

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Dockery, Vice Chair

MEETING DATE: Monday, October 17, 2011

TIME: 1:30 —3:30 p.m.

PLACE: *James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building*

MEMBERS: Senator Detert, Chair; Senator Dockery, Vice Chair; Senators Flores, Lynn, Montford, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Mandatory Review 2012-303 (Open Government Sunset Review of Section 288.9626, F.S., Public Records Exemption for Information Held by the Florida Opportunity Fund and the Institute for the Commercialization of Public Research) Presentation		Presented
2	Mandatory Review 2012-302 (Open Government Sunset Review of Section 288.075, F.S., Public Records Exemption for Information Held by Economic Development Agencies) Presentation		Presented
3	Presentation by Gray Swoope, President and CEO of Enterprise Florida, Inc., on an overview of the organization and an update on the implementation of ch. 2011-142, L.O.F., as it relates to the organization		Presented
4	Presentation by the Institute for the Commercialization of Public Research on an overview of the organization		Presented
5	Presentation by the Florida Opportunity Fund on an overview of the organization		Presented

Other related meeting documents

An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, www.flsenate.gov.



The Florida Senate

Interim Report 2012-303

September 2011

Committee on Commerce and Tourism

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 288.9626, F.S., PUBLIC RECORDS EXEMPTION FOR INFORMATION HELD BY THE FLORIDA OPPORTUNITY FUND AND THE INSTITUTE FOR THE COMMERCIALIZATION OF PUBLIC RESEARCH

Issue Description

The Legislature created the Florida Opportunity Fund (FOF) and the Institute for the Commercialization of Public Research (institute) in 2007¹ with similar missions of providing certain types of businesses access to capital – both public and private investments – that would assist them in reaching their full potential as job-creators.

The FOF is a not-for-profit corporation, governed by a 5-member board selected by Enterprise Florida, Inc., which uses appropriated state funds to match investments from private sources or other government entities into investment funds or into individual companies. FOF investments may be made into investment funds comprising multiple businesses or into individual businesses, representing statutorily specified industry sectors.

The institute is a not-for profit corporation, governed by a 5-member board as provided in statute, that has a broad directive to “assist in the commercialization of products”² developed through the research activities of Florida universities, research institutes, or publicly funded organizations. A specific responsibility of the institute is to administer the Commercialization Matching Grant Program, created in s. 288.9552, F.S.

Because both of these entities, in the course of conducting their missions, likely would have access to proprietary business information that, if released, could put the businesses at a competitive disadvantage in the marketplace, the Legislature, in 2007, created public records and public meeting exemptions for these entities.³ Specified types of business and investment information to which the FOF and the institute may have access are defined as confidential and thus unavailable to public review for up to 10 years. Also, these entities may close to the public those portions of their meetings where confidential information is discussed.

The Open Government Sunshine Review Act⁴ provides for the systematic review by the Legislature, through a cycle ending October 2 of the fifth year following enactment, of each exemption from the Public Records Act or the public meetings laws. Based on that schedule, the public records and public meetings exemptions created in s. 288.9626, F.S., are repealed October 2, 2012, unless reenacted after review by the Legislature prior to that date.

Background

Venture Capital in Florida

Over the past decade, Florida, Massachusetts, Connecticut, and a number of states have created programs to participate in venture capital financing⁵ – primarily to promote economic development in targeted industry

¹ Chapter 2007-189, L.O.F., the “Florida Capital Formation Act.” The statute cite is s. 288.9624, F.S.

² Section 288.9625(2), F.S.

³ Chapter 2007-190, L.O.F.

⁴ Section 119.15, F.S.

⁵ “Venture capital” is money provided by professional investors and, increasingly, governmental entities, who invest in new and/or rapidly growing companies with the potential to develop into significant economic contributors. Venture capital is an

sectors, but also to attract more private investment venture capital. Historically, Florida has lagged behind similar-sized and competitor states in attracting private venture, but saw an uptick in 2010, when Florida ranked 14th among the states, with \$225 million in private venture capital.⁶

The impact that venture capital can have on the success of young businesses is illustrated by this statistic: public companies headquartered in Florida that were once venture-backed account for 444,450 U.S. jobs and \$79 billion in U.S. revenue.⁷

Florida has a number of organizations that actively recruit venture capital, such as The Florida Venture Forum, the Florida Research Consortium, the State University System's Technology Transfer and Licensing Offices, and the Miami Innovation Fund. There also are national organizations, such as the Community Development Venture Capital Alliance⁸ that is a network of venture capital partners that can provide financing to eligible projects. Also, a January 2011 federal initiative called "Startup America" includes \$1 billion in funds through the U.S. Small Business Administration for investment in small companies.⁹

Florida Opportunity Fund

Created by the Legislature in 2007, the Florida Opportunity Fund (FOF)¹⁰ was intended to attract venture capital investment into targeted Florida industries by providing a state match.¹¹ The FOF is organized as a private, not-for-profit corporation under ch. 617, F.S., with a 5-member board of directors selected by an Enterprise Florida, Inc., (EFI) appointments committee.¹² The FOF's administrative staff is provided by EFI, and has a separate investment manager, Florida First Partners, comprised of Florida-based MILCOM Venture Partners and the Credit Suisse Customized Fund Investment Group. The Legislature appropriated \$29.5 million for investment funds in FY 2007-2008.¹³

Original directive

The FOF was established as a fund-of-funds program, meaning that it could only invest in investment funds, not directly in individual businesses; additionally, the investment funds had to match the state \$2 for every \$1 it invested. The emphasis was on "seed" and "early-stage" investments, because proponents of creating the FOF concluded that these types of companies were least likely to have access to venture funding and traditional

important source of equity for startup companies, in particular. A venture capitalist may invest before there is a real product or company organized, known as "seed investing," or may provide capital to a company in its first or second stages of development, known as "early stage investing." Venture capitalists mitigate their risks by developing a portfolio of young companies into a single venture fund, known as the "fund of funds" approach.

⁶ Information based on 2010 data from The MoneyTree Report and IHS Global Insight. See National Venture Capital Association report, "Venture Capital Impact by State." Available at http://www.nvca.org/index.php?option=com_content&view=article&id=321:vc-impact-by-state-&catid=38:nvca-public-policy&Itemid=586. Site last visited July 26, 2011. California led the list with \$11.6 billion, Massachusetts was next with \$2.4 billion, and New York was third with \$1.4 billion. Among competitor states, North Carolina was ranked 8th with \$529 million and Georgia was ranked 13th with \$343 million.

⁷ Ibid.

⁸ See <http://www.cdvcva.org/>. Site last visited July 26, 2011.

⁹ See <http://www.startupamericapartnership.org>. Site last visited July 26, 2011.

¹⁰ Section 288.9624, F.S. Also, the FOF's website is <http://www.floridaopportunityfund.com/HomePage.asp>. Site last visited July 26, 2011.

¹¹ The State Board of Administration (SBA) has, for many years, invested in so-called "alternative investments" that included Florida-based businesses, and in 2009, pursuant to ch. 2008-31, L.O.F., created the \$250 million Florida Growth Fund for venture-capital private-equity and direct investments within Florida. More information is available at <http://www.floridagrowthfund.com>. Site last visited July 26, 2011. These SBA programs are separate from the FOF.

¹² The current FOF board members are: chairman Kenneth Wright, partner with Baker Hostetler; vice chairman Andrew Hyltin, president of CNL Private Equity Corporation; Thomas Cornish, president and CEO of Seitlin Insurance and Advisory Services; Brian Nicholas, executive with the Acquired Asset Group of BB&T; and Pedro Pizarro, chairman and CEO of eLandia Group.

¹³ This appropriation was included in Section 4 of the substantive legislation, ch. 2007-189, L.O.F., which created the FOF.

financing.¹⁴ Targeted industries for the FOF investments included, but were not limited to, life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense. To be eligible for state participation, an investment fund must have an experienced and successful investment manager or team, and must focus on investment opportunities in Florida.

The FOF invested in its first fund in FY 2008-2009: \$594,000 in Element Partners II, according to FOF's financial statements.¹⁵ Currently, the FOF has six investment fund partners and as of June 30, 2010, had invested just over \$3 million.¹⁶

Expansion of investment authority

In 2009, the Florida Legislature amended s. 288.9624, F.S., to allow the FOF to make direct investments, including loans, in individual businesses and infrastructure projects; to form or operate other entities; and to accept funds from other public and private sources for use as investments.¹⁷ These direct investments must be made in Florida infrastructure projects, or in businesses that are Florida-based or have significant business activities in Florida and operate in technology sectors that are strategic to Florida, including the original list of industry types. The FOF may not use its original appropriation of \$29.5 million to make direct investments or for any purposes not specified in the original legislation.

In May 2010, the FOF launched a direct investment program with the Florida Energy and Climate Commission (commission), a nine-member board housed administratively in the Governor's Office that, at the time, was the lead entity for state energy and climate-change programs and policies.¹⁸ This new FOF program is expected to increase the availability of investment capital in Florida for businesses engaged in developing or producing energy-efficient or renewable energy (EE/RE) products or services. The FOF has access initially to \$36 million in federal funds through the 2009 American Recovery and Reinvestment Act to make loans or investments in qualifying businesses. Under the terms of the federal agreement, these investments are restricted to facility and equipment improvement using EE/RE products; acquisition or demonstration of renewable energy products; and improvement of existing production, manufacturing, assembly, or distribution processes to reduce consumption or increase the efficient use of energy in such processes. FOF has made one energy investment as of August 1, 2011.

2011 developments

EFI is partnering with the Department of Economic Opportunity (DEO) to allocate \$43.5 million in federal funds, as part of the U.S. State Small Business Credit Initiative,¹⁹ to the FOF for direct investments in eligible businesses. EFI has estimated that it can leverage the \$43.5 million into \$652.5 million in private investment. DEO has submitted an application to the U.S. Department of the Treasury to access Florida's full \$97.6 million share of federal funds, and may hear a decision by early autumn. The Legislative Budget Commission must approve the release of the federal funds.

Reporting Requirements

The FOF is required by statute²⁰ to submit an annual report by December of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes, at a minimum, an accounting of the amount of investments disbursed by the FOF fund; the progress of the FOF in accomplishing its responsibilities; a description of the benefits to the state resulting from the FOF, including the number of

¹⁴ See bill analysis for CS/SB 2420, which was the Senate companion to CS/CS/HB 83, which created the FOF. Available at <http://archive.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s2420.cm.pdf>. Site last visited Aug. 8, 2011.

¹⁵ The auditor described the \$594,000 investment as a payment of a \$4 million commitment to Element Partners II, which specializes in investments in "cleantech" companies. See <http://www.elementpartners.com>. Site last visited July 19, 2011.

¹⁶ The FOF's financial statements are on file with the Senate Commerce and Tourism Committee.

¹⁷ Sections 25-26, ch. 2009-51, L.O.F.

¹⁸ The commission's statutes were repealed and its responsibilities transferred to the Florida Department of Agriculture and Consumer Services by the Legislature in the 2011 session. See s. 500, ch. 2011-142, L.O.F.

¹⁹ This initiative is part of the federal Small Business Jobs Act of 2010. Information about the initiative is available at <http://www.treasury.gov/resource-center/sb-programs/Pages/ssbci.aspx>. Site last visited July 26, 2011.

²⁰ Section 288.9624(5), F.S.

businesses and jobs created, the number of associated industries started, and the growth of related research projects; and independently audited financial statements for the FOF that show receipts and expenditures during the preceding fiscal year for personnel, administration, and operating costs.

The Institute for the Commercialization of Public Research

Created in the same legislation as the FOF,²¹ the institute was envisioned as a matchmaker for venture capitalists and young companies trying to turn research ideas, technology, or patents, developed at public institutions, into marketable products and services.²² The institute's stated purpose is:

to assist in the commercialization of products developed by the research and development activities of publicly supported universities and colleges, research institutes, and other publicly supported organizations within the state.²³

The institute must support existing commercialization efforts at Florida universities, and may not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.

Governance²⁴

The institute is a not-for-profit corporation that is eligible for sovereign immunity and is subject to Florida law, but is not an "agency," as defined in s. 20.03(11), F.S. It is governed by a 5-member board of directors²⁵ comprised of:

- the chair of EFI or designee;
- the president of the state university where the institute is located or designee, or if jointly sponsored by a number of universities, the presidents of those universities must agree on the designated person to serve on the board; and
- three appointees by the Governor, to serve staggered 3-year terms to which they may be reappointed.

The institute also has a 15-member Industry Advisory Board, selected by the board of directors, to assist with mentoring companies selected by the institute, reviewing grant applications, and providing other guidance.

Staffing the institute is an interim executive director²⁶ and an executive assistant. The institute is based in Boca Raton.

