	98
04	Baker		3				1	4	
	Clay		21				7	28	
	Duval		45	1	1	6	45	5	103
	Nassau		3				4	8	
	Saint Johns		16				4	20	
04 Total		88	1	1	6	61	6	163	
07	Brevard		54	1		1	35	91	
	Orange		55			2	12	1	70
	Osceola		7			1	14	22	
	Seminole		35		2	2	4	1	44
07 Total		151	1	2	6	65	2	227	
08	Charlotte		10		2		8	1	21
	Collier		7	2		2	21	1	33
	Glades		2						2
	Hendry		5	1			1	1	8
	Lee		25	1			21		47
08 Total		49	4	2	2	51	3	111	
09	Palm Beach		146		28	5	30	209	
09 Total		146		28	5	30		209	
10	Broward		212	1	1	8	55	277	
10 Total		212	1	1	8	55		277	
11	Miami-Dade		276	15	3	21	12	327	
	Monroe		6			2	2	10	
11 Total		282	15	3	23	14		337	
12	Flagler		2				2	4	
	Volusia		26			1	24	1	52
12 Total		28			1	26	1	56	
13	Citrus		14	1	1	1		17	
	Hernando		13	1			2	16	
	Lake		13		1	1	18	33	
	Marion		17	3	1			2	23
	Sumter						4	1	5
13 Total		57	5	3	2	24	3	94	
14	Hardee		2				2	4	
	Highlands		6			2	6	14	
	Polk		22		2		35	59	
14 Total		30		2	2	43		77	
15	Indian River		13				1	14	
	Martin		8			2	5	15	
	Okeechobee		3					3	
	Saint Lucie		23			1	10	34	
15 Total		47			3	16		66	
23	DeSoto		5		1			6	
	Hillsborough		119	4	35	6	25	2	191
	Manatee		8			1	2	11	
	Pasco		23				32	55	
	Pinellas		70	8	21	1	1	101	
	Sarasota		48	2	2	3		55	
23 Total		273	14	59	11	60	2	419	
Grand Total		1508	53	120	84	594	21	2380	





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1283  
SPONSOR(S): Carroll  
TIED BILLS:

Black Business Investment

IDEN./SIM. BILLS: SB 2860

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	_____	McAuliffe 	Croom 
2) <u>Economic Expansion &amp; Infrastructure Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates the Florida Black Business Investment Act, which is intended to increase the availability of capital to black business enterprises. The bill recreates the Black Business Investment Board (the board) as a not for profit corporation to evaluate the needs and aid in the development of black business enterprises. The bill also creates the Black Business Loan Program, under the administration of the Office of Tourism, Trade, and Economic Development (OTTED), to provide loans, loan guarantees, and investments through eligible recipients such as Black Business Investment Corporations or others, to black business enterprises that cannot otherwise obtain capital through conventional lending institutions.

The bill also includes the following provisions:

- Requires the board to advise OTTED, to aid in the development and expansion of black business enterprises by leveraging state, local and private funds, to serve as an information and technical assistance clearinghouse, to market the program in the media and to collaborate with key state, local and education entities.
- Requires annual certification of program recipients, including Black Business Investment Corporations;
- Provides eligibility criteria for black business enterprises.
- Creates the Black Contractors Bond Program which authorizes the board to contract with a regulated surety company to establish guarantor funds to assist qualified black business enterprises in obtaining surety bonds and other credit instruments.
- Requires OPPAGA to study the implementation of the bill and to perform a program review after one year.

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

The bill has an effective date of July 1, 2007.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background:**<sup>1</sup>

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

The board's goals are to:

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

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

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

The board currently consists of the following members:

- Six members appointed by the Governor and subject to confirmation by the Senate, who must be experienced in investment finance and business development.
- One member from the private sector appointed by the President of the Senate, who must be experienced in investment finance and business development and who shall serve a term of 2 years.
- One member from the private sector appointed by the Speaker of the House of Representatives, who must be experienced in investment finance and business development and who shall serve a term of 2 years.
- Three representatives of black business investment corporations, who must be selected from among and by the chairs of the black business investment corporations. A representative from a black business investment corporation shall serve for a term of 2 years but is eligible for

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

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

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

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

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

### Black Business Investment Corporations

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

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

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

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

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

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

### Board Staffing

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

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

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

### Recent Audits

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

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

In January 2003, OPPAGA issued a report that found:

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

OPPAGA stated the best combination of options would be to:

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

### **Effect of Proposed Changes:**

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

### Black Business Investment Board

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

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

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

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

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

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

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

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

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

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

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

### Black Business Investment Corporations

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

### Black Business Loan Program

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

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

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

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

### Black Business Enterprise Eligibility

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

### Black Business Loan Program Trust Fund

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

### Black Contractors Bond Program

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

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

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

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

#### Quarterly and Annual Reports

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

#### OPPAGA Report

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

#### Repeals

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

#### Appropriation

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

### C. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 21. Provides an appropriation and staff to OTTED.

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

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

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Creation of Trust Funds

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

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



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

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

1 A bill to be entitled  
 2 An act relating to black business investment; amending s.  
 3 14.2015, F.S.; requiring the Office of Tourism, Trade, and  
 4 Economic Development to administer the Black Business Loan  
 5 Program; providing purposes; amending s. 288.702, F.S.;  
 6 revising a short title; amending s. 288.703, F.S.;  
 7 revising the definition of "minority person"; amending s.  
 8 288.706, F.S.; deleting references to the Florida Black  
 9 Business Investment Board, Inc., and black business  
 10 investment corporations from a list of certain financial  
 11 institutions maintained by the Department of Management  
 12 Services; requiring the Department of Management Services  
 13 to collaborate with the Florida Black Business Investment  
 14 Board, Inc., and the Office of Tourism, Trade, and  
 15 Economic Development for certain purposes; creating s.  
 16 288.7065, F.S.; providing a short title; amending s.  
 17 288.707, F.S.; revising provisions creating the Florida  
 18 Black Business Investment Board, Inc.; revising  
 19 legislative findings; creating the board; requiring the  
 20 board to contract with the Office of Tourism, Trade, and  
 21 Economic Development for certain purposes; specifying  
 22 application of public records and public meetings  
 23 requirements; providing for appointment of a board of  
 24 directors; specifying terms of office and experience  
 25 requirements of board members; providing for filling of  
 26 board vacancies; requiring the Governor to appoint a  
 27 chair; providing for meetings; requiring members to serve  
 28 without compensation; providing for reimbursement of

29 expenses; requiring members to file a statement of  
 30 financial interests; amending s. 288.708, F.S.; providing  
 31 for appointment and duties of the president of the board;  
 32 deleting a provision specifying prudent use of certain  
 33 funds and requiring use of funds according to applicable  
 34 laws, bylaws, or contracts; applying certain salary  
 35 limitation provisions to employees of the board; requiring  
 36 the Department of Management Services to establish a  
 37 lease-agreement program for board employees; amending s.  
 38 288.709, F.S.; revising the powers of the board; amending  
 39 s. 288.7091, F.S.; revising the duties of the board;  
 40 creating s. 288.7094, F.S.; providing a definition;  
 41 specifying eligibility of certain black business  
 42 investment corporations to participate in the Black  
 43 Business Loan Program; requiring the Office of Tourism,  
 44 Trade, and Economic Development to give priority  
 45 consideration to such corporations for participation in  
 46 the program; creating s. 288.7102, F.S.; establishing the  
 47 Black Business Loan Program in the Office of Tourism,  
 48 Trade, and Economic Development; requiring the office to  
 49 disburse funds appropriated by the Legislature, through  
 50 eligible recipients, to certain black business  
 51 enterprises; providing a legislative finding regarding use  
 52 of state funds received by the board through fiscal year  
 53 2005-2006; providing duties and responsibilities of the  
 54 office and the board in administering the program;  
 55 establishing a competitive application and annual  
 56 certification process for eligible recipients for funds to

57 provide loans, loan guarantees, and investments to black  
58 business enterprises; requiring an allocation policy for  
59 equitable distribution throughout the state; providing  
60 eligibility requirements for recipients to receive funds  
61 and to provide loans, loan guarantees, or investments;  
62 requiring annual certification of eligibility; requiring  
63 the office to consult with the board; requiring the office  
64 to adopt rules; requiring the board to adopt policies and  
65 procedures; creating s. 288.71025, F.S.; providing a  
66 prohibited act; providing for filing of a civil complaint  
67 and imposition of a fine; providing for use of funds  
68 received from such fine; creating s. 288.7103, F.S.;  
69 providing black business enterprise eligibility  
70 requirements for receiving loans, loan guarantees, or  
71 investments; amending s. 288.711, F.S.; renaming the  
72 Florida Investment Incentive Trust Fund as the Florida  
73 Black Business Loan Program Trust Fund; placing the fund  
74 in the Office of Tourism, Trade, and Economic Development  
75 for purposes of implementing and administering the Black  
76 Business Loan Program; deleting provisions relating to  
77 authorizations for the board to make investments from the  
78 fund for certain purposes; revising purposes for which a  
79 black business investment corporation is authorized to use  
80 funds received from the fund; amending s. 288.712, F.S.;  
81 revising provisions relating to guarantor funds to assist  
82 qualified black business enterprises obtain surety bonds  
83 and other credit instruments; authorizing board to  
84 contract with regulated surety companies; revising uses of

