

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, November 1, 2011

TIME: 10:30 a.m.—1:00 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	Presentation by Chris Hart, President and CEO of Workforce Florida, Inc., on Florida's workforce system and current issues		Presented
2	Presentation by Mary Helen Kress, President and CEO of Suncoast Workforce, the Region 18 regional workforce board, on an overview and update on the regional workforce boards		Presented
3	Presentation by Mireya Eavey, Executive Director of CareerEdge, on an overview of the organization		Presented
4	Presentation by Monster.com on an overview of the company and what it does to connect employers and job seekers		Presented
Consideration of proposed committee bill (Mandatory Review 2012-302 - Open Government Sunset Review of Section 288.075, F.S., Public Records Exemption for Information Held by Economic Development Agencies):			
5	SPB 7014	OGSR/Economic Development Agencies; Amending provisions which provides public records exemptions for information held by economic development agencies; saving from repeal the exemption concerning plans, intentions, or interests of a private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state; saving from repeal the exemption for trade secrets; saving from repeal the exemption for proprietary confidential business information; saving from repeal the exemption for identification, account, and registration numbers and sales, wage, and tax data relating to a recipient of an economic development incentive; removing the scheduled repeal of the exemptions, etc.	Temporarily Postponed

Consideration of proposed committee bill (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):

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, November 1, 2011, 10:30 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SPB 7020	OGSR/Florida Opportunity Fund and the Institute for the Commercialization of Public Research; Amending provisions which provide exemptions from public records and open meeting requirements for the Florida Opportunity Fund and the Institute for the Commercialization of Public Research; reorganizing the exemptions by removing references to the Institute for the Commercialization of Public Research and transferring the exemptions relating to the institute to a new statute; clarifying that the exemptions pertaining to the Florida Opportunity Fund apply to prospective investments, alternative investments, and certain confidential proprietary information provided by a proprietor; reducing the time period during which proprietary confidential business information is confidential and exempt from disclosure; imposing criminal penalties on a person who willfully and knowingly violates the public records or public meetings exemptions pertaining to the institute, etc.	Submitted as Committee Bill

Other Related Meeting Documents

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

WORKFORCE FLORIDA INC.

Florida Workforce System Overview

FLORIDA SENATE

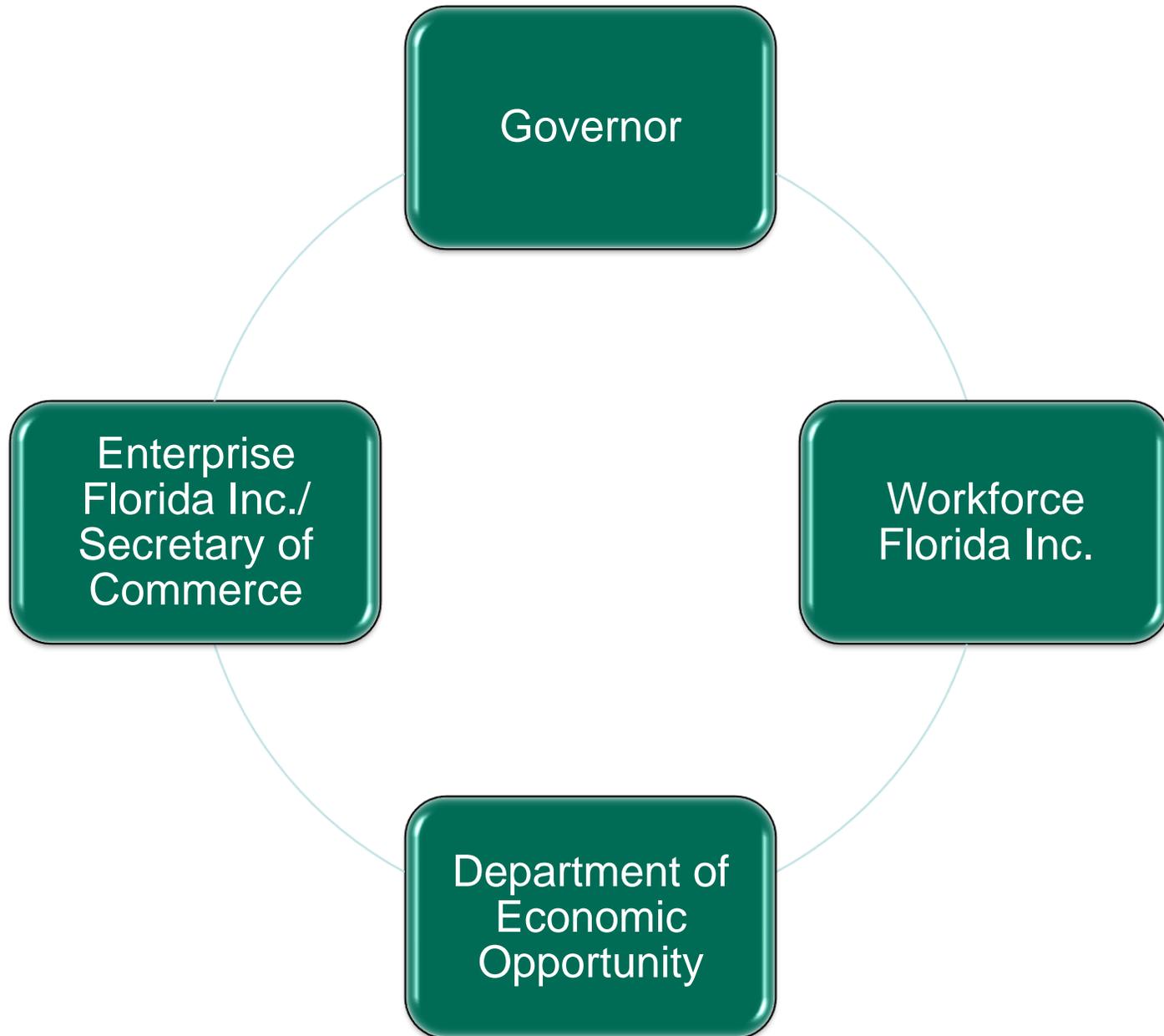
Commerce & Tourism Committee

Chris Hart IV, Workforce Florida President/CEO

November 1, 2011 • 10:30 a.m. ET



FLORIDA'S ECONOMIC DEVELOPMENT STRUCTURE



UNITED STATES DEPARTMENT OF LABOR

federal publications & guidance

- Public Law 105-220
- USDOL Employment and Training Administration Final Rule 20 CFR Part 652 et al.
- Office of Management and Budget Circulars A-110, A-122 & A-133

FLORIDA GOVERNOR

WORKFORCE FLORIDA INC.

