

By the Committee on Commerce and Tourism; and Senator Brandes

577-02897-18

20181314c1

1                                   A bill to be entitled  
2           An act relating to the Florida Capital Formation Act;  
3           amending s. 20.60, F.S.; deleting the requirement that  
4           the Department of Economic Opportunity manage certain  
5           activities related to the commercialization of  
6           specified products, services, and ideas; specifying  
7           that the Institute for Commercialization of Florida  
8           Technology is not an appropriate direct-support  
9           organization; amending s. 288.9621, F.S.; including s.  
10          288.96255, F.S., in the Florida Capital Formation Act;  
11          amending s. 288.9622, F.S.; revising legislative  
12          intent; amending s. 288.9623, F.S.; defining terms;  
13          amending s. 288.9625, F.S.; redesignating the  
14          Institute for the Commercialization of Public Research  
15          as the Institute for Commercialization of Florida  
16          Technology; deleting provisions regarding the  
17          institute's responsibilities; requiring that the  
18          investment-related affairs of the institute be managed  
19          by the private fund manager and overseen by the board  
20          of directors; restructuring the board of directors and  
21          the selection process for the board of directors;  
22          specifying term limits of the board members under  
23          certain circumstances; requiring the board of  
24          directors to amend the bylaws of the institute under  
25          certain circumstances; providing that a director is  
26          subject to restrictions on certain conflicts of  
27          interest; prohibiting a director from having a  
28          financial interest in certain investments; authorizing  
29          a director to be reimbursed for certain expenses;

577-02897-18

20181314c1

30 granting the institute certain powers; requiring the  
31 institute to indemnify certain persons; delegating  
32 certain duties to the board of directors; revising to  
33 whom the board must provide a copy of the annual  
34 report and who may require and receive supplemental  
35 data relative to the institute's operation; specifying  
36 that certain requirements be met before the private  
37 fund manager is authorized to make an investment in a  
38 company, on behalf of the institute; deleting  
39 provisions relating to certain duties of the  
40 institute; deleting provisions relating to certain  
41 fees charged by the institute and the prohibition on  
42 using capital in support of certain entities;  
43 specifying that the annual report is considered a  
44 public record subject to certain exemptions; revising  
45 the requirements of the institute's annual report;  
46 listing requirements and prohibitions for the private  
47 fund manager; stating the purpose of the institute's  
48 use of the private fund manager; requiring the private  
49 fund manager to assume the management of certain  
50 assets; authorizing the private fund manager to act on  
51 behalf of the institute for certain purposes;  
52 requiring that the private fund manager be paid  
53 certain fees; authorizing the private fund manager to  
54 undertake certain activities on behalf of the  
55 institute; requiring the private fund manager to issue  
56 an annual report to the board of directors by a  
57 specific date; specifying that the annual report is  
58 considered a public record subject to certain

577-02897-18

20181314c1

59 exemptions; requiring that the report contain certain  
60 information; amending s. 288.96255, F.S.; requiring  
61 that certain proceeds be returned to the Florida  
62 Technology Seed Capital Fund after the payment of  
63 certain costs and fees; requiring the institute to  
64 employ a private fund manager; requiring the private  
65 fund manager to perform specific duties; requiring  
66 that the private fund manager receive certain fees and  
67 costs at a specified time; requiring the private fund  
68 manager to use a certain process to evaluate a  
69 proposal; requiring the private fund manager to  
70 consider certain factors when approving a company for  
71 investment; deleting specific requirements for the  
72 investment of funds; authorizing the private fund  
73 manager, in addition to the institute, to perform  
74 certain tasks; amending s. 288.9627, F.S.; conforming  
75 provisions to changes made by this act; providing an  
76 effective date.