85 | the Black Contractors Bond Trust Fund and the Black  
 86 | Contractors Bond Program Administrative and Loss Reserve  
 87 | Fund; eliminating the Black Business Loan Guaranty Trust  
 88 | Fund; revising board exceptions to laws and rules related  
 89 | to a guaranty company; requiring board adoption of  
 90 | policies and procedures relating to board guarantee of  
 91 | loss and to required payment of premiums; authorizing  
 92 | contracting with private entity to administer black  
 93 | contractors bonding program; delineating board use of a  
 94 | surety bond company; delineating board requirements for  
 95 | encouraging program participation; amending s. 288.714,  
 96 | F.S.; requiring recipients to provide quarterly and annual  
 97 | reports; specifying report requirements; requiring the  
 98 | board to submit an annual program report to the Governor  
 99 | and Legislature; specifying report requirements; requiring  
 100 | certain black business investment corporations to submit  
 101 | quarterly reports to the board on uses of certain state  
 102 | funds; specifying report requirements; amending s.  
 103 | 288.9015, F.S.; requiring Enterprise Florida, Inc., to  
 104 | collaborate with the Florida Black Business Investment  
 105 | Board, Inc., and the Office of Tourism, Trade, and  
 106 | Economic Development for certain purposes; requiring the  
 107 | Office of Program Policy Analysis and Government  
 108 | Accountability to submit a status report to the Governor  
 109 | and Legislature on the Office of Tourism, Trade, and  
 110 | Economic Development's implementation of the Florida Black  
 111 | Business Investment Act; requiring the Office of Program  
 112 | Policy Analysis and Government Accountability to conduct a

113 program review of the Office of Tourism, Trade, and  
 114 Economic Development's performance in meeting goals of the  
 115 Florida Black Business Investment Act and to submit a  
 116 program review report to the Governor and Legislature;  
 117 amending s. 288.90151, F.S.; correcting a cross reference;  
 118 repealing s. 288.7092, F.S., relating to return on  
 119 investment from activities of the corporation; repealing  
 120 s. 288.7095, F.S., relating to duties of black business  
 121 investment corporations; repealing s. 288.71, F.S.,  
 122 relating to conditions for board action; repealing s.  
 123 288.7101, F.S., relating to the state employee leasing  
 124 program of the Department of Management Services for  
 125 employees of the Florida Black Business Investment Board,  
 126 Inc.; repealing s. 288.713, F.S., relating to capital  
 127 participation instruments; providing an appropriation and  
 128 authorizing certain positions; providing an effective  
 129 date.

130

131 Be It Enacted by the Legislature of the State of Florida:

132

133 Section 1. Paragraphs (g), (h), (i), and (j) of subsection  
 134 (2) of section 14.2015, Florida Statutes, are redesignated as  
 135 paragraphs (h), (i), (j), and (k), respectively, and a new  
 136 paragraph (g) is added to that subsection, to read:

137

138

14.2015 Office of Tourism, Trade, and Economic  
 Development; creation; powers and duties.--

139

140

(2) The purpose of the Office of Tourism, Trade, and  
 Economic Development is to assist the Governor in working with

HB 1283

2007

141 the Legislature, state agencies, business leaders, and economic  
 142 development professionals to formulate and implement coherent  
 143 and consistent policies and strategies designed to provide  
 144 economic opportunities for all Floridians. To accomplish such  
 145 purposes, the Office of Tourism, Trade, and Economic Development  
 146 shall:

147 (g) Administer the Black Business Loan Program, the  
 148 purpose of which is to leverage state, local, and private funds  
 149 to provide loans and loan guarantees to black business  
 150 enterprises that cannot obtain capital through conventional  
 151 lending institutions but that otherwise could compete  
 152 successfully in the private sector.

153 Section 2. Section 288.702, Florida Statutes, is amended  
 154 to read:

155 288.702 Short title.--This section and sections 288.703-  
 156 288.706 ~~This act shall be known and~~ may be cited as the "Florida  
 157 Small and Minority Business Assistance Act ~~of 1985.~~"

158 Section 3. Paragraph (a) of subsection (3) of section  
 159 288.703, Florida Statutes, is amended to read:

160 288.703 Definitions.--As used in this act, the following  
 161 words and terms shall have the following meanings unless the  
 162 content shall indicate another meaning or intent:

163 (3) "Minority person" means a lawful, permanent resident  
 164 of Florida who is:

165 (a) An African American, a person having origins in any of  
 166 the black racial groups of the African Diaspora, regardless of  
 167 cultural origin.

168 Section 4. Subsection (11) of section 288.706, Florida  
 169 Statutes, is amended, and subsection (12) is added to that  
 170 section, to read:

171 288.706 Florida Minority Business Loan Mobilization  
 172 Program.--

173 (11) The Department of Management Services shall maintain  
 174 a listing of financial institutions willing to participate in  
 175 the Florida Minority Business Loan Mobilization Program, ~~which~~  
 176 ~~may include the Florida Black Business Investment Board, Inc.,~~  
 177 ~~and black business investment corporations.~~ This list of  
 178 financial institutions shall not be exclusive. A minority  
 179 business enterprise vendor who has a working relationship with a  
 180 financial institution is encouraged to request that the  
 181 financial institution apply to participate as a financial  
 182 institution for the program.

183 (12) The Department of Management Services shall  
 184 collaborate with the Florida Black Business Investment Board,  
 185 Inc., and the Office of Tourism, Trade, and Economic Development  
 186 to assist in the development and enhancement of black business  
 187 enterprises.

188 Section 5. Section 288.7065, Florida Statutes, is created  
 189 to read:

190 288.7065 Short title.--This section and sections 288.707-  
 191 288.714 may be cited as the "Florida Black Business Investment  
 192 Act."

193 Section 6. Section 288.707, Florida Statutes, is amended  
 194 to read:

195 (Substantial rewording of section. See



196 s. 288.707, F.S., for present text.)  
 197 288.707 Florida Black Business Investment Board, Inc.;  
 198 findings; creation; membership; organization; meetings;  
 199 disclosure.--

200 (1) The Legislature finds that the public interest of the  
 201 state will be served by the creation of a not-for-profit public-  
 202 private entity the primary mission of which shall be to assist  
 203 in the development and expansion of black business enterprises  
 204 by:

205 (a) Advising the Office of Tourism, Trade, and Economic  
 206 Development in its oversight of the Black Business Loan Program  
 207 and creating long-range strategic policy for the program.

208 (b) Evaluating the unmet need for capital by black  
 209 business enterprises in the state.

210 (c) Creating partnerships between state and local  
 211 governments and private enterprises to aid in the development  
 212 and expansion of black business enterprises.

213 (d) Providing a network of information resources for black  
 214 business enterprises and providing technical assistance through  
 215 this network.

216 (2) (a) There is created a not-for-profit corporation to be  
 217 known as the "Florida Black Business Investment Board, Inc.,"  
 218 referred to in ss. 288.707-288.714 as the board, which shall be  
 219 registered, incorporated, organized, and operated in compliance  
 220 with chapter 617 and shall not be a unit or entity of state  
 221 government. The Legislature determines, however, that public  
 222 policy dictates that the board operate in the most open and  
 223 accessible manner consistent with its public purpose. Therefore,

224 the Legislature specifically declares that the board and its  
 225 advisory committees or similar groups created by the board,  
 226 including any subsidiaries, are subject to the provisions of  
 227 chapter 119, relating to public records, and the provisions of  
 228 chapter 286, relating to public meetings and records.

229 (b) The board shall contract with the Office of Tourism,  
 230 Trade, and Economic Development to implement the provisions of  
 231 ss. 288.707-288.714.

232 (3) The board shall be governed by a board of directors  
 233 chosen as follows:

234 (a) Five members appointed by the Governor who shall serve  
 235 terms of 4 years each, except that in making initial  
 236 appointments, the Governor shall appoint three members to serve  
 237 for terms of 2 years each and two members to serve for terms of  
 238 3 years each.

239 (b) One member appointed by the President of the Senate  
 240 who shall serve a term of 2 years.

241 (c) One member appointed by the Speaker of the House of  
 242 Representatives who shall serve a term of 2 years.

243 (d) The vice chair of Enterprise Florida, Inc., or his or  
 244 her designee.

245 (e) The chair of the Florida Development Finance  
 246 Corporation created pursuant to s. 288.9604.

247 (f) Four presidents of participating black business  
 248 investment corporations who shall be appointed by the Executive  
 249 Director of the Office of Tourism, Trade, and Economic  
 250 Development upon the recommendation of the Florida Consortium of  
 251 Black Business Investment Corporations, Inc., to serve for terms

252 of 3 years each. Each shall be eligible for reappointment to one  
 253 additional term of 3 years.

254 (4) Members of the board must have experience in business,  
 255 including financial services, banking, or economic development.  
 256 At least one of the Governor's appointees must have experience  
 257 in venture capitalism.

258 (5) Any person appointed to fill a vacancy on the board  
 259 shall be appointed in a like manner and shall serve for only the  
 260 remainder of the unexpired term. Any member shall be eligible  
 261 for reappointment.

262 (6) The Governor shall appoint the chairperson, who shall  
 263 be a member of the board and shall serve at the pleasure of the  
 264 Governor. The board shall annually elect one of its members as  
 265 vice chairperson.

266 (7) The board shall meet at least four times annually upon  
 267 the call of the chair or vice chair or at the request of a  
 268 majority of the membership. A majority of the total number of  
 269 current members of the board shall constitute a quorum. The  
 270 board may take official action by a majority vote of the members  
 271 present at any meeting at which a quorum is present.

272 (8) Members of the board shall serve without compensation,  
 273 but members, the president of the board, and other board  
 274 employees may be reimbursed for all reasonable, necessary, and  
 275 actual expenses as determined and approved by the board.

276 (9) Each member of the board who is not otherwise required  
 277 to disclose financial interests pursuant to s. 8, Art. II of the  
 278 State Constitution or s. 112.3144 shall file a statement of  
 279 financial interests pursuant to s. 112.3145.

