The Florida Senate

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Committee on Commerce

AN OVERVIEW OF THE ECONOMIC DEVELOPMENT AFFILIATES ADMINISTERED BY ENTERPRISE FLORIDA, INC.

Statement of the Issue

Enterprise Florida, Inc., (EFI) was created in 1992 by the Legislature as a nonprofit corporation with two duties: assist in the coordination of the state's economic development efforts and develop a strategic plan to improve the state's economic development. In succeeding years, the Legislature broadened EFI's responsibilities so that it is now Florida's principal economic development organization. EFI is the state's economic-development strategist, its business recruiter, and a facilitator of public-private investment in business ventures.

This issue brief reviews the history and structure of EFI and four affiliated programs that it oversees: the Florida Development Finance Corporation, the Florida Small Business Technology Growth Program, the Florida Opportunity Fund, and the Cypress Equity Fund.

Discussion

Creation of EFI

One of the early initiatives of Governor Lawton Chiles was the evaluation in 1991 of the executive agency governance structure. Chiles' transition task forces and "Government by the People Commission" developed a set of wide-ranging recommendations on agency mergers and realignment. One idea that grew from these discussions was creation of a lead entity, representing both the public and private sectors, to coordinate the state's economic development programs and policies. The idea coalesced as "Enterprise Florida," and a 1991 report drafted by the Florida Chamber of Commerce and the Florida Department of Commerce (DoC) detailed why such an entity was necessary and how it could be fully implemented within 3 years.[1] One of the key reasons for creating a new lead entity, according to the report, was "fragmentation" of the different state, local and private-sector entities charged with economic development:

> "A disconnected approach to economic development cannot help but result in uncoordinated, inchoate, and wasteful use of resources."[2]

The report noted that Enterprise Florida would not duplicate the DoC, but that the department's units responsible for marketing, research, business assistance, and administrative functions would be transferred, over a 3-year-period, to Enterprise Florida. When fully implemented, this new "public-private partnership" was envisioned to act as a catalyst for economic development in Florida, a broker for recruiting new businesses and retaining existing ones, and a coordinator for specialized entities – such as bond financing for business infrastructure or investment in new technologies – that would be at the core of efforts to diversify Florida's economy.

Based in large part on the aforementioned report's recommendation, Enterprise Florida, Inc. (EFI), was created by the Legislature in 1992.[3] The legislation references the economic challenges the state was facing, and concludes

[1] "Enterprise Florida: Partnership for a Competitive Economy." Prepared by the Florida Chamber of Commerce and the Florida Department of Commerce. Final Report, published October 31, 1991. On file with the Senate Commerce Committee.
[2] Ibid. p 16.
[3] Sections 1-7, ch. 92-277, L.O.F. (HB 55-E).

that Florida "needs a mechanism to bring together Florida's leadership and economic development resources, both public and private, to create enhanced economic development tools."[4] The legislation did not transfer any DoC responsibilities to EFI. The only two duties enumerated in the new law were assisting in the coordination of the state's economic development efforts and developing a state strategic plan for economic development by December 1, 1993.[5]

EFI was to be governed by a 21-member board of directors, of which 12 were private citizens appointed by the Governor from a list submitted initially by the Enterprise Florida Nominating Council, and subsequently by the EFI board. These 12 members were subject to Senate confirmation. The other nine members were: the Governor, the Lieutenant Governor, the Commissioner of Education, the Chancellor of the State University System, the executive director of the State Community College System, the Secretary of Commerce, the Secretary of Labor and Employment Security, or their designees; a member of the Florida Senate; and a member of the Florida House of Representatives.

The only mention of funding for EFI was that its board of directors had the power to "secure funding for programs and activities …. from federal, state, local, and private sources and from fees charged for services and published materials and solicit, receive, hold, invest, and administer any grant, payment, or gift of funds or property…."[6]

Subsequent, significant legislative changes

At least three pieces of 1993 legislation that passed into law mentioned EFI, but the most significant one was SB 2382 (ch. 93-187, L.O.F.), which created the Enterprise Florida Innovation Partnership[7] and the Enterprise Florida Capital Partnership[8] to work with EFI. Briefly:

- The Innovation Partnership was focused on providing leadership and development of market-based tools to diversify Florida's economy. It was authorized to create a "Florida Innovation Alliance" of providers of computer, telecommunications and other high-tech applications that would lend their expertise to assisting small and medium Florida firms needing to improve their market competitiveness. It also was directed to create the Florida Technology Research Investment Fund to invest in specified types of businesses. It later designated five "Innovation and Commercialization Centers" (ICCs)[9] and created the "Florida Manufacturing Technology Center."[10]
- The Capital Partnership was focused on ways to fund capital investment in Florida's economy, in particular to address the long-term debt needs of small- and medium-sized businesses. Although not directly specified in the implementing statute, the partnership was to work with the Florida Development Finance Corporation (FDFC), which was created in the same legislation, to address long-term capital financing for Florida businesses.

