

## CHAPTER 2018-139

### House Bill No. 1285

An act relating to Florida business entities; amending s. 20.60, F.S.; deleting the requirement that the Department of Economic Opportunity manage certain activities related to the commercialization of specified products, services, and ideas; specifying that the Institute for Commercialization of Florida Technology is not an appropriate direct-support organization; amending s. 288.9621, F.S.; designating an additional section as being included in the Florida Capital Formation Act; amending s. 288.9622, F.S.; revising legislative intent; amending s. 288.9623, F.S.; defining terms; amending s. 288.9625, F.S.; redesignating the Institute for the Commercialization of Public Research as the Institute for Commercialization of Florida Technology; specifying that the institute is not subject to control, supervision, or direction by the department; revising the institute's responsibilities; requiring that the investment-related affairs of the institute be managed by the private fund manager and overseen by the board of directors; restructuring the board of directors and the selection process for the board of directors; specifying term limits of the board members under certain circumstances; requiring the board of directors to amend the bylaws of the institute under certain circumstances; providing that a director is subject to restrictions on certain conflicts of interest; prohibiting a director from having a financial interest in certain investments; authorizing a director to be reimbursed for certain expenses; granting the institute certain powers; requiring the institute to indemnify certain persons; delegating certain duties to the board of directors; revising to whom the board must provide a copy of the annual report and who may require and receive supplemental data relative to the institute's operation; requiring that certain requirements be met before the private fund manager is authorized to make an investment in a company, on behalf of the institute; deleting provisions relating to certain duties of the institute; deleting provisions relating to certain fees charged by the institute and the prohibition on using capital in support of certain entities; specifying that the annual report is considered a public record, subject to certain exemptions; revising the requirements of the institute's annual report; listing requirements and prohibitions for the private fund manager; stating the purpose of the institute's use of the private fund manager; requiring the private fund manager to assume the management of certain assets; authorizing the private fund manager to act on behalf of the institute for certain purposes; requiring that the private fund manager be paid certain fees; authorizing the private fund manager to undertake certain activities on behalf of the institute; requiring the private fund manager to issue an annual report to the board of directors by a specific date; specifying that the annual report is considered a public record subject to certain exemptions; requiring that the report contain certain information; requiring that the institute transfer any funds received from a specific appropriation after a specified date to the General Revenue

Fund; requiring that all assets held by the institute and the Florida Technology Seed Capital Fund be immediately liquidated if the institute receives such an appropriation; providing that all the proceeds resulting from such liquidation revert to the General Revenue Fund; amending s. 288.96255, F.S.; revising the purpose of the technology fund; requiring that certain proceeds be returned to the fund after the payment of certain costs and fees; requiring the institute to employ a private fund manager; requiring the private fund manager to perform specific duties; requiring that the private fund manager receive certain fees and costs at a specified time; requiring the private fund manager to use a certain process to evaluate a proposal; requiring the private fund manager to consider certain factors when approving a company for investment; deleting specific requirements for the investment of funds; authorizing the private fund manager, in addition to the institute, to perform certain tasks; amending s. 288.9627, F.S.; conforming provisions to changes made by this act; amending s. 607.512, F.S.; authorizing the omission of certain confidential information from an annual benefit report of a social purpose corporation; amending s. 607.612, F.S.; authorizing the omission of certain confidential information from an annual benefit report of a benefit corporation; amending s. 658.23, F.S.; authorizing the modification of form articles of incorporation to include provisions required for a social purpose or benefit corporation; amending s. 658.30, F.S.; providing that certain provisions of the act extend to financial institutions in certain circumstances; authorizing stockholders, directors, and committees of financial institutions to hold meetings as authorized by the act; amending s. 658.36, F.S.; authorizing a financial institution to approve special stock offering plans notwithstanding provisions of the act; providing an effective date.

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

Section 1. Paragraph (e) of subsection (4) and paragraph (b) of subsection (9) of section 20.60, Florida Statutes, are amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(4) The purpose of the department is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians. To accomplish such purposes, the department shall:

(e) Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; ~~commercialization of products, services, or ideas developed in public universities or other public institutions;~~

and the development and promotion of professional and amateur sporting events.