From FY 2007-2008 through FY 2010-2011, the institute received its state funding through a management agreement with EFI. But beginning with FY 2011-2012, the new Department of Economic Opportunity (DEO) will serve as contract manager for the institute's state funding.²⁷

²¹ See FN 1.

²² The institute's website is <http://www.florida-institute.com>. Site last visited July 25, 2011.

²³ Section 288.9625(2), F.S.

²⁴ Section 288.9565(4), F.S.

²⁵ The institute's current board members are: chairman Beau Ferrari, Special Assistant to the CEO of Univision Communications, Inc.; vice-chairman David Day, the university designee and director of the Office of Technology Licensing at the University of Florida; treasurer Rhys Williams, president of iTherapeutics, a biotechnology company developing therapies for retinal degenerative disease; John Fraser, executive director of the Office of IP Development and Commercialization at Florida State University; and EFI designee Carl Roston, an attorney with Akerman Senterfitt who specializes in mergers & acquisitions and private equity.

²⁶ The institute's interim executive director is Jane Teague, who also is the executive director of the Enterprise Development Corporation of South Florida, a public-private partnership that helps recruit investors and acts as a business incubator.

²⁷ Section 192, ch. 2011-142, L.O.F.

State Funding for the Institute

In 2007, the Legislature appropriated \$900,000 in general revenue to the institute for its operations.²⁸ An additional \$600,000 was appropriated in 2009, as a transfer from the Florida Small Business Technology Growth Trust Fund administered by EFI.²⁹ In 2010, the institute was authorized to use up to 5 percent of the \$3 million appropriated for the Research Commercialization Matching Grant Program to administer the grants.³⁰ In FY 2011-2012, the Institute received a \$10 million general revenue appropriation, which did not specify the uses or amount set aside for the institute's administration.³¹ The institute and DEO currently are negotiating a contract on how the funds may be spent.

Responsibilities³²

To be eligible for the institute's assistance, the company or organization attempting to commercialize its product or service must be accepted by the institute into its program. The institute reviews the business plans and technology information of each company recommended by an institute peer-review board, before making its decision whether to accept a recommended company.

For each company that is accepted, the institute provides mentoring, develops marketing information, and uses its resources to attract capital investment into the company. The institute's other duties are to:

- Maintain a centralized location to showcase companies and their technologies and products;
- Develop an efficient process to inventory and publicize companies and products that have been accepted by the institute for commercialization;
- Routinely communicate with private investors and venture capital organizations regarding the investment opportunities in its showcased companies;
- Facilitate meetings between prospective investors and eligible companies in the institute;
- Develop cooperative relationships with publicly supported organizations all of which work together to provide resources or special knowledge that is likely to be helpful to institute companies; and
- Administer the Florida Research Commercialization Matching Grant Program, created in s. 288.9552, F.S.

The institute is prohibited from developing or accruing any ownership, royalty, or other such rights over, or interest in, companies or products in the institute and must maintain the confidentiality of proprietary information. It also may not charge for services rendered to state universities and affiliated organizations, community colleges, or state agencies.

The institute's newest responsibility is administering the state's Research Commercialization Matching Grant Program, created in 2010 to leverage existing federal grant programs for small businesses.³³ The state program is intended to assist small or startup companies that take advantage of federal and private financial support to accelerate their growth and market penetration. Program applicants must meet several criteria, such as having attracted funding from non-government sources and achieved certain milestones required by the federal government. As mentioned above, the Legislature appropriated \$3 million for the grant program. Last fall, the institute awarded Phase II grants to 11 Florida companies and Phase I grants to two companies. A second round of grants is not planned for FY 2011-2012.

²⁸ Section 4, ch. 2007-189, L.O.F.

²⁹ Section 72, ch. 2009-81, L.O.F.

³⁰ Section 56, ch. 2010-147, L.O.F.

³¹ Section 39(3), ch. 2011-76, L.O.F.

³² Section 288.9625(8), F.S.

³³ Background on the federal programs – the Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer (STTR) Program – is on the website of the U.S. Small Business Administration, available at <http://www.sba.gov/aboutsba/sbaprograms/sbir/index.html>. Site last visited July 27, 2011.

Reporting requirements³⁴

The institute's board must submit a report each December 1 to the Governor, the President of the Senate, the Speaker of the House of Representatives, EFI, and the president of the university under whose aegis the institute is placed. The report must include, at a minimum:

- Any assistance and activities provided to assist publicly supported universities, colleges, research institutes, and other publicly supported organizations in the state, by institute;
- A description of the benefits to this state resulting from the institute, including the number of businesses created, associated industries started, the number of jobs created, and the growth of related projects; and
- Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for personnel, administration, and operational costs of the institute.

The Public Records and Public Meetings Exemptions for the FOF and the Institute

The Legislature created a joint public records and public meetings exemption, in s. 288.9626, F.S., for the FOF and the institute in 2007.³⁵ Covered under the public records exemption in s. 288.9626(2), F.S., are:

- Materials that relate to methods of manufacture or production; potential trade secrets, patentable material, actual trade secrets as defined in s. 688.002, F.S., or proprietary information received, generated, ascertained, or discovered by or through research projects conducted by universities and other publicly supported organizations in Florida;
- Information that would identify investors or potential investors in projects reviewed by the FOF or the institute;
- Any information received from a person or another state or nation, or from the federal government, which is otherwise confidential or exempt from that governmental entity's laws; and
- Proprietary confidential business information regarding alternative investments for 10 years after the termination of the alternative investments.

The term "proprietary confidential business information" is defined to mean information that has been designated by the proprietor when provided to the FOF or the institute as owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private and the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

- Trade secrets as defined in s. 688.002, F.S.;
- Information provided to the FOF or institute regarding a prospective investment in a private equity fund, venture capital fund, angel fund, or portfolio company which is proprietary to the provider of the information;
- Financial statements and auditor reports of an alternative investment vehicle or portfolio company, unless such records have been released by the alternative investment vehicle or portfolio company and are publicly available;
- Meeting materials of an alternative investment vehicle relating to financial, operating, or marketing information of the alternative investment vehicle or portfolio company;
- Information regarding the portfolio positions in which an alternative investment vehicle or the FOF invests;
- Capital call and distribution notices to investors of an alternative investment vehicle or the FOF;
- Alternative investment agreements and related records; and
- Information concerning investors, other than the FOF itself, in an alternative investment vehicle or portfolio company.³⁶

³⁴ Section 288.9625(11), F.S.

³⁵ Chapter 2007-190, L.O.F.

³⁶ Section 288.9626(1)(g)1., F.S.

The statute also expressly excludes certain items from the definition of proprietary confidential business information:

- The name, address, and vintage year of an alternative investment vehicle or the FOF, and the identity of principals involved in the management of the alternative investment vehicle or the FOF;
- The dollar amount of the commitment made by the FOF to each alternative investment vehicle since inception;
- The dollar amount and date of cash contributions made by the FOF to each alternative investment vehicle since inception;
- The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the FOF from each alternative investment vehicle;
- The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the FOF, plus the remaining value of alternative-vehicle assets that are attributable to the FOF investment in each alternative investment vehicle;
- The net internal rate of return of each alternative investment vehicle since inception;
- The investment multiple of each alternative investment vehicle since inception;
- The dollar amount of the total management fees and costs paid on an annual fiscal year end basis by the FOF to each alternative investment vehicle on a fiscal-year-end basis.³⁷

Section 288.9626(3), F.S., creates the public meetings exemption for the FOF and the institute. The boards of directors of those entities may close that portion of their otherwise public meetings when they are discussing information that is confidential and exempt, per subsection (2) of that statute. The closed portions of the meetings still must be recorded and transcribed, but this information also is confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a), of the State Constitution.

Pursuant to s. 288.9626(4), F.S., the FOF and the institute may release the protected records to a governmental entity in the performance of its duties upon written request. The confidentiality must be maintained by those receiving entities. Violating s. 288.9626, F.S., is a first-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.³⁸

Once a confidential and exempt record becomes legally available or subject to public disclosure for any reason, that record is no longer confidential and exempt, and shall be made available for inspection and copying.

The legislation's "statement of necessity" listed a number of reasons why certain documents and information in the possession of the FOF and the institute should be confidential and exempt:³⁹

- Disclosure of proprietary confidential business information to the public would harm the business operations of the proprietor.
- Information received by the FOF or the institute from a person from another state or nation or the Federal Government, which is otherwise exempt or confidential pursuant to the laws of that state or nation or pursuant to federal law, should remain exempt or confidential because the highly confidential nature of research necessitates that it be protected.
- Without these exemptions, the disclosure of confidential and exempt information would jeopardize the effective and efficient administration of the FOF and the institute.
- Disclosure of investor identities may adversely impact the ability of the FOF or the institute to attract investors who desire anonymity.
- Disclosing proprietary confidential business information used in determining how private equity investments are made or managed by private partnerships investing assets on behalf of the FOF would negatively affect the business interests of private partnerships that rely heavily on their information advantage to generate investment returns, and competitor partnerships could gain an unfair competitive advantage if provided access to such information.

³⁷ Section 299.9626(1)(g)2., F.S.

³⁸ Section 288.9626(5), F.S.

³⁹ Section 2, ch. 2007-190, L.O.F.

- The release of proprietary confidential business information revealing how alternative investments are made could result in inadequate returns and ultimately frustrate attainment of the investment objective of the FOF.
- Portions of meetings of the FOF and institute boards of directors at which records made confidential and exempt by this act are discussed be made exempt from public meetings requirements in order to maintain the confidential and exempt status of this information.

Background on Florida’s Public Records and Public Meetings Requirements

Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.⁴⁰ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.⁴¹

Article I, s. 24, of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,⁴² which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency⁴³ records are available for public inspection. The term “public record” is broadly defined to mean:

“. . .all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”⁴⁴

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁴⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁴⁶

⁴⁰ Sections 1390 and 1391, F.S. (Rev. 1892)

⁴¹ Article I, s. 24, of the State Constitution.

⁴² Chapter 119, F.S.

⁴³ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁴⁴ Section 119.011(12), F.S.

⁴⁵ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁴⁶ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

Article I, s. 24 of the State Constitution also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Art. III, s. 4(e), of the State Constitution, except with respect to meetings exempted pursuant to this section or specifically closed by the Constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

Only the Legislature is authorized to create exemptions to open government requirements.⁴⁷ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.⁴⁸ A bill enacting an exemption⁴⁹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁵⁰

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁵¹ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁵²

The Open Government Sunset Review Act (the act)⁵³ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Sunshine Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁵⁴

⁴⁷ Article I, s. 24(c), of the State Constitution.

⁴⁸ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁴⁹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁵⁰ Article I, s. 24(c) of the State Constitution.

⁵¹ Attorney General Opinion 85-62.

⁵² *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁵³ Section 119.15, F.S.

⁵⁴ Section 119.15(6)(b), F.S.

The act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?⁵⁵

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.⁵⁶ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

“... notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.”

Background on Florida’s trade secrets law

Over the years, the Legislature has created a number of specific exemptions from public records for trade secrets.⁵⁷ Chapter 688, F.S., the Uniform Trade Secrets Act, defines a trade secret to mean:

. . . information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁵⁸

Chapter 688, F.S., also provides for injunctive relief, damages, and attorneys’ fees for misappropriating a trade secret. It permits the courts to enter an injunction for the actual or threatened misappropriation of a trade secret.⁵⁹ Further, the court may, in appropriate circumstances, require affirmative acts to protect trade secrets. A complainant under the act is also entitled to damages, which can include the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In the alternative, royalties can be required.⁶⁰

In an action under the Uniform Trade Secrets Act, the court is required to preserve the secrecy of the alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery

⁵⁵ Section 119.15(6)(a), F.S.

⁵⁶ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

⁵⁷ See, e.g., s. 1004.78(2), F.S. (trade secrets produced in technology research within community colleges); s. 365.174, F.S. (proprietary confidential business information and trade secrets submitted by wireless 911 provider to specified agencies); s. 570.544(8), F.S. (trade secrets contained in records of the Division of Consumer Services of the Department of Agriculture and Consumer Services); and s. 627.6699(8)(c), F.S. (trade secrets involving small employer health insurance carriers).

⁵⁸ Section 688.002(4), F.S.

⁵⁹ Section 688.003, F.S.

⁶⁰ Section 688.004, F.S.

proceedings, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.⁶¹

Additionally, s. 812.081(2), F.S., provides that:

Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 812.081(1)(c), F.S., defines “trade secret” to mean “. . . the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it.” The term “trade secret” includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Additionally, irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, when the owner of a trade secret takes measures to prevent it from becoming available to persons other than those selected by the owner to have access to it, the trade secret is considered to be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.

The Florida Attorney General has concluded that the fact certain information constitutes a trade secret under s. 812.081, F.S., does not, in and of itself, remove it from the requirements of the Public Records Act.⁶² When there is no exemption making information confidential or exempt, an agency is therefore under a duty to release public records even though such records may constitute trade secrets.