In 1994, the Legislature created the Enterprise Florida Jobs and Education Partnership, a not-for-profit corporation, to address the issues of preparing Florida's workforce for a global economy and developing a market-driven approach to plan for changes in the employment market.[11]

The next major statutory changes for EFI occurred in 1996, with the passage of a 182-page bill that revamped Florida's economic development governance structure.[12] The legislation abolished the DoC and the Florida

[4] Ibid.
[5] Ibid. s. 6.
[6] Ibid. s. 5.
[7] Sections 3-11, ch. 93-187, L.O.F.
[8] Sections 35-41, ch. 93-187, L.O.F.
[9] Only one of the ICCs still exists, as the Enterprise Development Corporation of South Florida. Website at http://www.edc-tech.org/. Last visited Sept. 22, 2010.
[10] This evolved into the Florida Manufacturing Extension Partnership. Website at http://www.floridamep.org/. Last visited Sept. 22, 2010.
[11] Section 1, ch. 94-232, L.O.F.
[12] Chapter 96-320, L.O.F. Sections 80-86 specifically amended EFI's sections of law. This extensive legislation also created a number of economic incentives, modified existing incentives, and created the Florida Commission on Tourism, Inc.

International Affairs Commission; formally recognized EFI as the state's lead economic development entity and broadened its responsibilities; and created the "Office of Tourism, Trade, and Economic Development" (OTTED) to perform what had been DoC's governance functions, such as providing contractual oversight of EFI and other public-private partnerships under contract.

EFI was charged with developing policies and implementing strategies to:

- Support Florida's existing businesses and recruit new businesses worldwide to Florida;
- Seek to bolster international trade opportunities;
- Develop a comprehensive approach to workforce development; and
- Promote economic opportunities for rural communities and small or minority businesses.

The Innovation, Capital Development, and Jobs and Education partnerships were renamed and redesignated as boards, and brought within EFI's corporate structure. Additionally, the International Trade and Economic Development Board was created to assist EFI in developing the state's overseas trade markets and promote business recruitment.

The newly created OTTED was directed to contract with EFI to "guide, stimulate, and promote the economic and trade development of the state."[13] OTTED was given control of the "Economic Development Trust Fund," where the Legislature would deposit appropriations for the various incentive programs.[14]

The 1996 legislation also addressed funding for EFI.[15] Consistent with the intent of creating a public-private partnership,[16] operational funding would be shared with the private sector. Specifically, the law required an incremental increase in private funding to EFI operations, from 10 percent of state appropriations in FY 1996-1997 to 50 percent of state appropriations by FY 2000-2001. These funds would be released through a budget amendment, in accordance with ch. 216, F.S., if EFI provided sufficient documentation that it had received the same amount in private matching funds for the given fiscal year. If sufficient documentation was not provided by the end of a given fiscal year, the state funds were to revert to the state's General Revenue Fund.

The 1996 legislation also directed the Office of Program Policy and Government Accountability (OPPAGA) to review, prior to the 1999 legislative session:

- the amount and type of private contributions received by EFI; and
- the circumstances affecting EFI's ability to achieve the required matching private funds for the previous 3 years.[17]

In 1997, the Legislature passed another large economic development bill,[18] part of which clarified OTTED's responsibilities and some of the incentive programs created the previous year. The legislation also clarified OTTED's relationship as "administrator" of its contract with EFI.[19]

[13] Ibid, s. 2.
[14] Ibid, s. 43.
[15] Ibid. s. 114(1).
[16] FN 1, pages 2 and 23-24.
[17] Ibid. 12, at s. 114(2). The issue of EFI's private match requirement has been the subject of two OPPAGA reports and a 2001 audit of EFI by the Florida Comptroller's Office. OPPAGA Report No. 98-31: "Review of Private Sector Match Contributions by Enterprise Florida, Inc." raised a number of questions about how EFI was computing its private match. The report is available at: http://www.oppaga.state.fl.us/Reports/pdf/9831rpt.pdf. OPPAGA also addressed the private-match issue in 2001, in Report 01-62: "Concerns Over Enterprise Florida's Performance, Services to Distressed Areas Point to a Need to Consider Alternatives for Its Future Role." This report is available at http://www.oppaga.state.fl.us/MonitorDOCs/Reports/pdf/0162rpt.pdf. Both sites last visited Sept. 22, 2010. For additional review of this issue, see "An Audit of Enterprise Florida, Incorporated" by the Office of the Comptroller, Department of Banking and Finance, October 3, 2001, pp. 32-34. This report is on file with the Senate Commerce Committee.
[18] Ch. 97-278, L.O.F.
[19] Ibid. s. 3.