(9) The executive director shall:

(b) Serve as the manager for the state with respect to contracts with Enterprise Florida, Inc., the Institute for the Commercialization of Public Research, and all applicable direct-support organizations. To accomplish the provisions of this section and applicable provisions of chapter 288, and notwithstanding the provisions of part I of chapter 287, the director shall enter into specific contracts with Enterprise Florida, Inc., the Institute for the Commercialization of Public Research, and other appropriate direct-support organizations. Such contracts may be for multiyear terms and must ~~shall~~ include specific performance measures for each year. For purposes of this section, the Florida Tourism Industry Marketing Corporation and the Institute for Commercialization of Florida Technology are ~~not is not an~~ appropriate direct-support organizations ~~organization~~.

Section 2. Section 288.9621, Florida Statutes, is amended to read:

288.9621 Short title.—~~Sections 288.9621-288.96255~~ Sections 288.9621-288.9625 may be cited as the “Florida Capital Formation Act.”

Section 3. Section 288.9622, Florida Statutes, is amended to read:

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 investment ~~venture equity~~ capital for emerging companies in the state, including, without limitation, businesses ~~enterprises~~ in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense, as well as other industries of strategic importance to this state ~~strategic technologies~~.

(2) It is the intent of the Legislature that ~~ss. 288.9621-288.96255~~ 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; allow the Institute for Commercialization of Florida Technology to use the services of highly qualified private fund managers experienced in the seed and early stage development industry in this state; outline the use, qualifications, and activities of the private management, without any financial support or specific appropriations from the state, by a private fund manager of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio of the Institute for Commercialization of Florida Technology ~~venture capital industry regardless of location;~~ facilitate the organization of the Florida Opportunity Fund as an investor in seed and early stage businesses, infrastructure projects, venture capital

funds, 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 investment ~~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 which ~~that~~ are based on high growth potential technologies, products, or services and which ~~that~~ will further diversify the economy of this state.

(4) It is the intent of the Legislature to reduce the ongoing operational cost and burden of managing the Florida Technology Seed Capital Fund and the Seed Capital Accelerator Program to this state and eliminate any financial support or specific appropriations from the state by engaging a private asset management entity in this state which is familiar with the seed and early stage investment industry in this state. This entity would be responsible for the management of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio without requiring ongoing budget expenditures by this state or receiving any financial support or specific appropriations from the state that an institute be created to mentor, market, and attract capital to such commercialization ventures throughout the state.

Section 4. Section 288.9623, Florida Statutes, is amended to read:

288.9623 Definitions.—As used in ss. 288.9621-288.96255, the term ss. ~~288.9621-288.9625~~:

(1) “Accelerator program” means the Seed Capital Accelerator Program managed by the institute.

~~(2)~~(1) “Board” means the board of directors of the Florida Opportunity Fund.

~~(3)~~(2) “Fund” means the Florida Opportunity Fund.

(4) “Institute” means the Institute for Commercialization of Florida Technology.

(5) “Investment portfolio” means individual or collective investment assets held under the technology fund.

(6) “Net profits” means the total gross proceeds received from the sale or liquidation of an asset of the investment portfolio less any costs, legal fees, professional fees, consulting fees, government fees, brokerage fees, taxes, management fees pursuant to s. 288.9625(12)(b), disbursement to private investors pursuant to s. 288.96255(6), or other fees, costs, and expenses incurred in the sale or liquidation of any of the investment portfolio assets.

(7) “Portfolio companies” means the companies who are part of the Florida Technology Seed Capital Fund investment portfolio.

(8) “Private fund manager” means the private entity, or its designee, selected to manage the investment portfolio on behalf of the institute.

(9) “Technology fund” means the Florida Technology Seed Capital Fund managed by the institute.