Findings and/or Conclusions

Committee staff conducted interviews with EFI, FOF, institute, and DEO staffs, and conducted document research to collect information for this report. A discussion of committee staff’s findings are summarized as they relate to the questions posed in s. 119.11(6)(a), F.S., for the Open Government Sunset Review Act process.

What specific records or meetings are affected by the exemption?

As explained in the “Background” section above, the exemption in s. 288.9626, F.S., affects:

- Methods of manufacture or production;
- Potential trade secrets;
- Patentable materials or discoveries;
- Actual trade secrets as defined in s. 688.002, F.S.;
- Proprietary confidential business information;
- Information received from a person or another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law;
- Investors other than the FOF; and
- A number of technical investment-related notices, background papers, and related documents.

⁶¹ Section 688.006, F.S.

⁶² Attorney General Opinion 92-43.

Some of these types of documentation are applicable to both the FOF and the institute, while others only are applicable to either the FOF or the institute.

Additionally, meetings or portions of meetings by the FOF and institute boards of directors, where the exempt and confidential information is discussed, are closed to the public. Records of these discussions from the closed portions of the meetings also are confidential and exempt.

Whom does the exemption uniquely affect, as opposed to the general public?

This exemption uniquely affects the FOF and the institute. Both entities are requesting that s. 288.9626, F.S., be re-enacted.

What is the identifiable public purpose or goal of the exemption?

Chapter 2007-190, L.O.F., listed several reasons (see “Background” section above) for why the specified information and records should be closed. The key reason was that making the information publicly available could prevent the FOF and the institute from fulfilling their statutory responsibilities, if funds or companies seeking investments were fearful their confidential proprietary business information could be revealed to their competitors, and if potential investors were concerned that their anonymity could not be protected.

Institute staff said they have never received a request for public records, since the institute’s creation. FOF staff said they have never received a direct request for public records, although EFI has received one request for FOF documents.

Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Some of the information made confidential by s. 288.9626, F.S., could be available, if not readily, by researching company filings to the U.S. Securities and Exchange Commission or the U.S. Patent and Trademark Office. Donor identities and contribution amounts, and contested proprietary business information, could be discovered through searches of property records, wills and codicils, lawsuits, federal tax returns, and other public records maintained at county courthouses. In summary, staff research indicates that the information listed in the statute is not readily available.

Is the record or meeting protected by another exemption?

No.

Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

No.

Options and/or Recommendations

Committee staff recommends reenacting s. 288.9626, F.S., with some technical changes. Primarily, staff recommends giving each of the entities involved – the FOF and the institute – separate statutes granting the public records exemptions and public meetings exemptions more clearly tied to their individual responsibilities and missions. FOF and institute staffs have expressed support for these clarifying changes.

The FOF and the institute were created in an omnibus “Florida Capital Formation Act” and share an overarching mission of providing access to venture capital and other financial assistance to start-up companies and new companies with high-growth potential in specified industry sectors. But the tools at each entity’s disposal, as specified in statute, are different. The FOF is focused entirely on using its state appropriations and other capital to make investments, with other partners, in either investment funds or directly in eligible businesses. The institute’s primary mission is to showcase eligible companies to prospective investors so as to facilitate investment in those companies, so they become marketable. Other than for the Research Commercialization Grant Program, the institute has received no state funds specifically tied to making investments in eligible businesses.

Because the majority of information specified in s. 288.9626, F.S., is confidential and exempt, and relates only to the FOF's activities, the section can be confusing as to when it applies to the institute.

Maintaining the FOF in s. 288.9626, F.S., and moving those provisions applicable to the institute to a new section of law will add clarity.

Staff's research indicates that none of the provisions applicable to the institute need modifying, and the changes to the provisions applicable to the FOF are technical in nature. For example, the FOF's responsibilities in s. 288.9624(4)(a), F.S., now include making direct investments and loans as part of its portfolio, so the definitions in s. 288.9626, F.S., should reflect that. Also, the existing s. 288.9626, F.S., has references to "investments" and "alternative investments." FOF staff and committee staff agree consistency is needed.

Implementation of these recommendations would not, in staff's professional judgment, constitute an expansion of the current provisions in s. 288.9626, F.S., and thus would not necessitate an Open Government Sunset Review on FOF's and the institute's public records and public meetings exemptions in 2017.

Open Government Sunset Review of s. 288.9626, F.S.

Public Records Exemption for the Florida Opportunity
Fund and the Institute for the
Commercialization of Public Research

Interim Report 2012-303

October 17, 2011



Background – Florida Opportunity Fund

- Created by the Legislature in 2007, Florida Opportunity Fund (FOF) was created as the state’s “venture capital” fund.
- It was conceived as a way to attract private investment into targeted industry sectors, with a 1 to 1 match.
- Industry sectors targeted for investments are: life sciences, IT, advance manufacturing processes, aviation and aerospace, and homeland security and defense.
- Enterprise Florida, Inc. (EFI), is the sole shareholder of the FOF, and selects the 5-member FOF governing board.
- The Legislature appropriated \$29.5 million to seed the FOF in 2007, and none since. In 2010, the FOF gained access to \$36 million in federal energy loan funds. In 2011, the LBC approved the release of nearly \$33 million in federal small-business funds, much of which may be used by the FOF to make loans to or equity investments in eligible companies.

Background – The Institute for the Commercialization of Public Research

- Created in 2007, the Institute was envisioned as a matchmaker for venture capitalists and young companies seeking financial backers to turn their research, technology, or patents into marketable products or services.
- The Institute supports existing commercialization efforts at Florida universities, and can only work with young companies that originated their research at these universities.
- The Institute also manages the Commercialization Matching Grant Program, created in 2010, to disburse \$3 million in grants to eligible young companies.
- The Institute has a 5-member board of directors, and currently is located in Boca Raton.
- The Legislature appropriated to the Institute initial operations funding of \$900,000 in 2007, and an additional \$600,000 in 2009. It received a \$10 million appropriation for FY 11-12.

Background – Public Records & Public Meetings Exemptions for the FOF and the Institute

- In 2007, the Legislature created an exemption from the state's public records, in specific circumstances, for the Florida Opportunity Fund and the Institute for the Commercialization of Public Research.
- Among the records held by these two entities that are confidential and exempt include:
 - Materials that relate to methods of manufacture or production;
 - Potential trade secrets and patentable material;
 - Materials that relate to the identity of donors or potential donors; and
 - Proprietary confidential business information.

Background -- FOF and Institute exemptions

- For the purposes of these entities, “proprietary confidential business information” means:
 - ❑ Trade secrets;
 - ❑ Investment information provided to the FOF or the Institute that is proprietary in nature to the provider;
 - ❑ Financial statements, audits, portfolio positions, and capital call and distribution notices;
 - ❑ Meeting materials relating to the financial, operating, or marketing information about the potential investment; and
 - ❑ Information concerning investors other than the FOF.
- The statute also specifies information that is NOT confidential and exempt.

Background – FOF and Institute exemptions, continued

- The statute also includes a public meetings exemption.
- It specifies that any portion of a meeting of the FOF board of directors or the Institute board of directors, where confidential and exempt information is discussed, is closed to the public.
- However, the exempt portions of all meetings must still be recorded and transcribed.
- These transcripts and recordings also are confidential and exempt.

Relevant Law to this OGSR

- Article I, s. 24(a), of the State Constitution
- Florida's Public Records Act in chapter 119, F.S.
- Florida's Public Meetings Law in chapter 286, F.S.
- Trademark Protection Law, s. 286.21-31, F.S.
- Chapter 688, F.S., the Uniform Trade Secrets Act

Guiding Legislative Principles

- Only the Legislature can create exemptions to open government requirements.
- Exemptions must specifically state the public necessity justifying the exemption.
- Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.
- In the fifth year after its creation, every exemption must be reviewed by the Legislature, and either re-enacted (with or without changes), repealed, or allowed to expire.

Guiding Legislative Principles, continued

The 3 statutory criteria used in the review are:

- Effective administration of the program would be significantly impaired without the exemption;
- The reputation or safety of an individual would be impaired without the exemption; or
- Without the exemption, a business that originated the information, formulas, devices, etc. may lose its competitive advantage in the marketplace.

FINDINGS

- The affected parties cited various reasons why the exemptions should be renewed. Key among them is that making the information publicly available could put the Fund or the Institute at a disadvantage in obtaining matching investments from private investors.
- However, the FOF and the Institute have very different responsibilities, so each provision of s. 288.9626, F.S., is not applicable to both the FOF and the Institute.
- The Legislature should consider re-enacting the exemptions because they appear to be fulfilling their statutory purpose.

Options

- Retain the public records and public meetings exemptions for the FOF and the Institute:
 - ❑ Modify s. 288.9626, F.S., so that it is applicable to the FOF only.
 - ❑ Create a separate statute for the Institute, that retains the current exemptions applicable to the Institute.
- Because these proposed modifications do not constitute an expansion of the public meeting and public records exemption for either the FOF or the Institute, there will be no requirement for legislative review in 5 years.



The Florida Senate

Interim Report 2012-302

September 2011

Committee on Commerce and Tourism

OPEN GOVERNMENT SUNSET REVIEW OF S. 228.075, F.S., PUBLIC RECORDS EXEMPTION FOR INFORMATION HELD BY ECONOMIC DEVELOPMENT AGENCIES

Issue Description

Chapter 77-75, L.O.F., created the general economic development exemption from Florida's public records requirements in s. 288.075, F.S.

Briefly, s. 288.075, F.S., currently identifies several categories of economic development agencies, and makes confidential and exempt the following information held by such agencies:

- Plans, intentions, or interests of a private company or individual considering locating, relocating, or expanding its business operations in Florida;
- Proprietary confidential business information;
- Trade secrets;
- Sales, employee wage and tax information related to businesses receiving state economic development incentives; and
- Identification, account, and registration numbers.

The length of time the above-mentioned categories of information are shielded from the public and the conditions for publicly releasing such information vary. The law also provides a criminal penalty for any person who fails to maintain the confidentiality of this information. This exemption is repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature prior to that date.

Background

Public Records and Meetings

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24, of the State Constitution, provides that:

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

¹ Section 1390, 139, F. S. (Rev. 1892).

² Article I, s. 24, of the State Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency⁴ records are available for public inspection. The term “public record” is broadly defined to mean:

. . .all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Article I, s. 24, of the State Constitution, also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Article III, s. 4(e), State Constitution, except with respect to meetings exempted pursuant to this section or specifically closed by the constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

Only the Legislature is authorized to create exemptions to open government requirements.⁸ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁵ Section 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, s. 24(c), of the State Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records. Under Florida law a two-thirds vote of each house is required for a public records or public meeting exemption to be created or expanded.

¹¹ Article I, s. 24(c), of the State Constitution.

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹³

The Open Government Sunset Review Act (the act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁵

The act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹⁶

While the standards in the act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁷ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

... notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ Section 119.15(6)(a), F.S.

¹⁷ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Public Records Exemptions for Economic Development Agencies

In 1977, the Legislature provided a public records exemption for records of the Division of Economic Development of the Florida Department of Commerce which contained information concerning the plans of a corporation to locate, relocate, or expand any of its business activities in this state.¹⁸ Since enacting the exemption, the Legislature has made several substantive and technical revisions while retaining the basic concept of affording confidentiality for records of an economic development agency. The last significant modification was in 2007, when a new category of business information was added and specific provisions of a related public-records exemption, s. 288.1067, F.S. (2006), were merged into s. 288.075, F.S., to create 5 distinct categories of exemptions related to the administration of economic development.¹⁹ Currently, the 5 categories of information held by economic development agencies that are exempt from public records are:

Exempted Material	Timeframe
Plans, intentions, or interests of a private company, person or individual considering locating, relocating, or expanding its business operations in Florida ²⁰	Confidential and exempt for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed whichever occurs first May be extended for up to an additional 12 months upon written request from the private company or individual upon a finding by the economic development agency that the entity is still actively seeking to locate, relocate, or expand in Florida
Trade secrets ²¹	Permanent
Proprietary confidential business information ²²	Confidential and exempt until such time as the information becomes otherwise publicly available or is no longer treated by the proprietor as confidential
Federal employer identification number, unemployment compensation account number, or Florida sales tax registration number ²³	Permanent
Specific sales, employee wage, and tax information related to the administration of state economic development incentives ²⁴	Exempt for a period not to exceed the duration of the incentive agreement or upon termination of the incentive agreement

The public records exempted by s. 288.075, F.S., are maintained by an “economic development agency,” which is defined in s. 288.075(1)(a), F.S., to include:

¹⁸ Adapted from CITE 2006 REPORT.