The Legislature in 1999 reiterated its requirement that state funding for EFI operations be matched by private funding, stating that it is "further the intent of the Legislature to maximize private-sector support in operating Enterprise Florida, Inc., as an endorsement of its value and as an enhancement of its efforts."[20] The law specified what qualified as private-sector support, the various categories of required support, and the overall ratio or match of the support – no less than 100 percent of the state's operating investment.

The same legislation abolished the Capital Development Board, the International Trade and Economic Development Board, and the Technology Development Board, and folded their assets and responsibilities into EFI as programs.[21] Also, the Jobs and Education Partnership was renamed the Workforce Development Board, still under EFI's oversight, and its responsibilities broadened.[22]

The 1999 legislation also:

- Specified that EFI "fully comply with the performance measures, standards, and sanctions in its contracts" with OTTED.[23]
- Required EFI to provide in its annual report to the Legislature information quantifying the public's return on investment (ROI) from state funds supporting EFI's activities and the results from customer-satisfaction surveys of businesses served and of each local economic-development organization in this state.[24] The ROI and customer satisfaction reports were to be developed and administered by a private accounting firm, after initial review by OPPAGA.[25]
- Required EFI to "coordinate its operation with local economic-development organizations to maximize the state and local return on investment to create jobs for Floridians."[26]

At least three OPPAGA or Senate committee reports have reviewed the above activities over the years.[27]

The latest significant legislative changes affecting EFI occurred in 2007, with creation of the Florida Opportunity Fund, and in 2010, when the FDFC program was amended to allow it to leverage federal funds to issue debt for specific energy-related projects. These changes are discussed below because they affect EFI's affiliate entities.

<u>EFI Today</u>

EFI currently is governed by a 19-member board of directors. The Governor appoints six private-sector members to the board, and the Senate President and the Speaker of the House of Representatives appoint three each. The public-sector members are the Governor, the Commissioner of Education, the state's Chief Financial Officer, the Secretary of State; the chair of the Workforce Florida, Inc. board of directors, or their designees; a member of the Florida Senate as ex officio; and a member of the Florida House of Representatives as an ex officio.

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[20] Section 29(5), ch. 99-251, L.O.F. This was codified in statute as s. 288.90151, F.S.
[21] Ibid, ss. 44 and 45.
[22] Ibid, ss. 50-63. The following year, the Legislature recreated the board as a separate entity – Workforce Florida, Inc. – and moved it to a new chapter of law, ch. 445, F.S., with passage of ch. 2000-165, L.O.F.
[23] Ibid. s. 29(6). Also, s. 14.2015(2) and (7), F.S., in current law require~~s~~ OTTED to contract with EFI, and that such contracts must include specific performance measures, standards, and sanctions.
[24] Ibid. s. 29(7).
[25] Ibid. s. 29(8).
[26] Ibid. s. 29(2).
[27] Relevant OPPAGA reports are: Report No. 01-62: "Concerns Over Enterprise Florida's Performance, Services to Distressed Areas Point to a Need to Consider Several Alternatives for its Future Role," available at http://www.oppaga.state.fl.us/MonitorDOCs/Reports/pdf/0162rpt.pdf; and Report No. 04-31: "Enterprise Florida Addresses Recommendations," available at http://www.oppaga.state.fl.us/Reports/pdf/0431rpt.pdf. See also a 2003 interim project report by the Senate Committee on Commerce and Economic Opportunities, entitled "Optimizing Accountability Requirements for State Economic Development Public-Private Partnerships," available at http://www.flsenate.gov/data/Publications/2003/Senate/reports/interim_reports/pdf/2003-114cm.pdf. Sites last visited Sept. 22, 2010.

For FY 2010-2011, EFI received $11.1 million from the state, and expects to receive $1.4 million in corporate contributions and $1.68 million in anticipated revenues and fees from its activities, for a total $13.68 million to pay its operating expenditures. *(Table 1 below)*

EFI has five organizational units tailored to its programs:

- Administration, which oversees its general operations as well as its affiliate entities involving public/private investments, meaning the Florida Opportunity Fund, the FDFC, the Cypress Fund, and the Florida Small Business Technology Fund.
- External Affairs and Investor Relations, which includes EFI's lobbying and local outreach efforts.
- Business Retention and Recruitment.
- International Trade and Business Development.
- Marketing and Strategic Development, which includes the research and strategic planning duties of EFI.

