

Council Substitute for
Council Substitute for House Bill No. 83

An act relating to venture capital investments; creating s. 288.9621, F.S.; providing a short title; creating s. 288.9622, F.S.; providing legislative findings and intent; creating s. 288.9623, F.S.; providing definitions; creating s. 288.9624, F.S.; requiring Enterprise Florida, Inc., to facilitate creation of the Florida Opportunity Fund; specifying criteria of the fund; providing for appointment of an appointment committee; providing for selection of a board of directors of the fund by Enterprise Florida, Inc.; specifying criteria; providing for terms and requirements of the directors; providing purposes of the fund; providing duties and responsibilities of the fund; authorizing the fund to negotiate all contract terms; providing for reimbursement for travel and other direct expenses; providing for powers of the fund; providing investment requirements for the fund; requiring the board of directors to issue an annual report on the activities of the fund; providing report requirements; creating s. 288.9625, F.S.; creating the Institute for the Commercialization of Public Research; providing that the institute is a not-for-profit corporation; providing that the purpose of the institute is to commercialize the products of public research; providing for membership of the board of directors; requiring the institute to provide data to certain entities; providing responsibilities of the institute; prohibiting the institute from having any interest in any product supported by the institute; prohibiting the institute from charging fees for services rendered to certain entities; requiring an annual report to the Governor and Legislature; providing report requirements; amending s. 1004.226, F.S.; providing that the 21st Century Technology, Research, and Scholarship Enhancement Act includes the commercialization of products and services developed from the research and development conducted at state universities; establishing the State University Research Commercialization Assistance Grants Program; requiring the Florida Technology, Research, and Scholarship Board to review and approve State University Research Commercialization Assistance Grants; requiring board members to refrain from having any direct interest or derive any benefit from a project receiving a grant under the program; providing guidelines for a state university to receive funding; providing for use of funds; requiring private match; requiring the board to periodically solicit proposals from state universities; providing criteria for application evaluation; providing for contracts with state universities; specifying content; requiring that the board's annual report to the Governor and Legislature include information on grants awarded and repaid; requiring the Office of Program Policy Analysis and Government Accountability to conduct an interim review and evaluation of the Florida Capital Formation Act; providing appropriations; providing an effective date.

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

Section 1. Sections 288.9621, 288.9622, 288.9623, 288.9624, and 288.9625, Florida Statutes, are created to read:

288.9621 Short title.—Sections 288.9621-288.9625 may be cited as the “Florida Capital Formation Act.”

288.9622 Findings and intent.—

(1) The Legislature finds and declares that there is a need to increase the availability of seed capital and early stage venture equity capital for emerging companies in the state, including, without limitation, enterprises in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense, as well as other strategic technologies.

(2) It is the intent of the Legislature that ss. 288.9621-288.9625 serve to mobilize private investment in a broad variety of venture capital partnerships in diversified industries and geographies; retain private-sector investment criteria focused on rate of return; use the services of highly qualified managers in the venture capital industry regardless of location; facilitate the organization of the Florida Opportunity Fund as a fund-of-funds investor in seed and early stage venture capital and angel funds; and precipitate capital investment and extensions of credit to and in the Florida Opportunity Fund.

(3) It is the intent of the Legislature to mobilize venture equity capital for investment in such a manner as to result in a significant potential to create new businesses and jobs in this state that are based on high growth potential technologies, products, or services and that will further diversify the economy of this state.

(4) It is the intent of the Legislature that an institute be created to mentor, market, and attract capital to such commercialization ventures throughout the state.

288.9623 Definitions.—As used in ss. 288.9621-288.9625:

(1) “Board” means the board of directors of the Florida Opportunity Fund.

(2) “Fund” means the Florida Opportunity Fund.

288.9624 Florida Opportunity Fund; creation; duties.—

(1)(a) Enterprise Florida, Inc., shall facilitate the creation of the Florida Opportunity Fund, a private, not-for-profit corporation organized and operated under chapter 617. Enterprise Florida, Inc., shall be the fund’s sole shareholder or member. The fund is not a public corporation or instrumentality of the state. The fund shall manage its business affairs and conduct business consistent with its organizational documents and the purposes set forth in this section. Notwithstanding the powers granted under chapter 617, the corporation may not amend, modify, or repeal a bylaw or article of incorporation without the express written consent of Enterprise Florida, Inc.