¹⁹ Chapter 2007-203, L.O.F. This law also repealed s. 288.1067, F.S. See also *Review of Public Records Exemptions Relating to Economic Development Agencies*, The Florida Senate Committee on Commerce, Interim Project Report 2007-103 (October 2006), available at http://archive.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-103cm.pdf (last visited 7/26/2011); and *House of Representatives Staff Analysis Bill #: HB 7201*, Government Efficiency and Accountability Council (April 23, 2007), available at <http://archive.flsenate.gov/data/session/2007/House/bills/analysis/pdf/h7201.GEAC.pdf> (last visited 7/26/2011).

²⁰ Section 288.075(2), F.S.

²¹ Section 288.075(3), F.S.

²² Section 288.075(4), F.S.

²³ Section 288.075(5), F.S.

²⁴ Section 288.075(6), F.S.

1. The Department of Economic Opportunity;²⁵
2. Any industrial development authority created in accordance with part III of ch. 159, F.S., or by special law;
3. Space Florida created in part II of ch. 331, F.S.;²⁶
4. The public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto;
5. Any research and development authority created in accordance with part V of ch. 159, F.S.; or
6. Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.²⁷

Section 288.075(1)(b), F.S., states that “proprietary confidential business information” means²⁸ information that is owned or controlled by the corporation, partnership, or person requesting confidentiality under this section; that is intended to be and is treated by the corporation, partnership, or person as private in that the disclosure of the information would cause harm to the business operations of the corporation, partnership, or person; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

1. Business plans.
2. Internal auditing controls and reports of internal auditors.
3. Reports of external auditors for privately held companies.

Section 288.075(2)(c), F.S., states that a public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information under this subsection until 90 days after the information is made public unless:

1. The public officer or employee is acting in an official capacity;
2. The agreement does not accrue to the personal benefit of such public officer or employee; and
3. In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project.

This section prevents public officers or employees from using confidential information to their personal benefit.

Section 288.075(7), F.S., states that any person who is an employee of an economic development agency who violates the provisions of this section commits a misdemeanor of the second degree.

Commission on Open Government Reform

The Commission on Open Government Reform was created by Executive Order 07-107 to review, evaluate, and issue recommendations regarding Florida’s public records and public meetings laws. The commission’s final report was issued in January 2009 and contained the following recommendations with respect to s. 288.075, F.S.:

1. The Legislature amend s. 288.075, F.S., to include a definition of “economic development project” and to subject the exemption to review and reenactment under the Open Government Sunset Review Act.

²⁵ Previously the Office of Tourism, Trade, and Economic Development (OTTED) within the Executive Office of the Governor was listed as an economic development agency. However, ch. 2011-142, L.O.F., abolished OTTED and amended s. 288.075, F.S. See s. 148, ch. 2011-142, L.O.F. The Division of Strategic Business Development is the division within the Department of Economic Opportunity that is responsible for many of OTTED’s functions and responsibilities.

²⁶ Space Florida is an Independent Special District of the State of Florida, created by part II of ch. 331, F.S., for the purposes of fostering the growth and development of a sustainable and world-leading space industry in Florida. See Space Florida’s website, available at <http://www.spaceflorida.gov/> (last visited 7/26/2011).

²⁷ This refers to entities such as Enterprise Florida, Inc., and public private partnerships that work with local governments, also known as economic development organization.

²⁸ This definition was created in 2007 by ch. 2007-203, L.O.F., as part of the recommendations of Interim Project Report 2007-103 (October 2006).

2. The Florida Economic Development Council coordinate with the Office of Open Government to provide training to local government economic development agencies on the scope and application of s. 288.075, F.S.²⁹

Florida Economic Development Council states that its purpose is to educate, advocate and connect the state wide network of economic developers through communications and events, providing leadership and vision to advance economic development professionals and economic development throughout the state of Florida as a whole.³⁰

“The Office of Open Government is charged with providing both the Executive Office of the Governor and each of Florida’s agencies with the guidance and tools to serve Florida with integrity and transparency.”³¹ The Office of Open Government was created by Governor Crist³² and reestablished by Governor Scott.³³

Findings and/or Conclusions

Methodology

A telephone survey was conducted regarding the exemption that included contacting state and local economic development agencies, the First Amendment Foundation, the Department of Economic Opportunity, Enterprise Florida, Inc. (EFI), and Space Florida. Responses were compiled and analyzed in the development of recommendations. There were a total of 75 entities contacted with 48 responding.

Findings

All of the 48 entities who responded to staff indicated that they supported reenacting the statute. The Governor’s Office may be developing legislation to name the Governor and EFI as economic development agencies within s. 288.075, F.S., to “clarify any confusion that may exist regarding their roles in the economic development process.”

While not related to the specific exemption under s. 288.075, F.S., some economic development organizations expressed concerns about whether the organizations were considered to be “state agencies” for purposes of the Public Records Act and Sunshine Law. There has been some debate as to the nature of these organizations.³⁴ These organizations may be developing draft legislation to clarify this issue, such as the creation of a bright line test.

Sunset Review Questions

The Open Government Sunset Review Act prescribes questions to be considered by the Legislature in deciding whether to save a public records exemption from its scheduled repeal. These questions address the content and general purpose of the exemption, and detail the specific documents and entities that are affected.

²⁹ *Reforming Florida’s Open Government Laws in the 21st Century*, The Commission on Open Government Reform, p. 20 (January 2009), on file with the Senate Commerce and Tourism Committee.

³⁰ Florida Economic Development Council, available at <http://www.fedc.net/join-fedc/purpose> (last visited 8/1/11).

³¹ The Office of the 45th Governor of Florida, Rick Scott, Office of Open Government, available at http://www.flgov.com/open_government/ (last visited 8/4/11).

³² Fla. Exec. Order No. 07-01, (January 2, 2007).

³³ Fla. Exec. Order No. 11-03, (January 4, 2011).

³⁴ See Inf. Op. to The Honorable Don Gaetz and The Honorable Marti Coley dated December 17, 2009, available at <http://www.myfloridalegal.com/ago.nsf/Opinions/9FCB14946923BD198525768F00686F5A> (last visited 8/2/11); and see Inf. Op. to Mr. Derek P. Rooney Dated June 8, 2011, available at <http://www.myfloridalegal.com/ago.nsf/Opinions/9BF33427865CA616852578B1005568A4> (last visited 8/2/11).

Whom does the exemption uniquely affect, as opposed to the general public?

The exemption affects businesses that are considering locating or expanding in Florida. Maintaining the confidentiality of the five categories of information encourages them to communicate with economic development agencies without concerns that confidential business information will be available to their competitors.

What specific records or meetings are affected by the exemption?

Records affected by this exemption are those held by an economic development agency relating to:

- Plans, Intentions, and Interests of a private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state.
- Trade Secrets.
- Proprietary Confidential Business Information meaning information that is owned or controlled by the corporation, partnership, or person requesting confidentiality under this statute; that is intended to be and is treated by the corporation, partnership, or person as private in that the disclosure of the information would cause harm to the business operations of the corporation, partnership, or person; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:
 1. Business plans.
 2. Internal auditing controls and reports of internal auditors.
 3. Reports of external auditors for privately held companies.
- Identification, Account, and Registration Numbers meaning a federal employer identification number, unemployment compensation account number, or Florida sales tax registration number.
- Economic Incentive Programs.

Can the information contained in the records be readily obtained by alternative means?

The information contained in the exempt records is not publicly available, and cannot be otherwise obtained unless directly from the business.

Is the record protected by another exemption and would it be appropriate to merge the exemptions?

The broad range of records protected by this exemption is not protected elsewhere in statute. Trade secrets are protected under s. 812.081, F.S., and s. 688.002, F.S., however these sections of law do not specifically deal with public records exemptions and records held by an economic development agency, and it is not recommended that these sections of law be merged as this would only lead to confusion as to the status of trade secrets as it relates to economic development.

What is the identifiable public purpose or goal of the exemption?

The goal of this exemption is to facilitate communications between businesses and economic development agencies. The exemption allows businesses to keep strategic information confidential while considering sites to locate or expand, the release of which may adversely affect them in the marketplace.

Conclusion

As discussed above, the Open Government Sunset Review Act requires that a public records exemption must serve an identifiable public purpose in order to be maintained. The exemption provided in s. 288.075, F.S., serves a public purpose in two ways. First, the exemption allows state and local economic development agencies to effectively and efficiently administer their programs. The goal of these agencies is to promote growth and attract businesses to Florida. Most state and local economic development agencies surveyed indicated that without the exemption, businesses would be less likely to communicate with them, and therefore possibly less likely to locate or expand in Florida. Second, this exemption affects confidential business information, the disclosure of which could adversely affect the business in the marketplace. Competitors could use this information to their advantage, reacting to business plans that would otherwise be confidential absent inquiries with a government entity. In cases

where businesses are considering relocation, it could cause disruption in the workforce, encouraging current employees to seek other employment.

Options and/or Recommendations

Options

The Committee may consider the recommendations of the Commission on Open Government Reform in its deliberation of this matter.

The following language could be added to s. 288.075(6)(c), F.S., to clarify that an economic development agency must comply with other provisions of law relating to reporting requirements, examples of which would include:

- The annual state incentives report prepared by EFI is in s. 288. 907, F.S.
- The reporting by EDOs to the applicable county or city that gave it public dollars for ecocodevelopment activities about how the EDOs spent the money in s. 125.045(4), F.S., and s. 166.021(9)(d), F.S.
- The annual reporting by all counties and certain cities (with annual revenues or expenditures greater \$250,000) on local incentives in excess of \$25,000 is specified in s. 125.045(5), F.S., and s. 166.021(9)(e), F.S.

“An economic development agency shall comply with all applicable reporting requirement outlined in Florida Statutes and may publish statistics in the aggregate and classified so as to prevent the identification of a single qualified applicant.”

Recommendations

Committee staff recommends that the public records exemption provided in s. 288.075, F.S., relating to certain business records held by economic development agencies, be re-enacted. Through the review of the public records exemption, it has been determined that the exemption serves a public purpose, as it is necessary to carry out a government program and protects confidential business information.

**Open Government Sunset
Review of s. 288.075, F.S.,
Public Records Exemption
for Information
Held by Economic
Development Agencies**

Interim Report 2012-302
Presented Oct. 17, 2011

Background

- In 1977, the Legislature provided a public records exemption for records of the Division of Economic Development of the former Florida Department of Commerce that contained information concerning the plans of a corporation to locate, relocate, or expand any of its business activities in this state.
- Since enacting the exemption, the Legislature has made several substantive and technical revisions while retaining the basic concept of affording confidentiality for records of an economic development agency.

Categories of exempt information held by economic development agencies

Exempted Material	Timeframe
Plans, intentions, or interests of a private company, person or individual considering locating, relocating, or expanding its business operations in Florida	-- Confidential and exempt for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first -- May be extended for up to an additional 12 months upon written request from the private company or individual upon a finding by the economic development agency that the entity is still actively seeking to locate, relocate, or expand in Florida
Trade secrets	Permanent
Proprietary confidential business information	Confidential and exempt until such time as the information becomes otherwise publically available or is no longer treated by the proprietor as confidential
Federal employer identification number, unemployment compensation account number, or Florida sales tax registration number	Permanent
Specific sales, employee wage, and tax information related to the administration of state economic development incentives	Exempt for a period not to exceed the duration of the incentive agreement or upon termination of the incentive agreement

Definitions

- The public records exempted by s. 288.075, F.S., are maintained by an “economic development agency,” which is defined in s. 288.075(1)(a), F.S., to include:
 - The Department of Economic Opportunity;
 - Any industrial development authority created in accordance with part III of ch. 159, F.S., or by special law;
 - Space Florida created in part II of ch. 331, F.S.;
 - The public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto;
 - Any research and development authority created in accordance with part V of ch. 159, F.S.; or
 - Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

Definitions, continued

“Proprietary confidential business information”
includes:

- Business plans.
- Business intentions to relocate or expand.
- Internal auditing controls and reports of internal auditors.
- Reports of external auditors for privately held companies.

Guiding Legislative Principles

- Only the Legislature can create exemptions to open government requirements.
- Exemptions must specifically state the public necessity justifying the exemption.
- Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.
- In the fifth year after its creation, every exemption must be reviewed by the Legislature, and either re-enacted (with or without changes), repealed, or allowed to expire.

Guiding Legislative Principles , continued

The 3 statutory criteria used in the review are:

- Effective administration of the program would be significantly impaired without the exemption;
- The reputation or safety of an individual would be impaired without the exemption; or
- Without the exemption, a business that originated the information, formulas, devices, etc. may lose its competitive advantage in the marketplace.