Table 1
FY 10-11 Budgetary Information about EFI's Organizational Units

EFI Unit	Full-time employees[28]	State Funds	Private Contributions	Revenue from Fees	Total Budget
Administration	13	$2.55 million	$47,117	$172,000	
Ext. Affairs/Investor Relations	9	$881,485	$161,178	$13,500	
Business Retention/Recruitment	11	$1.4 million	$235,516	$150,000	
International Trade & Business Development	15	$4.6 million	$310,000	$853,000	
Marketing/Strategic Intelligence	8	$1.55 million	$246,189	--	
TOTALS	56	$11.1 million	$1.4 million	$1,688,500	$13,688,500

Source: EFI – 9/14/10

Over the years EFI's reporting requirements have been modified to better reflect its responsibilities at the time. Currently, EFI produces:

- A quarterly economic bulletin.[29]
- An annual "incentives report," pursuant to s. 288.095(3)(c), F.S., that is a snapshot of EFI's recruitment successes over a calendar year. The report includes explanations of the statutorily created economic development incentives (most of which are in ch. 288, F.S.), how they were used to recruit or retain businesses and create jobs, and a "payback ratio" that is intended to measure the state's return on investment. The information is reported in the aggregate, in order to protect the confidentiality of the individual recipients, but a sampling of case studies is included at the back of the report.[30]
- An annual report on its activities during the previous fiscal year.[31]
- A 5-year strategic plan, currently called the "2010-2015 Roadmap to Florida's Future."[32]

[28] EFI also has three leased employees who were former Florida Department of Commerce employees and as part of the transfer retained their eligibility in the Florida Retirement System. Additionally, EFI has four part-time interns this fiscal year.

[29] The most recent report (Florida Economic Bulletin, Summer 2010) is available at http://www.eflorida.com/Knowledge.aspx?id=1672. Last visited Sept. 22, 2010.

[30] The most recent report (2009 Incentives Report) is available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf Last visited Sept. 22, 2010.

[31] The most recent report (2008-2009 Annual Report) is available at http://www.eflorida.com/IntelligenceCenter/Reports/2009%20EFI%20Annual%20Report.pdf. Last visited Sept. 22, 2010.

[32] This report is available at http://www.eflorida.com/Floridas_Future.aspx?id=8186. Last visited Sept. 22, 2010.

- A business guide and checklist that provides basic information about federal, state, and local requirements for starting a business in Florida, pursuant to s. 288.9105(6), F.S. This information is included on EFI's website, under its "customized information search" pull-down tab.[33]

EFI also administers three statutorily created, special-purpose economic development entities or affiliates:

- The FDFC, which historically operated through interlocal agreement with local governments to issue industrial revenue bonds for infrastructure projects, and which, with passage of 2010 legislation, can participate in a new federal loan program for energy projects.
- The Small Business Technology Growth Program, designed to provide loans or other forms of credit to businesses engaged in emerging technologies and which have fewer than 100 employees, but which in recent years has become inactive.
- The Florida Opportunity Fund (FOF), which invests with private partners in venture capital funds that include Florida-based businesses, or makes direct investments in Florida-based companies.

It also has general oversight of the Cypress Equity Fund, one of the state's earliest attempts to participate in venture capital investing.

<u>FDFC</u>

Synopsis

The FDFC was created in 1993 by the Legislature as a state-authorized issuer of industrial revenue bonds,[34] typically tax-exempt, private-activity bonds. Its original purpose was to help foster the growth of manufacturing and other strong job-creating businesses in Florida by brokering private-activity bond financing through inter-local agreements with counties, municipalities, and other local political subdivisions.[35] The FDFC's responsibilities were broadened during the 2010 legislative session to allow it to participate in a federal Department of Energy (DOE) guaranteed loan program for the development of renewable energy infrastructure projects, and related energy projects that may be eligible under federal law.[36]

The FDFC has a 5-member, independent board of directors appointed by the Governor and confirmed by the Senate. The FDFC is staffed by EFI. Since 1997, the FDFC has facilitated bond issues totaling $240,237,499 in support of 77 Florida businesses, including for-profit and not-for-profit companies.[37] As of September 1, 2010, the FDFC has not yet exercised its new financing authority for energy-related projects, but is evaluating proposals and may have an approved project by year's end.

