

FOR CONSIDERATION By the Committee on Commerce

577-01136B-09

20097056__

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; requiring that the Executive Office of the
19 Governor release funds upon review and approval of an
20 award by the Legislative Budget Commission; requiring
21 the Office of Tourism, Trade, and Economic Development
22 and the recipient of an award enter into a contract
23 setting forth conditions for the payment of incentive
24 funds; requiring that such agreement include certain
25 provisions; requiring that agreements signed after a
26 specified date contain certain additional provisions;
27 requiring that Enterprise Florida, Inc., submit a
28 report containing certain information within a
29 specified period after the conclusion of such

577-01136B-09

20097056__

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

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Subsections (2) and (3), paragraph (d) of
55 subsection (4), and subsections (5), (7), (8), (9), and (10) of
56 section 288.1089, Florida Statutes, are amended, and subsections
57 (11) and (12) are added to that section, to read:

58 288.1089 Innovation Incentive Program.—

577-01136B-09

20097056__

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

60 (a) "Alternative and renewable energy" means electrical,
61 mechanical, or thermal energy produced from a method that uses
62 one or more of the following fuels or energy sources: ethanol,
63 cellulosic ethanol, biobutanol, biodiesel, biomass, biogas,
64 hydrogen fuel cells, ocean energy, hydrogen, solar, hydro, wind,
65 or geothermal.

66 (b) "Average private sector wage" means the statewide
67 average wage in the private sector or the average of all private
68 sector wages in the county or in the standard metropolitan area
69 in which the project is located as determined by the Agency for
70 Workforce Innovation.

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

73 (d) "Commission" means the Florida Energy and Climate
74 Commission.

75 (e)~~(d)~~ "Cumulative investment" means cumulative capital
76 investment and all eligible capital costs, as defined in s.
77 220.191.

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

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

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

83 (i) "Industry wage" means the average annual wage paid to
84 employees in a particular industry, as designated by the North
85 American Industry Classification System (NAICS), and compiled by
86 the Bureau of Labor Statistics of the United States Department
87 of Labor.

577-01136B-09

20097056__

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

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

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

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

106 ~~(n)(j)~~ "Match" means funding from local sources, public or
107 private, which will be paid to the applicant and which is equal
108 to 100 percent of an award. Eligible match funding may include
109 any tax abatement granted to the applicant under s. 196.1995 or
110 the appraised market value of land, buildings, infrastructure,
111 or equipment conveyed or provided at a discount to the
112 applicant. Complete documentation of a match payment or other
113 conveyance must be presented to and verified by the office prior
114 to transfer of state funds to an applicant. An applicant may not
115 provide, directly or indirectly, more than 5 percent of match
116 funding in any fiscal year. The sources of such funding may not

577-01136B-09

20097056__

117 include, directly or indirectly, state funds appropriated from
118 the General Revenue Fund or any state trust fund, excluding tax
119 revenues shared with local governments pursuant to law.

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

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

126 (q)~~(m)~~ "Research and development" means basic and applied
127 research in the sciences or engineering, as well as the design,
128 development, and testing of prototypes or processes of new or
129 improved products. Research and development does not include
130 market research, routine consumer product testing, sales
131 research, research in the social sciences or psychology,
132 nontechnological activities, or technical services.

133 (r)~~(n)~~ "Research and development facility" means a facility
134 that is predominately engaged in research and development
135 activities. For purposes of this paragraph, the term
136 "predominantly" means at least 51 percent of the time.

137 (s)~~(o)~~ "Rural area" means a rural city, rural community, or
138 rural county as defined in s. 288.106.

139 (3) To be eligible for consideration for an innovation
140 incentive award, an innovation business, a ~~or~~ research and
141 development entity, or an alternative and renewable energy
142 company project ~~project~~ must submit a written application to Enterprise
143 Florida, Inc., before making a decision to locate new operations
144 in this state or expand an existing operation in this state. The
145 application must include, but not be limited to:

577-01136B-09

20097056__

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

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

153 (c) A description of the type of business activity,
154 product, or research and development undertaken by the
155 applicant, including six-digit North American Industry
156 Classification System codes for all activities included in the
157 project.