Section 5. Section 288.9625, Florida Statutes, is amended to read:

288.9625 Institute for the Commercialization of Florida Technology Public Research.~~—There is established at a public university or research center in this state the Institute for the Commercialization of Public Research.~~

(1) The institute ~~is~~ shall be a nonprofit not-for-profit corporation registered, incorporated, and operated in accordance with chapter 617. The institute is not subject to control, supervision, or direction by the department in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The purpose of the institute is to assist, without any financial support or specific appropriations from the state, in the commercialization of products developed by the research and development activities of an innovation business, including, but not limited to, those as defined in s. 288.1089; ~~a publicly supported college, university, or research institute; or any other publicly supported organization in this state.~~ The institute shall fulfill its purpose in the best interests of the state. The institute:

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

(f) May create corporate subsidiaries; and

(g) May not receive any financial support or specific appropriations from the state ~~Shall support existing commercialization efforts at state universities; and~~

(h) ~~May 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 the department. 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 ~~are~~ 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, including those in subsection (15); and

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

(4) ~~The investment-related affairs of the institute shall be managed by the private fund manager, and overseen 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 executive director of the department, or the director'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.~~

(a)(e) The board of directors shall consist of three directors appointed pursuant to the procedures and requirements of this section by the Governor to 3-year staggered terms, to which the directors may be reappointed.

(b) For any director appointed before July 1, 2018, the term of service for that director may continue through the end of his or her current term. The vacancy created by the expiration of such term must be filled pursuant to the procedures and requirements of this section.

(c) The bylaws of the institute shall be amended accordingly by the board of directors to reflect the requirements of this section.

(d) Upon vacancy, or within 90 days before an anticipated vacancy by the expiration of a term of a director, the private fund manager shall submit a

list of three eligible nominees, which may include the incumbent director, to replace the outgoing director. The board of directors, voting along with the private fund manager, may appoint a director from the nominee list or may request and appoint a director from a new list of three nominees that were not included on the previous list.

(e) The persons appointed as replacement directors must 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.

(f) Directors are subject to any restrictions on conflicts of interest specified in the organizational documents and may not have a financial interest in any venture capital investment in any portfolio company.

(g) Directors may be reimbursed for all reasonable, necessary, and actual expenses as determined and approved by the private fund manager pursuant to s. 112.061.

(h) The institute shall have all powers granted under its organizational documents and shall indemnify its directors and the private fund manager to the broadest extent permissible under the laws of this state.

(5) The board of directors shall oversee the private fund manager to ensure consistency with the Florida Capital Formation Act, perform those duties as may be delegated to it in the bylaws of the institute, and provide a copy of the institute’s annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the president of the university at which the institute is located.

~~(6) The department, 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) To the extent funds for investment are available in the technology fund, the private fund manager, on behalf of the institute, may make an investment in a company or organization if the following requirements are met:

~~(a) Before providing assistance, the institute accepted To be eligible for assistance, the company or organization attempting to commercialize its product based on the guidelines under s. 288.96255(4) must be accepted by the institute before receiving the institute’s assistance.~~

~~(b) The company or organization is based in this state 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.~~

~~(e) 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.~~

~~(8) 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.~~

~~(8)(9) Except as provided under s. 288.96255, the institute may not develop or accrue any ownership, royalty, patent, or other such rights over or interest in companies or products in the institute except in connection with financing provided directly to client companies and shall maintain the confidentiality of proprietary information.~~

~~(10) The institute may not charge for services provided to state universities and affiliated organizations, community colleges, or state agencies; however, the institute may deliver and charge for services to private companies and affiliated organizations if providing a service does not interfere with the core mission of the institute. The institute may not use its capital in support of private companies or affiliated organizations whose products were not developed by research and development activities of a publicly supported college, university, or research institute, or any other organization.~~

~~(9)(11) 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 annual report shall be considered a public record, as provided in paragraph (3)(b), subject to any~~



appropriate exemptions under s. 288.9627. The annual report must shall include the following:

(a) ~~Information on any assistance provided by the institute to an innovation business, as defined in s. 288.1089; a publicly supported college, university, or research institute; or any other publicly supported organization 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, management fees, administration, and operational costs of the institute.

(10) The private fund manager:

(a) Must be a for-profit limited liability company or a for-profit corporation formed, governed, and operated in accordance with chapter 605 or chapter 607, respectively.