DEPARTMENT OF ECONOMIC OPPORTUNITY

state laws, rules & policies

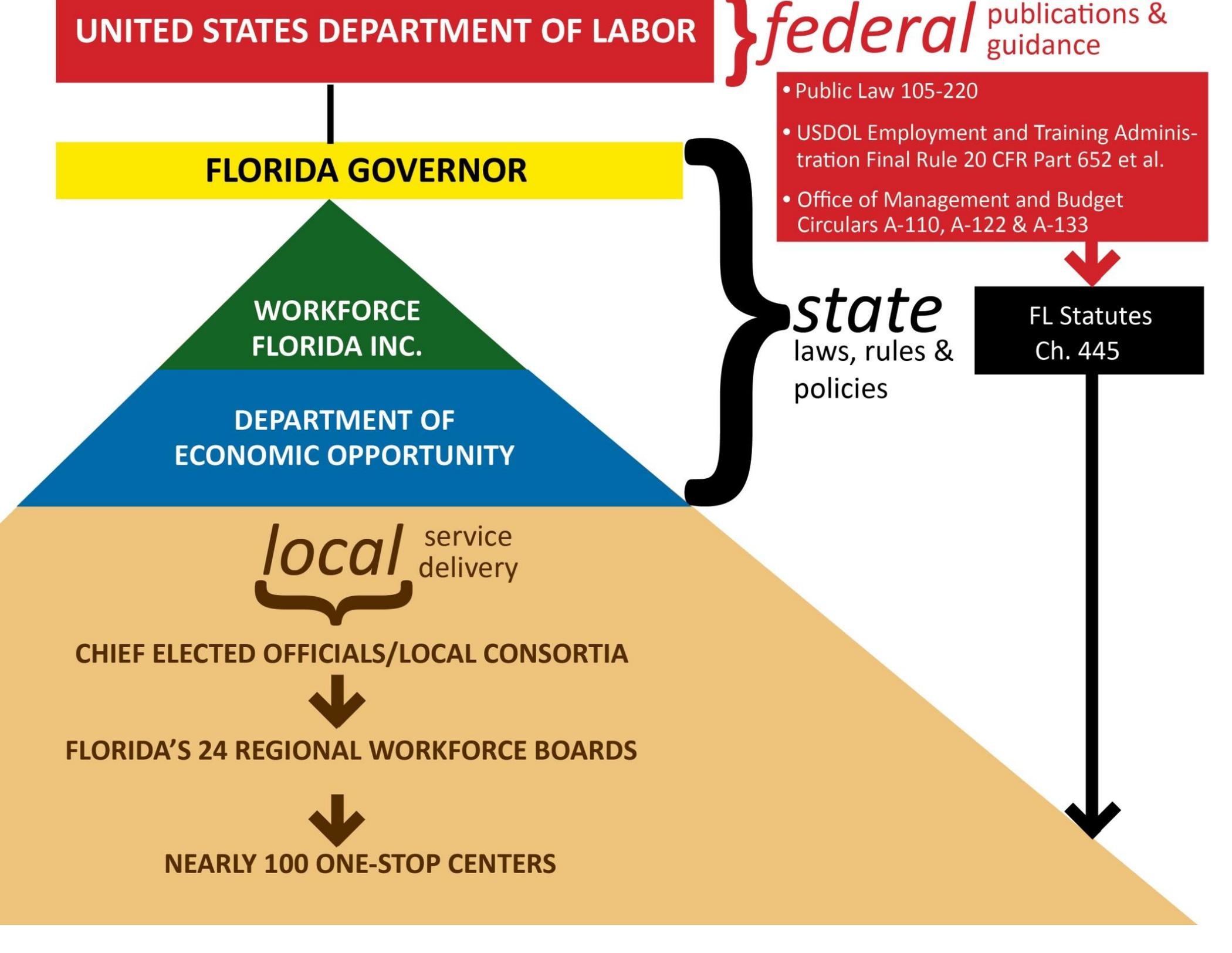
FL Statutes Ch. 445

local service delivery

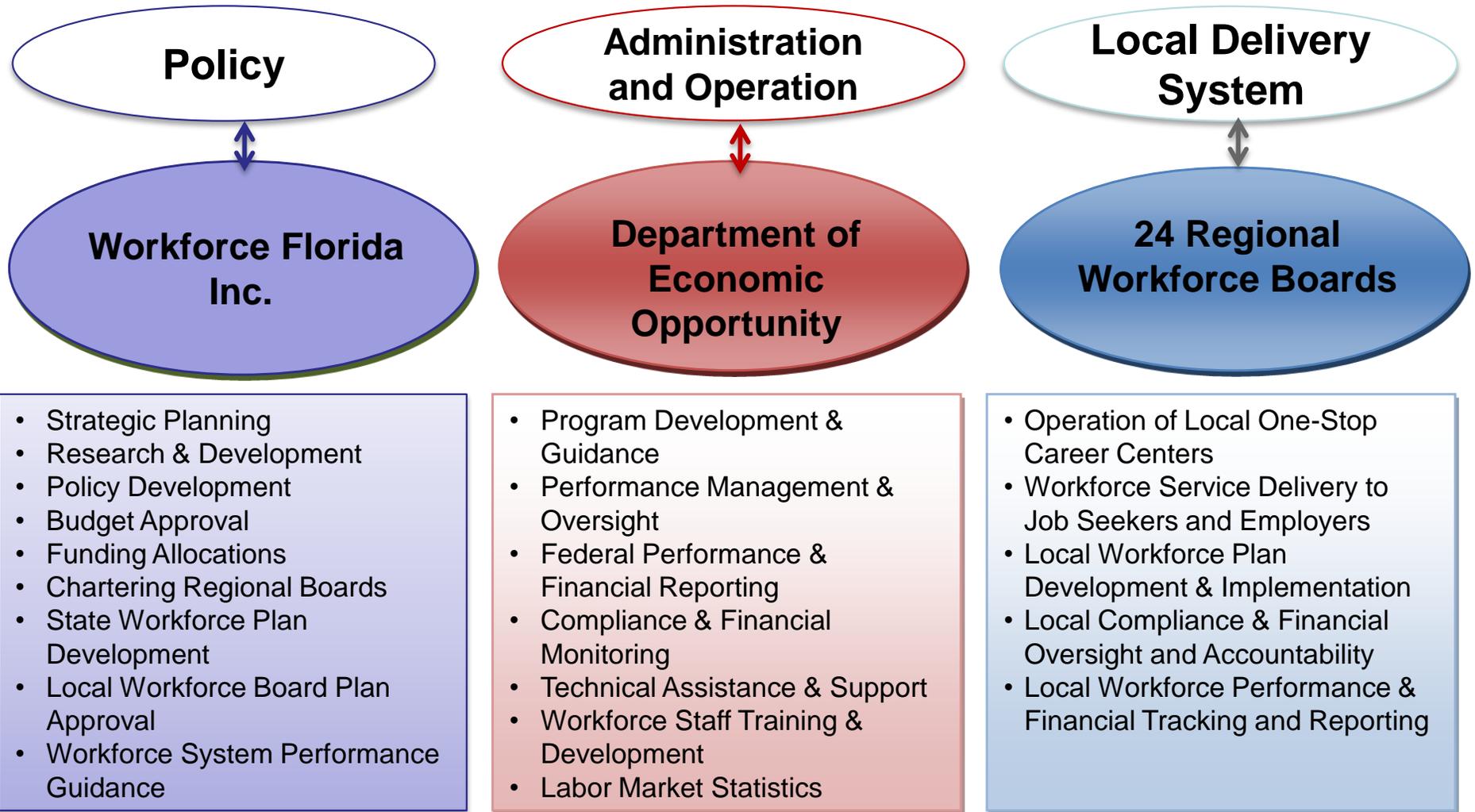
CHIEF ELECTED OFFICIALS/LOCAL CONSORTIA

FLORIDA'S 24 REGIONAL WORKFORCE BOARDS

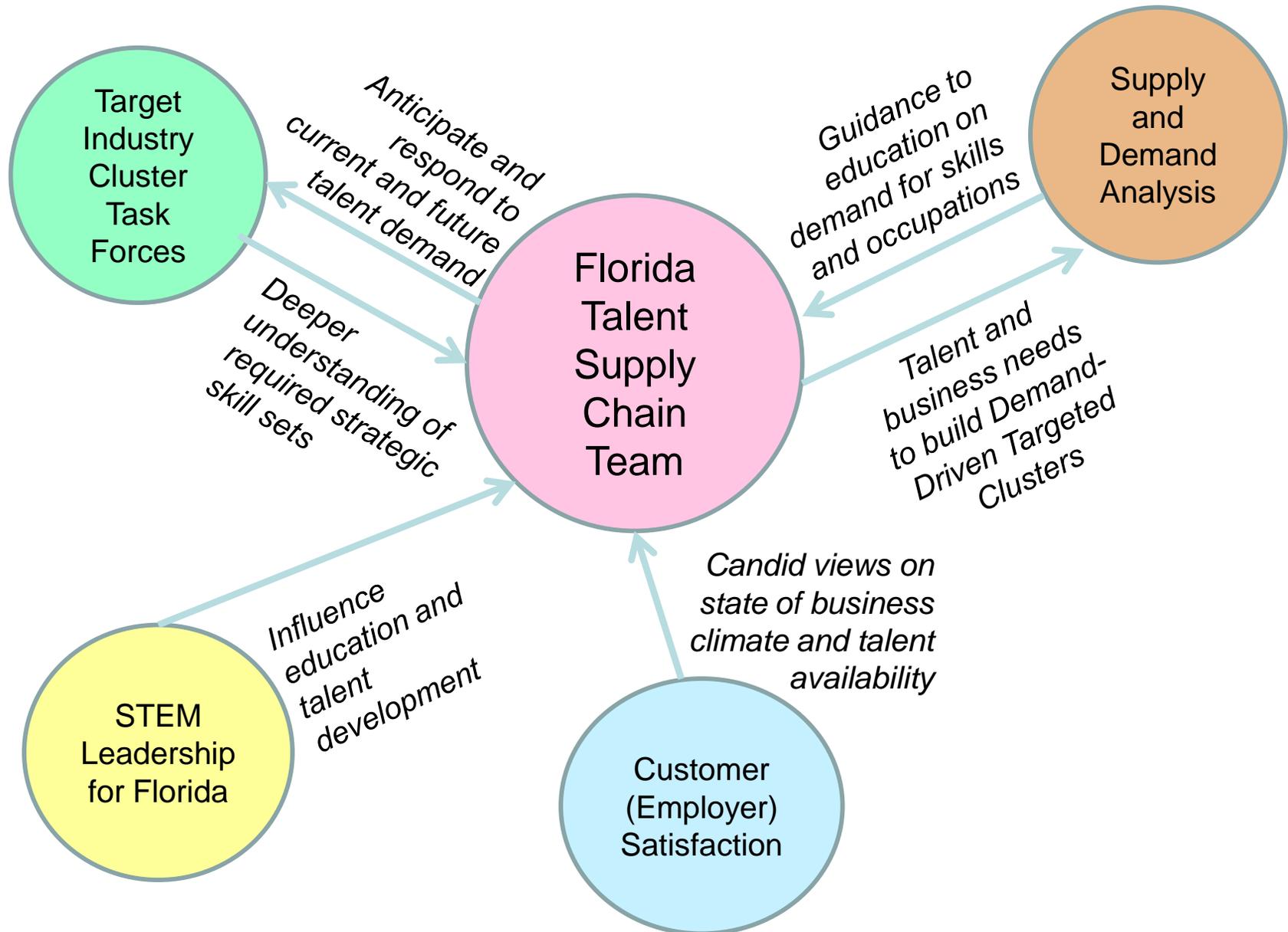
NEARLY 100 ONE-STOP CENTERS



FLORIDA'S WORKFORCE SYSTEM



WORKFORCE FLORIDA STRATEGIC PROJECTS: ADDRESSING BUSINESS' TALENT NEEDS



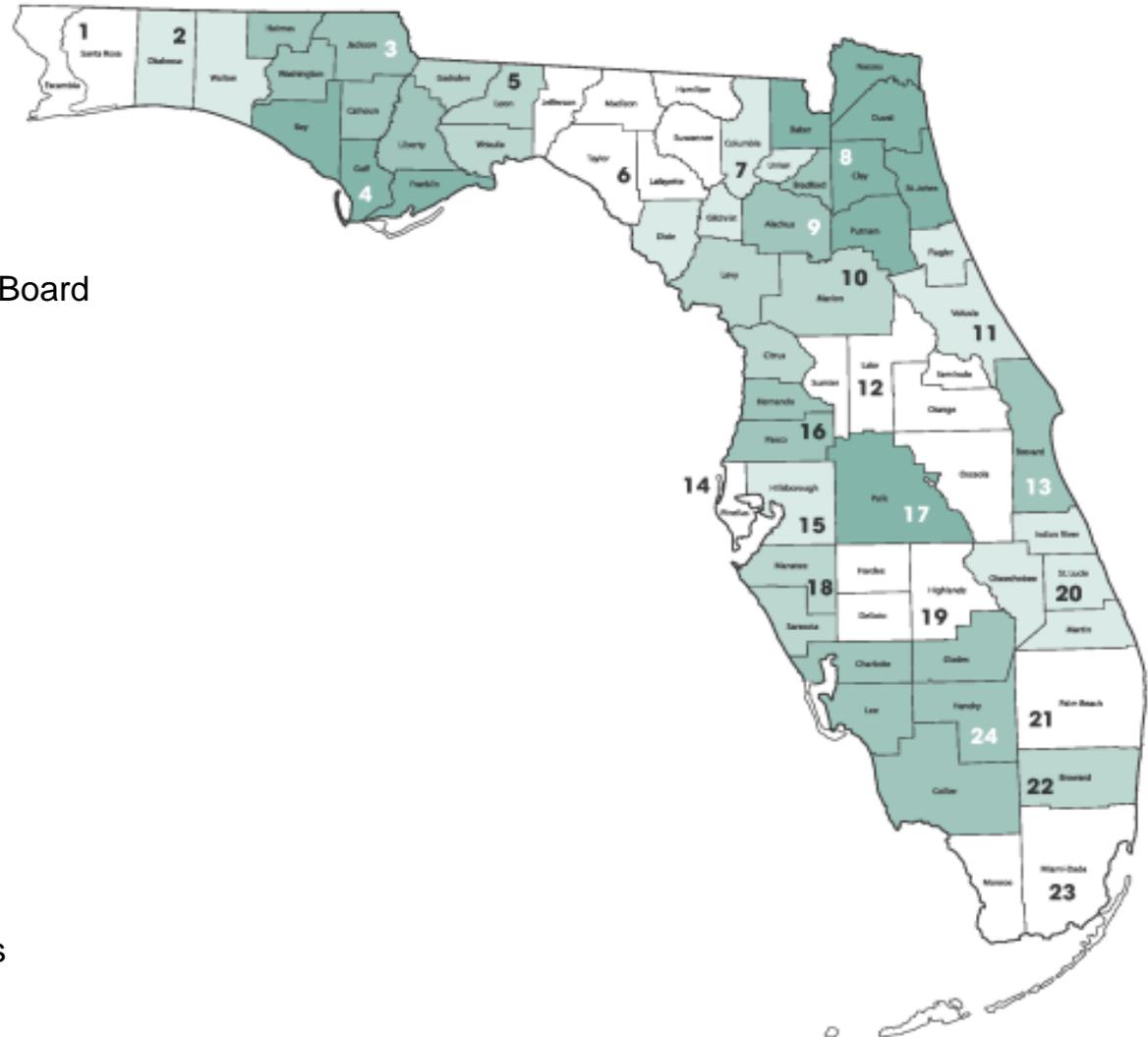
QUICK RESPONSE TRAINING

Provides partial reimbursement to new or expanding Florida businesses for customized training of employees. Also used to bolster job retention through skills upgrade.

- Support job creation
- Helped businesses provide training for more than 92,000 Floridians since 2000
- Trainees' wages increased 36.12 percent on average within 15 months of completing training
- For every public dollar invested, \$12.35 in private funds were leveraged
- State funded

FLORIDA'S WORKFORCE REGIONS

1. Workforce Escarosa
2. JobsPlus
3. Chipola Regional Workforce Board
4. Gulf Coast Workforce Board
5. **WORKFORCE plus**
6. North Florida Workforce Development Board
7. Florida Crown Workforce Board
8. WorkSource
9. FloridaWorks
10. Workforce Connection
11. Center for Business Excellence
12. WORKFORCE CENTRAL FLORIDA
13. Brevard Workforce
14. WorkNet Pinellas
15. Tampa Bay Workforce Alliance
16. Pasco-Hernando Workforce Board
17. PolkWorks
18. Suncoast Workforce
19. Heartland Workforce
20. Workforce Solutions
21. Workforce Alliance
22. WorkForce One Employment Solutions
23. South Florida Workforce Board
24. Southwest Florida Works



RECENT STATE ACCOUNTABILITY AND TRANSPARENCY ACTIONS

ACTIONS TAKEN BY WORKFORCE FLORIDA INC.

- Statewide policy prohibiting the expenditure of public funds for food, beverage, and dining activity adopted 12/16/09.
- Contracting review policy adopted 5/13/10 that established a review process for Regional Workforce Boards (RWBs) for contracts over \$25,000 with board members, relatives of board members, and board employees.
- Contracting prohibition policy adopted 8/18/11 that prohibits workforce board contracting with board members, with certain exceptions permitted at the board's discretion.

ACTIONS TAKEN BY THE FLORIDA LEGISLATURE

- FY 2010-11 and FY 2011-12 GAA proviso language prohibits RWBs, Workforce Florida, and the Agency for Workforce Innovation (AWI) from purchasing meals, food, or beverages for board members, staff, or employees of the RWBs.