77

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

79

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

83 20.60 Department of Economic Opportunity; creation; powers  
84 and duties.—

85 (4) The purpose of the department is to assist the Governor  
86 in working with the Legislature, state agencies, business  
87 leaders, and economic development professionals to formulate and

577-02897-18

20181314c1

88 implement coherent and consistent policies and strategies  
89 designed to promote economic opportunities for all Floridians.  
90 To accomplish such purposes, the department shall:

91 (e) Manage the activities of public-private partnerships  
92 and state agencies in order to avoid duplication and promote  
93 coordinated and consistent implementation of programs in areas  
94 including, but not limited to, tourism; international trade and  
95 investment; business recruitment, creation, retention, and  
96 expansion; minority and small business development; rural  
97 community development; ~~commercialization of products, services,~~  
98 ~~or ideas developed in public universities or other public~~  
99 ~~institutions;~~ and the development and promotion of professional  
100 and amateur sporting events.

101 (9) The executive director shall:

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

577-02897-18

20181314c1

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

119 288.9621 Short title.—Sections 288.9621-288.96255 ~~Sections~~  
120 ~~288.9621-288.9625~~ may be cited as the "Florida Capital Formation  
121 Act."

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

124 288.9622 Findings and intent.—

125 (1) The Legislature finds and declares that there is a need  
126 to increase the availability of seed capital and early stage  
127 investment ~~venture equity~~ capital for emerging companies in the  
128 state, including, without limitation, businesses ~~enterprises~~ in  
129 life sciences, information technology, advanced manufacturing  
130 processes, aviation and aerospace, and homeland security and  
131 defense, as well as other industries of strategic importance to  
132 this state ~~strategic technologies~~.

133 (2) It is the intent of the Legislature that ss. 288.9621-  
134 288.96255 ~~ss. 288.9621-288.9625~~ serve to mobilize private  
135 investment in a broad variety of ~~venture capital~~ partnerships in  
136 diversified industries and geographies; retain private sector  
137 investment criteria focused on rate of return; allow the use ~~the~~  
138 ~~services~~ of highly qualified private fund managers experienced  
139 in the seed and early stage development industry in this state;  
140 and outline the use, qualifications, and activities of the  
141 private management by a private fund manager of the assets of  
142 the Seed Capital Accelerator Program and the Florida Technology  
143 Seed Capital Fund investment portfolio of the Institute for  
144 Commercialization of Florida Technology ~~venture capital industry~~  
145 ~~regardless of location; facilitate the organization of the~~

577-02897-18

20181314c1

146 ~~Florida Opportunity Fund as an investor in seed and early stage~~  
147 ~~businesses, infrastructure projects, venture capital funds, and~~  
148 ~~angel funds; and precipitate capital investment and extensions~~  
149 ~~of credit to and in the Florida Opportunity Fund.~~

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

156 (4) It is the intent of the Legislature to reduce the  
157 ongoing operational cost and burden of managing the Florida  
158 Technology Seed Capital Fund and the Seed Capital Accelerator  
159 Program to this state by engaging a private asset management  
160 entity in this state which is familiar with the seed and early  
161 stage investment industry in this state. This entity would be  
162 responsible for the management of the assets of the Seed Capital  
163 Accelerator Program and the Florida Technology Seed Capital Fund  
164 investment portfolio without requiring ongoing budget  
165 expenditures by this state ~~that an institute be created to~~  
166 ~~mentor, market, and attract capital to such commercialization~~  
167 ~~ventures throughout the state.~~

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

170 288.9623 Definitions.—As used in ss. 288.9621-288.9625,  
171 the term ~~ss. 288.9621-288.9625~~:

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

174 (2) ~~(1)~~ “Board” means the board of directors of the Florida

577-02897-18

20181314c1

175 Opportunity Fund.

176 (3)~~(2)~~ "Fund" means the Florida Opportunity Fund.

177 (4) "Institute" means the Institute for Commercialization  
178 of Florida Technology.

179 (5) "Investment portfolio" means individual or collective  
180 investment assets held under the technology fund.

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

189 (7) "Portfolio companies" means the companies who are part  
190 of the Florida Technology Seed Capital Fund investment  
191 portfolio.

