

By the Committee on Commerce

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1 A bill to be entitled
2 An act relating to the Innovation Incentive Program;
3 amending s. 288.1089, F.S.; defining the terms
4 "commission," "industry wage," "naming opportunities,"
5 and "net royalty revenues"; expanding the definition
6 of "project" to include alternative and renewable
7 energy applicants; requiring that an application for
8 an incentive award include certain information;
9 authorizing the waiver or reduction of requirements
10 relating to matching funds for alternative and
11 renewable energy projects; requiring that Enterprise
12 Florida, Inc., evaluate proposals for all categories
13 of innovation incentive awards and solicit comments
14 from the Florida Energy and Climate Commission before
15 making its recommendations; providing requirements for
16 such evaluations and recommendations; providing
17 additional criteria for a research and development
18 facility; deleting qualifying criteria for alternative
19 and renewable energy projects; creating additional
20 evaluation criteria for alternative and renewable
21 energy projects; requiring that the Executive Office
22 of the Governor release funds upon review and approval
23 of an award by the Legislative Budget Commission;
24 requiring the Office of Tourism, Trade, and Economic
25 Development and the recipient of an award to enter
26 into a contract setting forth conditions for the
27 payment of incentive funds; requiring that such
28 agreement include certain provisions; requiring that
29 agreements signed after a specified date contain

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30 certain additional provisions; requiring that
31 Enterprise Florida, Inc., submit a report containing
32 certain information within a specified period after
33 the conclusion of such agreement to the Governor, the
34 President of the Senate, and the Speaker of the House
35 of Representatives; requiring that each recipient of
36 an award comply with certain business ethics standards
37 developed by Enterprise Florida, Inc.; deleting
38 provisions authorizing Enterprise Florida, Inc., to
39 collaborate with the State University System in
40 reviewing and evaluating business ethics standards;
41 requiring that the office submit to the Governor, the
42 President of the Senate, and the Speaker of the House
43 of Representatives a report containing certain
44 information; specifying a date on which the office
45 shall begin submitting such reports; requiring that
46 the Office of Program Policy Analysis and Government
47 Accountability and the Office of the Auditor General
48 submit a joint report; requiring that such reports be
49 submitted at specified intervals; requiring that such
50 reports include certain information; authorizing the
51 office to seek the assistance of certain government
52 entities for certain purposes; providing an effective
53 date.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Subsections (1), (2), and (3), paragraph (d) of
58 subsection (4), and subsections (5), (7), (8), (9), and (10) of

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59 section 288.1089, Florida Statutes, are amended, and subsections
60 (11) and (12) are added to that section, to read:

61 288.1089 Innovation Incentive Program.—

62 (1) The Innovation Incentive Program is created within the
63 Office of Tourism, Trade, and Economic Development to ensure
64 that sufficient resources are available to allow the state to
65 respond expeditiously to extraordinary economic opportunities
66 and to compete effectively for high-value research and
67 development, ~~and~~ innovation business, and alternative and
68 renewal energy projects.

69 (2) As used in this section, the term:

70 (a) "Alternative and renewable energy" means electrical,
71 mechanical, or thermal energy produced from a method that uses
72 one or more of the following fuels or energy sources: ethanol,
73 cellulosic ethanol, biobutanol, biodiesel, biomass, biogas,
74 hydrogen fuel cells, ocean energy, hydrogen, solar, hydro, wind,
75 or geothermal.

76 (b) "Average private sector wage" means the statewide
77 average wage in the private sector or the average of all private
78 sector wages in the county or in the standard metropolitan area
79 in which the project is located as determined by the Agency for
80 Workforce Innovation.

81 (c) "Brownfield area" means an area designated as a
82 brownfield area pursuant to s. 376.80.

83 (d) "Commission" means the Florida Energy and Climate
84 Commission.

85 (e) ~~(d)~~ "Cumulative investment" means cumulative capital
86 investment and all eligible capital costs, as defined in s.
87 220.191.

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88 (f)~~(e)~~ "Director" means the director of the Office of
89 Tourism, Trade, and Economic Development.

90 (g)~~(f)~~ "Enterprise zone" means an area designated as an
91 enterprise zone pursuant to s. 290.0065.

92 (h)~~(g)~~ "Fiscal year" means the state fiscal year.

93 (i) "Industry wage" means the average annual wage paid to
94 employees in a particular industry, as designated by the North
95 American Industry Classification System (NAICS), and compiled by
96 the Bureau of Labor Statistics of the United States Department
97 of Labor.