(b) The vice chair of Enterprise Florida, Inc., shall select from among its sitting board of directors a five-person appointment committee. The appointment committee shall select five initial members of a board of directors for the fund.

(c) The persons elected to the initial board of directors by the appointment committee shall include persons who have expertise in the area of the selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise as considered appropriate by the appointment committee.

(d) After election of the initial board of directors, vacancies on the board shall be filled by vote of the board of directors of Enterprise Florida, Inc., and board members shall serve terms as provided in the fund's organizational documents.

(e) Members of the board are subject to any restrictions on conflicts of interest specified in the organizational documents and may not have an interest in any venture capital investment selected by the fund under ss. 288.9621-288.9624.

(f) Members of the board shall serve without compensation, but members, the president of the board, and other board employees may be reimbursed for all reasonable, necessary, and actual expenses as determined and approved by the board pursuant to s. 112.061.

(g) The fund shall have all powers granted under its organizational documents and shall indemnify members to the broadest extent permissible under the laws of this state.

(2) Upon organization, the board shall conduct a national solicitation for investment plan proposals from qualified venture capital investment managers for the raising and investing of capital by the Florida Opportunity Fund. Any proposed investment plan must address the applicant's level of experience, quality of management, investment philosophy and process, provability of success in fundraising, prior investment fund results, and plan for achieving the purposes of ss. 288.9621-288.9624. The board shall select only venture capital investment managers having demonstrated expertise in the management of and investment in companies.

(3) The board is responsible for negotiating the terms of a contract with the Florida Opportunity Fund investment manager; executing the contract with the selected venture capital investment fund manager on behalf of the Florida Opportunity Fund; managing the business affairs of the Florida Opportunity Fund, such as accounting, audit, insurance, and related requirements; soliciting and negotiating the terms of, contracting for, and receiving investment capital and loan proceeds with the assistance of the investment manager; receiving investment returns; paying investors and debtors; and reinvesting the investment returns in the fund in order to provide additional venture capital investments designed to result in a significant potential to create new businesses and jobs in this state and further diversify the economy of this state.

(4) For the purpose of mobilizing investment in a broad variety of Florida-based, new technology companies and generating a return sufficient to continue reinvestment, the fund shall:

(a) Invest directly only in seed and early stage venture capital funds that have experienced managers or management teams with demonstrated experience, expertise, and a successful history in the investment of venture capital funds, focusing on opportunities in this state. The fund may not make direct investments in individual businesses. While not precluded from investing in venture capital funds that have investments outside this state, the fund must require a venture capital fund to show a record of successful investment in this state, to be based in this state, or to have an office in this state staffed with a full-time, professional venture investment executive in order to be eligible for investment.

(b) Negotiate for investment capital or loan proceeds from private, institutional, or banking sources.

(c) Negotiate any and all terms and conditions for its investments.

(d) Invest only in funds that have raised capital from other sources so that the amount invested in an entity in this state is at least twice the amount invested by the fund. Investments must be made in Florida-based companies, including, but not limited to, enterprises in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense, as well as other strategic technologies.

(5) By December 1 of each year, the board shall issue an annual report concerning the activities conducted by the fund to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report, at a minimum, must include:

(a) An accounting of the amount of investments disbursed by the fund and the progress of the fund.

(b) A description of the benefits to this state resulting from the fund, including the number of businesses created, associated industries started, the number of jobs created, and the growth of related research projects.

(c) Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for personnel, administration, and operational costs of the fund.

288.9625 Institute for the Commercialization of Public Research.—There is established the Institute for the Commercialization of Public Research.

(1) The institute shall be a not-for-profit corporation registered, incorporated, and operated in accordance with chapter 617.

(2) The purpose of the institute is to assist in the commercialization of products developed by the research and development activities of universities and colleges, research institutes, and publicly supported organizations

within the state. The institute shall operate to fulfill its purpose and in the best interests of the state. The institute:

(a) Shall be a corporation primarily acting as an instrumentality of the state pursuant to s. 768.28(2), for the purposes of sovereign immunity;

(b) Is not an agency within the meaning of s. 20.03(11);

(c) Is subject to the open records and meetings requirements of s. 24, Art. I of the State Constitution, chapter 119, and s. 286.011;

(d) Is not subject to the provisions of chapter 287;

(e) Shall be governed by the code of ethics for public officers and employees as set forth in part III of chapter 112;

(f) Is not authorized to create corporate subsidiaries;

(g) Shall support existing commercialization efforts at state universities; and

(h) Shall not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.