Governance[38]

As mentioned above, the Governor appoints the FDFC's five-member board of directors, subject to Senate confirmation. At least three of the board members must be bankers selected by the Governor from a list submitted by EFI, and one of the directors must be an economic development specialist. The chairperson of the Florida Black Business Investment Board serves as an ex officio member. Terms are for 4 years, and any vacancy occurring during a term is filled by the Governor for the remainder of that term. Board members[39] receive no compensation but are entitled to per diem and travel expenses.

Pursuant to s. 288.9605, F.S., the FDFC may:

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[33] See http://eflorida.com/. Free registration may be required to obtain some of the information. Last visited Sept. 22, 2010.
[34] Sections 25-34, ch. 93-187, L.O.F., codified as ss. 288.9602-288.9610, F.S.
[35] Section 288.9602, F.S., generally expresses the legislative intent of the FDFC.
[36] Sections 2-10, ch. 2010-139, L.O.F.
[37] A list of the businesses that have received private-activity bonds through the FDFC is on file with the Senate Commerce Committee.
[38] Section 288.9604, F.S.
[39] Current FDFC board members are: chairman Pete Tesch, president of the Ocala/Marion County Economic Development Corporation; vice-chairman Jose Luis de la Rosa, vice president at Bank of America; Frank DiBello, president of Space Florida; William C. Jones, first vice president at SunTrust Bank; and Rebecca Reynolds, public funds director for Fifth Third Bank.

- Borrow money and accept any form of financial assistance from the federal government, the state, or local governmental entities, or from private sources;
- Enter into interlocal agreements with local governments as partners in issuing industrial development revenue bonds;
- Issue revenue bonds and other types of financial instruments for the purpose of financing and refinancing certain energy-related capital projects that promote economic development within Florida;
- Establish and manage a "guaranty fund," which guarantees that the bonds will be repaid, and is funded in part through a premium paid by the business applying for FDFC assistance and by a property interest in the infrastructure to be built with the bond proceeds; and
- Invest bond proceeds held in reserve.

Bond-Issuance Process

Pursuant to s. 288.9606, F.S., the FDFC may issue bonds or other types of indebtedness for:

- Renewable energy projects that meet the statutory definitions in either s. 366.91 or s. 377.803, F.S.;[40]
- Renewable energy and electric power transmission projects eligible for federal loan guarantees under the American Recovery and Reinvestment Act (ARRA) of 2009;[41] and
- If permitted by federal law, energy efficiency improvements, installation of renewable-energy equipment, and wind-resistant improvements to structures pursuant to s. 163.08, F.S. These are commonly referred to as "Property-Assessed Clean Energy" or "PACE" projects.

One source of funding for these types of projects is expected to be $5.9 billion in federal loan guarantees through ARRA. The federal funds guarantee 80 percent of a loan for an eligible project, with the "development finance organization" (DFO) underwriting the project to pledge 5 percent of the loan amount.

The Florida Finance Network[42] is Florida's DFO for this venture, with the FDFC taking the lead.

For all other types of capital projects, FDFC may issue industrial development revenue bonds only when authorized to do so by a public agency, through interlocal agreement. The interlocal agreement establishes the terms of bonds, which may not exceed 30 years, and which typically have been tax-exempt private-activity bonds available within the federal allocation pool.[43] Over the years under this program, bond recipients have included a power boat manufacturer, a glass manufacturer and customizer, a truss company, an engineering firm specializing in communications telemetry, a nursing home, and a juice manufacturer. FDFC is more accurately described as a conduit for these bonds, shepherding businesses through the application, approval, and bond validation processes. The FDFC is not directly liable for repaying the bonds in case the recipient business defaults, but it does require certain guarantees, collateral, security interests, or lines of credit from the bond recipients. Repayment of the indebtedness is the responsibility of the borrowing business.

The FDFC also must maintain what is now called the Energy, Technology, and Economic Development Guaranty Fund, which will hold state general revenue appropriations or other sources of funds that may be used to make debt service payments or pay insurance, maintenance, or other costs necessary to preserve the project. This

[40] Biomass energy, hydroelectric power, hydrogen produced from sources other than fossil fuels, geothermal power, ocean energy, solar energy, and wind energy are included in the two definitions.

[41] Text of the federal law can be accessed at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf. Site last visited Sept. 22, 2010. Eligible projects include renewable energy systems that generate electrical or thermal energy, and facilities that manufacture system components; construction or upgrading of electric power transmission systems; and "leading edge" biofuel projects in the pilot or demonstration phase that the U.S. Energy Secretary determines are commercially viable and will produce fewer greenhouse gas emissions than other transportation fuels.

[42] More information about the Florida Finance Network is available at http://www.floridafinance.org/. Last visited Sept. 22, 2010.