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

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

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

164 (g) The total number of full-time equivalent employees
165 currently employed by the applicant in this state, if
166 applicable.

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

168 (i) A detailed explanation of why the innovation incentive
169 is needed to induce the applicant to expand or locate in the
170 state and whether an award would cause the applicant to locate
171 or expand in this state.

172 (j) If applicable, an estimate of the proportion of the
173 revenues resulting from the project that will be generated
174 outside this state.

577-01136B-09

20097056__

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

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

180 1. Demonstrate a plan for significant collaboration with an
181 institution of higher education;

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

184 3. Include matching funds provided by the applicant or
185 other available sources. The match requirement may be reduced or
186 waived in rural areas of critical economic concern or reduced in
187 rural areas, brownfield areas, and enterprise zones ~~This~~
188 ~~requirement may be waived if the office and the department~~
189 ~~determine that the merits of the individual project or the~~
190 ~~specific circumstances warrant such action;~~

191 4. Be located in this state;

192 5. Provide jobs that pay an estimated annual average wage
193 that equals at least 130 percent of the average private sector
194 wage. ~~The average wage requirement may be waived if the office~~
195 ~~and the commission determine that the merits of the individual~~
196 ~~project or the specific circumstances warrant such action; and~~

197 6. Meet one of the following criteria:

198 a. Result in the creation of at least 35 direct, new jobs
199 at the business.

200 b. Have an activity or product that uses feedstock or other
201 raw materials grown or produced in this state.

202 c. Have a cumulative investment of at least \$50 million
203 within a 5-year period.

577-01136B-09

20097056__

204 d. Address the technical feasibility of the technology, and
205 the extent to which the proposed project has been demonstrated
206 to be technically feasible based on pilot project
207 demonstrations, laboratory testing, scientific modeling, or
208 engineering or chemical theory that supports the proposal.

209 e. Include innovative technology and the degree to which
210 the project or business incorporates an innovative new
211 technology or an innovative application of an existing
212 technology.

213 f. Include production potential and the degree to which a
214 project or business generates thermal, mechanical, or electrical
215 energy by means of a renewable energy resource that has
216 substantial long-term production potential. The project must, to
217 the extent possible, quantify annual production potential in
218 megawatts or kilowatts.

219 g. Include and address energy efficiency and the degree to
220 which a project demonstrates efficient use of energy, water, and
221 material resources.

222 h. Include project management and the ability of management
223 to administer and complete the business project.

224 (5) Enterprise Florida, Inc., shall evaluate proposals for
225 all three categories of innovation incentive awards and transmit
226 recommendations for awards to the office. Before making its
227 recommendations on alternative and renewable energy projects,
228 Enterprise Florida, Inc., shall solicit comments and
229 recommendations from the Florida Energy and Climate Commission
230 ~~for alternative and renewable energy project proposals.~~ For each
231 project, such evaluation and recommendation to the office must
232 include, but need not be limited to:

577-01136B-09

20097056__

233 (a) A description of the project, its required facilities,
234 and the associated product, service, or research and development
235 associated with the project.

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

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

241 (d) The cumulative investment to be dedicated to the
242 project within 5 years and the total investment expected in the
243 project if more than 5 years.

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

246 (f) A statement of any special impacts the project is
247 expected to stimulate in a particular business sector in the
248 state or regional economy or in the state's universities and
249 community colleges.

250 (g) A statement of any anticipated or proposed
251 relationships with state universities.

252 (h) A statement of the role the incentive is expected to
253 play in the decision of the applicant to locate or expand in
254 this state.

255 (i) A recommendation and explanation of the amount of the
256 award needed to cause the applicant to expand or locate in this
257 state.