Methodology

- Telephone surveys of affected parties were conducted. Contacted were state and local economic development agencies, the First Amendment Foundation, the Department of Economic Opportunity, Enterprise Florida, Inc. (EFI), and Space Florida.
- Several face-to-face interviews also were conducted.
- Staff researched the changes to the statute over the years, previous interim projects on the topic, and case law.

Findings

- Respondents expressed support for re-enacting the statute.
- Through this review of s. 288.075, F.S., staff determined that the exemption continues to serve its public purpose of protecting confidential business information in order to promote economic development.

Recommendation

Committee staff recommends that the public records exemption provided in s. 288.075, F.S., relating to certain business records held by economic development agencies be re-enacted.

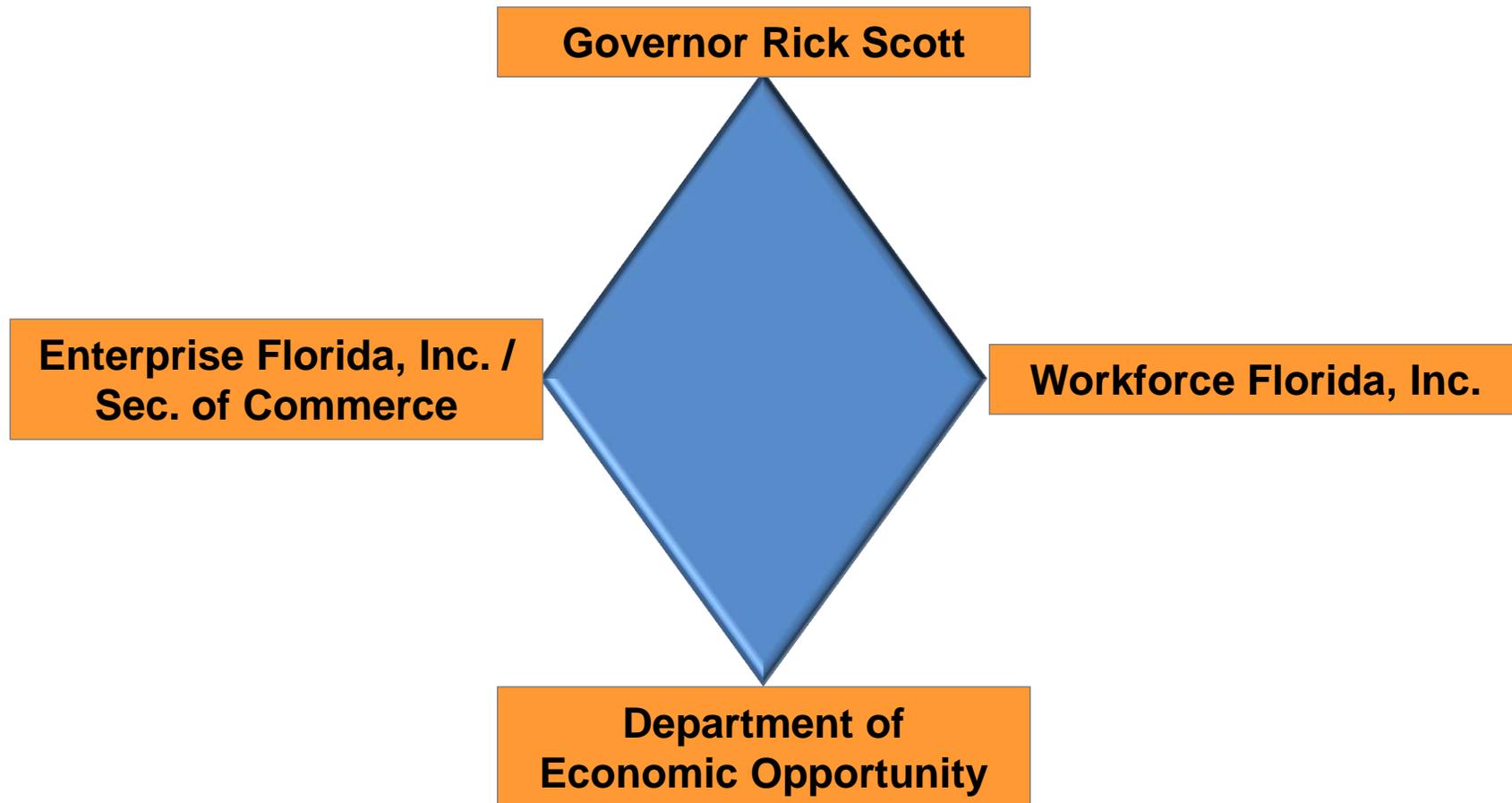


Florida's Approach to Statewide Economic Development

Gray Swoope, Secretary of Commerce
President & CEO, Enterprise Florida

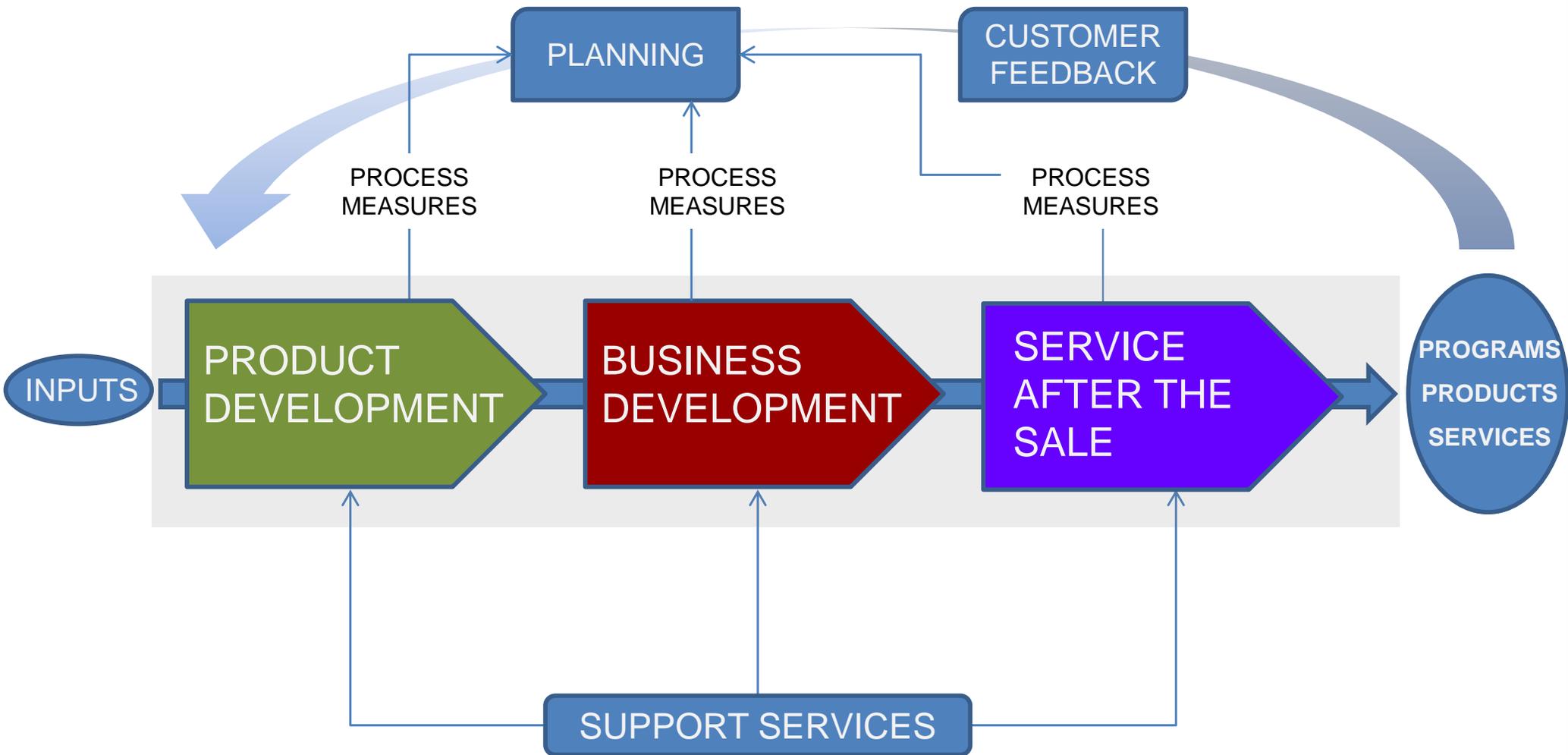


Unified Approach to Economic Development



Economic Development as a System

Where Does Everyone Fit?



Three Types of Growth

Competitive Projects

These are the types of projects EFL works daily

- New Business
- Expansions
- Retention

Facilitated Growth

- Tourism
- International Trade
- Small Business Development Programs
- University Entrepreneurial Programs
- Commercialization Programs

Organic Growth

- New Business Start-Ups
- Companies Choosing Markets

7 Years = 700,000 Jobs



Thank You



Tab 3

THE FLORIDA SENATE COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/17/2011
Date

Bill Number

Name Gray Swoope
Address 325 John Knox - The Atrium St. 201
Street
TLH FL 32308
City *State* *Zip*

Phone 850-298-6620
E-mail _____
Job Title Pres & CEO
Sec. of Commerce

Speaking: For Against Information

Appearing at request of Chair

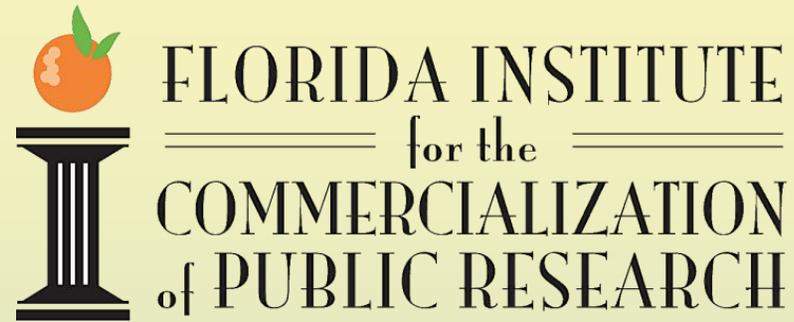
Subject _____

Representing Enterprise Florida

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.



Igniting Florida's Innovation Economy

Senate Commerce & Tourism Committee

October 17, 2011

“Innovation is the central issue in economic prosperity” Michael Porter,
Author, Professor, Harvard Business School

Startup Companies and Job Creation

- **Startups Create Most New Net Jobs in the United States** (Kauffman Foundation 2010)
- **University Potential for New Product and Company Creation** (last 30 years since Bayh-Dole Act – AUTM 2010)
 - 6,000 new businesses
 - 4,300 new products
 - 153 drugs
- **Florida attracts \$2B+ in Research Dollars**

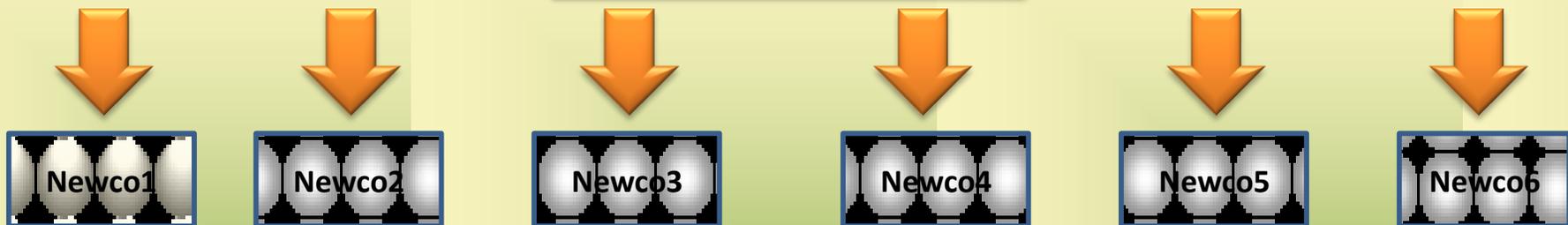
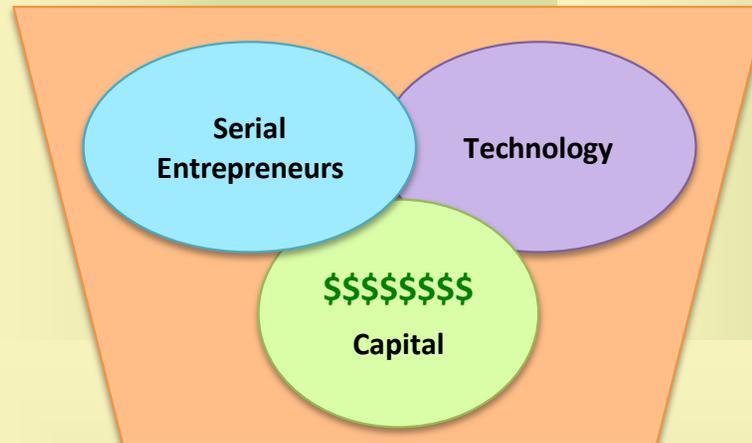
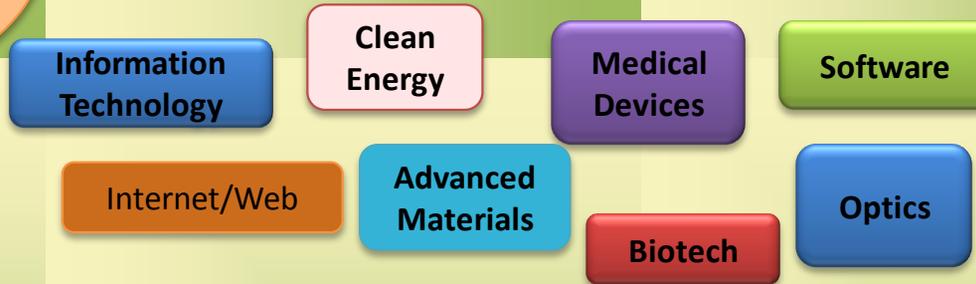
What We Do

- New startup company and job creation based on publicly funded research
- Focus on key target industries
 - Life Sciences
 - Information Technology
 - Clean Energy
 - Aviation/Aerospace
 - Homeland Security/Defense
 - Other Emerging Sectors
- Match commercially-viable technologies with experienced management and capital
- Administer Commercialization Matching Grant Program and EFI Pilot Seed Funding Program
- Increase access to capital for entrepreneurs

How We Work

Public Universities

Private Research Institutions



Jobs... Jobs... Jobs... Jobs... Jobs... Jobs... Jobs... Jobs... Jobs... Jobs!