[43] According to the state Division of Bond Finance, Florida's 2010 federal allocation of tax-exempt, private activity bonds is nearly $1.67 billion, of which $97.5 million is allocated to a "manufacturing pool" from which the FDFC typically draws its traditional bond financing.

guaranty fund includes $5 million specifically earmarked as the FDFC's 5-percent match for any energy-related project it selects for the federal loan guarantee program. The $5 million was reappropriated from the Florida Energy and Climate Commission to OTTED in the FY 2010-2011 General Appropriations Act.[44]

Reporting requirements

The statute requires an annual report be submitted by December of each year to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader that includes any Auditor General's report as required under s. 11.45(3)(j), F.S.; the FDFC's operations and accomplishments over the last year, including the number of businesses assisted; and the FDFC's assets and liabilities for its most recently concluded fiscal year.

Based on its annual report for FY 08-09 – the most recent available – the FDFC facilitated the issuance of $18.46 million in bonds to two entities: Out of Door Academy ($13.5 million) in Siesta Key for construction of a performing arts center and development of athletic fields and for classroom renovations; and Sculptor Charter School ($4.96 million) in Titusville to renovate classroom facilities and pay off the school's building lease. The FDFC earned $64,793 in bond issuance fees that fiscal year, which helped defray its administrative expenditures.

OPPAGA has reviewed the FDFC program in the context of evaluating EFI or state business assistance programs in four reports published in 1995-1998, and its concerns about the design of the Florida Development Finance Corporation (FDFC) have been largely addressed as the FDFC has evolved.[45]

Small Business Technology Growth Program[46]

As mentioned above, the Legislature in 1993 created a number of committees and boards within EFI's umbrella to handle specific economic-development tasks. One of them was the Enterprise Florida Innovation Partnership (renamed the Technology Development Board in 1996, with minor amendments[47]). It was directed to create market-driven, performance-based economic development incentives for innovative businesses that could diversity Florida's economy and provide high-wage employment; no examples were specified in statute. A key responsibility of this group was to advise and coordinate with EFI the state�s economic development policies regarding technology development and expansion.

Created in 1998, the Small Business Technology Growth Program is intended to assist Florida businesses that had "high job growth and emerging technology potential" and fewer than 100 employees[48] in obtaining financing to expand. The types of financing were unspecified in statute. The program was originally managed by the Technology Development Board but, by 1999, the board was abolished and EFI was given direct oversight responsibility.

The Legislature appropriated $1.5 million for the program in FY 98-99, and nothing since then. The funds were initially used as loan guarantees. Seven banks participated in the program, dispensing at least $3.8 million in loans to 14 businesses over the next 2 years.[49] Because the participating banks, and not EFI, did the loan underwriting,

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[44] Sections 136-138, ch. 2010-152, L.O.F.

[45] The reports which included significant discussion of the FDFC are: Report No. 95-09: "Review of the Enterprise Florida Capital Partnership," available at http://www.oppaga.state.fl.us/Reports/pdf/9509rpt.pdf.; Report No. 96-19: "Review of State-Supported Business Loan Programs," available at http://www.oppaga.state.fl.us/Reports/pdf/9619rpt.pdf.; Report No. 97-29: "Follow-Up Report on the Enterprise Florida Capital Partnership," available at http://www.oppaga.state.fl.us/Monitordocs/Reports/pdf/9729rpt.pdf.; and Report No. 98-32: "Review of the Capital Development Board of Enterprise Florida, Inc.," available at http://www.oppaga.state.fl.us/Reports/pdf/9832rpt.pdf. Sites last visited Sept. 22, 2010.

[46] Section 288.95155, F.S. (Created in s. 37, ch. 98-59, L.O.F.)

[47] Sections 288.9512-288.9514, F.S., which had specified the board's makeup and responsibilities, were repealed by ch. 99-251, L.O.F.

[48] Section 288.95155(1), F.S.

[49] Information compiled by EFI and on file with the Senate Commerce Committee.

there is incomplete data available on the recipients and whether they are still in business in Florida and how many jobs the loans actually helped create.[50]

In early 2009, EFI wrote off the last loan, leaving $1,681,380 million in the account for the year that ended June 30, 2009. During the 2009 legislative session, $600,000 from the account was earmarked to be advanced by EFI to the Center for the Commercialization of Public Research (center)[51] for its operations. Per an agreement between the two entities, the funds are advanced to the center as needed; for the year that ended June 30, 2010, EFI advanced $150,000 to the center for its operations. This left $1.53 million in the account.