(b) Shall conduct activities on behalf of the institute which are consistent with the purposes set forth in this section.

(c) Must have expertise and experience in the management and operation of early stage companies in this state.

(d) Must have experience with investment in early stage ventures in this state and have a working knowledge and understanding of the investment portfolio and the relevant industries of the portfolio companies in this state.

(e) Shall employ personnel and professionals who have knowledge of the investment portfolio and portfolio companies of the institute, as well as financial, technical, and business expertise to manage the technology fund activity.

(f) May not be a public corporation or instrumentality of the state.

(g) Is not a corporation primarily acting as an instrumentality of the state pursuant to s. 768.28(2), for the purposes of sovereign immunity.

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

(i) Is not subject to chapter 287.

(j) May not be governed by the code of ethics for public officers and employees as set forth in part III of chapter 112.

(k) May not receive any specific appropriation from the state in any amount.

(11) The purpose of the institute's use of a private fund manager is to alleviate the state's burden of the continued and future operational and management costs related to the technology fund and accelerator program without the financial support of or any specific appropriation from the state, while allowing the institute, through the activities of the private fund manager, to continue to foster greater private-sector investment funding, to encourage seed-stage investments in startup and early stage companies, and to advise companies about how to restructure existing management, operations, product development, or service development to attract advantageous business opportunities.

(12) The private fund manager shall assume the management of the assets of the accelerator program and the technology fund investment portfolios associated with the institute.

(a) The private fund manager has the authority on behalf of the institute to:

1. Negotiate investment, sale, and liquidation terms with portfolio and nonportfolio companies;

2. Develop and execute contracts, or amendments thereto, with portfolio and nonportfolio companies;

3. Seek new qualified companies for the investment of funds from the technology fund;

4. Receive, on behalf of the institute, investment capital from the sale or liquidation of any portion of the investment portfolio, loan proceeds, or other investment returns, and remit such capital, proceeds, and returns to the technology fund pursuant to s. 288.96255, except as otherwise provided in this section and s. 288.96255; and

5. Perform additional duties set forth in s. 288.96255.

(b) The private fund manager shall be paid reasonable fees consistent with industry fund management practices and consisting of:

1. An operational management fee, including the reimbursement of expenses, paid from the proceeds of the repayment of loans from the accelerator program or other capital, proceeds, and returns available in the technology fund;

2. A portfolio fee paid from the proceeds of each sale or liquidation of assets or portions of the assets of the investment portfolio; and

3. A closing fee paid from the investment amount paid by the technology fund to a company at the closing of each investment.

(13) The private fund manager may undertake the following activities on behalf of the institute:

(a) Mentor, assist with the development of marketing information, and assist with attracting capital investment, as well as bring other resources to the company which may foster its effective management, growth, capitalization, technology protection, or marketing or business success;

(b) Communicate with private investors and venture capital organizations regarding investment opportunities in the portfolio companies of the technology fund and accelerator program;

(c) Facilitate meetings between prospective investors and the companies; and

(d) Develop cooperative relationships with publicly supported organizations that work together to provide resources or special knowledge likely to be helpful to portfolio companies.

(14) By November 1 of each year, the private fund manager shall issue an annual report to the board of directors of the institute concerning the activities the private fund manager conducted which relate to existing accelerator program and technology fund investments in order for the board to be in compliance with its report obligations under subsection (9). The annual report provided by the private fund manager shall be considered a public record, as provided in paragraph (3)(b), subject to any appropriate exemptions under s. 288.9627. The annual report, at a minimum, must include:

(a) A description of the benefits to this state resulting from the assets of the accelerator program and technology fund, including the number of jobs created, the amount of capital the companies raised, and other benefits relating to increased research expenditures and company growth.

(b) Independently audited financial statements related to the receipt and calculation of the net profits of the investment portfolio.

(15) If the institute receives any specific appropriation from the state after July 1, 2018, the institute shall immediately transfer such funds to the General Revenue Fund. The institute, and all assets held by the institute, including all assets and ownership interests held by the technology fund pursuant to s. 288.96255, shall be liquidated immediately after the receipt of such appropriation, and all proceeds of the sales of such assets and ownership interests shall revert to the General Revenue Fund.