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

577-01136B-09

20097056__

262 (k) A recommendation for specific performance criteria the
263 applicant would be expected to achieve in order to receive
264 payments from the fund and penalties or sanctions for failure to
265 meet or maintain performance conditions.

266 (l) Additional evaluative criteria for a research and
267 development facility project include:

268 1. A description of the extent to which the project has the
269 potential to serve as catalyst for an emerging or evolving
270 cluster.

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

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

277 4. A description of the project's contribution to the
278 diversity and resiliency of the innovation economy of this
279 state.

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

283 (7) Upon receipt of the evaluation and recommendation from
284 Enterprise Florida, Inc., ~~and from the Florida Energy and~~
285 ~~Climate Commission for alternative and renewable energy project~~
286 ~~proposals~~, the director shall recommend to the Governor the
287 approval or disapproval of an award. In recommending approval of
288 an award, the director shall include proposed performance
289 conditions that the applicant must meet in order to obtain
290 incentive funds and any other conditions that must be met before

577-01136B-09

20097056__

291 the receipt of any incentive funds. The Governor shall consult
292 with the President of the Senate and the Speaker of the House of
293 Representatives before giving approval for an award. Upon review
294 and approval of an award by the Legislative Budget Commission,
295 the Executive Office of the Governor shall release the funds
296 ~~pursuant to the legislative consultation and review requirements~~
297 ~~set forth in s. 216.177.~~

298 (8) (a) After the conditions ~~Upon approval by the Governor~~
299 ~~and release of the funds as set forth in subsection (7) have~~
300 been met, the director shall issue a letter certifying the
301 applicant as qualified for an award. The office and the award
302 recipient ~~applicant~~ shall enter into an agreement that sets
303 forth the conditions for payment of the incentive funds
304 ~~incentives~~. The agreement must include, at a minimum:

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

306 2. The performance conditions that must be met in order to
307 obtain the award or portions of the award, including, but not
308 limited to, net new employment in the state, average wage, and
309 total cumulative investment.~~†~~

310 3. Demonstration of a baseline of current service and a
311 measure of enhanced capability.~~†~~

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

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

314 6. Sanctions for failure to meet performance conditions,
315 including any clawback provisions.

316 (b) Additionally, agreements signed on or after July 1,
317 2009, must include the following provisions:

318 1. Notwithstanding subsection (4), a requirement that the
319 jobs created by the recipient of the incentive funds pay an

577-01136B-09

20097056__

320 annual average wage at least equal to the relevant industry's
321 annual average wage or at least 130 percent of the average
322 private-sector wage, whichever is greater.

323 2. A reinvestment requirement. Each recipient of an award
324 shall reinvest up to 15 percent of net royalty revenues,
325 including revenues from spin-off companies and the revenues from
326 the sale of stock it receives from the licensing or transfer of
327 inventions, methods, processes, and other patentable discoveries
328 conceived or reduced to practice using its facilities in Florida
329 or its Florida-based employees, in whole or in part, and to
330 which the recipient of the grant becomes entitled during the 20
331 years following the effective date of its agreement with the
332 office. Each recipient of an award also shall reinvest up to 15
333 percent of the gross revenues it receives from naming
334 opportunities associated with any facility it builds in this
335 state. Reinvestment payments shall commence no later than 6
336 months after the recipient of the grant has received the final
337 disbursement under the contract and shall continue until the
338 maximum reinvestment, as specified in the contract, has been
339 paid. Reinvestment payments shall be remitted to the office for
340 deposit in the Biomedical Research Trust Fund for companies
341 specializing in biomedicine or life sciences, or in the Economic
342 Development Trust Fund for companies specializing in fields
343 other than biomedicine or the life sciences. If these trust
344 funds no longer exist at the time of the reinvestment, the
345 state's share of reinvestment shall be deposited in their
346 successor trust funds as determined by law. Each recipient of an
347 award shall annually submit a schedule of the shares of stock
348 held by it as payment of the royalty required by this paragraph

577-01136B-09

20097056__

349 and report on any trades or activity concerning such stock. Each
350 recipient's reinvestment obligations survive the expiration or
351 termination of its agreement with the state.