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

195 (9) "Technology fund" means the Florida Technology Seed  
196 Capital Fund managed by the institute.

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

199 288.9625 Institute for ~~the~~ Commercialization of Florida  
200 Technology Public Research.~~There is established at a public~~  
201 ~~university or research center~~ in this state the Institute for  
202 ~~the~~ Commercialization of Florida Technology Public Research.

203 (1) The institute shall be a nonprofit ~~not-for-profit~~

577-02897-18

20181314c1

204 corporation registered, incorporated, and operated in accordance  
205 with chapter 617.

206 (2) The purpose of the institute is to assist in the  
207 commercialization of products developed by the research and  
208 development activities of an innovation business, including, but  
209 not limited to, those ~~as defined in s. 288.1089; a publicly~~  
210 ~~supported college, university, or research institute; or any~~  
211 ~~other publicly supported organization in this state.~~ The  
212 institute shall fulfill its purpose in the best interests of the  
213 state. The institute:

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

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

218 (c) Is subject to the open records and meetings  
219 requirements of s. 24, Art. I of the State Constitution, chapter  
220 119, and s. 286.011;

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

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

225 (f) May create corporate subsidiaries. †

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

228 ~~(h) May not supplant, replace, or direct existing~~  
229 ~~technology transfer operations or other commercialization~~  
230 ~~programs, including incubators and accelerators.~~

231 (3) The articles of incorporation of the institute must ~~be~~  
232 ~~approved in a written agreement with the department.~~ The



577-02897-18

20181314c1

233 ~~agreement and the articles of incorporation shall:~~

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

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

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

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

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

252 (4) The investment-related affairs of the institute shall  
253 be managed by the private fund manager, and overseen by a board  
254 of directors who shall serve without compensation. Each director  
255 shall have only one vote. The chair of the board of directors  
256 shall be selected by a majority vote of the directors, a quorum  
257 being present. ~~The board of directors shall consist of the~~  
258 ~~following five members:~~

259 ~~(a) The executive director of the department, or the~~  
260 ~~director's designee.~~

261 ~~(b) The president of the university where the institute is~~

577-02897-18

20181314c1

262 ~~located or the president's designee unless multiple universities~~  
263 ~~jointly sponsor the institute, in which case the presidents of~~  
264 ~~the sponsoring universities shall agree upon a designee.~~

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

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

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

277 (d) Upon vacancy, or within 90 days before an anticipated  
278 vacancy by the expiration of a term of a director, the private  
279 fund manager shall submit a list of three eligible nominees,  
280 which may include the incumbent director, to replace the  
281 outgoing director. The board of directors, voting along with the  
282 private fund manager, may appoint a director from the nominee  
283 list or may request and appoint a director from a new list of  
284 three nominees that were not included on the previous list.

285 (e) The persons appointed as replacement directors must  
286 include persons who have expertise in the area of the selection  
287 and supervision of early stage investment managers or in the  
288 fiduciary management of investment funds and other areas of  
289 expertise as considered appropriate.

290 (f) Directors are subject to any restrictions on conflicts

577-02897-18

20181314c1

291 of interest specified in the organizational documents and may  
292 not have a financial interest in any venture capital investment  
293 in any portfolio company.

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

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

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

308 (6) ~~The department, the president and the board of trustees~~  
309 ~~of the university where the institute is located, the Auditor~~  
310 ~~General, and the Office of Program Policy Analysis and~~  
311 ~~Government Accountability may require and receive from the~~  
312 ~~institute or its independent auditor any detail or supplemental~~  
313 ~~data relative to the operation of the institute.~~

314 (7) To the extent funds for investment are available in the  
315 technology fund, the private fund manager, on behalf of the  
316 institute, may make an investment in a company or organization  
317 if all of the following requirements are met:

318 (a) Before providing assistance, the institute accepted ~~To~~  
319 ~~be eligible for assistance,~~ the company or organization