Section 6. Subsection (1) and subsections (3) through (7) of section 288.96255, Florida Statutes, are amended to read:

288.96255 Florida Technology Seed Capital Fund; creation; duties.—

(1) The Institute for the Commercialization of Florida Technology Public Research shall create the Florida Technology Seed Capital Fund as a corporate subsidiary. The purpose of the technology fund is, without any financial assistance or specific appropriations from the state, to foster

greater private-sector investment funding, to encourage seed-stage investments in start-up companies, and to advise companies about how to restructure existing management, operation, or production to attract advantageous business opportunities. The net profits of the proceeds of each sale or liquidation of assets or portions of the assets of the investment portfolio must a sale of the equity held by the fund shall be returned to the technology fund for reinvestment after payment of the applicable costs, professional fees, expenses, fees pursuant to s. 288.9625(12)(b), and disbursement to private investors pursuant to paragraph (6)(e).

(3) ~~The institute shall employ a private fund manager pursuant to s. 288.9625 professionals who have both technical and business expertise to manage the investment portfolio and technology fund activity. The private fund manager institute shall establish an investor advisory board comprised of venture capital professionals and early-stage investors from this and other states who shall advise the institute and guide the fund management of the technology fund and make funding recommendations, provided that capital for investment is available in the technology fund. The private fund manager shall receive reasonable fees consistent with industry practices for performing due diligence and an investment closing fee paid out of the technology fund at the closing of each investment in addition to reasonable attorney fees, other fees prescribed in s. 288.9625(12)(b), and other costs in connection with making an investment. Administrative costs paid out of the fund shall be determined by the investor advisory board.~~

(4) ~~The private fund manager institute shall use a thorough and detailed process that is modeled after investment industry practices the best practices of the investment industry to evaluate a proposal. In order to approve a company for investment, the private fund manager, on behalf of the institute, must consider if:~~

(a) ~~The company has a strong intellectual property position, a capable management team, readily identifiable paths to market or commercialization, significant job-growth potential, the ability to provide other sources of capital to leverage the state's investment, and the potential to attract additional funding;~~

(b) ~~The private fund manager has had an opportunity to complete due diligence to its satisfaction company has been identified by a publicly funded research institution;~~

(c) ~~The start-up company is a target industry business as defined in s. 288.106(2); and~~

(d) ~~The company has been identified by An approved private-sector lead investor who has demonstrated due diligence typical of start-up investments in evaluating the potential of the company has identified the company.;~~ and

(e) ~~The advisory board and fund manager have reviewed the company's proposal and recommended it.~~

(5)(a)—Seed Funds from the technology fund may be invested if the institute approves a company and the initial seed-stage investment. The initial seed-stage investment must be at least \$50,000, but no more than \$300,000. The initial seed-stage investment requires a one-to-one, private-sector match of investment.

~~(b)—Additional seed funds may be invested in a company if approved by the institute. The cumulative total of investment in a single company may not exceed \$500,000. Any additional investment amount requires a two-to-one, private-sector match of investment.~~

(6) The institute or private fund manager may:

(a) Provide a company with value-added support services in the areas of business plan development and strategy, the preparation of investor presentations, and other critical areas identified by the private fund manager ~~institute~~ to increase its chances for long-term viability and success;

(b) Encourage appropriate investment funds to become preapproved to match investment funds;

(c) Market the attractiveness of the state as an early-stage investment location; ~~and~~

(d) Collaborate with state economic-development organizations, national associations of seed and angel funds, and other innovation-based associations to create an enhanced state entrepreneurial ecosystem; ~~and-~~

(e) Transfer any portion of the assets of the investment portfolio, on behalf of the institute, into a private fund or special purpose vehicle, receive additional private investment in the private fund or special purpose vehicle, manage the private fund or special purpose vehicle, and distribute to the technology fund and the private investors the respective pro rata portion of any net profits from the sale or liquidation of the assets of such private fund or special purpose vehicle.