(3) The articles of incorporation of the institute must be approved in a written agreement with Enterprise Florida, Inc. The agreement and the articles of incorporation shall:

(a) Provide that the institute shall provide equal employment opportunities for all persons regardless of race, color, religion, gender, national origin, age, handicap, or marital status;

(b) Provide that the institute is subject to the public records and meeting requirements of s. 24, Art. I of the State Constitution;

(c) Provide that all officers, directors, and employees of the institute shall be governed by the code of ethics for public officers and employees as set forth in part III of chapter 112;

(d) Provide that members of the board of directors of the institute are responsible for the prudent use of all public and private funds and that they will ensure that the use of funds is in accordance with all applicable laws, bylaws, and contractual requirements; and

(e) Provide that the fiscal year of the institute is from July 1 to June 30.

(4) The affairs of the institute shall be managed by a board of directors who shall serve without compensation. Each director shall have only one vote. The chair of the board of directors shall be selected by a majority vote of the directors, a quorum being present. The board of directors shall consist of the following five members:

(a) The chair of Enterprise Florida, Inc., or the chair's designee.

(b) The president of the university where the institute is located or the president's designee unless multiple universities jointly sponsor the institute, in which case the presidents of the sponsoring universities shall agree upon a designee.

(c) Three directors appointed by the Governor to 3-year staggered terms, to which the directors may be reappointed.

(5) The board of directors shall provide a copy of the institute's annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, Enterprise Florida, Inc., and the president of the university at which the institute is located.

(6) Enterprise Florida, Inc., the president and the board of trustees of the university where the institute is located, the Auditor General, and the Office of Program Policy Analysis and Government Accountability may require and receive from the institute or its independent auditor any detail or supplemental data relative to the operation of the institute.

(7) Enterprise Florida, Inc., shall issue a request for proposals to state universities requesting proposals to fulfill the purposes of the institute as described in this section and provide for its physical location in a major metropolitan area in the southern part of the state having extensive commercial air service to facilitate access by venture capital providers. Enterprise Florida, Inc., shall review the proposals in a committee appointed by its board of directors which shall make a recommendation for final selection. Final approval of the selected proposal must be by the board of directors of Enterprise Florida, Inc., at one of its duly noticed meetings.

(8)(a) To be eligible for assistance, the company or organization attempting to commercialize its product must be accepted by the institute before receiving the institute's assistance.

(b) The institute shall receive recommendations from any publicly supported organization that a company that is commercializing the research, technology, or patents from a qualifying publicly supported organization should be accepted into the institute.

(c) The institute shall thereafter review the business plans and technology information of each such recommended company. If accepted, the institute shall mentor the company, develop marketing information on the company, and use its resources to attract capital investment into the company, as well as bring other resources to the company which may foster its effective management, growth, capitalization, technology protection, or marketing or business success.

(9) The institute shall:

(a) Maintain a centralized location to showcase companies and their technologies and products;

(b) Develop an efficient process to inventory and publicize companies and products that have been accepted by the institute for commercialization;

(c) Routinely communicate with private investors and venture capital organizations regarding the investment opportunities in its showcased companies;

(d) Facilitate meetings between prospective investors and eligible organizations in the institute;

(e) Hire full-time staff who understand relevant technologies needed to market companies to the angel investors and venture capital investment community; and

(f) Develop cooperative relationships with publicly supported organizations all of which work together to provide resources or special knowledge that is likely to be helpful to institute companies.

(10) The institute shall not develop or accrue any ownership, royalty, patent, or other such rights over or interest in companies or products in the institute and shall maintain the secrecy of proprietary information.

(11) The institute shall not charge for services rendered to state universities and affiliated organizations, community colleges, or state agencies.

(12) By December 1 of each year, the institute shall issue an annual report concerning its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall include the following:

(a) Information on any assistance and activities provided by the institute to assist publicly supported universities, colleges, research institutes, and other publicly supported organizations in the state.