- FY 2010-11 and FY 2011-12 GAA proviso language requires approval from AWI and Workforce Florida for contracts exceeding \$25,000 between a RWB and a member of that board that has any relationship with the contracting vendor.
- FY 2011-12 GAA proviso language requires that any expenditures by RWBs for outreach, advertising, or public relations must have a direct program benefit and the cost of promotional items which exceeds \$5,000 must be preapproved by AWI.



Regional Workforce Delivery in Florida

PRESENTATION BY SUNCOAST WORKFORCE, REGION 18, SARASOTA AND MANATEE COUNTIES

Mary Helen Kress, President & CEO

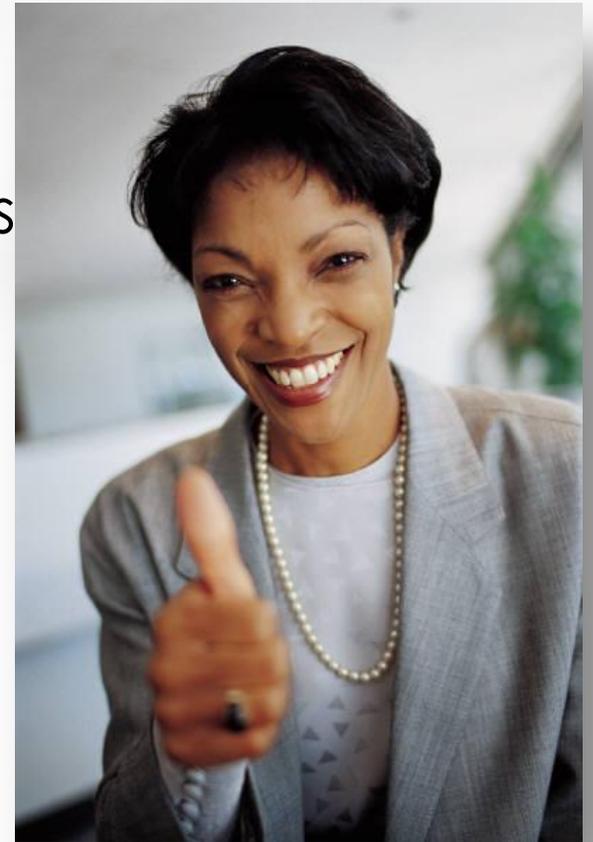
Dale Vollrath, Board Chair & President of TRC Staffing

Leslie Loveless, Chief Administrative Officer



Employer Focus

- **Growth Industries**: healthcare, hospitality, specialized technology and manufacturing
- **Employer Services**:
 - Recruiting and screening applicants
 - Providing skills upgrade training
 - Offering On-the-Job Training
 - Customized Job Fairs
- **Close partnerships** with Economic Development and Chambers of Commerce



Job Seeker Services



- Leveraging technology
- Assessing Skills
- Connecting to careers
- Providing training funds in targeted occupations
- Special Populations
 - Priority to Military Veterans
 - Putting cash recipients back to work
 - Working with youths
- Collaboration with Educators

Special Projects

- Bi-County Healthcare Initiative
- Community Entrepreneur Opportunity Committee
- Construction Technology Careers
- Digital Literacy
- Empowerment Project
- ETAM Grant
- Partner in Tampa Bay's "Florida Eight" Initiative



Contact Information

Leslie Loveless

Suncoast Workforce

3660 N. Washington Blvd.

Sarasota, FL 34234

Ph: 941.358.4080 ext. 1107

Email: LLoveless@SuncoastWorkforce.org



CareerEdge

Funders Collaborative Manatee Sarasota



Today's Presentation

- Mission
 - Results
 - Why CareerEdge Works
 - A National Model
 - Employers Testimony
 - Questions
- 

CareerEdge Mission

- Provide employers with qualified and skilled workers to make their businesses more competitive
- Help employees earn sustaining wages and advance workers into higher-paying jobs



Results: From Independent Evaluator

<u>Metric</u>	<u>Q2 Status</u>	<u>Preliminary Q3 Status</u>
Number Trained	732	1,265
New Job Creation	159	325
Certifications/Degrees	1,936	2,850
Promotions	8	39
Wage Increases	29	60
Employers Served	10	11



Quick Q3 Impact Analysis

Financial Data

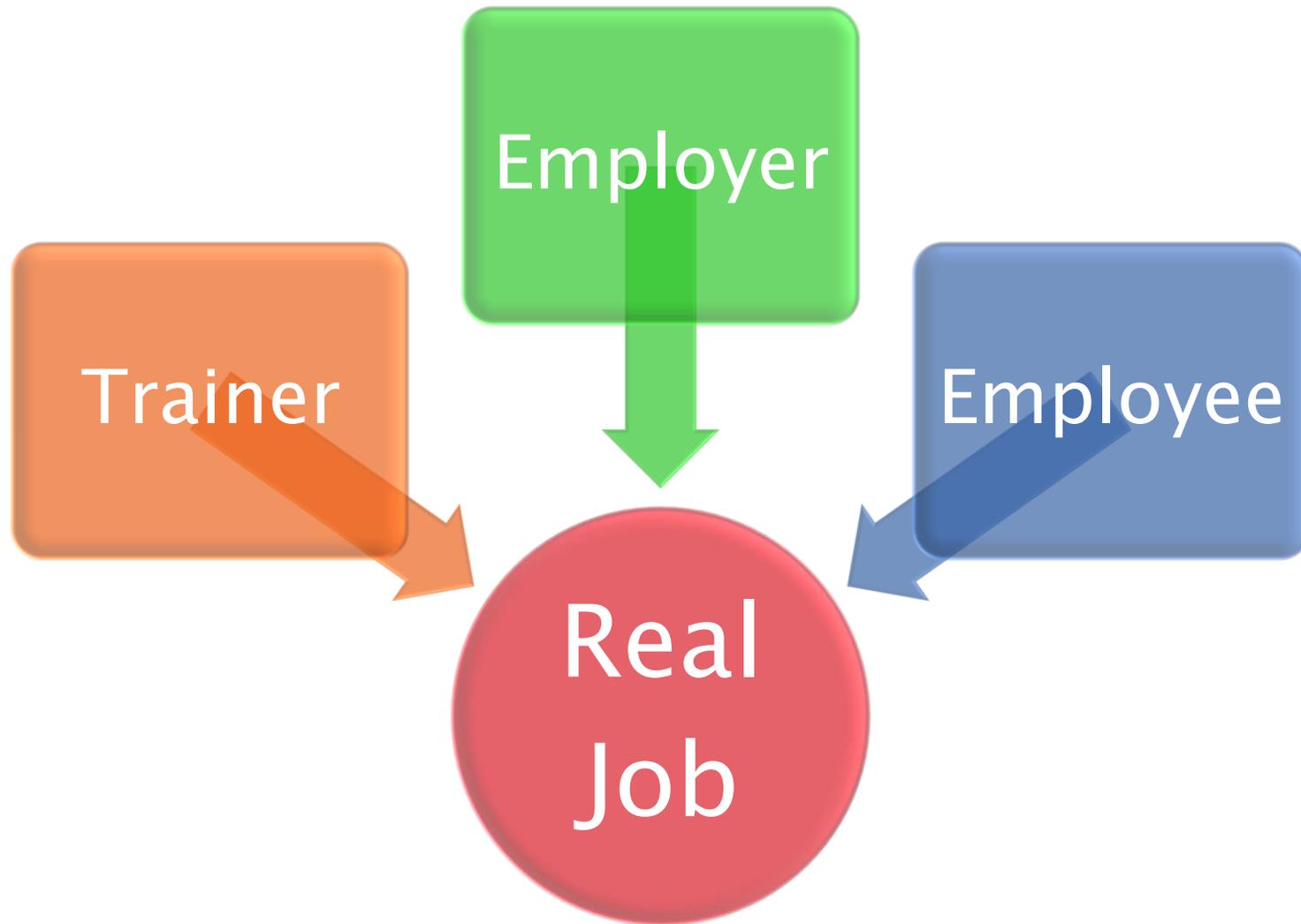
CareerEdge Investment	\$471,296
Employer Investment	\$333,368
Suncoast Workforce Investment	<u>\$69,220</u>
Total Investment	\$873,884