~~(7)—The institute shall annually evaluate the activities and results of the funding, taking into consideration that seed investment horizons span from 3 to 7 years.~~

Section 7. Section 288.9627, Florida Statutes, is amended to read:

288.9627 Exemptions from public records and public meetings requirements for the Institute for the Commercialization of Florida Technology Public Research.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Institute for the Commercialization of Florida Technology Public Research” or “institute” means the institute established by s. 288.9625.

(b)1. “Proprietary confidential business information” means information that has been designated by the proprietor when provided to the institute as information that is owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

- a. Trade secrets as defined in s. 688.002.
- b. Financial statements and internal or external auditor reports of a proprietor corporation, partnership, or person requesting confidentiality under this statute, unless publicly released by the proprietor.
- c. Meeting materials related to financial, operating, investment, or marketing information of the proprietor corporation, partnership, or person.
- d. Information concerning private investors in the proprietor corporation, partnership, or person.

2. “Proprietary confidential business information” does not include:

- a. The identity and primary address of the proprietor’s principals.
- b. The dollar amount and date of the financial commitment or contribution made by the institute.
- c. The dollar amount, on a fiscal-year-end basis, of cash repayments or other fungible distributions received by the institute from each proprietor.
- d. The dollar amount, if any, of the total management fees and costs paid on an annual fiscal-year-end basis by the institute.

(c) “Proprietor” means a corporation, partnership, or person that has applied for or received assistance, financial or otherwise, from the institute and that controls or owns the proprietary confidential business information.

(2) PUBLIC RECORDS EXEMPTION.—

(a) The following records held by the institute are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects conducted by universities and other publicly supported organizations in this state and that are provided to the institute by a proprietor.

2. Information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the institute for assistance.

3. Any information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

4. Proprietary confidential business information for 7 years after the termination of the institute's financial commitment to the company.

(b) At the time any record made confidential and exempt by this subsection, or portion thereof, is legally available or subject to public disclosure for any other reason, that record, or portion thereof, shall no longer be confidential and exempt and shall be made available for inspection and copying.

(3) PUBLIC MEETINGS EXEMPTION.—

(a) That portion of a meeting of the institute's board of directors at which information is discussed which is confidential and exempt under subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Any exempt portion of a meeting shall be recorded and transcribed. The board of directors shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any meeting may not be off the record.

(c) A transcript and minutes of exempt portions of meetings are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) REQUEST TO INSPECT OR COPY A RECORD.—

(a) Records made confidential and exempt by this section may be released, upon written request, to a governmental entity in the performance of its official duties and responsibilities.

(b) Notwithstanding the provisions of paragraph (2)(a), a request to inspect or copy a public record that contains proprietary confidential business information shall be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the institute, to verify the following to the institute through a written declaration in the manner provided by s. 92.525:

1. That the requested record contains proprietary confidential business information and the specific location of such information within the record;

2. If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in s. 688.002;

3. That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and

4. That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.

(c)1. Any person may petition a court of competent jurisdiction for an order for the public release of those portions of any record made confidential and exempt by subsection (2).

2. Any action under this subsection must be brought in Palm Beach County or Alachua County, and the petition or other initial pleading shall be served on the institute and, if determinable upon diligent inquiry, on the proprietor of the information sought to be released.

3. In any order for the public release of a record under this subsection, the court shall make a finding that:

a. The record or portion thereof is not a trade secret as defined in s. 688.002;

b. A compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and

c. The release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, or the institute.

(5) PENALTIES.—Any person who willfully and knowingly violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. Subsection (4) is added to section 607.512, Florida Statutes, to read:

607.512 Preparation of annual benefit report.—

(4) Notwithstanding the requirements of this section, information that is required to be included in the annual benefit report but that is otherwise required by applicable regulatory state or federal law to be kept confidential may be omitted from the annual benefit report. If such information is omitted, the annual benefit report shall expressly state that information required by this section has been omitted in reliance on this subsection.