(b) A description of the benefits to this state resulting from the institute, including the number of businesses created, associated industries started, the number of jobs created, and the growth of related projects.

(c) Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for personnel, administration, and operational costs of the institute.

Section 2. Subsection (4) of section 1004.226, Florida Statutes, is amended, subsection (7) is renumbered as subsection (8) and amended, and a new subsection (7) is added to that section, to read:

1004.226 The 21st Century Technology, Research, and Scholarship Enhancement Act.—

(4) FLORIDA TECHNOLOGY, RESEARCH, AND SCHOLARSHIP BOARD.—The Florida Technology, Research, and Scholarship Board is created within the Board of Governors of the State University System to guide the establishment of Centers of Excellence, ~~and the attraction of world class scholars, and the commercialization of products and services developed from the research and development conducted at state universities.~~

(a) The board shall consist of 11 members. Five members shall be appointed by the Governor, one of whom the Governor shall appoint as chair of the board, one of whom must be a member of the board of directors of Enterprise Florida, Inc., and one of whom must be a member of the Board of Governors of the State University System. Three members shall be appointed by the President of the Senate, and three members shall be appointed by the Speaker of the House of Representatives. Appointed members must be representative of business leaders, industrial researchers, academic researchers, scientists, and leaders in the emerging and advanced technology sector. Appointed members may not serve for more than 4 years, and any vacancy that occurs during these appointees' terms shall be filled in the same manner as the original appointment. A majority of members constitutes a quorum.

(b) Members of the board shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses in accordance with s. 112.061 while in the performance of their duties.

(c) The Board of Governors shall provide staff support for the activities of the board and per diem and travel expenses for board members.

(d) The board is charged with recommending criteria to the Board of Governors for the 21st Century World Class Scholars Program and with providing guidance to the Board of Governors regarding the implementation and administration of the Centers of Excellence Program.

(e) The board shall recommend to the Board of Governors the qualifications, standards, and requirements for approval of investments in Centers of Excellence under this act. The board may form committees of its members and is encouraged to consult with Enterprise Florida, Inc., the Florida Research Consortium, Bio-Florida, IT Florida, the Florida Aviation Aerospace Alliance, and any other entity whose input may be helpful in determining the requirements and standards for the program.

(f) The board shall review and approve State University Research Commercialization Assistance Grants under subsection (7). The board is encouraged to consult with Enterprise Florida, Inc.; entities with prior experience in early stage business investment; and any other entity whose input may be helpful in evaluating grant proposals.

(g) Members of the board must agree to refrain from having any direct interest in any contract, franchise, privilege, or other benefit arising from a state university project receiving a State University Research Commercialization Assistance Grant during the term of his or her appointment and for 2 years after the termination of such appointment. It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s.775.083, for a person to serve on the board in violation of this paragraph or to accept a direct interest in any contract, franchise, privilege, or other benefit granted by the grant recipients within 2 years after the termination of his or her service on the board.

(7) STATE UNIVERSITY RESEARCH COMMERCIALIZATION ASSISTANCE GRANT PROGRAM.—The State University Research Commer-

cialization Assistance Grant Program is established to promote the commercialization of university research products for the purpose of enhancing the state's economy and the state's public universities. All Phase Two and Phase Three grants established by this program require \$1 in private investment for each \$1 in state funding provided. A state university may apply for early stage capital funding for the purpose of developing products and services resulting from university research. An application may include joint participation in the development of products and services by a cooperating university. Grant funds awarded under this subsection may be used by the university for a variety of premarketing activities, including, but not limited to, securing patents, establishing startup companies, developing license agreements, attracting private investment, and supporting other activities that are necessary to establish commercially viable ventures for the marketing and sale of products resulting from university research. Funds may not be used for research or development.

(a) State University Research Commercialization Assistance Grants may be provided under the following categories:

1. Phase One grants, which may not exceed \$50,000 per project, shall be available to assist with early market research, independent evaluation, consultation, and other initial activities that may be required to develop an initial business model for a university research product that has the potential for commercialization.

2. Phase Two grants, which may not exceed \$100,000 per project, shall be available to assist with the development of a complete business plan for the commercialization of a university research product.

3. Phase Three grants, which may not exceed \$250,000 per project, shall be available for the implementation and execution of a completed business plan for a university research product.