Extra Performance Metrics (Imputed)

Cost per job created	\$2,697	
Cost per worker trained	\$691	
Cumulative impact on annual earnings:		
Average hourly wage	\$ 14.00	
Average hourly increase	14%	\$2.00
Percent of workers receiving increase	60%	
Annual increase from CE-funded programs	\$ 3,096,720	

The \$3.1 million comes from the following formula: The average hourly increase (\$2.00) times 2040 hours per year times the # of workers trained times 60%.

CareerEdge Simple Model



Why Does CareerEdge Work?

- Utilize labor analysis for growing industry sectors
 - Solve the employers workforce problems
 - Focus on results, **NOT** transactions
 - Invest flexible capital with employer skin in the game
 - Partner with EDC's, chambers, training provider and workforce board
 - Use independent evaluator for credibility
 - Keep it simple
- 

\$4 Million over 4–Years

▶ Private

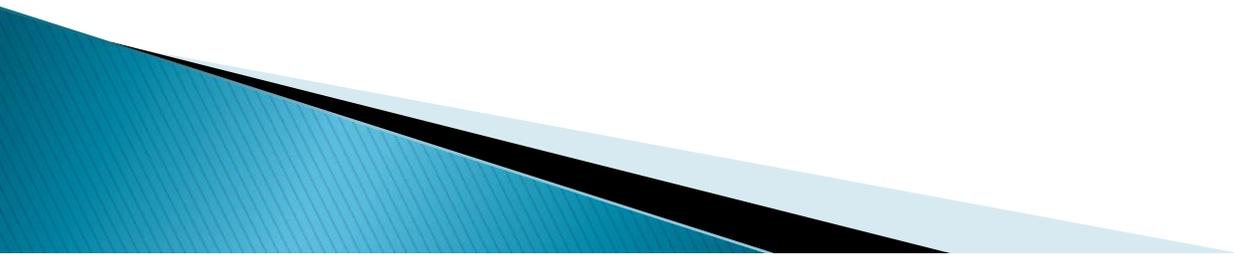
- ▶ Bank of America
- ▶ Gulf Coast Community Foundation
- ▶ John S. and James L. Knight Foundation
- ▶ Jane's Trust
- ▶ Microsoft
- ▶ The National Fund for Workforce Solutions

▶ Public

- ▶ Bradenton Downtown Development Authority & 14th Street CRA
- ▶ Central Community Redevelopment Agency
- ▶ City of Sarasota CRA
- ▶ Sarasota County Government

Employer Testimony

- ▶ <http://www.youtube.com/watch?v=jW58U9eZCVw&feature=uploademail>



Contact Information

- ▶ Mireya Eavey, Executive Director
- ▶ 302 Manatee Ave East, Suite 230
- ▶ Bradenton, FL 34208
- ▶ www.careeredgefunders.org
- ▶ (941) 744-2661



Training the Next Generation of Skilled Workers

Healthcare | Manufacturing | Technology | Transportation



CareerEdge
Funders Collaborative Manatee Sarasota

BRADENTON | SARASOTA



CareerEdge is the first Funders Collaborative designated as a National Fund for Workforce Solutions site in the Southeastern United States. CareerEdge uses donated funds to create a skilled labor pool in the Manatee-Sarasota region and helps local employers find the talent they need.

Through collaboration and partnerships, CareerEdge helps the region's economic development by bringing employers and employees together. CareerEdge creates a better career path for local workers and helps local employers advance their incumbent workers into higher-skill/higher-wage positions, and that thereby opens entry-level positions that can be filled by newer, less-skilled entrants to the workforce.

As an entrepreneurial alliance composed of businesses, city and county governments, educational institutions, philanthropic foundations and community organizations, CareerEdge will strengthen and advocate for workforce development to make a lasting impact here in the Manatee-Sarasota region.

CareerEdge is pooling local, state and national funds in the form of flexible capital to be used as targeted grants for proaction projects and workforce solutions and public policy advocacy.

CareerEdge's Workforce Goals

CareerEdge has three main objectives:

- Assisting local businesses with developing the skilled, loyal employees they need to help their businesses thrive and grow
- Creating flexible, long-term solutions to help low and moderate-wage workers improve their earning abilities through demand-driven training, capacity building and public policy advocacy
- Securing collaborations and partnerships with funders to develop and continue to offer magnifying impact for economic growth in our region

CareerEdge is an independent collaborative unrestricted by the regulations that encumber traditional government organizations, and because of this advantage, CareerEdge can efficiently offer creative solutions to benefit the employees and employers we serve.

What Can CareerEdge Do for Employees?

SCCE
ATTITUDE IS EVERYTHING
STATE COLLEGE OF FLORIDA



At CareerEdge, we work with you – our local employers – to provide the resources and skills training your employees need to obtain and maintain long-term, rewarding, higher-earning careers.

CareerEdge will help you improve your employees' career potential within your company by:

- Working with you to help you assess your employees' skills, identify their key talents and overcome employment barriers
- Providing you with training assistance or identifying resources to help your low- and moderate-wage workers improve their employability
- Helping you create advancement opportunities within your company through educational coursework, college preparation training and bridge programs
- Identifying public services and income support to assist your workers while they improve their career prospects
- Informing you of private or public funding options that can help your low- and moderate-wage workers finance their education

CareerEdge can provide you with the resources you need to help your workers improve their skills and secure a higher paying job. Please visit CareerEdge's website at careeredgefunders.org for more information.

What Can CareerEdge Do for Employers?

CareerEdge recognizes that local employers drive growth and bring prosperity to the Manatee-Sarasota region, and cannot reach their full potential without a skilled, productive workforce.

Through its programs and grants, CareerEdge can assist employers by:

- Partnering with you to manage career paths and foster development and loyalty within your current workforce
- Keeping you up-to-date on public workforce programs and strategic planning solutions that will result in better retention for your organization
- Focusing on solving problems faced by workers and businesses
- Helping you think outside the box for better succession planning
- Providing career coaching, case management and other support services

As an employer, you are a vital member of the Manatee-Sarasota community. CareerEdge has unique insights and capabilities to give you the support and information you need to take your business to the next level. If you'd like to contact CareerEdge, please email us at employers@careeredgefunders.org.



CareerEdge Quick Facts



CareerEdge engages employers and workers to improve economic development in the Manatee-Sarasota region through various channels. Some of the key areas CareerEdge promotes:

- **Needs assessments** — by finding gaps in worker training and education needs, employer skill requirements and public workforce development systems
- **Skilled workforce training** — by focusing on fast-growing healthcare, manufacturing, transportation and technology sectors in Manatee-Sarasota
- **Partnerships** — by reaching out to employer partners, providing information and finding long-term solutions to workforce challenges
- **Agency communication** — by recommending employer needs and workforce training and education requirements to the appropriate institutions and public agencies
- **Administering grants** — by using funding from private and public sources to conduct outreach efforts, facilitate solutions and measure progress
- **Fostering relationships** — by working with workforce leaders and key representatives
- **Advocacy** — by improved public workforce programs demonstrating best practices and fostering public-private partnerships
- **Accountability** — by rigorously measuring program outcomes, communicating results and applying lessons learned to foster future success

Our Founding Funders

Through collaborations with our funders, CareerEdge advocates more effective workforce public policy, building workforce partnerships and creating regional capacity through a variety of activities and programs. CareerEdge couldn't provide its much-needed services to the region without the support and generous funding from our partners.

The CareerEdge Founding Partners in this public-private initiative are:

- John S. and James L. Knight Foundation
- The Central Community Redevelopment Agency
- The Bradenton Downtown Development Authority
- The Bradenton 14th Street CRA
- The Gulf Coast Community Foundation of Venice
- Bank of America
- The Manatee Community Action Agency

How Can You Become a Funder?

If you are interested in helping CareerEdge in bringing private, public and philanthropic organizations together to build the region's economic capacity, there are many ways you can become involved. CareerEdge works diligently to assemble funding for its employer and employee programs and to inspire collaboration among its generous funders. We invite you to email CareerEdge at funders@careeredgefunders.org for more information about joining forces with us.