Investor Advisory Board

Greg Baty; Hamilton Lane, Ft. Lauderdale, FL

Richard J. Brandewie; Ballast Point Ventures, St. Petersburg, FL

Jonathan E. Cole; New World Angels, W. Palm Beach, FL

Robert Crutchfield; Harbert Venture Partners, Birmingham, AL

Kent A. Gossett; SR-One, Philadelphia, PA

Jonathan I. Kislak; Antares Capital Corporation, Miami Shores, FL

Garheng Kong; Sofinnova Ventures, Menlo Park, CA

Curt LaBelle; Tullis Health Investors, Greenwich, CT

Neil McFarlane; McFarlane BioVentures, Jupiter, FL

Richard Molloy; Florida Gulfshore Capital, Naples, FL

Patricia Palmer; Littlebanc Advisors, Boca Raton, FL

David Pierson; Intersouth Partners, Durham, NC

Alan W. Rossiter; Springboard Capital Partners, Jacksonville, FL

Dan Rua; Inflexion Partners, Gainesville, FL

Richard Swier; Startup Florida, Sarasota, FL

Alan Taetle; Noro Moseley, Atlanta, GA

John Uhrin; Credit Suisse, Research Triangle Park, NC

Michael J. Wasserman; H.I.G. Ventures, Miami, FL

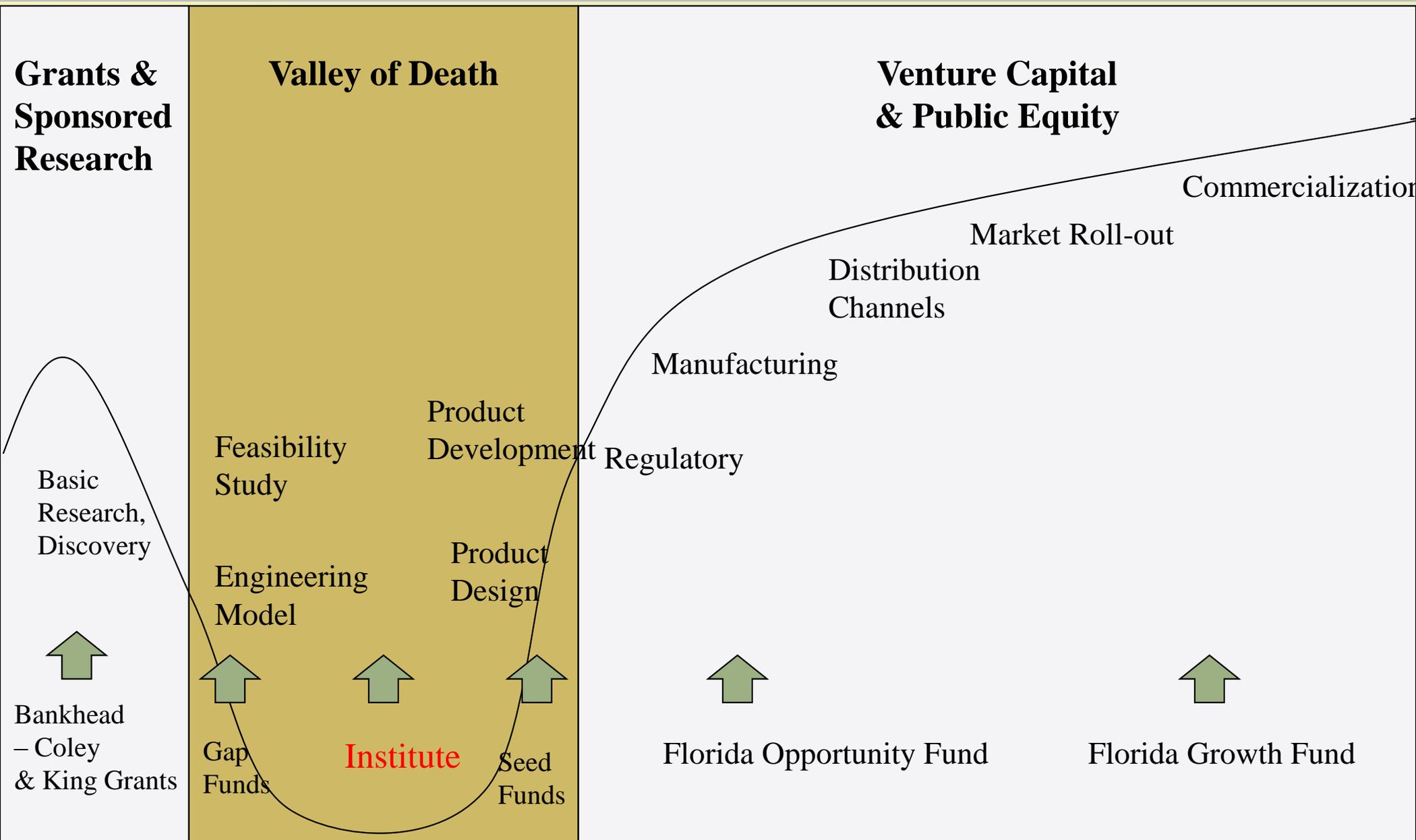
Scott Weiner; Pappas Ventures, Durham, NC



Representative Institute Projects



Where We Fit



\$10 Million Appropriation

- Continue core Institute programs consistent with Florida targeted industry strategy
- Provide seed capital to companies through “Repayable at Liquidity” loans of \$50-300K
- Require funding match from private Accredited Investors
- Institute Investor Advisory Board reviews and recommends companies for funding
- Final loan decisions made by Board of Directors
- Qualifying Florida companies with robust market potential and management talent
- Companies must stay in Florida 5 years or pay back

Program Status

- Contract executed; program launched
- Funding application, diligence and approval process in place
- Funding documents prepared
- Pent-up demand - 30+ companies applied
- 8 companies selected for presentations; 3 approved for next steps

Next Steps

- Hire additional resources
- Establish office in Gainesville
- Review applications, screen and assess new opportunities
- Fund qualifying companies
- Identify CEOs and private investment capital
- Seek continued program funding

Outcomes

- Increased number of viable companies in targeted industries
- Increased number of high-wage, high-skill jobs
- Increased investment in Florida-based companies
- Attraction and retention of top business talent
- Robust, innovation-based economy for Floridians



FLORIDA INSTITUTE
for the
COMMERCIALIZATION
of PUBLIC RESEARCH

Florida Institute for the Commercialization of Public Research

Jane Teague – Interim Executive Director

Jane.Teague@florida-institute.com

(561) 368-8889

David Day – Principal Investigator

dlday@ufl.edu

(352) 392-8929



Representative Projects and Testimonials

Core Program

Nanophotonica – technology developed at University of Florida paired with a CEO in Orlando. Company has raised in excess of \$300,000 in public and private funds throughout Florida.

GLG Pharma – technology developed at H. Lee Moffitt Cancer Center & Research Institute paired with CEO in Jacksonville. Company has raised in excess of \$1.5M in public and private funds, significant portion from Palm Beach County.

Powers Device Technologies – technology developed at Florida State University paired with a CEO in Jacksonville. Company has raised in excess of \$1.8M in public and private funds.

MDI Partners – technology developed at University of Florida and University of South Florida, entrepreneur from Boca Raton, capital raised in South Florida and throughout the US.

TellUsPoint/Next Exit History – technology developed at University of West Florida, entrepreneur from Pensacola, capital raised in West Florida

“Grape Cell Strain Commercialization Analysis” – technology developed at Florida A&M University, entrepreneur from South Florida conducted analysis and developed commercialization strategy

Commercialization Matching Grant Program – 13 awardees received a total of \$2.8M

Accelogic, Weston – develops computational methods for the extreme acceleration of supercomputing for researchers and industry

Captozyme, Gainseville – biotechnology company developing nutraceuticals and drugs for treatment and prevention of oxalate-related conditions in humans and animals

Structural Composites, W. Melbourne – provides products and services to government and industry for finer reinforced plastic composites applications

RINI Technologies, Oviedo – develops thermal management products (mini-refrigeration, spray cooling, storage) for military and other applications

Seed Capital Accelerator Program (Launched Summer 2011)

- 25 Companies applied to date
- 6 companies evaluated
- 2 companies recommended for a total of \$580,000 in funding; projected to create 117 jobs; cost per job created under \$5,000



“Florida has become a leader in the global life sciences industry. In support of this achievement, the Florida Institute for the Commercialization of Public Research is one of our most valuable assets. It focuses on a long term economic development strategy and provides the highest level of experience, innovative programs and private sector partners to generate positive economic and social impact. Without the Institute, GLG Pharma would not be where we are today, raising money, hiring associates, and actively working to commercialize a technology that will result in the next generation of personalized therapies for the treatment of cancer.”

Michael Lovell, PhD, President, GLG Pharma (Licensee of technology developed at the H. Lee Moffitt Cancer Center, entrepreneur from Jacksonville, capital raised in Palm Beach County

“The Institute plays a key role in the state, helping the universities identify commercially-viable technologies and connecting them to entrepreneurs like me who are seeking new product and business opportunities. The Institute assisted me with finding promising medical device technologies to complement my existing product portfolio, thereby accelerating my business expansion and growth.”

Navroze Mehta, Managing Director, MDI Partners

“As a venture capitalist based in Atlanta who has invested in Florida companies, we are extremely interested in new technologies and companies originating from Florida's research institutions. The Institute has made it easy for us to evaluate new opportunities, and we will continue to include Florida companies in our investment strategy moving forward.”

Alan Taetle, General Partner, Noro Moseley, Member of Institute Volunteer Investor Advisory Board

“I have recently had the privilege to serve on a Governor's appointed strategic planning committee to develop a technology based economic development strategy in Alabama, and I applaud Florida's efforts, through the Institute, to increase the role of universities in new company creation and job growth. With a research base as large as Florida's, there is tremendous opportunity to create the companies whose products and services will improve our quality of life while building an economic development engine that will create high quality jobs and capital investment in Florida, now and in the decades to come. “

Robert L. Crutchfield, Venture Partner, Harbert Venture Partners, Member of Volunteer Investor Advisory Board

“As an active angel investor and partner in an early stage venture fund, I appreciate the opportunity to work with the Institute which is an integral part of Florida's strategy to build a knowledge-based economy. The organization provides much needed support to public research institutions, helping them to create the entrepreneurial infrastructure necessary for Florida to compete on the global stage.”

Neil McFarlane, Partner, McFarlane BioVentures, Member of Volunteer Investor Advisory Board

"This program (CMGP), and programs like it, can have a dramatic economic impact in the State of Florida. Designed specifically to fill key funding gaps that early-stage companies face as they move from the research and development phase into product development and commercialization, we anticipate that this program will go a long way towards building Florida's knowledge-based economy and look forward to its ongoing success."

Dan Rini, PhD, President, RINI Technologies, Commercialization Matching Grant Program Award Recipient

FLORIDA
OPPORTUNITY
F U N D

The logo for the Florida Opportunity Fund, featuring the text "FLORIDA OPPORTUNITY FUND" in a serif font, with "FUND" on a separate line. Below the text is a stylized orange arc.