Currently, EFI is considering awarding $50,000 grants to two small Florida-based technology companies that have been identified by the center as having the potential for growth. EFI staff has commented that while the loan program is defunct, the growth fund remains a useful tool EFI can use to assist small technology-based businesses with high-growth potential.

EFI is directed to prepare and include in its annual incentives report,[52] due by December 31 of each year, a discussion on the financial status of the technology grant program, including:

- Specifying the grant program's assets and liabilities within the current fiscal year and
- Listing all of the businesses assisted, the private dollars leveraged by each business assisted, and the growth in sales and in employment of each business assisted.

Prior to being amended in 2010, s. 288.95155(5), F.S., required EFI to submit a stand-alone report on the technology grant program by January 1 of each year to its board of directors and to the substantive and appropriations committees of the Legislature with oversight of economic development programs. In recent years, EFI responded that it did not submit formal reports because the program was inactive, and instead supplied legislative staff with summary information.

<u>Florida Opportunity Fund</u>

Created by the Legislature in 2007, the Florida Opportunity Fund (FOF)[53] was intended to attract venture capital investment into targeted Florida industries by providing a state match.[54] The FOF is organized as a private, not-for-profit corporation under ch. 617, F.S., with a 5-member board of directors selected by an EFI appointments committee.[55] The FOF's administrative staff is provided by EFI, and has a separate investment manager, Florida First Partners, comprised of Florida-based MILCOM Venture Partners and the Credit Suisse Customized Fund Investment Group.[56] The Legislature appropriated $29.5 million for investment funds in FY 2007-2008.[57]

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[50] Information compiled by EFI indicates that the 14 companies receiving the loans promised to create or retain a total of 498 jobs, per their submitted loan applications.

[51] The center was created by the Legislature in 2007 to facilitate investment in young companies so they can perfect and market their inventions, services, or products. More information about the center is available at its website, http://www.florida-institute.com. Site last visited Sept. 22, 2010.

[52] The "incentives report" is required pursuant to s. 288.095(3)(c), F.S.

[53] Chapter 2007-189, L.O.F.

[54] The State Board of Administration (SBA) has, for many years, invested in so-called "alternative investments" that included Florida-based businesses, and in 2009, pursuant to ch. 2008-31, L.O.F., created the $250 million Florida Growth Fund for venture-capital private-equity and direct investments within Florida. More information is available at http://www.floridagrowthfund.com/. These SBA programs are separate from the Florida Opportunity Fund. Site last visited Sept. 22, 2010.

[55] The current FOF board members are: chairman Kenneth Wright, partner with Baker Hostetler; vice chairman Andrew Hyltin, president of CNL Private Equity Corporation; Thomas Cornish, president and CEO of Seitlin Insurance and Advisory Services; Brian Nicholas, executive with the Acquired Asset Group of BB&T; and Pedro Pizarro, chairman and CEO of eLandia Group.

[56] The FOF website is http://floridaopportunityfund.com. Site last visited Sept. 22, 2010.

[57] That same fiscal year, the Legislature also appropriated $500,000 to EFI pay the costs associated with implementing the FOF.

Original directive

The FOF was established as a fund-of-funds program, meaning that it could only invest in investment funds, not directly in individual businesses; additionally, the investment funds had to match the state $2 for every $1 it invested. The emphasis was on "seed" and early-stage investments, because proponents of creating the FOF concluded that these types of companies were least likely to have access to venture funding and traditional financing. Targeted industries for the FOF investments included, but were not limited to, life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense. To be eligible for state participation, an investment fund had to have an experienced and successful investment manager or team, and must focus on investment opportunities in Florida.

The FOF invested in its first fund in FY 08-09: $594,000 in Element Partners II, according to FOF's financial statements.[58] Currently, the FOF has six investment fund partners and as of June 30, 2010, had invested just over $3 million.[59]

Expansion of investment authority

In 2009, the Florida Legislature amended s. 288.9624, F.S., to allow the FOF to make direct investments, including loans, in individual businesses and infrastructure projects; to form or operate other entities; and to accept funds from other public and private sources for use as investments.[60]These direct investments must be made in Florida infrastructure projects, or in businesses that are Florida-based or have significant business activities in Florida and operate in technology sectors that are strategic to Florida, including the original list of industry types. The FOF may not use its original appropriation of $29.5 million to make direct investments or for any purposes not specified in the original legislation.