352 3. Requirements for the establishment of internship
353 programs or other learning opportunities for educators and
354 secondary, postsecondary, graduate, and doctoral students.

355 4. A requirement that the recipient submit quarterly
356 reports and annual reports related to activities and performance
357 to the office, according to standardized reporting periods.

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

360 6. A process for amending the agreement.

361 (9) Enterprise Florida, Inc., shall assist the office in
362 validating the performance of an innovation business, a ~~or~~
363 research and development facility, or an alternative and
364 renewable energy business that has received an award. At the
365 conclusion of the innovation incentive award agreement, or its
366 earlier termination, Enterprise Florida, Inc., shall, within 90
367 days, submit a report ~~the results of the innovation incentive~~
368 ~~award~~ to the Governor, the President of the Senate, and the
369 Speaker of the House of Representatives detailing whether the
370 recipient of the innovation incentive grant achieved its
371 specified outcomes.

372 (10) Each recipient of an award shall comply with
373 ~~Enterprise Florida, Inc., shall develop~~ business ethics
374 standards developed by Enterprise Florida, Inc., which are based
375 on appropriate best industry practices ~~which shall be applicable~~
376 ~~to all award recipients.~~ The standards shall address ethical
377 duties of business enterprises, fiduciary responsibilities of

577-01136B-09

20097056__

378 management, and compliance with the laws of this state.
379 ~~Enterprise Florida, Inc., may collaborate with the State~~
380 ~~University System in reviewing and evaluating appropriate~~
381 ~~business ethics standards. Such standards shall be provided to~~
382 ~~the Governor, the President of the Senate, and the Speaker of~~
383 ~~the House of Representatives by December 31, 2006. An award~~
384 ~~agreement entered into on or after December 31, 2006, shall~~
385 ~~require a recipient to comply with the business ethics standards~~
386 ~~developed pursuant to this section.~~

387 (11) (a) Beginning January 5, 2010, and every year
388 thereafter, the office shall submit to the Governor, the
389 President of the Senate, and the Speaker of the House of
390 Representatives a report summarizing the activities and
391 accomplishments of the recipients of grants from the Innovation
392 Incentive Program during the previous 12 months and an
393 evaluation by the office of whether the recipients are catalysts
394 for additional direct and indirect economic development in
395 Florida.

396 (b) Beginning March 1, 2010, and every third year
397 thereafter, the Office of Program Policy Analysis and Government
398 Accountability and the Florida Auditor General's Office shall
399 jointly release a report evaluating the Innovation Incentive
400 Program's progress toward creating clusters of high-wage, high-
401 skilled, complementary industries that serve as catalysts for
402 economic growth specifically in the regions in which they are
403 located, and generally for the state as a whole. Such report
404 should include critical analyses of quarterly and annual
405 reports, annual audits, and other documents prepared by the
406 Innovation Incentive program awardees; relevant economic

577-01136B-09

20097056__

407 development reports prepared by the office, Enterprise Florida,
408 Inc., and local or regional economic development organizations;
409 interviews with the parties involved; and any other relevant
410 data. Such report should also include legislative
411 recommendations, if necessary, on how to improve the Innovation
412 Incentive Program so that the program reaches its anticipated
413 potential as a catalyst for direct and indirect economic
414 development in this state.

415 (12) The office may seek the assistance of the Office of
416 Program Policy Analysis and Government Accountability, the
417 Legislature's Office of Economic and Demographic Research, and
418 other entities for the purpose of developing performance
419 measures or techniques to quantify the synergistic economic
420 development impacts that awardees of grants are having within
421 their communities.

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