(b) Based on the availability of funds, the board shall periodically solicit proposals from state universities for State University Research Commercialization Assistance Grants. The board shall establish guidelines prescribing the criteria and format for the submission of grant applications by state universities. Any state university, upon approval of its board of trustees, may submit a request to the board for a grant to facilitate the commercialization of a university research product or the commercialization of a patent held by a state agency under a cooperative agreement between the state agency and the university. A state university need not receive prior stage grants to be eligible for Phase Two or Phase Three grants. When evaluating the applications submitted for funding, the board shall consider the following criteria:

1. The potential return to the university which may be reasonably assumed based on the business case presented in support of the proposed project.

2. The potential for the creation of high-wage jobs resulting from the success of the proposed project.

3. The potential of the proposed project to address pressing needs of the residents of the state.
4. The potential of the proposed project to enhance the economic competitiveness of the state and the university.
5. The technical, financial, organizational, and marketing feasibility of the project and its business plan.
6. The potential of the proposed project to create other related business enterprises.

Each proposed project shall be evaluated on its individual merits.

(c) The board shall negotiate and execute contracts with state universities governing the terms of State University Research Commercial Assistance Grants. The board may not execute the contract unless the contract is approved by the affirmative vote of at least six of the 11 members of the board. Each contract, at a minimum, must contain provisions that:

1. Specify the procedures and schedules that govern the disbursement of funds under this section and specify the conditions or deliverables that the state university must satisfy before the release of each disbursement.
2. Require the state university to submit a business plan in a form and manner prescribed by the board.
3. Require the state university to submit data to the board concerning the activities and performance of projects funded pursuant to this section and to provide to the board an annual accounting of the expenditure of funds disbursed under this subsection.
4. Require the state university to negotiate repayment to the General Revenue Fund of the amount of the grant awarded to a project when the project generates sufficient revenues to sustain a profitable operation.
5. Require the state university to expend 95 percent of grant proceeds for described uses in the approved grant application and not otherwise reduce grant proceeds with facilities charges or fees by the university.

(d) Upon verification by the Board of Governors that a state university has executed a contract with the board for a State University Research Commercialization Assistance Grant, the Board of Governors shall release grant funds to the university.

(8)(7) ANNUAL REPORT.—The board, in cooperation with the Board of Governors of the State University System and the state universities or research centers receiving investments under this act, shall issue an annual report by December 31 each year of the activities conducted, including the accomplishments and overall economic benefits to the state, the number of 21st Century World Class Scholars attracted, the number of Centers of Excellence created or expanded, the success of collaborations with related industries, the number and amount of State University Research Commercialization Assistance Grants awarded and repaid, and the success of these

programs. The annual report shall be presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report must include a copy of an independent audit of the board and a review of the progress of programs administered by the board.

Section 3. Prior to the 2012 Regular Session of the Legislature, the Office of Program Policy Analysis and Government Accountability shall conduct a review and evaluation of the effectiveness and viability of the Florida Capital Formation Act. The office shall specifically evaluate the total capital investment in the state, private sector investment, rate of return, creation of new business and jobs, debt incurred, and industries impacted. The office shall also recommend outcome measures for further evaluation of the program. The office shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2012.

Section 4. The nonrecurring sum of \$31 million is appropriated from the General Revenue Fund to Enterprise Florida, Inc., for the 2007-2008 fiscal year. Of these funds, \$500,000 shall be for the purpose of initiating activities necessary to implement the responsibilities of the Florida Opportunity Fund under this act, and \$29.5 million is provided for the purpose of making investments under s. 288.9624, Florida Statutes. In addition, \$100,000 of these funds are provided to Enterprise Florida, Inc., for the purpose of startup costs associated with the Institute for the Commercialization of Public Research under s. 288.9625, Florida Statutes, and \$900,000 shall be provided to the institute for its operational expenses.

Section 5. The nonrecurring sum of \$4 million is appropriated to the Board of Governors of the State University System from the General Revenue Fund solely for the State University Research Commercialization Assistance Grant Program created by this act. Funds must be disbursed by the Board of Governors pursuant to grant agreements and contracts by the Florida Technology, Research, and Scholarship Board.

Section 6. This act shall take effect July 1, 2007.

Approved by the Governor June 19, 2007.

Filed in Office Secretary of State June 19, 2007.