98 (j)~~(h)~~ "Innovation business" means a business expanding or
99 locating in this state that is likely to serve as a catalyst for
100 the growth of an existing or emerging technology cluster or will
101 significantly impact the regional economy in which it is to
102 expand or locate.

103 (k)~~(i)~~ "Jobs" means full-time equivalent positions, as that
104 term is consistent with terms used by the Agency for Workforce
105 Innovation and the United States Department of Labor for
106 purposes of unemployment compensation tax administration and
107 employment estimation, resulting directly from a project in this
108 state. The term does not include temporary construction jobs.

109 (l) "Naming opportunities" means charitable donations from
110 any person or entity in consideration for the right to have all
111 or a portion of the facility named for or in the memory of any
112 person, living or dead, or for any entity.

113 (m) "Net royalty revenues" means all royalty revenues less
114 the cost of obtaining, maintaining, and enforcing related patent
115 and intellectual property rights, both foreign and domestic.

116 (n)~~(j)~~ "Match" means funding from local sources, public or

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117 private, which will be paid to the applicant and which is equal
118 to 100 percent of an award. Eligible match funding may include
119 any tax abatement granted to the applicant under s. 196.1995 or
120 the appraised market value of land, buildings, infrastructure,
121 or equipment conveyed or provided at a discount to the
122 applicant. Complete documentation of a match payment or other
123 conveyance must be presented to and verified by the office prior
124 to transfer of state funds to an applicant. An applicant may not
125 provide, directly or indirectly, more than 5 percent of match
126 funding in any fiscal year. The sources of such funding may not
127 include, directly or indirectly, state funds appropriated from
128 the General Revenue Fund or any state trust fund, excluding tax
129 revenues shared with local governments pursuant to law.

130 (o)~~(k)~~ "Office" means the Office of Tourism, Trade, and
131 Economic Development.

132 (p)~~(l)~~ "Project" means the location to or expansion in this
133 state by an innovation business, a ~~or~~ research and development
134 applicant, or an alternative and renewable energy applicant
135 approved for an award pursuant to this section.

136 (q)~~(m)~~ "Research and development" means basic and applied
137 research in the sciences or engineering, as well as the design,
138 development, and testing of prototypes or processes of new or
139 improved products. Research and development does not include
140 market research, routine consumer product testing, sales
141 research, research in the social sciences or psychology,
142 nontechnological activities, or technical services.

143 (r)~~(n)~~ "Research and development facility" means a facility
144 that is predominately engaged in research and development
145 activities. For purposes of this paragraph, the term

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146 "predominantly" means at least 51 percent of the time.

147 (s)~~(e)~~ "Rural area" means a rural city, rural community, or
148 rural county as defined in s. 288.106.

149 (3) To be eligible for consideration for an innovation
150 incentive award, an innovation business, a ~~or~~ research and
151 development entity, or an alternative and renewable energy
152 company project ~~project~~ must submit a written application to Enterprise
153 Florida, Inc., before making a decision to locate new operations
154 in this state or expand an existing operation in this state. The
155 application must include, but not be limited to:

156 (a) The applicant's federal employer identification number,
157 unemployment account number, and state sales tax registration
158 number. If such numbers are not available at the time of
159 application, they must be submitted to the office in writing
160 prior to the disbursement of any payments under this section.

161 (b) The location in this state at which the project is
162 located or is to be located.

163 (c) A description of the type of business activity,
164 product, or research and development undertaken by the
165 applicant, including six-digit North American Industry
166 Classification System codes for all activities included in the
167 project.

168 (d) The applicant's projected investment in the project.

169 (e) The total investment, from all sources, in the project.

170 (f) The number of net new full-time equivalent jobs in this
171 state the applicant anticipates having created as of December 31
172 of each year in the project and the average annual wage of such
173 jobs.

174 (g) The total number of full-time equivalent employees

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175 currently employed by the applicant in this state, if
176 applicable.

177 (h) The anticipated commencement date of the project.

178 (i) A detailed explanation of why the innovation incentive
179 is needed to induce the applicant to expand or locate in the
180 state and whether an award would cause the applicant to locate
181 or expand in this state.

182 (j) If applicable, an estimate of the proportion of the
183 revenues resulting from the project that will be generated
184 outside this state.