Section 9. Subsection (5) is added to section 607.612, Florida Statutes, to read:

607.612 Preparation of annual benefit report.—



(5) Notwithstanding the requirements of this section, information that is required to be included in the annual benefit report but that is otherwise required by applicable regulatory state or federal law to be kept confidential may be omitted from the annual benefit report. If such information is omitted, the annual benefit report shall expressly state that information required by this section has been omitted in reliance on this subsection.

Section 10. Subsection (2) of section 658.23, Florida Statutes, is amended to read:

658.23 Submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.—

(2) The articles of incorporation shall contain:

(a) The name of the proposed bank or trust company.

(b) The general nature of the business to be transacted or a statement that the corporation may engage in any activity or business permitted by law. Such statement shall authorize all such activities and business by the corporation.

(c) The amount of capital stock authorized, showing the maximum number of shares of par value common stock and of preferred stock, and of every kind, class, or series of each, together with the distinguishing characteristics and the par value of all shares.

(d) The amount of capital with which the corporation will begin business, which may not be less than the amount required by the office pursuant to s. 658.21.

(e) A provision that the corporation is to have perpetual existence unless existence is terminated pursuant to the financial institutions codes.

(f) The initial street address of the main office of the corporation, which shall be in this state.

(g) The number of directors, which shall be five or more, and the names and street addresses of the members of the initial board of directors.

(h) A provision for preemptive rights, if applicable.

(i) A provision authorizing the board of directors to appoint additional directors, pursuant to s. 658.33, if applicable.

The office shall provide to the proposed directors form articles of incorporation which must include only those provisions required under this section or under ~~part I~~ of chapter 607. The form articles may be modified by the applicant to include any of the additional provisions required by part II or part III of chapter 607 which are necessary for a corporation to be a social purpose or benefit corporation. The form articles shall be acknowledged by

the proposed directors and returned to the office for filing with the Department of State.

Section 11. Section 658.30, Florida Statutes, is amended to read:

658.30 Application of the Florida Business Corporation Act.—

(1) When not in direct conflict with or superseded by specific provisions of the financial institutions codes, the provisions of the Florida Business Corporation Act, part I of chapter 607, and, if applicable, part II or part III of chapter 607, extend to state banks and trust companies formed under the financial institutions codes. This section shall be liberally construed to accomplish the purposes stated herein.

(2) Without limiting the generality of subsection (1), stockholders, directors, and committees of state banks and trust companies may hold meetings in any manner authorized by part I of chapter 607, and, if applicable, part II or part III of chapter 607, and any action by stockholders, directors, or committees required or authorized to be taken at a meeting may be taken without a meeting in any manner authorized by part I of chapter 607.

Section 12. Subsection (3) of section 658.36, Florida Statutes, is amended to read:

658.36 Changes in capital.—

(3) If a bank or trust company's capital accounts have been diminished by losses to less than the minimum required pursuant to the financial institutions codes, the market value of its shares of capital stock is less than the present par value, and the bank or trust company cannot reasonably issue and sell new shares of stock to restore its capital accounts at a share price of par value or greater of the previously issued capital stock, the office, notwithstanding any other provisions of part I of chapter 607 and, if applicable, part II or part III of chapter 607, or the financial institutions codes, may approve special stock offering plans.

(a) Such plans may include, but are not limited to, mechanisms for stock splits including reverse splits; revaluations of par value of outstanding stock; changes in voting rights, dividends, or other preferences; and creation of new classes of stock.

(b) The plan must be approved by majority vote of the bank or trust company's entire board of directors and by holders of two-thirds of the outstanding shares of stock.

(c) The office shall disapprove a plan that provides unfair or disproportionate benefits to existing shareholders, directors, executive officers, or their related interests. The office shall also disapprove any plan that is not likely to restore the capital accounts to sufficient levels to achieve a sustainable, safe, and sound financial institution.

(d) For any bank or trust company that the office determines to be a failing financial institution pursuant to s. 655.4185, the office may approve special stock offering plans without a vote of the shareholders.

Section 13. This act shall take effect July 1, 2018.

Approved by the Governor March 30, 2018.

Filed in Office Secretary of State March 30, 2018.