577-02897-18

20181314c1

320 attempting to commercialize its product based on the guidelines  
321 under s. 288.96255(4) ~~must be accepted by the institute before~~  
322 ~~receiving the institute's assistance.~~

323 (b) The company or organization is based in this state  
324 ~~institute shall receive recommendations from any publicly~~  
325 ~~supported organization that a company that is commercializing~~  
326 ~~the research, technology, or patents from a qualifying publicly~~  
327 ~~supported organization should be accepted into the institute.~~

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

336 (8) ~~The institute shall:~~

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

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

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

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

347 (e) ~~Hire full-time staff who understand relevant~~  
348 ~~technologies needed to market companies to the angel investors~~

577-02897-18

20181314c1

349 ~~and venture capital investment community; and~~

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

354 (8) ~~(9)~~ Except as provided under s. 288.96255, the institute  
355 may not develop or accrue any ownership, royalty, patent, or  
356 other such rights over or interest in companies or products in  
357 the institute except in connection with financing provided  
358 directly to client companies and shall maintain the  
359 confidentiality of proprietary information.

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

370 (9) ~~(11)~~ By December 1 of each year, the institute shall  
371 issue an annual report concerning its activities to the  
372 Governor, the President of the Senate, and the Speaker of the  
373 House of Representatives. The annual report shall be considered  
374 a public record, as provided in paragraph (3) (b), subject to any  
375 appropriate exemptions under s. 288.9627. The annual report must  
376 ~~shall~~ include the following:

377 (a) Information on any assistance provided by the institute

577-02897-18

20181314c1

378 to an innovation business, as defined in s. 288.1089, ~~a publicly~~  
379 ~~supported college, university, or research institute; or any~~  
380 ~~other publicly supported organization in the state.~~

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

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

389 (10) The private fund manager:

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

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

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

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

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

406 (f) May not be a public corporation or instrumentality of

577-02897-18

20181314c1

407 the state.

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

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

412 (i) Is not subject to chapter 287.

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

415 (11) The purpose of the institute's use of a private fund  
416 manager is to alleviate the state's burden of the continued and  
417 future operational and management costs related to the  
418 technology fund and accelerator program, while allowing the  
419 institute, through the activities of the private fund manager,  
420 to continue to foster greater private-sector investment funding,  
421 to encourage seed-stage investments in startup and early stage  
422 companies, and to advise companies about how to restructure  
423 existing management, operations, product development, or service  
424 development to attract advantageous business opportunities.

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

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

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

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

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

577-02897-18

20181314c1

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

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

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

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

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

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

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

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

463 (b) Communicate with private investors and venture capital  
464 organizations regarding investment opportunities in the



577-02897-18

20181314c1

465 portfolio companies of the technology fund and accelerator  
466 program;

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

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

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

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

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

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

493 288.96255 Florida Technology Seed Capital Fund; creation;

577-02897-18

20181314c1

494 duties.-

495 (1) The Institute for ~~the~~ Commercialization of Florida  
496 Technology Public Research shall create the Florida Technology  
497 Seed Capital Fund as a corporate subsidiary. The purpose of the  
498 technology fund is to foster greater private-sector investment  
499 funding, to encourage seed-stage investments in start-up  
500 companies, and to advise companies about how to restructure  
501 existing management, operation, or production to attract  
502 advantageous business opportunities. The net profits of the  
503 proceeds of each sale or liquidation of assets or portions of  
504 the assets of the investment portfolio must a sale of the equity  
505 held by the fund shall be returned to the technology fund for  
506 reinvestment after payment of the applicable costs, professional  
507 fees, expenses, fees pursuant to s. 288.9625(12)(b), and  
508 disbursement to private investors pursuant to paragraph (6)(e).