280 Section 7. Section 288.708, Florida Statutes, is amended  
 281 to read:

282 288.708 President; employees.--

283 (1) The president of the board ~~corporation~~, who may also  
 284 be designated as secretary-treasurer, shall be appointed by the  
 285 board and shall serve at the pleasure of the board. The board  
 286 shall establish and adjust the compensation of the president.  
 287 The president shall be the chief administrative and operational  
 288 officer of the board ~~corporation~~ and shall direct and supervise  
 289 administrative affairs and the general management of the board  
 290 ~~corporation~~. The board may delegate to its president those  
 291 powers and responsibilities it deems appropriate, except for  
 292 appointment of the president. The president:

293 (a) May contract with or employ legal and technical  
 294 experts and such other employees, permanent and temporary, as  
 295 shall be authorized by the board;

296 (b) Shall attend meetings of the board; and

297 (c) Shall cause copies to be made of all minutes and other  
 298 records and documents of the board and shall certify that such  
 299 copies are true copies. All persons dealing with the ~~corporation~~  
 300 ~~or~~ board may rely upon such certification.

301 (2) ~~The corporation and its officers and board members are~~  
 302 ~~responsible for the prudent use of all public and private funds~~  
 303 ~~and shall ensure that the use of such funds is in accordance~~  
 304 ~~with all applicable laws, bylaws, or contractual requirements.~~

305 An employee of the board ~~corporation~~ may not receive  
 306 compensation for employment that exceeds the salary paid to the  
 307 Governor, unless the board ~~corporation~~ and the employee have

308 executed a contract that prescribes specific and measurable  
 309 performance outcomes for the employee, the satisfaction of which  
 310 provides the basis for the award of incentive payments that  
 311 increase the employee's total compensation to a level above the  
 312 salary paid to the Governor. The Department of Management  
 313 Services shall establish a lease-agreement program under which  
 314 an employee of the board, as of June 30, 2002, retains his or  
 315 her status as a state employee until the employee voluntarily or  
 316 involuntarily terminates his or her status with the board.  
 317 Status as a state employee shall include the right to  
 318 participate in the Florida Retirement System.

319 Section 8. Section 288.709, Florida Statutes, is amended  
 320 to read:

321 288.709 Powers of the Florida Black Business Investment  
 322 Board, Inc.--The board shall have all the powers granted under  
 323 chapter 617 and any powers necessary or convenient to carry out  
 324 and effectuate the purposes and provisions of ss. 288.707-  
 325 288.714, including, but not limited to, the power to:

326 (1) Adopt bylaws for the regulation of its affairs and the  
 327 conduct of its business and adopt policies to implement the  
 328 provisions of law conferring duties upon it. The ~~Such~~ bylaws  
 329 shall provide that the board ~~corporation~~ is subject to the  
 330 requirements of s. 24, Art. I of the State Constitution and  
 331 chapter 119 and s. 286.011.

332 ~~(2) Adopt an official seal.~~

333 ~~(3) Sue and be sued in its own name.~~

334 ~~(4) Make and execute contracts and other instruments~~  
 335 ~~necessary or convenient for the exercise of its power and~~  
 336 ~~functions.~~

337 ~~(5) Acquire, hold, and dispose of personal property for~~  
 338 ~~its corporate purposes.~~

339 (2)(6) Enter into agreements or other transactions with  
 340 any federal, state, or local agency or private entity.

341 ~~(7) Encourage financial institutions to participate in~~  
 342 ~~consortia for the purpose of investing in black business~~  
 343 ~~enterprises.~~

344 ~~(8) Ensure that funds available to the board for purposes~~  
 345 ~~set forth in ss. 298.707-298.714 are disbursed on a statewide~~  
 346 ~~basis and are not concentrated in one geographical area.~~

347 (3)(9) Invest any funds held in reserves or sinking funds,  
 348 or any funds not required for immediate disbursement, in such  
 349 investments as may be authorized for trust funds under s.  
 350 215.47; however, such investments will be made on behalf of the  
 351 board by the Chief Financial Officer or by another trustee  
 352 appointed for that purpose.

353 (4)(10) Appear in its own behalf before boards,  
 354 commissions, departments, or other agencies of municipal,  
 355 county, state, or Federal Government.

356 ~~(11) Procure insurance or require bond against any loss in~~  
 357 ~~connection with its property in such amounts and from such~~  
 358 ~~insurers as may be necessary or desirable.~~

359 (5)(12) Apply for, accept, and disburse from any state or  
 360 nonstate source ~~Receive and accept from any federal, state, or~~  
 361 ~~local agency grants, loans, or advances for, or in aid of, the~~

362 purposes of ss. 288.707-288.714, and to receive and accept  
 363 contributions from any source of either money, property, labor,  
 364 or other things of value, to be held, used, and applied for said  
 365 purposes.

366 ~~(13) Create, issue, and buy and sell stock, evidences of~~  
 367 ~~indebtedness, and other capital participation instruments; to~~  
 368 ~~hold such stock, evidences of indebtedness, and capital~~  
 369 ~~participation instruments; and to underwrite the creation of a~~  
 370 ~~capital market for these securities in a manner designed to~~  
 371 ~~enhance development of capital ownership in the target group.~~

372 (6)(14) Provide and pay for such advisory services and  
 373 technical assistance as may be necessary or desirable to carry  
 374 out the purposes of this act.

375 (7)(15) Engage in special programs to enhance the  
 376 development of black business enterprises as authorized by this  
 377 act.

378 ~~(16) Promote black ownership of financial institutions in~~  
 379 ~~Florida.~~

380 ~~(17) Take, hold, and improve property, including real~~  
 381 ~~property.~~

382 ~~(18) Do any and all things necessary or convenient to~~  
 383 ~~carry out the purposes of, and exercise the powers given and~~  
 384 ~~granted in, ss. 288.707-288.714, and exercise any other powers,~~  
 385 ~~rights, or responsibilities of a corporation.~~

386 (8)(19) In addition to any indemnification available under  
 387 chapter 617, indemnify, and purchase and maintain insurance on  
 388 behalf of, directors, officers, and employees of the board  
 389 ~~corporation~~ and its boards against any personal liability or

390 accountability by reason of actions taken while acting within  
 391 the scope of their authority.

392 (9)~~(20)~~ Provide in its bylaws that, upon the dissolution  
 393 of the board corporation, all of its assets acquired through the  
 394 use of state funds, after payment of all legal debts and  
 395 liabilities, revert to the ~~this~~ state.

396 Section 9. Section 288.7091, Florida Statutes, is amended  
 397 to read:

398 (Substantial rewording of section. See  
 399 s. 288.7091, F.S., for present text.)

400 288.7091 Duties of the Florida Black Business Investment  
 401 Board, Inc.--The board shall:

402 (1) Serve as an advisory board to the Office of Tourism,  
 403 Trade, and Economic Development, through contract with the  
 404 office, to assist the office with the implementation of ss.  
 405 288.707-288.714.

406 (2) Aid the development and expansion of black business  
 407 enterprises by leveraging state, local, and private funds to be  
 408 held by the board for use according to the provisions of ss.  
 409 288.707-288.714.

410 (3) Serve as the clearinghouse for information and sources  
 411 of technical assistance that will enhance the development and  
 412 expansion of black business enterprises and facilitate the  
 413 provision of technical assistance in communities in which such  
 414 services are otherwise underserved.

415 (4) Aggressively market the Black Business Loan Program  
 416 and related services to black business enterprises through all



417 appropriate media outlets, including media targeting the  
 418 African-American community.

419 (5) Collaborate with Enterprise Florida, Inc., or its  
 420 affiliates to develop and expand black business enterprises.

421 (6) Collaborate with the Department of Transportation, the  
 422 Department of Management Services, including the Florida  
 423 Minority Business Loan Mobilization Program, Workforce Florida,  
 424 Inc., and other state agencies and partners, the State  
 425 University System, including the Florida Agricultural and  
 426 Mechanical University's Institute of Urban Policy and Commerce,  
 427 school boards, and local governments to create a network of  
 428 information and to identify available resources to enhance the  
 429 development and expansion of black business enterprises.

430 (7) Develop strategies to increase financial institution  
 431 investment in black business enterprises.

432 (8) Provide a 5-year projection of the need for capital by  
 433 black business enterprises. The board may contract with an  
 434 independent entity to prepare the projection once every 5 years.

435 (9) Annually provide for a financial audit, as defined in  
 436 s. 11.45, of the board's accounts and records by an independent  
 437 certified public accountant. The audit shall include an  
 438 explanation of all investments made by the board and an  
 439 explanation of administrative costs. Within 6 months after the  
 440 end of the fiscal year, the audit report shall be provided to  
 441 the Governor, the President of the Senate, the Speaker of the  
 442 House of Representatives, and the Auditor General.

443 Section 10. Section 288.7094, Florida Statutes, is created  
 444 to read:

445 288.7094 Black business investment corporations.--

446 (1) The term "black business investment corporation" means  
 447 a corporation that provides loans, loan guarantees, or  
 448 investments to black business enterprises under ss. 288.707-  
 449 288.714.

450 (2) A black business investment corporation that meets the  
 451 requirements of s. 288.7102(3) is eligible to participate in the  
 452 Black Business Loan Program and shall receive priority  
 453 consideration by the Office of Tourism, Trade, and Economic  
 454 Development for participation in the program.

455 Section 11. Section 288.7102, Florida Statutes, is created  
 456 to read:

457 288.7102 Black Business Loan Program.--The Black Business  
 458 Loan Program is established in the Office of Tourism, Trade, and  
 459 Economic Development. Under the program, the office shall  
 460 disburse funds appropriated by the Legislature, through eligible  
 461 recipients, to black business enterprises that cannot obtain  
 462 capital through conventional lending institutions but that could  
 463 otherwise compete successfully in the private sector. In  
 464 creating this program, the Legislature finds that the public  
 465 interest of the state has been served with respect to the use of  
 466 any state funds received by the Florida Black Business  
 467 Investment Board, Inc., and any black business investment  
 468 corporation prior to and through fiscal year 2005-2006.

469 (1) The board shall establish a uniform, open, and  
 470 competitive application and annual certification process for  
 471 eligible recipients who seek funds to provide loans, loan

472 guarantees, or investments to black business enterprises  
 473 pursuant to the Florida Black Business Investment Act.