185 (4) To qualify for review by the office, the applicant
186 must, at a minimum, establish the following to the satisfaction
187 of Enterprise Florida, Inc., and the office:

188 (d) For an alternative and renewable energy project in this
189 state, the project must:

190 1. Demonstrate a plan for significant collaboration with an
191 institution of higher education;

192 2. Provide the state, at a minimum, a break-even return on
193 investment within a 20-year period;

194 3. Include matching funds provided by the applicant or
195 other available sources. The match requirement may be reduced or
196 waived in rural areas of critical economic concern or reduced in
197 rural areas, brownfield areas, and enterprise zones ~~This~~
198 ~~requirement may be waived if the office and the department~~
199 ~~determine that the merits of the individual project or the~~
200 ~~specific circumstances warrant such action;~~

201 4. Be located in this state; and

202 5. Provide at least 35 direct, new jobs that pay an
203 estimated annual average wage that equals at least 130 percent

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204 of the average private sector wage. ~~The average wage requirement~~
205 ~~may be waived if the office and the commission determine that~~
206 ~~the merits of the individual project or the specific~~
207 ~~circumstances warrant such action; and~~

208 ~~6. Meet one of the following criteria:~~

209 ~~a. Result in the creation of at least 35 direct, new jobs~~
210 ~~at the business.~~

211 ~~b. Have an activity or product that uses feedstock or other~~
212 ~~raw materials grown or produced in this state.~~

213 ~~e. Have a cumulative investment of at least \$50 million~~
214 ~~within a 5-year period.~~

215 ~~d. Address the technical feasibility of the technology, and~~
216 ~~the extent to which the proposed project has been demonstrated~~
217 ~~to be technically feasible based on pilot project~~
218 ~~demonstrations, laboratory testing, scientific modeling, or~~
219 ~~engineering or chemical theory that supports the proposal.~~

220 ~~e. Include innovative technology and the degree to which~~
221 ~~the project or business incorporates an innovative new~~
222 ~~technology or an innovative application of an existing~~
223 ~~technology.~~

224 ~~f. Include production potential and the degree to which a~~
225 ~~project or business generates thermal, mechanical, or electrical~~
226 ~~energy by means of a renewable energy resource that has~~
227 ~~substantial long-term production potential. The project must, to~~
228 ~~the extent possible, quantify annual production potential in~~
229 ~~megawatts or kilowatts.~~

230 ~~g. Include and address energy efficiency and the degree to~~
231 ~~which a project demonstrates efficient use of energy, water, and~~
232 ~~material resources.~~

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233 ~~h. Include project management and the ability of management~~
234 ~~to administer and complete the business project.~~

235 (5) Enterprise Florida, Inc., shall evaluate proposals for
236 all three categories of innovation incentive awards and transmit
237 recommendations for awards to the office. Before making its
238 recommendations on alternative and renewable energy projects,
239 Enterprise Florida, Inc., shall solicit comments and
240 recommendations from the Florida Energy and Climate Commission
241 ~~for alternative and renewable energy project proposals.~~ For each
242 project, such evaluation and recommendation to the office must
243 include, but need not be limited to:

244 (a) A description of the project, its required facilities,
245 and the associated product, service, or research and development
246 associated with the project.

247 (b) The percentage of match provided for the project.

248 (c) The number of full-time equivalent jobs that will be
249 created by the project, the total estimated average annual wages
250 of such jobs, and the types of business activities and jobs
251 likely to be stimulated by the project.

252 (d) The cumulative investment to be dedicated to the
253 project within 5 years and the total investment expected in the
254 project if more than 5 years.

255 (e) The projected economic and fiscal impacts on the local
256 and state economies relative to investment.

257 (f) A statement of any special impacts the project is
258 expected to stimulate in a particular business sector in the
259 state or regional economy or in the state's universities and
260 community colleges.

261 (g) A statement of any anticipated or proposed

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262 relationships with state universities.

263 (h) A statement of the role the incentive is expected to
264 play in the decision of the applicant to locate or expand in
265 this state.

266 (i) A recommendation and explanation of the amount of the
267 award needed to cause the applicant to expand or locate in this
268 state.

269 (j) A discussion of the efforts and commitments made by the
270 local community in which the project is to be located to induce
271 the applicant's location or expansion, taking into consideration
272 local resources and abilities.

273 (k) A recommendation for specific performance criteria the
274 applicant would be expected to achieve in order to receive
275 payments from the fund and penalties or sanctions for failure to
276 meet or maintain performance conditions.

277 (l) Additional evaluative criteria for a research and
278 development facility project include:

279 1. A description of the extent to which the project has the
280 potential to serve as catalyst for an emerging or evolving
281 cluster.

282 2. A description of the extent to which the project has or
283 could have a long-term collaborative research and development
284 relationship with one or more universities or community colleges
285 in this state.