Please visit our website for details about CareerEdge programs and services:
www.careeredgefunders.org

You can also contact us via email: info@careeredgefunders.org

Optimizing the Florida Jobs Marketplace



monster.com
Your calling is calling™

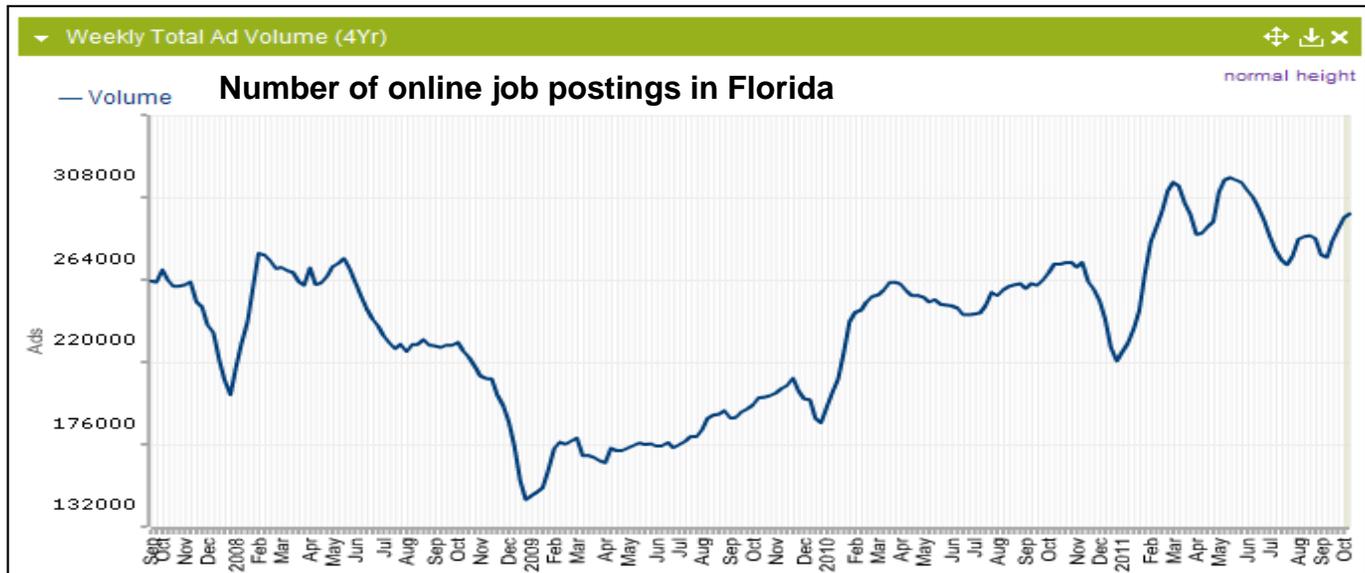
November 1, 2011
The Florida Senate Commerce and Tourism Committee

The Harsh Reality

973,000* people receiving unemployment benefits in Florida



287,200** unique job postings online in Florida



- 14,626 Mechanics and Installers
- 12,394 Customer Service
- 9,518 Personal Care
- 5,627 Internships

*U.S. Bureau of Labor Statistics, September, 2011

**Wanted Technologies, Help Wanted Online October, 2011



Companies Aren't Getting the Employees They Need

Dr. Peter Cappelli, in The Wall Street Journal



More than 50% of U.S. companies have difficulty filling open positions

Dr. Cappelli is the George W. Taylor professor of management at the Wharton School and director of Wharton's Center for Human Resources. He can be reached at reports@wsj.com.

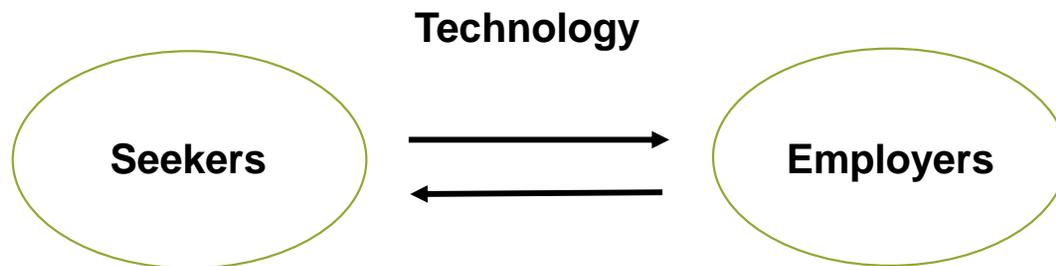
*Wall Street Journal, October 24, 2011
<http://tinyurl.com/3nz676g>

The Challenge: Matching Job Seekers to Jobs

- **Structural unemployment** - is a form of unemployment resulting from a mismatch between demand in the labor market and the skills and locations of the workers seeking employment.
- **Systems Inefficiencies** – Employers and job seekers match inefficiently. Job seekers do not “know” what options exist for employment. Employers have a difficult time sifting through excessive amounts of unqualified candidates.

Characteristics of a “World Class” Labor Exchange System

- The ideal labor marketplace



- Built from the users perspective (seeker & employer)
- Smart matching technology and automation is a MUST
- Cutting Edge - Mobile Technology, Facebook, Twitter
- RESULTS for Job Seeker / Employer
- Fills existing jobs faster and Creates new Jobs

4. Things Florida can do ...

...to address structural unemployment and create a world class employment marketplace

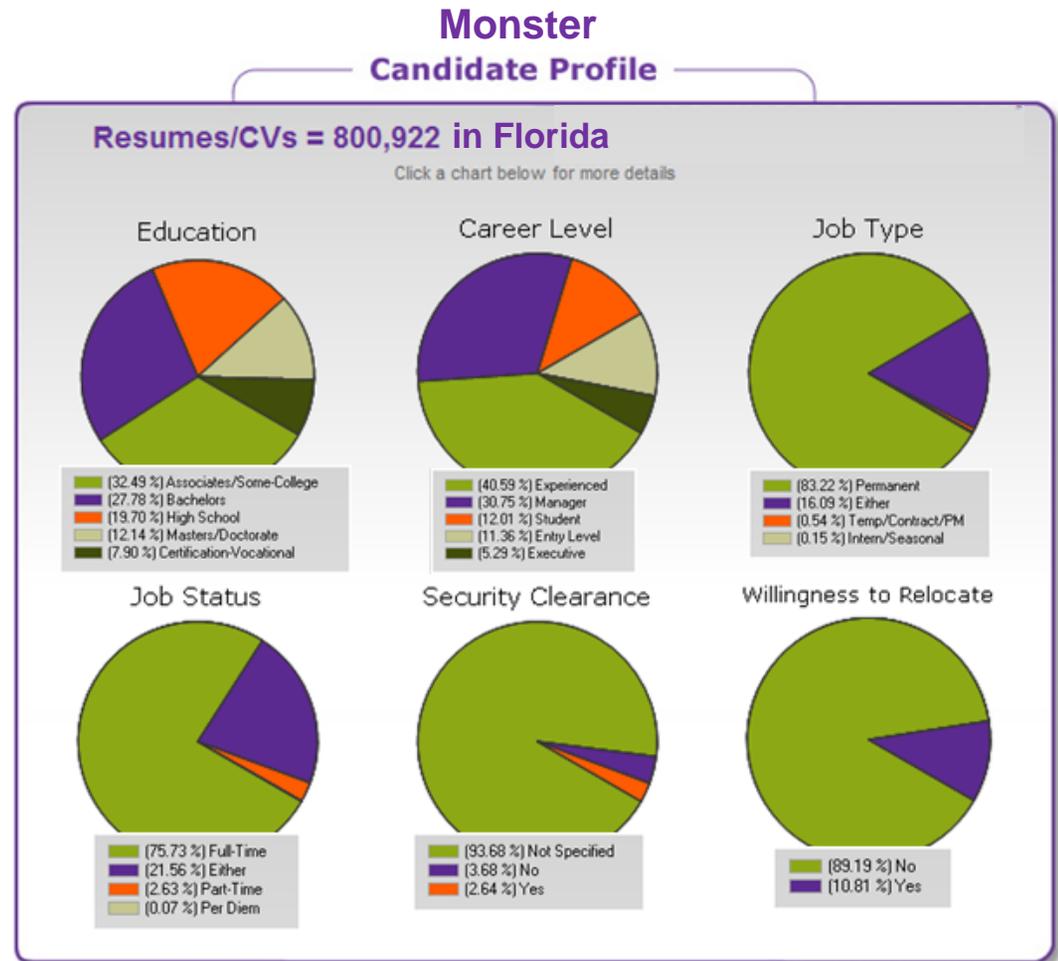
1. Increase the labor supply in the system
2. Use next generation matching to overcome system inefficiencies
3. Use automation
4. Leverage analytics to drive economic development and create new jobs

1. Increase the Available Labor Supply

Resumes currently in EFM	400,000
Florida resumes in Monster.com	800,000
People wanting to relocate to Florida in Monster.com	500,000
TOTAL	1,700,000

Increase of 425%

- Additional sources of labor supply
 - > Colleges and Universities
 - > State agencies
 - > Other