FLORIDA OPPORTUNITY FUND

***COMBINING CAPABILITIES AND RESOURCES
TO DELIVER EXCEPTIONAL PERFORMANCE***

Update for Senate Commerce
October 17, 2011

Agenda

- Florida Opportunity Fund Overview
- Fund-of-Funds Update
- Direct Investment Programs Update
 - Florida Clean Energy Investment Program
 - State Small Business Credit Initiative (SSBCI)
- Infrastructure Fund Initiative

Florida Opportunity Fund Overview

- The Florida Opportunity Fund (FOF) was authorized by the Legislature through the Florida Capital Formation Act and established in accordance with the Act by EFI in 2007 to generate returns and expand the availability of venture capital for Florida businesses.
- During the 2009 Legislative session the Governor signed into law an expansion of the FOF's mandate to invest directly into Florida businesses and infrastructure projects.
- The primary objective of the FOF is to implement investment to:
 - attract additional capital to the State;
 - create jobs;
 - generate returns to perpetuate the benefits of the FOF; and
 - enhance the diversity of Florida economy through investment, particularly in businesses in Florida technology sectors.
- FOF currently manages three programs:
 - Florida Fund of Funds
 - Florida Clean Energy Direct Investment Program
 - Florida - State Small Business Credit Initiative (SSBCI)

“Board-Supervised” Fund

**Florida Opportunity Fund
Board of Directors**

 **Enterprise Florida**

Florida First Partners

**Company
#1**

**Company
#2**

**Company
#3**

**Company
#4**

...

**Company
#n**

- Governance and oversight
- Customized, detailed and timely reporting
- Approval of all company commitments
- Active company management
- Standard reporting structures
- Value-add contributions across and between companies

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OPPORTUNITY
F U N D

The logo for the Florida Opportunity Fund, featuring the text "FLORIDA OPPORTUNITY FUND" in a serif font, with "FUND" on a separate line. Below the text is a stylized, curved line representing a horizon or a path.

FUND-OF-FUNDS UPDATE

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Fund-of-Funds Update

- Program funds are fully committed & performing well
- Fund-of-Funds investments have generated substantial private capital leverage:
 - \$29.5 million allocated to Program that is committed to funds with assets of \$3.5 billion, yielding a ~118.6x leverage ratio
 - \$226.05 million already invested into Florida deals from private investors yielding a ~7.7x leverage ratio
- Approximately 328 Florida-based employees positively impacted
- Strong pipeline of additional potential fund managers, pending additional capital

Fund of Funds Investment Commitment Summary

Fund		Investment Focus	Commitment
Element II	National	Cleantech	\$4M
Inflexion*	Local	IT, Media, Communications	\$2M
Harbert II	Regional	IT, Healthcare, Pharma & Device	\$4M
NEA	National	IT, Cleantech & Healthcare	\$4M
5AM	Regional	Life Sciences	\$3M
HIG Bioventures II	National	Life Sciences	\$4M
TBA	Regional	IT, Healthcare, Pharma & Device	\$4M
Stonehenge*	Local	IT, Security, Cleantech, Devices	\$2M
Investment Commitment Total			\$27M

*Contingent Commitments

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The logo for the Florida Opportunity Fund, featuring the text "FLORIDA OPPORTUNITY FUND" in a serif font, with "FUND" on a separate line. Below the text is a stylized, curved line representing a horizon or a path.

CLEAN ENERGY INVESTMENT PROGRAM UPDATE

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Clean Energy Investment Program (CEIP) Overview

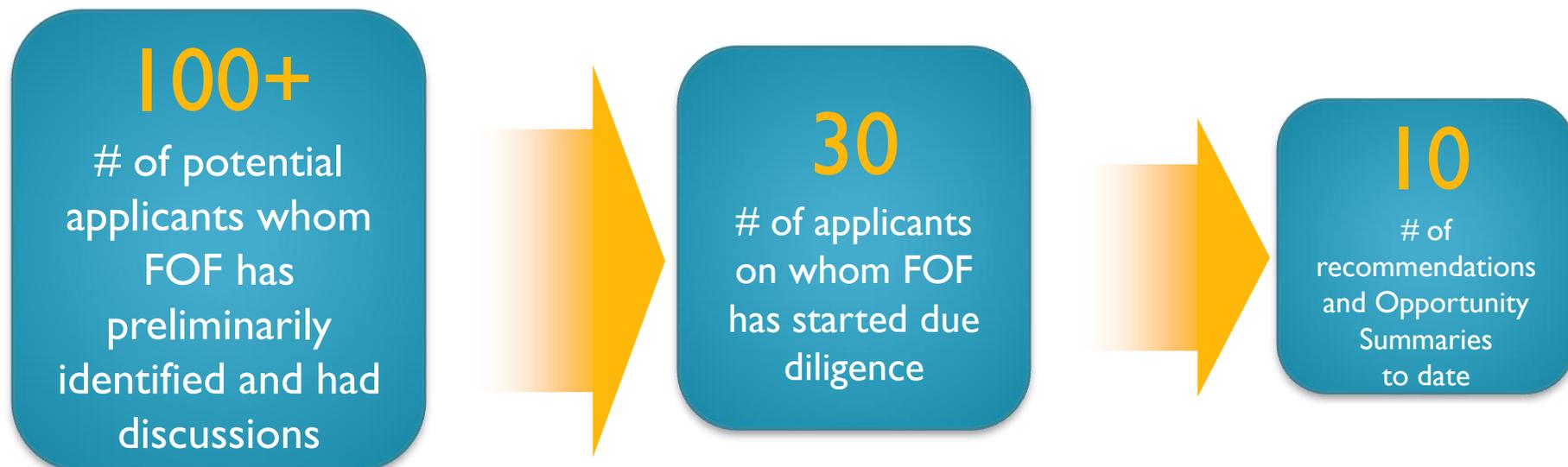
- Program Focus: Funding Florida businesses and projects to further energy efficiency and renewable energy (EE/RE) within Florida and create Florida jobs/economic diversification.
- Program Activities: The Program will provide funding to Florida businesses and projects for:
 1. Facility and equipment improvement with EE products, equipment, and materials for use by companies in their operations
 2. Renewable energy product, equipment, and materials acquisition/upgrading for use by companies in their operations
 3. EE/RE process improvement within Florida businesses for use by companies in their existing operations
 4. Demonstration of EE/RE products, equipment, and materials

CEIP Update

- Program launched: November 2010
- Initial Program Investment Capital: \$32.4M
- Active Outreach activities successful
 - Over 400 companies identified
 - Robust pipeline created representing over \$100M of opportunities
- \$12 million invested into three Florida businesses
 - \$80M of additional private capital invested into these businesses, yielding a ~6.7x leverage ratio
 - Over 165 jobs anticipated to be created/retained
- Anticipate over \$20M of additional investments next quarter

Overview of CELP Pipeline

- FOF has generated a pipeline of nearly 400 potential investment leads
- Leads are concentrated in the following industry groups:
 - Renewables (i.e. ethanol, biodiesel, solar, hydro producers)
 - High-tech manufacturing (i.e. PV, Semi, Communications Equip)
 - Data and tech product/services (i.e. EE/RE product/service providers)
 - Industrial equipment & services (i.e. HVAC, water treatment)



Investment Overview: Mustang Vacuum Systems



BACKGROUND:

Headquartered in Sarasota, FL, Mustang is a leading technological provider of vacuum deposition equipment for industrial applications

TECHNOLOGY:

Mustang's next generation technology, including the production of thin film CIGS and cadmium telluride photovoltaics, offers solar PV companies a low cost, high efficiency solution for thin film CIGS photovoltaic cell production

PROGRAM BENEFITS:

Mustang's proposed demonstration line will cost 45% less, save at least 20% annually from more efficient operations, use 40% less electricity and occupy 55% less facility space vs. existing tools. Product sales will also expand FL's manufacturing industry and assist in attracting solar-related jobs to the state. Resulting expansion is expected to create approximately 100 jobs over 5 years.

Investment Overview: LS9



LS9, INC.



BACKGROUND:

Manufacturer of commercially-available biodiesel and specialty chemical products through a simple, cost effective commercial fermentation process via sugar based feedstock.

TECHNOLOGY:

LS9 has synthesized a one-step commercial fermentation process for renewable chemical and fuel (biodiesel) production utilizing a biological process that regularly occurs in nature, and capitalizes on the fermentation of sugars, which has been used for centuries to produce consumer and industrial products.

PROGRAM BENEFITS:

Expected reduction of energy usage of 77% per unit of production. Initial production capacity of 50,000 gallons of renewable energy (biofuels/specialty chemicals), with potential to scale to 10 mm gallons of production capacity. Estimated creation of 50 full time FL jobs for plant operations over a 5-year period. Additionally, 70 construction jobs are estimated during the plant retrofit.

Investment Overview: Fracture



BACKGROUND:

Founded in 2008 and headquartered in Gainesville, Florida, Fracture is an online, go-to-printing channel for consumers wishing to frame digital images.

TECHNOLOGY:

Convenient and cost effective method for consumers to selectively capture their digital images in a clean and contemporary manner.

PROGRAM BENEFITS:

Facility and Equipment improvements are expected to enable a 90% reduction in energy per unit produced. Process Improvements of 10%+ are anticipated from a reduction in waste materials (i.e. glass / packaging components). Combined, these improvements are expected to result in a 10X improvement in production volume and an increase in energy efficiency on a per unit basis. Company estimates creation of 15 full time FL jobs over a 3-year period.

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OPPORTUNITY
F U N D

The logo for the Florida Opportunity Fund, featuring the text "FLORIDA OPPORTUNITY FUND" in a serif font, with "FUND" on a separate line. Below the text is a stylized, curved line representing a horizon or a path.

FLORIDA SSBCI INVESTMENT PROGRAM UPDATE

A decorative horizontal line consisting of a thin gold line on the left and a thicker teal line on the right, extending across the width of the slide.

Treasury-Funded Direct Investment Program

State Small Business Credit Initiative (SSBCI)

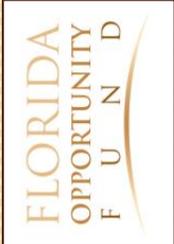


Nationally funded with \$1.5 billion to strengthen state programs that support lending to small businesses and small manufacturers

\$42.5 million



Realizing significant long-term capital appreciation by investing in high-quality projects and businesses that provide a lasting benefit to Florida



SSBCI Program Overview

❑ **FOF – SSBCI Program will deploy \$42.5M:**

- ✓ Utilizing existing infrastructure and pipeline opportunities to allow immediate deployment of capital
- ✓ Gaining access to innovative technologies
- ✓ Leveraging powerful network of co-investors, portfolio companies, DoD, defense contractors, government contacts, and universities
- ✓ Achieving +15x capital leverage efficiently by utilizing existing assets under management and relationships (“hit the ground running”)
- ✓ Extending the life and benefits of one-time government funding

❑ **Benefit the state of Florida**

- ✓ Promote and sustain job growth within high-tech, high-paying industry sectors
- ✓ Encourage economic development and diversification within critical clusters
- ✓ Increase the availability of capital for innovative Florida businesses