286 3. A description of the existing or projected impact of the
287 project on established clusters or targeted industry sectors.

288 4. A description of the project's contribution to the
289 diversity and resiliency of the innovation economy of this
290 state.

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291 5. A description of the project's impact on special needs
292 communities, including, but not limited to, rural areas,
293 distressed urban areas, and enterprise zones.

294 (m) Additional evaluative criteria for alternative and
295 renewable energy proposals include:

296 1. The availability of matching funds or other in-kind
297 contributions applied to the total project from an applicant.
298 The commission shall give greater preference to projects that
299 provide such matching funds or other in-kind contributions.

300 2. The degree to which the project stimulates in-state
301 capital investment and economic development in metropolitan and
302 rural areas, including the creation of jobs and the future
303 development of a commercial market for renewable energy
304 technologies.

305 3. The extent to which the proposed project has been
306 demonstrated to be technically feasible based on pilot project
307 demonstrations, laboratory testing, scientific modeling, or
308 engineering or chemical theory that supports the proposal.

309 4. The degree to which the project incorporates an
310 innovative new technology or an innovative application of an
311 existing technology.

312 5. The degree to which a project generates thermal,
313 mechanical, or electrical energy by means of a renewable energy
314 resource that has substantial long-term production potential.

315 6. The degree to which a project demonstrates efficient use
316 of energy and material resources.

317 7. The degree to which the project fosters overall
318 understanding and appreciation of renewable energy technologies.

319 8. The ability to administer a complete project.

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320 9. Project duration and timeline for expenditures.

321 10. The geographic area in which the project is to be
322 conducted in relation to other projects.

323 11. The degree of public visibility and interaction.

324 (7) Upon receipt of the evaluation and recommendation from
325 Enterprise Florida, Inc., ~~and from the Florida Energy and~~
326 ~~Climate Commission for alternative and renewable energy project~~
327 ~~proposals,~~ the director shall recommend to the Governor the
328 approval or disapproval of an award. In recommending approval of
329 an award, the director shall include proposed performance
330 conditions that the applicant must meet in order to obtain
331 incentive funds and any other conditions that must be met before
332 the receipt of any incentive funds. The Governor shall consult
333 with the President of the Senate and the Speaker of the House of
334 Representatives before giving approval for an award. Upon review
335 and approval of an award by the Legislative Budget Commission,
336 the Executive Office of the Governor shall release the funds
337 ~~pursuant to the legislative consultation and review requirements~~
338 ~~set forth in s. 216.177.~~

339 (8) (a) After the conditions ~~Upon approval by the Governor~~
340 ~~and release of the funds as set forth in subsection (7) have~~
341 been met, the director shall issue a letter certifying the
342 applicant as qualified for an award. The office and the award
343 recipient ~~applicant~~ shall enter into an agreement that sets
344 forth the conditions for payment of the incentive funds
345 ~~incentives~~. The agreement must include, at a minimum:

346 1. The total amount of funds awarded.~~†~~

347 2. The performance conditions that must be met in order to
348 obtain the award or portions of the award, including, but not

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349 limited to, net new employment in the state, average wage, and
350 total cumulative investment.~~†~~

351 3. Demonstration of a baseline of current service and a
352 measure of enhanced capability.~~†~~

353 4. The methodology for validating performance.~~†~~

354 5. The schedule of payments.~~†~~ and

355 6. Sanctions for failure to meet performance conditions,
356 including any clawback provisions.

357 (b) Additionally, agreements signed on or after July 1,
358 2009, must include the following provisions:

359 1. Notwithstanding subsection (4), a requirement that the
360 jobs created by the recipient of the incentive funds pay an
361 annual average wage at least equal to the relevant industry's
362 annual average wage or at least 130 percent of the average
363 private-sector wage, whichever is greater.

364 2. A reinvestment requirement. Each recipient of an award
365 shall reinvest up to 15 percent of net royalty revenues,
366 including revenues from spin-off companies and the revenues from
367 the sale of stock it receives from the licensing or transfer of
368 inventions, methods, processes, and other patentable discoveries
369 conceived or reduced to practice using its facilities in Florida
370 or its Florida-based employees, in whole or in part, and to
371 which the recipient of the grant becomes entitled during the 20
372 years following the effective date of its agreement with the
373 office. Each recipient of an award also shall reinvest up to 15
374 percent of the gross revenues it receives from naming
375 opportunities associated with any facility it builds in this
376 state. Reinvestment payments shall commence no later than 6
377 months after the recipient of the grant has received the final