474 (2) The office, in consultation with the board, shall  
 475 develop an allocation policy to ensure that services provided  
 476 under ss. 288.707-288.714 for the benefit of black business  
 477 enterprises are disbursed equitably throughout the state. The  
 478 board shall facilitate the formation of black business  
 479 investment corporations in communities that are not served by  
 480 such corporations.

481 (3) To be eligible to receive funds and provide loans,  
 482 loan guarantees, or investments under this section, a recipient  
 483 must:

484 (a) Be a corporation registered in the state.

485 (b) Demonstrate that its board of directors includes  
 486 citizens of the state experienced in the development of black  
 487 business enterprises.

488 (c) Demonstrate that the recipient has a business plan  
 489 that allows the recipient to operate in a manner consistent with  
 490 ss. 288.707-288.714 and the rules of the office.

491 (d) Demonstrate that the recipient has the technical  
 492 skills to analyze and evaluate applications by black business  
 493 enterprises for loans, loan guarantees, or investments.

494 (e) Demonstrate that the recipient has established viable  
 495 partnerships with public and private funding sources, economic  
 496 development agencies, and workforce development and job referral  
 497 networks.

498 (f) Demonstrate that the recipient can provide a private  
 499 match equal to 20 percent of the amount of funds provided by the  
 500 office.

501 (g) Agree to maintain the recipient's books and records  
 502 relating to funds received by the office according to generally  
 503 accepted accounting principles and in accordance with the  
 504 requirements of s. 215.97(7) and to make those books and records  
 505 available to the office for inspection upon reasonable notice.

506 (4) The board shall annually certify each eligible  
 507 recipient, who must meet the provisions of ss. 288.707-288.714,  
 508 the terms of the contract between the recipient and the office,  
 509 and any other applicable state or federal laws. An entity may  
 510 not receive funds under ss. 288.707-288.714 unless the entity  
 511 meets annual certification requirements.

512 (5) The office shall consult with the board in  
 513 implementing the provisions of this section.

514 (6) (a) The office, in consultation with the board, shall  
 515 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement  
 516 this section.

517 (b) The board shall adopt policies and procedures  
 518 necessary to implement this section.

519 Section 12. Section 288.71025, Florida Statutes, is  
 520 created to read:

521 288.71025 Prohibited acts; penalties.--

522 (1) It is unlawful for any person to hold itself out as a  
 523 black business investment corporation without being certified by  
 524 the board as eligible to participate in the Florida Black  
 525 Business Loan Program.

526           (2) The board may file a civil complaint and impose a fine  
 527 of \$500 on any person violating subsection (1). Any funds  
 528 received from such fines shall be appropriated to the board for  
 529 any and all of the purposes and uses provided in the Florida  
 530 Black Business Investment Act.

531           Section 13. Section 288.7103, Florida Statutes, is created  
 532 to read:

533           288.7103 Eligibility for loan, loan guarantee, or  
 534 investment.--A black business enterprise is not eligible to  
 535 receive a loan, loan guarantee, or investment unless the black  
 536 business enterprise demonstrates that:

537           (1) The proposed loan, loan guarantee, or investment is  
 538 economically sound and will assist the black business enterprise  
 539 in entering the conventional lending market, increasing  
 540 opportunities for employment, and strengthening the economy of  
 541 the state.

542           (2) The black business enterprise will be able to compete  
 543 successfully in the private sector if the black business  
 544 enterprise obtains the requested financial assistance and has  
 545 obtained or will obtain appropriate and credible technical or  
 546 managerial support through an organization approved by the  
 547 corporation.

548           Section 14. Section 288.711, Florida Statutes, is amended  
 549 to read:

550           288.711 Florida Black Business Loan Program Investment  
 551 ~~Incentive~~ Trust Fund.--

552           (1) There is hereby created the Florida Black Business  
 553 Loan Program Investment Incentive Trust Fund in the Office of

554 Tourism, Trade, and Economic Development for the purpose of  
 555 providing loans or loan guarantees under the Black Business Loan  
 556 Program as provided in s. 288.7102 from which money may be drawn  
 557 for loans, loan guarantees, or investments ~~or loans~~, as  
 558 authorized by this section, to encourage the development of  
 559 appropriate financial mechanisms in the private sector to  
 560 capitalize and assist in the development of black business  
 561 enterprises. All income earned by investments of the fund shall  
 562 be ~~deposited in the fund~~ for carrying out the purposes of ss.  
 563 288.707-288.714. Administrative costs of the program shall be  
 564 appropriated in a lump-sum appropriation from the fund ~~created~~  
 565 ~~herein~~ and shall be provided in the General Appropriations Act.

566 (2) A black business investment corporation is authorized  
 567 to use funds received from the Florida Black Business Loan  
 568 Program Trust Fund in ~~The board is authorized to invest from the~~  
 569 ~~Florida Investment Incentive Trust Fund in black business~~  
 570 ~~investment corporations which conduct, or agree to conduct,~~  
 571 ~~programs of assisting the development of black business~~  
 572 ~~enterprises. Such investments shall be made under conditions~~  
 573 ~~required by law and as the board may, from time to time, require~~  
 574 ~~and may take~~ any of the following forms:

575 (a) Purchases of stock, preferred or common, voting or  
 576 nonvoting, ~~as determined by the board;~~ however, no more than 40  
 577 percent of the funds may be used for direct investments in black  
 578 business enterprises;

579 (b) Loans or loan guarantees, with or without recourse, in  
 580 either a subordinated or priority position, ~~as determined by the~~  
 581 ~~board; provided, however, that no more than 20 percent of the~~

582 ~~capital base may be used for direct loans to black business~~  
583 ~~enterprises; or~~

584 (c) Technical support to black business enterprises, not  
585 to exceed 7 percent of the funds received, and direct  
586 administrative costs, not to exceed 10 percent of the funds  
587 received ~~Any other investment authorized by the board based on~~  
588 ~~the expertise of its members.~~

589 (3) It is the intent of the Legislature that if any one  
590 type of investment mechanism authorized in subsection (2) is  
591 held to be invalid all other valid mechanisms remain available.

592 (4) All loans, loan guarantees, and investments, and any  
593 income related thereto, shall be used to carry out the public  
594 purpose of ss. 288.707-288.714, which is to develop black  
595 business enterprises. This is not meant to preclude a reasonable  
596 profit for the participating black business investment  
597 corporation or for return of equity developed to the state and  
598 participating financial institutions upon any distribution of  
599 the assets or excess income of the investment corporation.

600 Section 15. Section 288.712, Florida Statutes, is amended  
601 to read:

602 (Substantial rewording of section. See  
603 s. 288.712, F.S., for present text.)

604 288.712 Guarantor funds.--

605 (1) The board is authorized to establish, with or without  
606 public or private partners, guarantor funds to assist qualified  
607 black business enterprises in obtaining surety bonds and other  
608 credit instruments when required.

609           (2) The board may contract with a regulated surety company  
 610 to conduct a surety bond program for black business enterprises.

611           (3) There is hereby created the Black Contractors Bond  
 612 Trust Fund. For purposes of this section, the board may utilize  
 613 the Black Contractors Bond Trust Fund, consisting of moneys  
 614 deposited or credited to the Black Contractors Bond Trust Fund  
 615 pursuant to any appropriation made by law; any grants, gifts,  
 616 and contributions received pursuant to ss. 288.707-288.714; all  
 617 moneys recovered following defaults; and any other moneys  
 618 obtained by the board for this purpose. The fund shall be  
 619 administered by the board in trust for the purposes of this  
 620 section and shall at no time be part of general public funds  
 621 under the following procedures:

622           (a) Any claims against the state arising from defaults  
 623 shall be payable from the Black Contractors Bond Program  
 624 Administrative and Loss Reserve Fund as provided in this section  
 625 or from the Black Contractors Bond Trust Fund. Nothing in this  
 626 section grants or pledges to any obligee or other person any  
 627 state moneys other than the moneys in the Black Contractors Bond  
 628 Program Administrative and Loss Reserve Fund or the Black  
 629 Contractors Bond Trust Fund.

630           (b) There is hereby created the Black Contractors Bond  
 631 Program Administrative and Loss Reserve Fund, consisting of all  
 632 premiums charged and collected in accordance with this section  
 633 and any interest income earned from the moneys in the Black  
 634 Contractors Bond Trust Fund.

635           (c) The board may guarantee bonds executed by sureties for  
 636 black business enterprises under this section as principals on



637 contracts with the state, any political subdivision or  
 638 instrumentality, or any person as the obligee. The board, as  
 639 guarantor, may exercise all the rights and powers of a company  
 640 authorized by the Department of Financial Services to guarantee  
 641 bonds under chapter 624, but otherwise is not subject to any  
 642 laws related to a guaranty company under chapter 624 or to any  
 643 rules of the department.

644 (d) The board shall adopt policies and procedures for the  
 645 application for bond guarantees and for the review and approval  
 646 of applications for bond guarantees submitted by sureties that  
 647 execute bonds eligible for guarantees under this section.

648 (e) In accordance with the policies and procedures adopted  
 649 pursuant to this section, the board may guarantee up to 90  
 650 percent of the loss incurred and paid by sureties on bonds  
 651 guaranteed under this section.

652 (f) The policies and procedures of the board shall require  
 653 the black business enterprise to pay a premium in advance for  
 654 the bond to be established by the board. All premiums paid by  
 655 the black business enterprise shall be paid into the Black  
 656 Contractors Bond Program Administrative and Loss Reserve Fund.

657 (g) The penal sum amounts of all outstanding bonds issued  
 658 by the board shall not exceed the amount of moneys in the Black  
 659 Contractors Bond Trust Fund.