FOF Objectives with SSBCI Funds

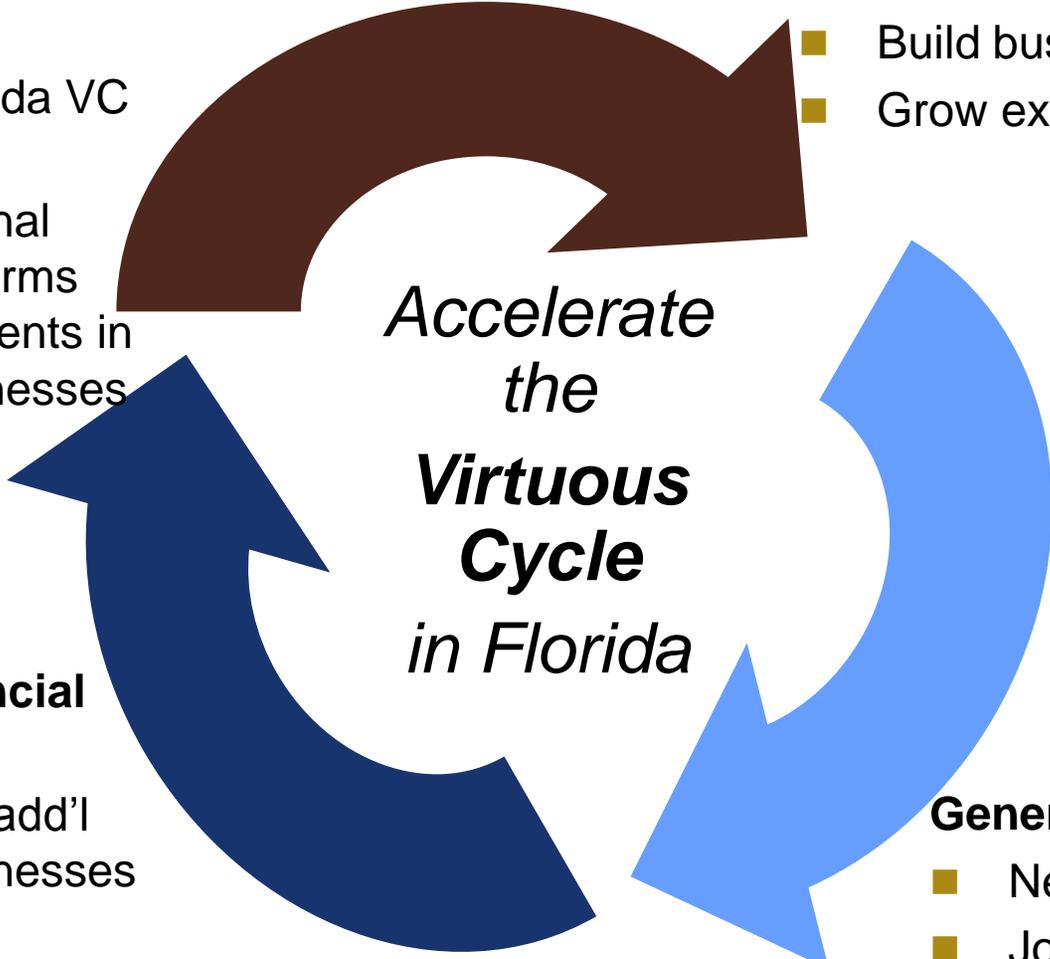
Increase investment capital in Florida

- Partner with existing Florida VC Firms
- Attract national investment firms with investments in Florida businesses and projects

Invest in & Grow FL Businesses

- Build businesses of the future
- Grow existing businesses

*Accelerate
the
Virtuous
Cycle
in Florida*



Generate Financial Returns

- Reinvest in add'l Florida businesses
- Enhance sustainment of program goals

Generate Jobs in Florida

- New high quality jobs
- Jobs to support existing and new industries

FLORIDA
OPPORTUNITY
F U N D

The logo for the Florida Opportunity Fund, featuring the text "FLORIDA OPPORTUNITY FUND" in a serif font, with the letters "F", "U", "N", and "D" spaced out below "OPPORTUNITY". A thin, curved line is positioned below the text.

INFRASTRUCTURE PROGRAM UPDATE



Florida Infrastructure Opportunity

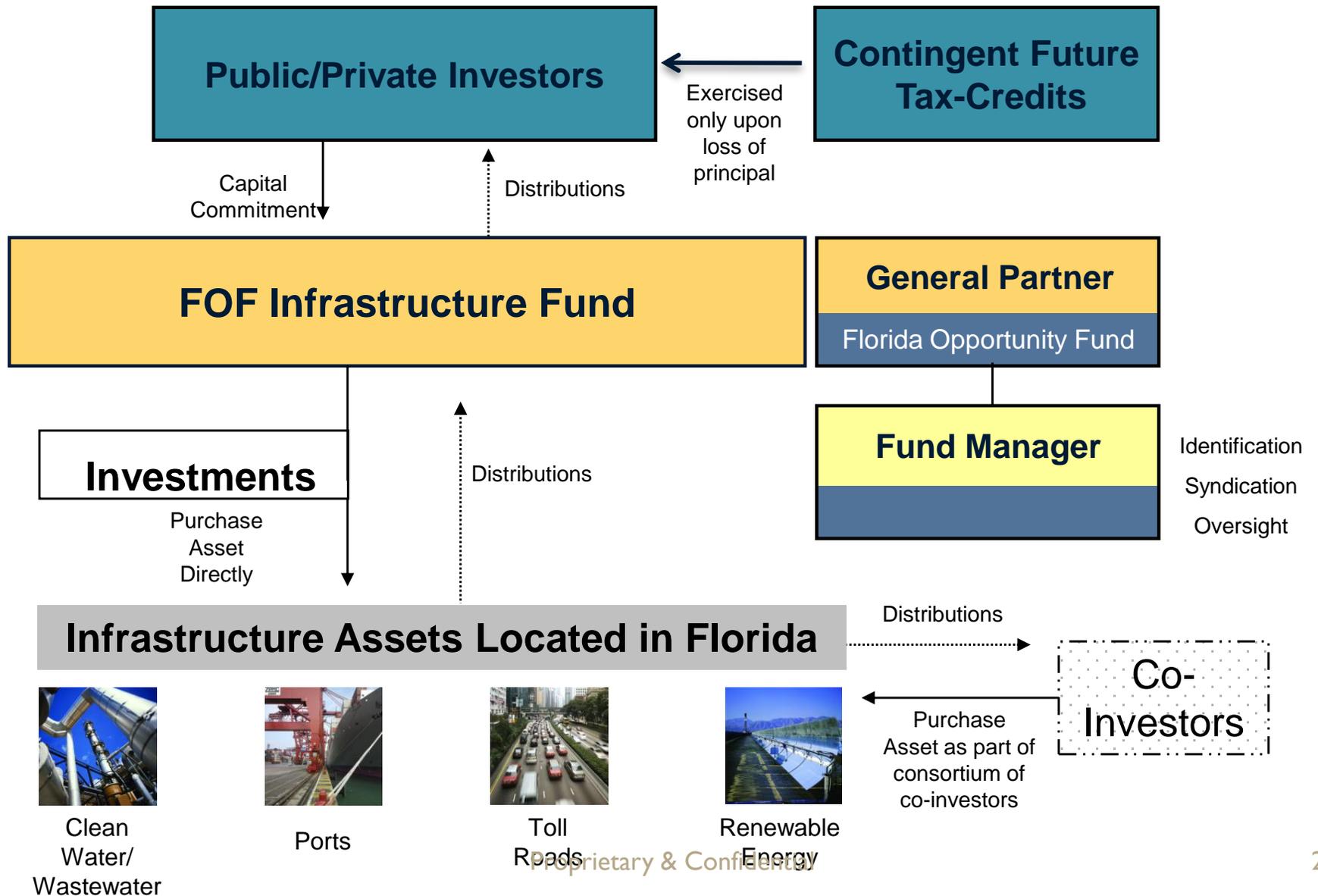
- Based on an initial survey of potential projects in Florida, the FOF believes that the investable opportunity set over the next 3-5 years dramatically exceeds the size of the proposed program
- Tremendous transportation infrastructure needs exist throughout the State for highways, seaports, airports, and transport
 - Florida DOT's 5-year work program exceeds \$36 billion, with nearly \$14 billion in capacity improvements
- For water and renewable projects contemplated over the next 3 – 5 years alone, over \$3 billion of investment will be required
 - Florida is one of the largest renewable energy producers with potential to create a market epicenter and create lasting, high wage jobs
 - Local/regional governments are exploring a \$1 billion water pipeline
- Port improvements exceed millions of dollars annually
 - Panama Canal expansion will bring large opportunities to Florida if its ports are prepared and expanded

Florida Opportunity Fund

Proposed Public/Private Infrastructure Program

- The FOF proposes the creation of a \$700 million FOF-managed infrastructure investment program (the "Fund")
- The Fund would be focused on Florida infrastructure opportunities in:
 - Transportation/Roads
 - Clean water/wastewater delivery and treatment
 - Renewable energy
 - Ports
 - Communications
 - Other sectors strategic to Florida
- The Fund would be supported by future contingent tax credits
 - These year 2024 contingent tax credits would only be used to guarantee a return of principal investment to Fund investors
 - Assuming the Fund merely generates historic industry average investment returns, NONE of these contingent tax credits would be used
 - Only in a downside scenario would the contingent tax credits be partially utilized in year 2024
- Regardless of the return scenario, the Fund will yield substantial and sustainable infrastructure projects, with value that is several times the amount protected by the State through tax credits

Potential Program Structure



Why Does the State need to be Involved?

- Enables sharp, sole focus on Florida infrastructure
- The State's involvement will:
 - Increase the flow of private capital into state projects
 - Leverage the state's backstop to attract private investment to invest into an Infrastructure Fund focused **solely** on Florida
 - Highlight infrastructure as a state-wide priority to maximize impact
- The Program's results will be felt state-wide
 - Improved infrastructure yields improved economic activity
 - Broad and significant job creation that remain in Florida
 - Virtuous cycle of growth, leading to potential increase in tax receipts
- By raising private capital, state funds can be deployed into other critical needs

Benefits to the State

The creation of a \$700 million FOF infrastructure fund focused on Florida infrastructure opportunities could potentially:

- Attract over \$6 billion of private capital to Florida from co-investors and project lenders, most from outside the State
- Create thousands of jobs in Florida that remain in Florida and speed economic recovery
- Accelerate the deployment of permanent infrastructure in Florida - a clear and absolute tangible benefit to Floridians
- Alleviate budget pressure by leveraging private capital to solve government needs
- Result in potentially NO costs to the State
 - If the Fund is simply able to return the original investment capital to its investors, the tax credits will not be used
 - The State will only incur program costs in the event that the infrastructure fund does not return the original investment capital, and even then would not be incurred until 2024

FLORIDA
OPPORTUNITY
F U N D

The logo for the Florida Opportunity Fund is contained within a white rectangular box with a thin black border. It features the words "FLORIDA", "OPPORTUNITY", and "FUND" stacked vertically in a gold, serif font. The letters "F", "U", "N", and "D" in "FUND" are spaced out horizontally. Below the text is a gold, curved line that resembles a rising horizon or a stylized arch.

FLORIDA OPPORTUNITY FUND

***COMBINING CAPABILITIES AND RESOURCES
TO DELIVER EXCEPTIONAL PERFORMANCE***

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Tab 5

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10-17-2011

Date

Bill Number

Name JASON ROTTENBERG

Phone 407 509 6088

Address 2601 ROSE ISLE CIRCLE

E-mail jason@mlcomvp.com

Street

ORLANDO FL 32803

City

State

Zip

Job Title MANAGING

PARTNER

Speaking: For Against Information

Appearing at request of Chair

Subject FOF

Representing _____

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Community Affairs
Health Regulation

SENATOR JEREMY RING
32nd District

October 10, 2011

President Mike Haridopolos
409 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear President Haridopolos,

I am requesting to be excused from all legislative business scheduled until November 15th due to my continued recuperation from my recent surgery.

Thank you in advance for considering this request to be excused from legislative business until the week of November 15th. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 32

Approved

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5094

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

- Judiciary Chair
- Budget
- Budget - Subcommittee on Education Pre-K - 12
- Appropriations
- Commerce and Tourism
- Communications, Energy and Public Utilities
- Governmental Oversight and Accountability
- Reappointment
- Rules

SENATOR ANITERE FLORES

Majority Whip
38th District

Approved 9/9/11

Mike H.

September 7, 2011

The Honorable Mike Haridopoulos
President of the Florida Senate
409 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear President Haridopoulos:

In the light of the October due date for the birth of my child, I will be unable to travel to Tallahassee for the September, October, and November interim committee meetings. Under Senate policy, I am writing to you in my capacity as chair of the Committee on Judiciary to request approval for excused absences from these meetings. I will work with Senator Joyner, the committee Vice Chair, and with Eric Maclure, the committee staff director, to plan the agendas for the meetings.

In addition, I have written to the respective chairs of the committees on which I serve to request excused absences from them. Because I need to miss multiple committee meetings, I wanted to apprise you as well. In this manner, I hope that this letter will serve as a global request to the Senate for an excused absence during this period.

Thank you for your consideration and your understanding. I look forward to working with you leading up to and during the 2012 Regular Session.

Sincerely,

Anitere Flores

CC: The Honorable Arshenia Joyner, Vice Chair, Committee on Judiciary
Ms. Debbie Brown, Interim Secretary
Mr. Craig Meyer, Chief of Staff

REPLY TO

- ☎ 10991 North Kendall Drive, Suite 300, Miami, Florida 33176 (305) 270-6500
- ☎ 315 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (904) 487-3140

Senate - Website - www.fl.senate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: SB 401

Case:

Type:

Caption: Senate Commerce and Tourism Committee

Judge:

Started: 10/17/2011 1:36:25 PM

Ends: 10/17/2011 3:15:48 PM

Length: 01:39:24

1:37:22 PM Tab 3 - Gray Swoope, President & CEO of Enterprise Florida, Inc.
2:17:52 PM Tab 4 - Jane Teague, Institute for the Commercialization of Public Research
2:35:24 PM Tab 5 - Jason Rothenberg, Florida Opportunity Fund
3:04:27 PM Tab 1 - Interim Project 2012-303 (Joyce Pugh)
3:10:44 PM Tab 2 - Interim Project 2012-302 (Joyce Pugh)