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378 disbursement under the contract and shall continue until the
379 maximum reinvestment, as specified in the contract, has been
380 paid. Reinvestment payments shall be remitted to the office for
381 deposit in the Biomedical Research Trust Fund for companies
382 specializing in biomedicine or life sciences, or in the Economic
383 Development Trust Fund for companies specializing in fields
384 other than biomedicine or the life sciences. If these trust
385 funds no longer exist at the time of the reinvestment, the
386 state's share of reinvestment shall be deposited in their
387 successor trust funds as determined by law. Each recipient of an
388 award shall annually submit a schedule of the shares of stock
389 held by it as payment of the royalty required by this paragraph
390 and report on any trades or activity concerning such stock. Each
391 recipient's reinvestment obligations survive the expiration or
392 termination of its agreement with the state.

393 3. Requirements for the establishment of internship
394 programs or other learning opportunities for educators and
395 secondary, postsecondary, graduate, and doctoral students.

396 4. A requirement that the recipient submit quarterly
397 reports and annual reports related to activities and performance
398 to the office, according to standardized reporting periods.

399 5. A requirement for an annual accounting to the office of
400 the expenditure of funds disbursed under this section.

401 6. A process for amending the agreement.

402 (9) Enterprise Florida, Inc., shall assist the office in
403 validating the performance of an innovation business, a ~~or~~
404 research and development facility, or an alternative and
405 renewable energy business that has received an award. At the
406 conclusion of the innovation incentive award agreement, or its

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407 earlier termination, Enterprise Florida, Inc., shall, within 90
408 days, submit a report ~~the results of the innovation incentive~~
409 ~~award~~ to the Governor, the President of the Senate, and the
410 Speaker of the House of Representatives detailing whether the
411 recipient of the innovation incentive grant achieved its
412 specified outcomes.

413 (10) Each recipient of an award shall comply with
414 ~~Enterprise Florida, Inc., shall develop~~ business ethics
415 standards developed by Enterprise Florida, Inc., which are based
416 on appropriate best industry practices ~~which shall be applicable~~
417 ~~to all award recipients.~~ The standards shall address ethical
418 duties of business enterprises, fiduciary responsibilities of
419 management, and compliance with the laws of this state.
420 ~~Enterprise Florida, Inc., may collaborate with the State~~
421 ~~University System in reviewing and evaluating appropriate~~
422 ~~business ethics standards. Such standards shall be provided to~~
423 ~~the Governor, the President of the Senate, and the Speaker of~~
424 ~~the House of Representatives by December 31, 2006. An award~~
425 ~~agreement entered into on or after December 31, 2006, shall~~
426 ~~require a recipient to comply with the business ethics standards~~
427 ~~developed pursuant to this section.~~

428 (11) (a) Beginning January 5, 2010, and every year
429 thereafter, the office shall submit to the Governor, the
430 President of the Senate, and the Speaker of the House of
431 Representatives a report summarizing the activities and
432 accomplishments of the recipients of grants from the Innovation
433 Incentive Program during the previous 12 months and an
434 evaluation by the office of whether the recipients are catalysts
435 for additional direct and indirect economic development in

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436 Florida.

437 (b) Beginning March 1, 2010, and every third year
438 thereafter, the Office of Program Policy Analysis and Government
439 Accountability and the Florida Auditor General's Office shall
440 jointly release a report evaluating the Innovation Incentive
441 Program's progress toward creating clusters of high-wage, high-
442 skilled, complementary industries that serve as catalysts for
443 economic growth specifically in the regions in which they are
444 located, and generally for the state as a whole. Such report
445 should include critical analyses of quarterly and annual
446 reports, annual audits, and other documents prepared by the
447 Innovation Incentive program awardees; relevant economic
448 development reports prepared by the office, Enterprise Florida,
449 Inc., and local or regional economic development organizations;
450 interviews with the parties involved; and any other relevant
451 data. Such report should also include legislative
452 recommendations, if necessary, on how to improve the Innovation
453 Incentive Program so that the program reaches its anticipated
454 potential as a catalyst for direct and indirect economic
455 development in this state.

456 (12) The office may seek the assistance of the Office of
457 Program Policy Analysis and Government Accountability, the
458 Legislature's Office of Economic and Demographic Research, and
459 other entities for the purpose of developing performance
460 measures or techniques to quantify the synergistic economic
461 development impacts that awardees of grants are having within
462 their communities.

463 Section 2. This act shall take effect July 1, 2009.