660 (h) Any funds to the credit of the Black Contractors Bond  
 661 Program Administrative and Loss Reserve Fund in excess of the  
 662 amount necessary to fund the appropriation authority for the  
 663 fund shall be held as a loss reserve to pay claims arising from  
 664 defaults on surety bonds guaranteed in accordance with this

665 section. If the balance of funds in the Black Contractors Bond  
 666 Administrative and Loss Reserve Fund is insufficient to pay a  
 667 claim against the state arising from default, then the claim  
 668 shall be payable from the Black Contractors Bond Trust Fund.

669 (4) Nothing in this section shall be construed to prohibit  
 670 or restrict the board from entering into a joint venture or  
 671 other contractual agreement with a private insurer or to invest  
 672 in a private entity to handle all or part of a black contractors  
 673 bonding program for black business enterprises. The board is  
 674 authorized and encouraged to contract with a regulated surety  
 675 company to conduct a surety bond program for black business  
 676 enterprises. Moneys from the Black Contractors Bond Trust Fund  
 677 may be used for these purposes. The board may approve one  
 678 application per fiscal year from each surety company to support  
 679 one fiscal year of that company's activities under this section.  
 680 A surety bond company that applies for a bond guarantee under  
 681 this section, regardless of whether the guarantee is approved,  
 682 is not restricted from also applying for individual bond  
 683 guarantees under this section.

684 (5) The board shall do all of the following to implement  
 685 the black contractors bonding program:

686 (a) Conduct outreach, marketing, and recruitment of black  
 687 contractors.

688 (b) Provide assistance to the Office of Supplier Diversity  
 689 within the Department of Management Services, as needed, to  
 690 certify new black business enterprises and to train appropriate  
 691 department staff.

692           (c) Provide business development services to black  
 693 business enterprises in the developmental and transitional  
 694 stages of the program, including financing and bonding  
 695 assistance and management and technical assistance.

696           (d) Develop a mentor program to bring businesses into a  
 697 working relationship with black contractors in a way that  
 698 commercially benefits both entities and serves the purpose of  
 699 the program.

700           (e) No later than December 31, 2007, prepare and submit to  
 701 the Governor a detailed report outlining and evaluating the  
 702 progress made in implementing the black contractors bonding  
 703 program.

704           (f) Establish a process by which black contractors may  
 705 apply for contract assistance, financial and bonding assistance,  
 706 management and technical assistance, and mentoring  
 707 opportunities.

708           Section 16. Section 288.714, Florida Statutes, is amended  
 709 to read:

710           (Substantial rewording of section. See  
 711 s. 288.714, F.S., for present text.)

712           288.714 Quarterly and annual reports.--

713           (1) Each recipient of state funds under ss. 288.707-  
 714 288.712 shall provide to the board a quarterly report within 15  
 715 days after the end of each calendar quarter that includes a  
 716 detailed summary of the recipient's performance of the duties  
 717 imposed by ss. 288.707-288.712, including, but not limited to:

718           (a) The dollar amount of all loans or loan guarantees made  
 719 to black business enterprises, the percentages of the loans

720 guaranteed, and the names and identification of the types of  
721 businesses served.

722 (b) Loan performance information.

723 (c) The amount and nature of all other financial  
724 assistance provided to black business enterprises.

725 (d) The amount and nature of technical assistance provided  
726 to black business enterprises, including technical assistance  
727 services provided in areas in which such services are otherwise  
728 unavailable.

729 (e) A balance sheet for the recipient, including an  
730 explanation of all investments and administrative and  
731 operational expenses.

732 (f) A summary of all services provided to non-black  
733 business enterprises, including the dollar value and nature of  
734 such services and the names and identification of the types of  
735 businesses served.

736 (g) Any other information as required by the board by  
737 rule.

738 (2) By May 1 of each year, the board shall provide to the  
739 Governor, the President of the Senate, and the Speaker of the  
740 House of Representatives a detailed report of the performance of  
741 the Black Business Loan Program, including:

742 (a) A cumulative summary of quarterly report data required  
743 by subsection (1).

744 (b) A description of the strategies implemented by the  
745 board to increase private investment in black business  
746 enterprises.

747 (c) A summary of the board's performance of its duties  
 748 under ss. 288.707-288.712.

749 (d) The most recent 5-year projection of the need for  
 750 capital by black business enterprises.

751 (e) Recommendations for legislative or other changes to  
 752 enhance the development and expansion of black business  
 753 enterprises in the state.

754 (f) A projection of the program's activities during the  
 755 next 12 months.

756 Section 17. Subsection (4) of section 288.9015, Florida  
 757 Statutes, is amended to read:

758 288.9015 Enterprise Florida, Inc.; purpose; duties.--

759 (4) Enterprise Florida, Inc., shall incorporate the needs  
 760 of small and minority businesses into the economic-development,  
 761 international-trade and reverse-investment, and workforce-  
 762 development responsibilities assigned to the organization by  
 763 this section. ~~Where practicable and consistent with the~~  
 764 ~~expertise of the Black Business Investment Board, Inc.,~~  
 765 Enterprise Florida, Inc., shall collaborate ~~contract~~ with the  
 766 Florida Black Business Investment Board, Inc., and the Office of  
 767 Tourism, Trade, and Economic Development ~~corporation~~ for the  
 768 delivery of services in fulfillment of the responsibilities of  
 769 Enterprise Florida, Inc., relating to small and minority  
 770 businesses.

771 Section 18. The Office of Program Policy Analysis and  
 772 Government Accountability shall prepare a status report on the  
 773 initial implementation of the Florida Black Business Investment  
 774 Act by the Office of Tourism, Trade, and Economic Development

775 and shall provide the report to the Governor, the President of  
 776 the Senate, and the Speaker of the House of Representatives by  
 777 December 1, 2008. The office shall a conduct a program review of  
 778 the Office of Tourism, Trade, and Economic Development's  
 779 performance in meeting the goals of the Florida Black Business  
 780 Investment Act and shall provide a report to the Governor, the  
 781 President of the Senate, and the Speaker of the House of  
 782 Representatives by December 1, 2009.

783 Section 19. Subsection (6) of section 288.90151, Florida  
 784 Statutes, is amended to read:

785 288.90151 Return on investment from activities of  
 786 Enterprise Florida, Inc.--

787 (6) Enterprise Florida, Inc., shall fully comply with the  
 788 performance measures, standards, and sanctions in its contracts  
 789 with the Office of Tourism, Trade, and Economic Development  
 790 under s. 14.2015(2) (i) ~~(h)~~ and (7). The Office of Tourism, Trade,  
 791 and Economic Development shall ensure, to the maximum extent  
 792 possible, that the contract performance measures are consistent  
 793 with performance measures that the office is required to develop  
 794 and track under performance-based program budgeting.

795 Section 20. Sections 288.7092, 288.7095, 288.71, 288.7101,  
 796 and 288.713, Florida Statutes, are repealed.

797 Section 21. The sum of \$8.5 million is appropriated from  
 798 the General Revenue Fund to the Office of Tourism, Trade, and  
 799 Economic Development for the 2007-2008 fiscal year for purposes  
 800 of implementing and administering the Black Business Loan  
 801 Program, and 3 full-time equivalent positions and \$500,000 for  
 802 operation are authorized.

HB 1283

2007

803

Section 22. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 1283**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Council/Committee hearing bill: Committee on Economic  
2 Development  
3 Representative Carroll offered the following:

**Amendment (with title amendment)**

Remove lines 550-568 and insert:

288.711 Florida Black Business Loan Program; Investment  
~~Incentive~~ Trust Fund Administration.--

(1) The Economic Development ~~There is hereby created the~~  
~~Florida Investment Incentive~~ Trust Fund in the Office of  
Tourism, Trade, and Economic Development shall be used for the  
purpose of providing loans or loan guarantees under the Black  
Business Loan Program as provided in s. 288.7102 from which  
money may be drawn for loans, loan guarantees, or investments ~~or~~  
~~loans~~, as authorized by this section, to encourage the  
development of appropriate financial mechanisms in the private  
sector to capitalize and assist in the development of black  
business enterprises. All income earned by investments of the  
fund, from funds deposited pursuant to s. 288.707-288.14, shall  
be ~~deposited in the fund~~ for carrying out the purposes of ss.

000000



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

22 288.707-288.714. Administrative costs of the program shall be  
23 appropriated in a lump-sum appropriation from the fund ~~created~~  
24 ~~herein~~ and shall be provided in the General Appropriations Act.

25 (2) A black business investment corporation is authorized  
26 to use funds received from the Economic Development Trust Fund,  
27 from funds deposited pursuant to s. 288.707-288.14, in The board  
28 ~~is authorized to invest from the~~

29  
30

31 ===== T I T L E A M E N D M E N T =====

32 Remove line 71-76 and insert:  
33 investments; amending s. 288.711, F.S., providing the Office of  
34 Tourism, Trade, and Economic Development will administer the  
35 trust fund for the purposes of implementing and administering  
36 the Black Business Loan Program; deleting provisions relating to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **HB 1283**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Council/Committee hearing bill: Committee on Economic  
2 Development

3 Representative Carroll offered the following:

**Amendment (with title amendment)**

6 Remove lines 611-668 and insert:

7 Section 15. Section 288.712, Florida Statutes, is amended  
8 to read:

9 (3) For purposes of this section, the board may utilize  
10 the Black Contractors Bond Trust Fund, consisting of moneys  
11 deposited or credited to the Black Contractors Bond Trust Fund  
12 pursuant to any appropriation made by law; any grants, gifts,  
13 and contributions received pursuant to ss. 288.707-288.714; all  
14 moneys recovered following defaults; all premiums charged and  
15 collected in accordance with this section and any interest  
16 income earned; and any other moneys obtained by the board for  
17 this purpose. The fund shall be administered by the board in  
18 trust for the purposes of this section and shall at no time be  
19 part of general public funds under the following procedures:

20 (a) Any claims against the state arising from defaults  
21 shall be payable from the Black Contractors Bond Trust Fund.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

22 Nothing in this section grants or pledges to any obligee or  
23 other person any state moneys other than the moneys in the Black  
24 Contractors Bond Trust Fund.