2. Adopt Best of Breed Next Generation Technology

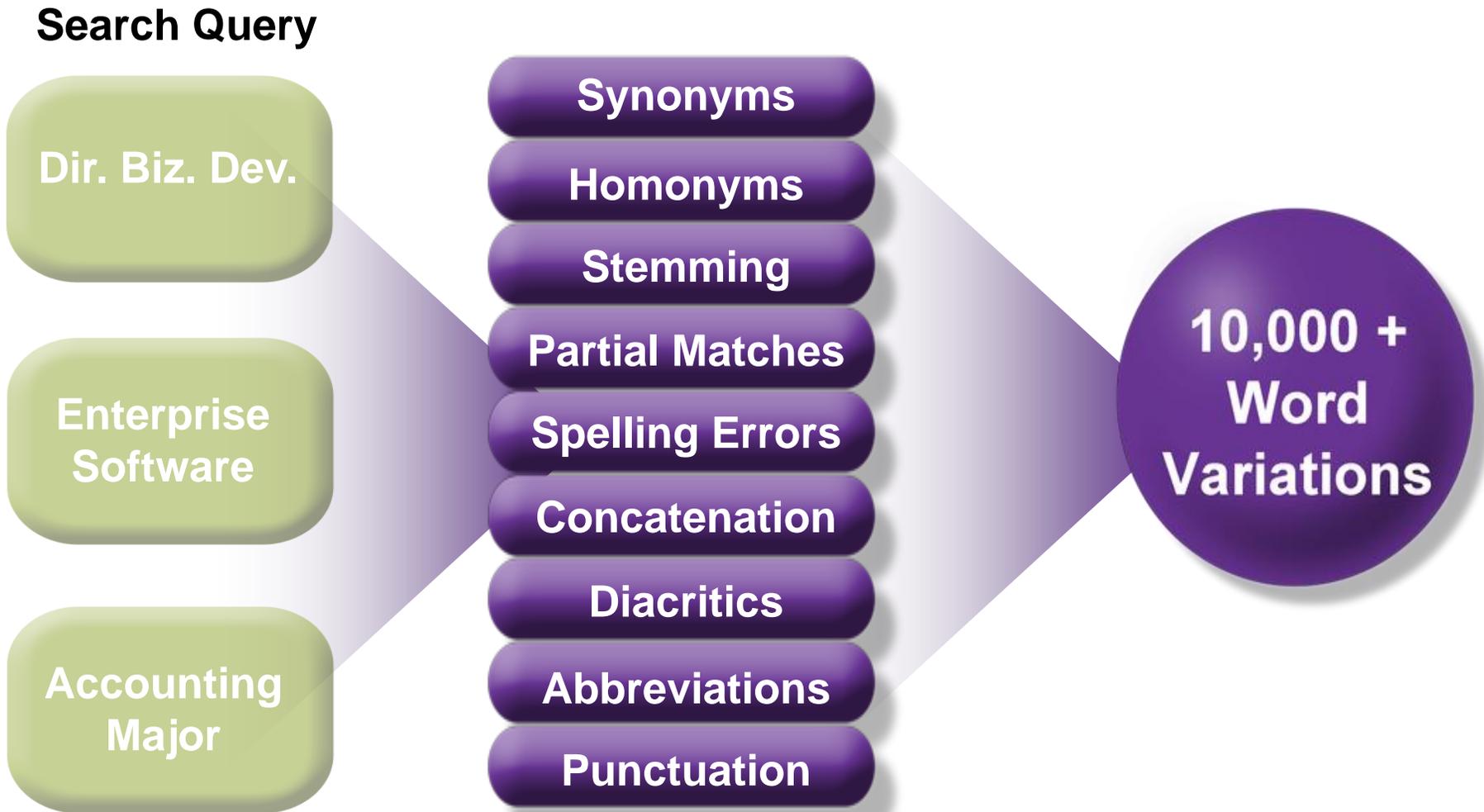
There are more than 40,000 online job boards...*
...All of them use the same outdated technology



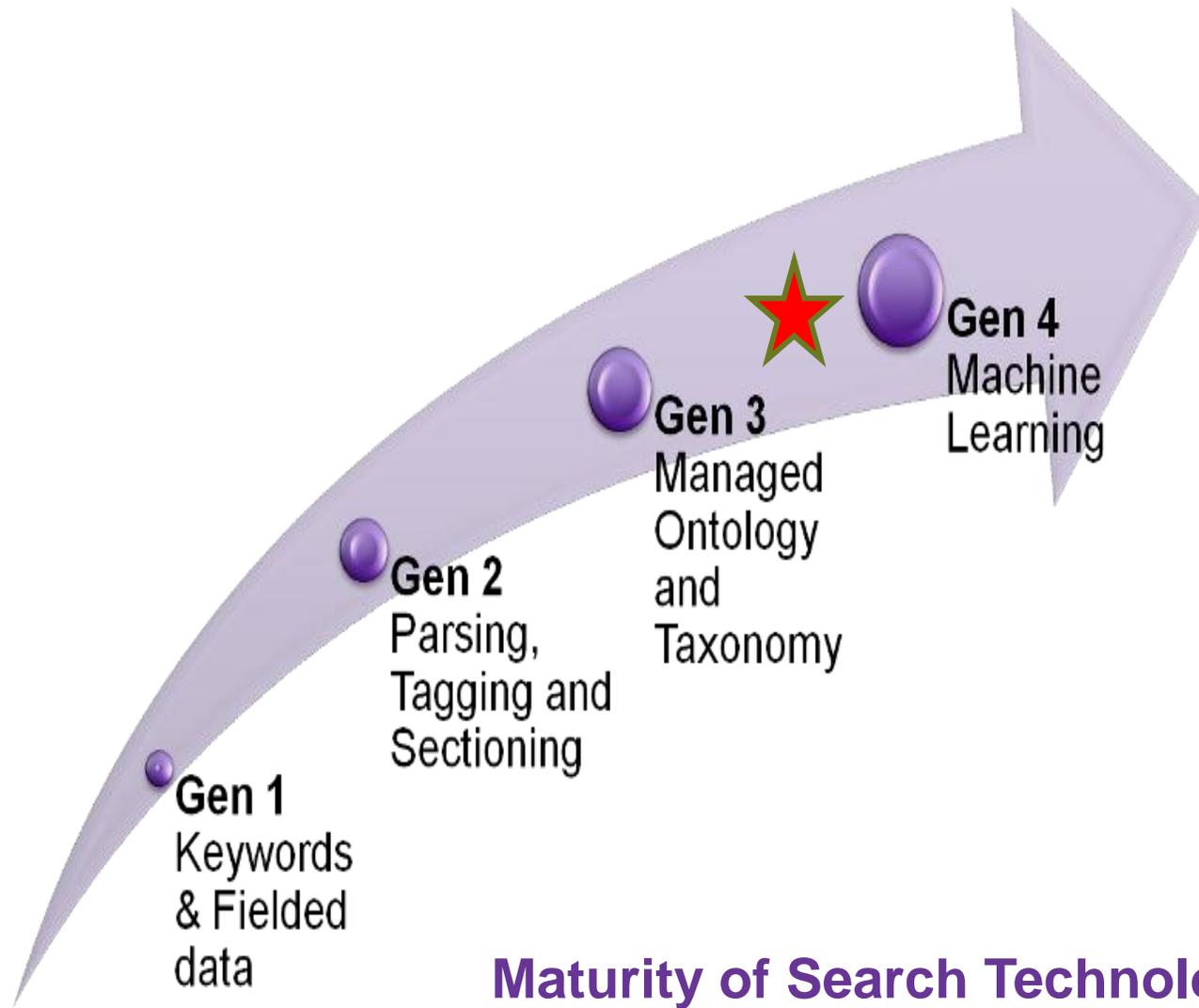
Category, location, keyword, and Boolean (AND, OR, NOT) matching is “old” technology and it is NOT effective.

*International Association of Employment Web Sites
<http://www.employmentwebsites.org/>

The Common Search Problem



“Next Generation” Matching Technology



monster®

“Next Generation” Matching Technology

Monster’s New Resume Search Is a Winner

Posted By [John Zappe](#) On November 19, 2009 @ 7:15 pm In [Featured](#), [News and Features](#) | [13 Comments](#)



^[1]When Monster bought Trovix in the summer of 2008, the [blogosphere popped with wonder](#) ^[2] at how the job board would make use of Trovix’ job matching technology.

[Forrester Research analyst Zach Thomas suggested](#) ^[3] that, “By making this acquisition, Monster is putting a real emphasis on search and they believe it will help them leap-frog the competition.” [Others were less generous](#) ^[4].

The answer has been coming ever since Monster began beta testing Power Resume Search several months ago. A few weeks ago, confident that its \$100 million investment was the homerun it expected, Monster turned Power Search live, premiering it during an analyst meeting that was also webcast over a marathon five hours or so.

Tuesday, the company demoed the new search for a group of recruitment consultants and bloggers. And the result was no mere home run; think grand slam.

In a word, Monster’s new Power Resume Search is stunning. Stunning in its simplicity. Stunning in its speed. Stunning in its ability to intuit skills from a title, and to rank and rerank the resulting candidates depending on what skills and other qualities you decide important. Stunning in its potential for changing the job board business.

Source: ERE.net November, 2009

monster®

Monster's 6Sense Search Technology

accounting 5 years experience

POWERED BY OUR
6sense
SEARCH TECHNOLOGY

Don't Search. Match.

Retire recruiting with Monster Power Resume Search™ the new and most advanced way to find your next hire. Powered by Monster's patented 6Sense™ search technology, Power Resume Search™ delivers unrivaled results with precision, speed and accuracy. Results sorted and ranked. Results compared side by side. Results to make you the next company hero. Stop searching. Start matching. Only at Monster.com.

6.8 match
9.6 match
8.0 match

GET A **monster** ADVANTAGE



- Provides unrivaled candidate matches
- Understands concepts and context
- Bases matches on actual, relevant experience, skills, education, and more
- Automatically sorts, scores, and ranks
- Provides at-a-glance comparisons

Concept and Context-Based Searching

- Knows the difference between:
 - > George Washington University
 - > Washington Mutual
 - > 123 Washington Avenue
 - > Mike Washington
- Evaluates the length of time using a skill or holding a job.
 - > 10 years of experience vs. 1 year
- Understands difference between recent and dated experience.
 - > Engineer now vs. Engineer 10 yrs ago



EXPERIENCE:

11/2010 - 5/2011 Gerson, Preston, Robinson & Miami Beach, FL
Company, P.A., Certified
Public Accountants
Industry: Accounting and Auditing Services
Accountant
Provided accounting and tax services to a wide range of domestic and foreign
companies and individuals during the past tax season. Software products utilized:
ProSystem, QuickBooks, and Excel.

7/1982 - 7/2010 Kathryn Rawls Posten, Coral Gables, FL
Certified Public **Accountant**;
B.D. Rawls, Certified Public
Accountant
Industry: Accounting and Auditing Services
Accountant
Throughout my career with this local accounting firm, I have provided my clients with a
wide range of accounting and tax services. In addition to the preparation of individual,
corporation, and partnership tax returns, I have experience in the preparation of Form
990-PF (Return of Private Foundation), Form 1041 (U.S. Income Tax Return for Estates
and Trusts), and Form 5500 (Annual Return/Report of Employee Benefit Plan). Besides
individual taxpayers, my corporate and partnership clients have included securities and
real estate investors, lessors of residential and nonresidential properties, retailers, and
farmers. I am adept at using Creative Solutions Accounting software products.