In May 2010, the FOF launched a direct investment program with the Florida Energy and Climate Commission (commission), a nine-member board housed administratively in the Governor's Office that is the lead entity for state energy and climate-change programs and policies.[61] This new FOF fund is expected to increase the availability of investment capital in Florida for businesses engaged in developing or producing energy-efficient or renewable energy (EE/RE) products or services. The FOF will have access to $36 million initially in federal funds to make investments in qualifying businesses. Fund investments are restricted by statute to be used for facility and equipment improvement with EE/RE products; acquisition or demonstration of renewable energy products; and improvement of existing production, manufacturing, assembly, or distribution processes to reduce consumption or increase the efficient use of energy in such processes. No investments have been made as of September 1, 2010.

Reporting Requirements

The FOF is required by statute to submit an annual report by December of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes, at a minimum, an accounting of the amount of investments disbursed by the FOF fund; the progress of the FOF in accomplishing its responsibilities; a description of the benefits to the state resulting from the FOF, including the number of businesses and jobs created, the number of associated industries started, and the growth of related research projects; and independently audited financial statements for the FOF that show receipts and expenditures during the preceding fiscal year for personnel, administration, and operating costs.

[58] The auditor described the $594,000 investment as a payment of a $4 million commitment to Element Partners II, which specializes in investments in "cleantech" companies. See http://www.elementpartners.com. Site last visited Sept. 22, 2010.

[59] The FOF's financial statements are on file with the Senate Commerce Committee.

[60] Sections 25-26, ch. 2009-51, L.O.F.

[61] More information about the commission is available at http://www.myfloridaclimate.com/climate_quick_links/florida_energy_climate_commission). Site last visited Sept. 22, 2010.

The Cypress Equity Fund[62]

One of Florida's earliest experiments in encouraging venture capital investment in this state was the Cypress Equity Fund (Cypress), which was the creation of the now-defunct Enterprise Florida Capital Partnership. Cypress was not created in statute, but its startup expenses were funded in part through a $1.45 million state appropriation in FY 95-96.[63] The purpose of the Cypress Equity Fund was to facilitate venture capital investments by Florida private financial institutions and institutional investors, thus encouraging national venture capital managers to consider investment opportunities in this state.

The Cypress Equity Fund was designed as a "fund of funds" that would invest in national private venture capital funds which, in turn, would invest in companies with high potential for growth, with the hope that those companies would be located in Florida. However, there was no requirement that the investments be made in Florida-based businesses. In order to obtain the State Board of Administration's participation as an investor, the fund had to be designed to meet certain conditions, such as having no geographic restrictions on its investments.

Cypress obtained $20.5 million in total commitments from five private financial institutions and $15 million from the one public institutional investor, the Florida State Board of Administration. As of February 29, 2009, more than $32.5 million has been invested, with a payout over the years of nearly $54.5 million in distributions and realized gains to investors.[64] The Cypress Equity Fund's net compound annual internal rate of return, since the program's creation, was calculated at 21.87 percent, as of February 2009.[65] The fair-market valuation of the 16 current funds total $4.39 million, as of July 31, 2010.[66] The fund is self-supporting.

As the Legislature has abolished the Enterprise Florida Capital Partnership and its successor, the Capital Development Board, EFI now has the overarching responsibility for the Cypress Equity Fund. EFI has maintained the long-standing contract with Abbott Capital Management, a private equity manager, to invest Cypress' assets with national venture capital firms for a 1-percent management fee.

OPPAGA's aforementioned report[67] concluded that the Cypress Equity Fund:

> "achieved its limited goal of initiating venture capital investments by Florida private financial Institutions and public institutional investors. However, the fund was not designed to target in-state investments. As a result, it has not contributed to the achievement of its more important goal of improving Florida businesses' access to venture capital. However, it would not benefit the state to discontinue the fund. Given the fund's contracts, commitments and investments made to the fund by the SBA and Florida private institutional investors could not be readily transferred to other investment media that would target investments to Florida companies."

Cypress likely will be dissolved when its currently uninvested funds are disbursed, which may occur in the next two years, according to EFI.[68]

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[62] Much of this background is based on OPPAGA Report No. 98-33: "Review of the Enterprise Florida, Inc. Capital Development Board's Cypress Equity Fund," available at http://www.oppaga.state.fl.us/Reports/pdf/9833rpt.pdf. Site last visited Sept. 22, 2010.
[63] Line-item 1680Y, ch. 95-429, L.O.F Also, OPPAGA's Report No. 95-09: "Review of the Enterprise Florida Capital Partnership" noted that the partnership spent $1.1 million total in state funds to start up Cypress.
[64] Information provided by EFI. On file with the Senate Commerce Committee.
[65] Ibid.
[66] Ibid.
[67] Ibid.
[68] Conversation with Louis Laubscher, EFI senior vice president and COO, on Aug. 11, 2010.