509 (3) The institute shall employ a private fund manager  
510 pursuant to s. 288.9625 ~~professionals who have both technical~~  
511 ~~and business expertise~~ to manage the investment portfolio and  
512 technology fund activity. The private fund manager ~~institute~~  
513 ~~shall establish an investor advisory board comprised of venture~~  
514 ~~capital professionals and early-stage investors from this and~~  
515 ~~other states who~~ shall advise the institute and guide the ~~fund~~  
516 management of the technology fund and make funding  
517 recommendations, provided that capital for investment is  
518 available in the technology fund. The private fund manager shall  
519 receive reasonable fees consistent with industry practices for  
520 performing due diligence and an investment closing fee paid out  
521 of the technology fund at the closing of each investment in  
522 addition to reasonable attorney fees, other fees prescribed in

577-02897-18

20181314c1

523 s. 288.9625(12)(b), and other costs in connection with making an  
524 investment. ~~Administrative costs paid out of the fund shall be~~  
525 ~~determined by the investor advisory board.~~

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

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

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

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

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

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

549 (5) ~~(a) Seed Funds~~ from the technology fund may be invested  
550 if the institute approves a company and the initial seed-stage  
551 investment. ~~The initial seed-stage investment must be at least~~

577-02897-18

20181314c1

552 ~~\$50,000, but no more than \$300,000. The initial seed stage~~  
553 ~~investment requires a one-to-one, private-sector match of~~  
554 ~~investment.~~

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

560 (6) The institute or private fund manager may:

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

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

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

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

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

577-02897-18

20181314c1

581 the assets of such private fund or special purpose vehicle.

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

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

587 288.9627 Exemptions from public records and public meetings  
588 requirements for the Institute for ~~the~~ Commercialization of  
589 Florida Technology Public Research.—

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

591 (a) "Institute for ~~the~~ Commercialization of Florida  
592 Technology Public Research" or "institute" means the institute  
593 established by s. 288.9625.

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

605 a. Trade secrets as defined in s. 688.002.

606 b. Financial statements and internal or external auditor  
607 reports of a proprietor corporation, partnership, or person  
608 requesting confidentiality under this statute, unless publicly  
609 released by the proprietor.

577-02897-18

20181314c1

610 c. Meeting materials related to financial, operating,  
611 investment, or marketing information of the proprietor  
612 corporation, partnership, or person.

613 d. Information concerning private investors in the  
614 proprietor corporation, partnership, or person.

615 2. "Proprietary confidential business information" does not  
616 include:

617 a. The identity and primary address of the proprietor's  
618 principals.

619 b. The dollar amount and date of the financial commitment  
620 or contribution made by the institute.

621 c. The dollar amount, on a fiscal-year-end basis, of cash  
622 repayments or other fungible distributions received by the  
623 institute from each proprietor.

624 d. The dollar amount, if any, of the total management fees  
625 and costs paid on an annual fiscal-year-end basis by the  
626 institute.

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

631 (2) PUBLIC RECORDS EXEMPTION.—

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

635 1. Materials that relate to methods of manufacture or  
636 production, potential trade secrets, or patentable material  
637 received, generated, ascertained, or discovered during the  
638 course of research or through research projects conducted by

577-02897-18

20181314c1

639 universities and other publicly supported organizations in this  
640 state and that are provided to the institute by a proprietor.

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

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

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

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

656 (3) PUBLIC MEETINGS EXEMPTION.—

657 (a) That portion of a meeting of the institute's board of  
658 directors at which information is discussed which is  
659 confidential and exempt under subsection (2) is exempt from s.  
660 286.011 and s. 24(b), Art. I of the State Constitution.

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

667 (c) A transcript and minutes of exempt portions of meetings

577-02897-18

20181314c1

668 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
669 I of the State Constitution.

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

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

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

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

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

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

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

695 (c)1. Any person may petition a court of competent  
696 jurisdiction for an order for the public release of those



577-02897-18

20181314c1

697 portions of any record made confidential and exempt by  
698 subsection (2).

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

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

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

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

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

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

718       Section 8. This act shall take effect July 1, 2018.