7/1980 - 7/1982 Laventhol & Horwath, Coral Gables, FL
Certified Public Accountants
Industry: Accounting and Auditing Services
Senior Accountant, Staff Accountant
During my years with Laventhol & Horwath, I worked on a wide range of assignments
encompassing a broad diversity of companies in manufacturing, service industries,
wholesaling, and retailing. In addition to audit, review, and compilation engagements for
businesses, I worked on personal financial statements, as well as tax returns for both
large and small jobs. When I was promoted to Senior, I became responsible for entire
engagements with selected clients.

1/1980 - 7/1980 Loeb & Troper, Certified New York, NY
Public Accountants
Industry: Accounting and Auditing Services
Junior Accountant
Loeb & Troper is a medium-size firm numbering approximately one hundred. The
company offers services in all major divisions of the profession. My duties involved
transaction testing and auditing in the areas of cash, inventory, receivables, and
payables.

6/1974 - 1/1980 Metropolitan Life Insurance New York, NY
Company
Industry: Insurance
Senior Expense Analyst
Specific duties included: (1) preparation of special instructions to enable the Field to
develop their MAS budgets, (2) analysis of Field budgets, compensation, non-
compensation, and capital budgets, (3) analysis of Head Office MAS accountability
expense reports for CEO, (4) preparation of expense portion of Field five-year plan, and
(5) miscellaneous expense studies.

EDUCATION:

8/1976 - 6/1979 The Bernard M. Baruch US-NY-New York
College of The City University
of New York
Master's Degree
Major: Accounting
GPA: 3.6

9/1970 - 6/1974 Hofstra University US-NY-Hempstead
Bachelor's Degree
Major: Business Management
Minor: Psychology
Graduated with Departmental Honors

CERTIFICATION:

Certified Public **Accountant**



10.0
match

Robert Burd
Aventura, FL| Master's Degree

- Accountant, Gerson, Preston, Robinson & Company, P.A., Certified Public Accountants

3118 N.E. 210 Terrace
Aventura, FL 33180
US
Home: 305-466-2810
Mobile: -
happy1761@aol.com

Resume updated 3 months ago

Experience 36.6 yrs

Authorization US Authorized

Desired Salary -

Relocation Will Relocate

Source Monster

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[Send letter](#)

[Rate candidate](#)

[Update Status](#)

[Block candidate](#)

Resume
Candidate Detail **NEW!**
Additional Info

● = Meets job requirements

Experience/Work History

2010 - 2011	● Accountant	Gerson, Preston, Robinson & Company, P.A., Certified Public Accountants
1982 - 2010	● Accountant	Kathryn Rawls Posten, Certified Public Accountant; B.D. Rawls, Certified Public Accountant
1980 - 1982	● Senior Accountant, Staff Accountant	Laventhol & Horwath, Certified Public Accountants
1980 - 1980	● Junior Accountant	Loeb & Troper, Certified Public Accountants
1974 - 1980	Senior Expense Analyst	Metropolitan Life Insurance Company

Education

1979	Masters Degree	The Bernard M. Baruch College of The City University of New York
1974	Bachelors Degree	Hofstra University

Skills match

	Other skills	Last Used	Years
-	Tax Accounting	04/2011	28.5
	Intuit Quickbooks	04/2011	0.5
	Tax Software	04/2011	0.5
	Tax Returns	06/2010	30.0
	Employee Benefits	06/2010	28.0
	Accounting	06/2010	28.0
	Domestic Tax	06/2010	28.0
	Securities	06/2010	28.0
	Residential Real Estate	06/2010	28.0
	Real Estate	06/2010	28.0
	Accounting Software	06/2010	28.0
	Diversity	06/1982	2.0
	Manufacturing	06/1982	2.0
	Financial Statements	06/1982	2.0
	Auditing	06/1980	0.5
	Accounts Payable	06/1980	0.5

Comprehensive analysis results in accurate scoring

Compare Candidates Print Move all to folder			
Candidate	9.5 match Julie Robinson In-House Counsel /Controller January 2011 - Present US Authorized Add to folder Remove	9.2 match Christopher Davis Senior Staff Accountant US Authorized Add to folder Remove	8.7 match Lisa Andersen - US Authorized Add to folder Remove
Location	Orlando, FL	US-Tavares	Valrico, FL
Most recent job title Most recent company	In-House Counsel /Controller January 2011 - Present	Senior Staff Accountant Katzman, Garfinkel & Berger	- QualaWash Holdings, LLC, Bulk Container Cleaning Service
Experience	In-House Counsel /Controller January 2011 - Present (2.7 years) Senior Accountant (1.8 years) Senior Accountant (2.1 years)	Senior Staff Accountant (0.3 years) Accounting Manager (0.2 years) Staff Accountant (3.0 years) Controller (3.4 years) Staff Accountant (1.3 years)	(0.8 years) Senior Accountant (6.6 years) Senior Accountant (1.5 years) Master of Business Administration (1.0 years)
Relevant skills	Sarbanes-Oxley Act (SOX), Accounting, SEC Filings, Due Diligence, Mergers and Acquisitions, Legal, Trademarks, Writing Skills, Corporate Policies, Contract Management	Sarbanes-Oxley Act (SOX), Accounting, Reconciliation, Accounts Payable, Accounts Receivable Processing, Legal, Financial Reporting, Cash Flow Projection, Payroll Administration, Procedure Implementation	Sarbanes-Oxley Act (SOX), Staff Training, Reconciliation, Accounts Payable, Problem Solving Skills, Journal Entries, General Ledger Accounting, Great Plains Product Family, Accounting, Budgeting
Desired salary	55,000 - 80,000 USD/yr	-	50,000 - 65,000 USD/yr
Years of experience	4.6 years	8.2 years	9.8 years
Education	Barry University School of Law, Rhode Island College, Rhode Island College, Bristol Community College	Strayer University, University of Alaska Anchorage	
Relocation	Won't Relocate	Won't Relocate	Won't Relocate

3. Automation



- Job seeker creates account and uploads resume
- Monster's 6-Sense technology parses the resume and identifies the best fit jobs based on skills, education, experience, etc.
- Job seeker receives the best fit jobs delivered through their account or via email

Automation

Employer

Job Description

- Vacancy Number: 020-000-020-002000
- Controlling Unit:
- Salary Range: \$61,900.00 - \$77,200.00
- Hiring Range:
- Division: JUST SECRETARY FOR MANAGEMENT
- Job Code: 10003
- Schedule Code: 1004
- Location: 1000
- Posting Date: 01/20/07
- Closing Date: 02/20/07

Description of Work

THIS IS A PROFESSIONAL POSITION INVOLVED IN THE DEVELOPMENT & ENHANCEMENT OF HIGH LEVEL BUSINESS APPLICATIONS AND TECHNICALLY COMPLEX & HIGHLY INTERACTIVE COMPUTER PRODUCTION APPLICATIONS. THIS PERSON WILL WORK UNDER THE DIRECT SUPERVISION OF AN APPLICATIONS PROJECT DEVELOPMENT SUPERVISOR TO DEVELOP AND/OR MODIFY CODE WHICH WILL SERVE THE SPECIFIC BUSINESS NEEDS OF THE NC STATE HIGHWAY PATROL. OTHER CANDIDATE BACKGROUND SECTION PROJECT DEVELOPMENT EFFORTS. THE DEVELOPMENT TOOLS USED ARE VISUAL BASIC 6.0 - VISUAL STUDIO 6.0 AND OR OUTLINE. CANDIDATE MUST HAVE EXPERIENCE IN VISUAL BASIC 6.0 EXPERIENCE WITH MESSAGE TOOLS (I.E. MESSAGE BOARD). EXPERIENCE WITH ACTIVE REPORTING TOOL OR OTHER REPORTING SOFTWARE. EXPERIENCE WITH ACCESS DATA OBJECT (ADO) CONNECT & TECH. EXPERIENCE WITH SQL (MS) & MS ACCESS OR. MUST HAVE GOOD ANALYTICAL SKILLS. EXPERIENCE IN GATHERING REQUIREMENTS, GOOD COMMUNICATION & WRITING SKILLS. "COMPUTER SKILL LEVEL: ADVANCED" - "REQUIREMENT IS CONTINGENT UPON THE SATISFACTORY OUTCOME OF CRIMINAL AND CREDIT BACKGROUND INVESTIGATION."

Knowledge, Skills And Abilities

PROGRAMMING EXPERIENCE IN VIS. BASIC. MICROSOFT SOFTWARE (I.E. MS OFFICE, EXCEL, ACTIVE REPORTING TOOL) & OR. PROGRAMMING EXPERIENCE IN MESSAGE DEVELOPMENT OR OTHER UNDERSTANDING OF THE CRIMINAL JUSTICE INFORMATION SYSTEM (CJIS) IS DESIRABLE. CANDIDATE WITH VISUAL EXPERIENCE AND SKILLS IS ENCOURAGED TO APPLY. MUST HAVE

The screenshot shows the 'Manage Candidates' interface for a 'Restaurant Manager' job. It lists three candidates:

- Abby Smith**: Resume Uploaded 01/20/07, Status: Recruited, Hiring: 01/20/07, Screening Score: N/A, Method: Applied Online, Career Level: Manager (Manager / Supervisor of Staff), Work Experience: 0-2 years, Highest Education: Bachelor's Degree, Desired Salary: \$50,000.00 - \$60,000.00.
- Sean Butler**: Resume Uploaded 01/20/07, Status: Recruited, Hiring: 01/20/07, Screening Score: N/A, Method: Applied Online (University of Staff), Career Level: Manager (Manager / Supervisor of Staff), Work Experience: 2 to 4 years, Highest Education: Bachelor's Degree, Desired Salary: \$10,000.
- Curtis Cooper**: Resume Uploaded 01/19/07, Status: Recruited, Hiring: 01/20/07, Screening Score: N/A, Method: Applied Online, Career Level: Manager (Manager / Supervisor of Staff), Work Experience: 2 to 4 years, Highest Education: Some College/Community College, Desired Salary: N/A.

- Employer creates a job posting and posts it on EFM where job seekers can search for and apply to the opening
- Simultaneously, Monster's 6-Sense matching technology identifies the best candidates existing in the resume database and delivers them to the employer



4.