25 (b) The board may guarantee bonds executed by sureties for  
26 black business enterprises under this section as principals on  
27 contracts with the state, any political subdivision or  
28 instrumentality, or any person as the obligee. The board, as  
29 guarantor, may exercise all the rights and powers of a company  
30 authorized by the Department of Financial Services to guarantee  
31 bonds under chapter 624, but otherwise is not subject to any  
32 laws related to a guaranty company under chapter 624 or to any  
33 rules of the department.

34 (c) The board shall adopt policies and procedures for the  
35 application for bond guarantees and for the review and approval  
36 of applications for bond guarantees submitted by sureties that  
37 execute bonds eligible for guarantees under this section.

38 (d) In accordance with the policies and procedures adopted  
39 pursuant to this section, the board may guarantee up to 90  
40 percent of the loss incurred and paid by sureties on bonds  
41 guaranteed under this section.

42 (e) The policies and procedures of the board shall require  
43 the black business enterprise to pay a premium in advance for  
44 the bond to be established by the board. All premiums paid by  
45 the black business enterprise shall be paid into the Black  
46 Contractors Bond Trust Fund.

47 (f) The penal sum amounts of all outstanding bonds issued  
48 by the board shall not exceed the amount of moneys in the Black  
49 Contractors Bond Trust Fund.

50 (g) Any funds to the credit of the Black Contractors Bond  
51 Trust Fund in excess of the amount necessary to fund the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

52 appropriation authority for the fund shall be held as a loss  
53 reserve to pay claims arising from defaults on surety bonds  
54 guaranteed in accordance with this section.  
55  
56

57 ===== T I T L E A M E N D M E N T =====

58 Remove line(s) 85-87 and insert:  
59 the Black Contractors Bond Trust Fund; eliminating the Black  
60 Business Loan Guaranty Trust

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **HB 1283**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Committee on Economic  
 2 Development

3 Representative Carroll offered the following:

**Amendment**

6 Remove lines 797-802 and insert:

7 Section 21. The sum of \$6 million is appropriated from the  
 8 Department of Community Affairs Operating Trust Fund to the  
 9 Office of Tourism, Trade, and Economic Development for the 2007-  
 10 2008 fiscal year for purposes of implementing and administering  
 11 the Black Business Loan Program. Of those funds, \$400,000 will  
 12 be used for operations. Three full-time equivalent positions and  
 13 the associated salary and rate are authorized and funded with  
 14 such operating funds for the Office of Tourism, Trade, and  
 15 Economic Development to administer the provisions of this bill.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1487 Insurance Premium and Corporate Income Tax Credits
SPONSOR(S): Schenck and others
TIED BILLS: IDEN./SIM. BILLS: SB 2280

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Committee on Economic Development, West, SDW, Croom, SR.

SUMMARY ANALYSIS

The program will provide state tax credits for corporate income tax, under s. 220.11, F.S., and premium insurance tax, under s. 624.509, F.S., for qualified investments in Florida low-income communities.

The intent is to make the state more attractive to national investors who are deciding where to invest funds raised under the federal New Markets Tax Credits program by building a state "piggy-back" on tax credits offered by the federal program. Florida ranked 25th in total NMTC investment dollars during fiscal years 2003-2005.

The credit provided under this bill is 8.33 percent per year for six years after the original date of the investment. Over six years this credit totals 50 percent of the investment. Any amount of the tax credit may be carried forward infinitely—for future taxable years. The tax credits are allocated on a first-come, first-serve basis. The federal program provides credits totaling 39 percent of the investment over a seven year period. A company with a qualified investment for both the federal and state program would receive 89 percent of the purchase price of the investment in tax credits.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill requires the Department of Revenue to assume new duties such as limiting the monetary amount of qualified equity investments, adjusting tax credits under certain circumstances, recapturing tax credits under certain circumstances, and adopt rules for the purpose of administering the allocation of tax credits for certain qualified investments.

Ensure Lower Taxes: This bill provides tax credits to companies or entities making investments in low-income communities in Florida.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation:

##### ***Certified Capital Companies***

Currently, Florida offers direct tax credits for premium insurance tax through the Certified Capital Company Act (CAPCO).

The 1998 Florida Legislature enacted the Certified Capital Company Act.<sup>1</sup> This program encourages private investment in venture capital by providing direct tax credits for investment in qualified businesses. The stated purpose of this act is to stimulate a substantial increase in venture capital investments in Florida by providing an incentive for insurance companies to invest in state-certified capital companies (CAPCOs) which, in turn, will invest in new or expanding businesses.<sup>2</sup> Eligible insurance companies are granted insurance premium tax credits in amounts equal to investments in CAPCOs. The increase in investment capital is intended to contribute to employment growth, create high-paying jobs, and expand or diversify Florida's economy.

To date, the insurance industry has invested \$150 million in three state-certified CAPCOs. The insurance companies may claim insurance premium tax credits totaling \$15 million each year for ten years.

According to information in the most recent annual OPPAGA report on the CAPCO program, there were 47 qualified businesses in which the CAPCOs had invested as of December 31, 2004.<sup>3</sup> Examples of industries represented by the qualified businesses are electronic imaging, medical technology, boat manufacturing, credit card payment processing, vehicle fleet management systems, an internet portal for fishermen, and a cookie manufacturer. The most recent investments include businesses predominantly in the child daycare, landscaping, and restaurant industries. The total number of full-time jobs in qualified businesses at the time of the initial investments in the 47 companies was 1,218. The total number of full-time jobs in all qualified businesses as of December 31, 2004 was 1,009.

While as many as nine states have created CAPCOs, this type of program is increasingly viewed by researchers as the more "problematic" of the Venture Capital Funds (VCF) programs, in terms of

"...its high cost, poor design and target-inefficiency. Unlike any other VCF program, the CAPCO program provides a 100% premium tax credit to insurance

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<sup>1</sup> Section 288.99, F.S.

<sup>2</sup> Section 288.99(2), F.S.

<sup>3</sup> Section 288.99(12), F.S., requires OTTED to report annually on the performance of the CAPCO program. The following information was compiled from the latest annual report issued in 2004. Executive Office of the Governor, Office of Tourism, Trade & Economic Development, *Certified Capital Company Act Annual Report on Performance*, June 2005.



company investors. In effect, the government underwrites the entire investment risk."<sup>4</sup>

### **Federal New Market Tax Credit**

The New Markets Tax Credit Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.<sup>5</sup>

An organization wishing to receive awards under the NMTC Program must be certified as a CDE by the US Department of Treasury.

To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary a mission of serving, or providing investment capital for, low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.<sup>6</sup>

### **Community Development Entities in Florida, Investment by State**

There are 56 CDEs in Florida scattered throughout the state.<sup>7</sup> Florida trails only New York (121), California (116), Texas (66), Pennsylvania (59), and Illinois (58) in total number of CDE's.<sup>8</sup>

Despite a respectable number of CDEs located in the state, Florida ranked 25<sup>th</sup> in total NMTC investment dollars during fiscal years 2003-2005. The state received only 1.23 percent of total loans and investment and only 8 total projects.<sup>9</sup>

State	Total dollar amount of loans and investment	Percentage of all loans and investment	Number of NMTC projects	Percentage of NMTC projects
1. California	\$303,081,270	9.74	58	9.95
2. New York	239,178,566	7.68	25	4.29
3. Ohio	201,857,969	6.49	69	11.84
4. Maine	153,527,250	4.93	13	2.23
5. Wisconsin	149,131,108	4.79	26	4.46
6. Missouri	146,165,868	4.70	22	3.77
7. Massachusetts	145,059,237	4.66	34	5.83
8. Kentucky	135,117,406	4.34	44	7.55
9. North Carolina	126,420,590	4.06	14	2.40
10. Washington	125,703,680	4.04	19	3.26
11. Minnesota	122,587,357	3.94	13	2.23
12. Oklahoma	112,092,186	3.60	24	4.12
13. Oregon	111,464,317	3.58	14	2.40
14. Maryland	106,171,382	3.41	14	2.40
15. New Jersey	83,439,000	2.68	7	1.20

<sup>4</sup> Statement of Professor Daniel Sandler, University of Western Ontario, London; senior research fellow of the Taxation Law and Policy Research Institute, Melbourne; associated with Minden Gross Grafstein & Greenstein LLP, Toronto. See Daniel Sandler, *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States* (Toronto: Canadian Tax Foundation, 2004).

<sup>5</sup> Information contained in this paragraph can be found at [http://www.cdfifund.gov/what\\_we\\_do/programs\\_id.asp?programID=5](http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5) (visited 3/15/07).

<sup>6</sup> Available online at [http://www.cdfifund.gov/what\\_we\\_do/programs\\_id.asp?programID=5](http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5) (visited 3/15/07).

<sup>7</sup> Available online at <http://www.cdfifund.gov/docs/certification/CDEstate.pdf>.

<sup>8</sup> Id.

<sup>9</sup> Information found in the table came from the United States Government Accounting Office (GAO) *Report to Congressional Committees, Tax Policy, January, 2007*.

16. Pennsylvania	77,111,177	2.48	21	3.60
17. Arizona	68,476,055	2.20	8	1.37
18. Washington D.C.	67,715,807	2.18	10	1.72
19. Texas	65,644,265	2.11	11	1.89
20. Michigan	57,541,869	1.85	10	1.72
21. Virginia	55,898,873	1.80	8	1.37
22. Rhode Island	55,235,675	1.77	3	0.51
23. Utah	53,884,716	1.73	14	2.40
24. Georgia	38,516,906	1.24	4	0.69
<b>25. Florida</b>	<b>38,261,093</b>	<b>1.23</b>	<b>8</b>	<b>1.37</b>

### **Effects of Proposed Changes:**

HB 1487 creates the Florida new markets development program. The program will provide state tax credits for corporate income tax, under s. 220.11, F.S., and premium insurance tax, under s. 624.509, F.S., for qualified investments in Florida low-income communities.

The intent of the bill is to “piggy-back” on tax credits offered by the federal New Markets Tax Credit Program to provide greater investment in Florida. Parts of the bill follow federal law related to the New Markets Tax Credit Program;<sup>10</sup> differences will be identified through the analysis.

### **Qualified Investments**

A “qualified equity investment” means any equity investment or long-term debt security by a qualified CDE that:

- Is acquired on or after July 1, 2007;
- Has at least 85 percent of its cash purchase priced invested in a qualified low-income community investments; and
- Is designated by the CDE as a qualified equity investment, regardless whether the investment was designated under the federal New Markets Tax Credit Program.

In addition, a qualified equity investment may mean an equity investment or long-term debt security that is currently a qualified equity investment.

The qualified equity investment does not have to be approved under the federal program. As such, the bill appears to be missing program criteria and oversight for those investments not approved by the federal program.

The definition for a “qualified equity investment” in this bill expands the federal definition allowed under Sec. 45D of the Internal Revenue Code. It allows a CDE to designate a qualified investment regardless of whether it is approved under the federal program; and it allows for long-term debt security to be a qualified investment.

“Long-term debt security” means any debt instrument issued by a CDE, “at par value or a premium, having an original maturity date of at least 7 years following the date of its issuance, with no acceleration of repayment, amortization, or prepayment features before its original maturity date, and having no distribution, payment, or interest features related to the profitability of the qualified community development entity or performance of the qualified community development entity’s investment portfolio.”

The bill does not define what types of businesses the investments must be made in, nor what economic indicators classify a low-income community.

<sup>10</sup> Sec. 45D Internal Revenue Code.  
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 DATE: 3/15/2007

### Qualified Active Low-Income Community Business

A "qualified active low-income community business" is defined as having the same meaning as what is provided in federal law. It also includes language different from federal law that states the business must not derive 15 percent or more of its annual revenue from the rental or sale of real estate.

### Tax Credits

The bill allows a tax credit to be taken annually only after the investment has been made and held for a full year. The credit provided under this bill is 8.33 percent per year for six years after the originally date of the investment. Over six years this credit totals 50 percent of the investment. Any amount of the tax credit may be carried forward infinitely, for future taxable years. The tax credits are allocated on a first-come, first-serve basis.

The federal program provides credits totaling 39 percent of the investment over a seven year period. A company with a qualified investment for both the federal and state program would receive 89 percent of the purchase price of the investment in tax credits.

A business would qualify for credits as follows:

Year	State Program	Federal Program
1	0%	5%
2	8.33%	5%
3	8.33%	5%
4	8.33%	6%
5	8.33%	6%
6	8.33%	6%
7	8.33%	6%

The issuer<sup>11</sup> certifies an investment to the Department of Revenue (department). The CDE is required to provide the department the anticipated dollar amount of an investment in the state during the first 12-month period following the initial credit allowance date. The department is required to adjust future credits if the actual amount of the investment is different from the estimated amount.

The bill does not allow the transfer or sale of tax credits, but does allow a tax credit to travel with the purchase of an investment to a new owner.

The maximum amount of tax credits allowed in any year shall not exceed \$15 million.

The department shall recapture tax credits available to an investor if:

- For any reason the federal government recaptures a related tax credit;
- The CDE redeems any principal repayment related to the investment prior to its seventh anniversary; and
- The requirement to maintain at least 85 percent of the investment in low-income community investments in Florida is not met.

The bill gives the department rulemaking authority to administer this tax credit program.

The bill does not provide a sunset or repeal of the statute, review of the program, or annually reporting related to the investments or tax credits. A specific statute for this program is not provided in the bill.

The Department of Revenue raised many concerns with this bill; examples of these include:

- Tax credits are generally codified within a statute and not codified just within the Laws of Florida;

<sup>11</sup> The term "issuer" is not defined; but it appears it indicates the CDE.

- The bill does not provide for the order in which tax credits will be claimed by businesses;
- The bill does not provide for the usual and customary add back of the amount of the credit against corporate income tax;
- The bill does not provide dates for when tax credits are eligible;
- The calculation of the amount of qualified low-income community investments will be very difficult to quantify;
- The department is unclear on how it will be able to monitor that no more than \$15 million in tax credits are allowed per a year; and
- The department is unfamiliar with evaluating contracts to ensure investments meet the definition of a long-term security debt.

## C. SECTION DIRECTORY:

### Section 1: New Markets Development Program

Subsection (1) provides definitions.

Subsection (2) provides taxpayers who hold a qualified equity investment on a credit allowance date of the investment are entitled to a nonrefundable, nontransferable tax credit for the taxable year in which the credit allowance date falls; provides for calculating the amount of the tax credit; limits the amount of the tax credit that may be redeemed in a fiscal year; provides for the redemption of tax credits earned by certain business entities and by the partners, members, or shareholders of those entities; authorizes a taxpayer to carry over any amount of the tax credit that the taxpayer is prohibited from redeeming in a taxable year to any subsequent taxable year.

Subsection (3) requires the issuer of a qualified equity investment to certify to the Department of Revenue the anticipated dollar amount of investments to be made in this state during a specified period following the initial credit allowance date; requires the department to limit the monetary amount of qualified equity investments to a level necessary to limit the use of tax credits to a specified amount in each fiscal year; provides a basis for such limitation; authorizes the department to adjust tax credits under certain circumstances.

Subsection (4) requires the department to recapture tax credits from certain taxpayers under certain circumstances.

Subsection (5) requires the department to adopt rules; requires the department to administer the allocation of tax credits for certain qualified investments in a specified manner.

Section 2: Provides an effective date of July 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may bring new businesses and jobs to some of Florida's poorest areas. It is possible that a positive impact on state government revenues could result through an increase in sales and use tax and other tax revenues

#### 2. Expenditures:

This bill provides up to \$15 million annually in tax credits.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may bring new businesses and jobs to some of Florida's poorest areas. It is possible that a positive impact on local government revenues could result in increased local tax revenues.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

One of the goals of this bill is provide tax credits for investment into some of Florida's poorest areas that could result in new businesses and new jobs. This bill may have a positive economic impact on the private sector.

D. FISCAL COMMENTS:

See subsections "B.1" and "C" above.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

B. RULE-MAKING AUTHORITY:

This bill grants rule-making authority to the Department of Revenue for the purpose of administering the provisions set out by this bill including the recapture provision and the allocation of tax credits issued for quality equity investments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a statute for this program.

The bill does not provide a sunset or repeal of the statute, review of the program, or annually reporting related to the investments or tax credits.

The Department of Revenue raised many concerns with this bill; examples of these include:

- Tax credits are generally codified within a statute and not codified just within the Laws of Florida;
- The bill does not provide for the order in which tax credits will be claimed by businesses;
- The bill does not provide for the usual and customary add back of the amount of the credit against corporate income tax;
- The bill does not provide dates for when tax credits are eligible;
- The calculation of the amount of qualified low-income community investments will be very difficult to quantify;
- The department is unclear on how it will be able to monitor that no more than \$15 million in tax credits are allowed per a year; and
- The department is unfamiliar with evaluating contracts to ensure investments meet the definition of a long-term security debt.

D. STATEMENT OF THE SPONSOR

No statement provided.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
2           An act relating to insurance premium and corporate income  
3           tax credits; providing definitions; providing that  
4           taxpayers who hold a qualified equity investment on a  
5           credit allowance date of the investment are entitled to a  
6           nonrefundable, nontransferable tax credit for the taxable  
7           year in which the credit allowance date falls; providing  
8           for calculating the amount of the tax credit; limiting the  
9           amount of the tax credit that may be redeemed in a fiscal  
10          year; providing for the redemption of tax credits earned  
11          by certain business entities and by the partners, members,  
12          or shareholders of those entities; authorizing a taxpayer  
13          to carry over any amount of the tax credit that the  
14          taxpayer is prohibited from redeeming in a taxable year to  
15          any subsequent taxable year; requiring the issuer of a  
16          qualified equity investment to certify to the Department  
17          of Revenue the anticipated dollar amount of investments to  
18          be made in this state during a specified period following  
19          the initial credit allowance date; requiring the  
20          department to limit the monetary amount of qualified  
21          equity investments to a level necessary to limit the use  
22          of tax credits to a specified amount in each fiscal year;  
23          providing a basis for such limitation; authorizing the  
24          department to adjust tax credits under certain  
25          circumstances; requiring the department to recapture tax  
26          credits from certain taxpayers under certain  
27          circumstances; requiring the department to adopt rules;  
28          requiring the department to administer the allocation of

HB 1487

2007

29 tax credits for certain qualified investments in a  
 30 specified manner; providing an effective date.

31

32 Be It Enacted by the Legislature of the State of Florida:

33

34 Section 1. New markets development program.--

35 (1) As used in this section, the term:

36 (a) "Adjusted purchase price" means the product of the  
 37 amount paid to the issuer of a qualified equity investment for  
 38 such qualified equity investment and a fraction the numerator of  
 39 which is the dollar amount of qualified low-income community  
 40 investments held by the issuer in this state as of the credit  
 41 allowance date during the applicable tax year and the  
 42 denominator of which is the total dollar amount of qualified  
 43 low-income community investments held by the issuer as of the  
 44 credit allowance date during the applicable tax year.

45 (b) "Applicable percentage" means zero percent for the  
 46 first credit allowance date and 8.33 percent for each of the  
 47 next six credit allowance dates.

48 (c) "Credit allowance date" means:

49 1. The date on which any qualified equity investment is  
 50 initially made; and

51 2. The first anniversary date after the initial investment  
 52 date.

53 (d) "Long-term debt security" means any debt instrument  
 54 issued by a qualified community development entity, at par value  
 55 or a premium, having an original maturity date of at least 7  
 56 years following the date of its issuance, with no acceleration



57 of repayment, amortization, or prepayment features before its  
 58 original maturity date, and having no distribution, payment, or  
 59 interest features related to the profitability of the qualified  
 60 community development entity or the performance of the qualified  
 61 community development entity's investment portfolio. This  
 62 paragraph does not limit the holder's ability to accelerate  
 63 payments on the debt instrument in situations in which the  
 64 issuer has defaulted on covenants designed to ensure compliance  
 65 with this section or s. 45D of the Internal Revenue Code of  
 66 1986, as amended.

67 (e) "Qualified active low-income community business" has  
 68 the same meaning as in s. 45D of the Internal Revenue Code of  
 69 1986, as amended. Any business that derives or projects to  
 70 derive 15 percent or more of its annual revenue from the rental  
 71 or sale of real estate is not a qualified active low-income  
 72 community business.

73 (f) "Qualified community development entity" has the same  
 74 meaning as in s. 45D of the Internal Revenue Code of 1986, as  
 75 amended, if such entity has entered into an allocation agreement  
 76 with the Community Development Financial Institutions Fund of  
 77 the United States Treasury Department with respect to credits  
 78 authorized by s. 45D of the Internal Revenue Code of 1986, as  
 79 amended.

80 (g) "Qualified equity investment" means any equity  
 81 investment or long-term debt security issued by a qualified  
 82 community development entity that was a qualified equity  
 83 investment when in the possession of a prior holder or:

84 1. Is acquired on or after July 1, 2007, at its original

85 issuance solely in exchange for cash;  
 86 2. Has at least 85 percent of its cash purchase price used  
 87 by the issuer to make qualified low-income community  
 88 investments; and  
 89 3. Is designated by the issuer as a qualified equity  
 90 investment pursuant to this section, regardless of whether it  
 91 also has been designated as a qualified equity investment under  
 92 s. 45D of the Internal Revenue Code of 1986, as amended.  
 93 (h) "Qualified low-income community investment" means any  
 94 capital or equity investment in or loan to any qualified active  
 95 low-income community business. With respect to any one qualified  
 96 active low-income community business, on a collective basis with  
 97 all of its affiliates, the maximum amount of investment that any  
 98 qualified community development entity, on an aggregate basis  
 99 with all of its affiliates, may use for the calculation of any  
 100 numerator described in paragraph (a) shall be \$10 million. For  
 101 purposes of calculating the amount of qualified low-income  
 102 community investments held by an issuer, an investment shall be  
 103 deemed to be held by an issuer, even if the investment has been  
 104 sold or repaid, if the issuer reinvests an amount equal to the  
 105 capital returned to or recovered by the issuer from the original  
 106 investment, exclusive of any profits realized, in another  
 107 qualified low-income community investment within 12 months after  
 108 receipt of such capital. An issuer is not required to reinvest  
 109 capital returned from qualified low-income community investments  
 110 after the sixth anniversary of the issuance of the qualified  
 111 equity investment for which the proceeds were used to make the  
 112 qualified low-income community investment. The qualified low-

113 income community investment shall be deemed to be held by the  
114 issuer through the seventh anniversary of the qualified equity  
115 investment's issuance.

116 (i) "Tax credit" means a credit against the taxes imposed  
117 by ss. 220.11 and 624.509, Florida Statutes.

118 (j) "Taxpayer" means any individual or entity subject to  
119 the taxes imposed by ss. 220.11 and 624.509, Florida Statutes.

120 (2) A taxpayer holding a qualified equity investment on a  
121 credit allowance date of such qualified equity investment is  
122 entitled to a tax credit during the taxable year, including the  
123 credit allowance date. The tax credit amount is equal to the  
124 applicable percentage of the adjusted purchase price paid to the  
125 issuer of such qualified equity investment. The amount of the  
126 tax credit that may be redeemed in any tax year may not exceed  
127 the amount of the taxpayer's state tax liability for such tax  
128 year. A tax credit authorized under this section is not  
129 refundable or transferable. Tax credits earned by a partnership,  
130 limited liability company, S corporation, or other "pass-  
131 through" entity may be allocated to the partners, members, or  
132 shareholders of such entity for their direct redemption in  
133 accordance with the provisions of any agreement among the  
134 partners, members, or shareholders. Any amount of tax credit  
135 that the taxpayer is prohibited by this section from redeeming  
136 in a taxable year may be carried forward to any of the  
137 taxpayer's subsequent taxable years. The amount of tax credits  
138 that may be allocated by the Department of Revenue under this  
139 section in each fiscal year may not exceed \$15 million. The  
140 Department of Revenue shall limit the monetary amount of

141 qualified equity investments authorized under this section to a  
 142 level necessary to limit use of tax credits to no more than \$15  
 143 million of tax credits in any fiscal year. Such limitations on  
 144 qualified equity investments shall be based solely on the  
 145 anticipated use of credits without regard for the potential of  
 146 taxpayers to carry forward tax credits to later tax years.

147 (3) The issuer of the qualified equity investment must  
 148 certify to the department the anticipated dollar amount of such  
 149 investments to be made in this state during the first 12-month  
 150 period following the initial credit allowance date. On the  
 151 second credit allowance date, if the actual dollar amount of the  
 152 investments is different from the amount estimated, the  
 153 department shall adjust the credits arising on the second  
 154 allowance date to account for the difference.

155 (4) The department shall recapture the tax credit allowed  
 156 under this section with respect to the qualified equity  
 157 investment if:

158 (a) Any amount of the federal tax credit available with  
 159 respect to a qualified equity investment that is eligible for a  
 160 tax credit under this section is recaptured under s. 45D of the  
 161 Internal Revenue Code of 1986, as amended;

162 (b) The issuer redeems or makes any principal repayment  
 163 with respect to a qualified equity investment before the seventh  
 164 anniversary of the issuance of the qualified equity investment;  
 165 or

166 (c) The qualified community development entity fails to  
 167 maintain at least 85 percent of the proceeds of the qualified  
 168 equity investment in qualified low-income community investments

169 in Florida at any time before the seventh anniversary of the  
 170 issuance of the qualified equity investment.

171

172 Any tax credit that is subject to recapture shall be recaptured  
 173 from the taxpayer who claimed the tax credit on a tax return.

174 (5) The department shall adopt rules to administer this  
 175 section, including recapture provisions on a scaled proportional  
 176 basis, and to administer the allocation of tax credits issued  
 177 for qualified equity investments, which shall be conducted on a  
 178 first-come, first-served basis.

179 Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 1487

COUNCIL/COMMITTEE ACTION

ADOPTED                           \_\_\_ (Y/N)  
ADOPTED AS AMENDED           \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION       \_\_\_ (Y/N)  
FAILED TO ADOPT               \_\_\_ (Y/N)  
WITHDRAWN                      \_\_\_ (Y/N)  
OTHER                           \_\_\_\_\_

1 Council/Committee hearing bill:

2 Representative(s)           offered the following:

3  
4           **Amendment**

5           Insert on line 33 :

6 Section . , Florida Statutes, is added, to read:

7  
8           Remove lines 51-52 and insert:

9 Each of the six (6) subsequent anniversary dates of the date  
10 upon which the qualified equity investment was initially made.

11  
12           Remove line 69 and insert:

13 1986, as amended.

14 (5) Qualified business--(i) In general. Except as otherwise  
15 defined in this paragraph (d)(50), the term qualified business  
16 means any trade or business. There is no requirement that  
17 employees of a qualified business be residents of a low-income  
18 community.

19 (ii) Rental of real property. The rental to others of real  
20 property located in any low-income community (as defined in  
21 section 45D(e)) is a qualified business if and only if the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22 property is not residential rental property (as defined in  
23 section 168(e)(2)(A)) and there substantial improvements located  
24 on the real property. For purposes of the preceding section, the  
25 term substantial improvements the cost basis of which equals or  
26 exceeds 50 percent of the cost basis of the land on which the  
27 improvements are located and the costs which are incurred after  
28 the date the CDE makes the investment or loan. However, a CDE's  
29 investment in or loan to a business engaged in the rental of  
30 real property is not a qualified low-income community investment  
31 under paragraph (d)(1)(i) of this section to the extent any  
32 lessee of the real property is not a qualified business under  
33 this paragraph (d)(5).

34 (iii) Exclusions—(A) Trades of businesses involving  
35 intangibles. The term qualified business does not include any  
36 trade or business consisting predominantly of the development or  
37 holding of intangibles for sale or license.

38 (B) Certain other trades or businesses. The term qualified  
39 business does not include any trade or business consisting of  
40 the operation of any private or commercial golf course, country  
41 club, massage parlor, hot tub facility, suntan facility,  
42 racetrack or other facility used for gambling, or any store the  
43 principle business of which is the sale of alcoholic beverages  
44 for consumption off premises.

45 (C) Farming. The term qualified business does not include  
46 any trade or business the principal activity of which is farming  
47 (within the meaning of section 2032A(e)(5)(A) or (B)) if, as of  
48 the close of the taxable year of the taxpayer conducting such  
49 trade or business, the sum of the aggregate unadjusted bases  
50 (or, if greater, the fair market value) of the assets owned by  
51 the taxpayer that are used in such a trade or business, and the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

52 aggregate value of the assets leased by the taxpayer that are  
53 used in such trade or business, exceeds \$500,000. For purposes  
54 of this paragraph (d)(5)(iii)(C), two or more trades or  
55 businesses will be treated as a single trade or business under  
56 rules similar to the rules of section 52(a) and (b).

57

58 Remove line 73 and insert:

59 (e) Low-Income Community—For purposes of this section—

60 (1) In General—The term low-income community means any  
61 population

62 (f) "Qualified community development entity" has the same

63

64 ===== D I R E C T O R Y A M E N D M E N T =====

65 Remove line(s) and insert:

66

67

68 ===== T I T L E A M E N D M E N T =====

69 Remove line(s) and insert:

70