Talent Supply Analytics

Skills Report, Locations Report, Education Report

0 candidates selected

Alex Abraham
 San Jose, CA
 Senior Software Engineer, Timebyte Inc
 1259 Fairway Green Circle
 San Jose, CA 95131
 US
 Home: -
 Mobile: -

Resume updated 2 days ago
 Experience 23.2
 Authorization US Authorized
 Desired Salary -
 Relocation Won't Relocate
 Source Monster

[Add to folder](#)
[Forward resume](#)
[Send letter](#)
[Add note](#)
[Block candidate](#)
[Update status](#)
[Rate candidate](#)
[Print](#)

Resume Candidate Detail NEW! Additional Info

Experience/Work History

2009 - Present	Senior Software Engineer	Timebyte Inc
2007 - 2008	Project Leader/Senior Software Engineer	Longs Drug Stores Corp
2005 - 2007	Senior Software Engineer	Walt Disney Corp
2000 - 2005	Project Leader/Senior Software Engineer	Road Inc
1998 - 2000	Senior Software Engineer	Hynet Technologies, Inc
1997 - 1998	Senior Software Engineer	Callac Inc
1993 - 1997	Senior Software Engineer	Howard Hughes Medical Institute
1992 - 1993	Senior Software Engineer	Vistro Computer Inc
1990 - 1992	Software Engineer	Ramtek Inc
1986 - 1990	Software Engineer	Kaiser Electronics

Education

1986	Master of Science, Computer Science	University of Texas at Arlington
1978	Bachelor of Science, Pharmacy	Taipei Medical College

Skills match
 You searched for: Java, Unix

Skills	Last Used	Years
Java		
JavaServer Pages (JSP)	Currently Used	13.3
Java	Currently Used	10.4
Tomcat	Currently Used	8.4
JavaServer Pages Standard Tag Library (JSTL)	Currently Used	6.3
JUnit	Currently Used	4.7
Spring Framework	Currently Used	4.7
Java 2 Platform Enterprise Edition (J2EE)	12/2008	6.9
Java Message Service (JMS)	12/2008	5.4
Apache Xerces Java Parser	12/2008	1.8
Exolab Castor Data Binding Framework	12/2008	1.8
Jakarta Java Struts Framework	05/2007	10.9
Java RMI and JNI (Java Raw or Native Interface)	03/2000	2.7
Java Foundation Classes (JFC)	03/2000	2.7
Java Swing	03/2000	1.4
Enterprise JavaBeans (EJB)	04/1990	3.8
JDBC (Java Database Connectivity)	04/1990	3.8
JavaServer Faces (JSF)	04/1990	3.8
Java Servlets	Unknown	Not Specified
Java Applets	Unknown	Not Specified
Unix		
Concurrent Versions System (CVS)	Currently Used	8.0
Unix Shell Programming	1/3/2008	1.6
Unix Operating Systems	04/1990	3.8
X Windows	04/1990	3.8
Linux Operating System	04/1990	3.8
X Windows Servers	04/1990	3.8
XL8	04/1990	3.8
Other skills		

Talent Dashboard » New Skills Report

72 Resumes Matched out of 329 Total

Education Level	Count	% of Results	% of Total
1 Bachelors Degree	27	37%	8%
2 Masters Degree	17	23%	5%
3 Associate Degree	9	12%	2%

Showing 1-8 of 8 results

Advanced Filters	Count	% of Results	% of Total
1 Visto	101	41%	25%
2 HTML	97	40%	21%
3 Wireframing	95	39%	20%
4 Process Flow	91	37%	19%
5 Management	89	36%	19%
6 English	82	33%	18%
7 CSS	76	31%	16%
8 SQL	76	31%	13%

Locations Report:

Location	Count
Los Angeles	48
Jacksonville	41
San Diego	41
Atlanta	38
Miami	38
Irvine	35
Austin	34
Pittsburgh	32
Brooklyn	31
Denver	31
Mesquite	31
San Francisco	29
Charlotte	27
Columbia	25
Wyandanch	25
Boca Raton	24
Centerville	24



Optimal Labor Market System Produces Results / ROI

- > More people into existing jobs faster
 - Reducing unemployment & increasing tax base
- > New jobs created
 - company expansion and relocation, moving people up the career pathway, creating opportunity for emerging talent
- > Increased Productivity
 - Better fit between seeker and job, resulting in satisfaction, and longevity.

Reduce unemployment and create new jobs in Florida by supplementing the existing Employ Florida Market Place with an extended talent pool and best of breed job matching technology

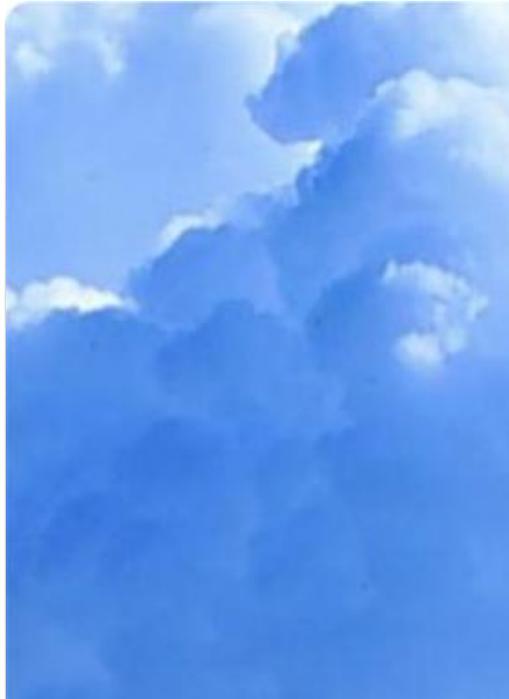
Thank you

Bill Davies
Monster Public Sector and Education
Bill.Davies@Monster.com
770-330-9378

November 1, 2011
The Florida Senate Commerce and Tourism Committee



monster.com
Your calling is calling™



Case Study

State of Ohio Public/Private Partnership Model

- Veteran portal with military skills translator
- Ex-offender portal enables career exploration and readiness while incarcerated
- Work keys test score integration, and other specialized portals
- Mobile device solutions
- Facebook and Twitter integrations



monster®

About Monster



- World's largest global career company
- Connected to over 110 million US workers at all levels
- Recognized by 95% of job seekers and 93% of employers
- More than 22M unique job seeker visitors each month in the US
- World's largest labor market supply and demand database: 130M+ US resumes
- World's largest online military community: **Military.com - 10M+ active members**
- Alliance with over 1,000 newspapers
- Powering online career solutions in more than 600 organizations
- Leading the transformation of the American workforce
 - > Putting America Back to Work Career Fairs
 - > Monster Making It Count Program
 - > Pathways Out of Poverty, WIRED, Kellogg Foundation
- Trusted partner and advisor to more than 700 government customers

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SPB 7014

INTRODUCER: Commerce and Tourism Committee

SUBJECT: OGSR/Economic Development Agencies

DATE: October 31, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Hrdlicka	CM	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Currently, certain business records are confidential and exempt from Florida's public records requirements when held by an economic development agency and requested to be exempt by the affected business. Examples of economic development agencies include the Department of Economic Opportunity (DEO), Enterprise Florida, Inc., (EFI), and other specified economic development agencies.

Section 288.075, F.S., lists as the categories of information to held confidential and exempt the following: business plans, intentions and interests; trade secrets; proprietary confidential business information; identification, account, and registration numbers; and information related to economic incentive programs. This section is scheduled to be repealed October 2, 2012.

SB 7014 is the result of Interim Report 2012-302,¹ the Commerce and Tourism Committee's Open Government Sunset Review of the public records exemption in s. 288.075, F.S. The report recommended re-enactment of this exemption, without changes.

The proposed committee bill removes the October 2, 2012, repeal date in s. 288.075, F.S. It must pass each chamber of the Legislature by a two-thirds vote of the members voting and present in order to become law.

¹ *Open Government Sunset Review of Section 288.075, F.S., Public Records Exemption for Information Held by Economic Development Agencies*. Report available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-302cm.pdf>. Site last visited Oct. 21, 2011.

II. Present Situation:

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 that contained information concerning the plans of a corporation to locate, relocate, or expand any of its business activities in this state.² 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 five distinct categories of exemptions related to the administration of economic development.³ They 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 ⁴	-- 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 ⁵	Permanent
Proprietary confidential business information ⁶	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 ⁷	Permanent
Specific sales, employee wage, and tax information related to the administration of state economic development incentives ⁸	Exempt for a period not to exceed the duration of the incentive agreement or upon termination of the incentive agreement

² Senate Interim Project Report 2006-205, *Open Government Sunset Review of s. 288.075, F.S., Economic Development Agencies*. Available at: http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-205cm.pdf. Site last visited Oct. 25, 2011.

³ Chapter 2007-203, L.O.F. This law also repealed s. 288.1067, F.S. See *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; 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>. All sites last visited Oct. 21, 2011.

⁴ Section 288.075(2), F.S.

⁵ Section 288.075(3), F.S.

⁶ Section 288.075(4), F.S.

⁷ Section 288.075(5), F.S.

⁸ Section 288.075(6), F.S.

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;⁹
- 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.;¹⁰
- 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 local government’s business or industrial interests;
- 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, municipality, or county.¹¹

Section 288.075(1)(b), F.S., states that “proprietary confidential business information” means¹² 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 is information concerning:

- Business plans;
- Internal auditing controls and reports of internal auditors, or
- 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:

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

⁹ 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.

¹⁰ 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/>. Site last visited Oct. 21, 2011.

¹¹ This refers to entities such as Enterprise Florida, Inc., and public private partnerships that work with local governments, also known as economic development organization.

¹² 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). See FN 3.

This section of law 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 second-degree misdemeanor, punishable by a maximum penalty of 60 days in jail and a \$500 fine.

General Background on Florida's Public Records and Public Meetings Laws

Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹³ 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.¹⁴

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,¹⁵ 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 agency¹⁶ 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,

¹³ Sections 1390 and 1391, F.S. (Rev. 1892)

¹⁴ Article I, s. 24, of the State Constitution.

¹⁵ Chapter 119, F.S.

¹⁶ 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."

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.”¹⁷

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.¹⁸ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.¹⁹

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.²⁰ 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.²¹ A bill enacting an exemption²² may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.²³

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.²⁴ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.²⁵

The Open Government Sunset Review Act (the act)²⁶ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the

¹⁷ Section 119.011(12), F.S.

¹⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

¹⁹ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

²⁰ Article I, s. 24(c), of the State Constitution.

²¹ *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).

²² Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

²³ Article I, s. 24(c) of the State Constitution.

²⁴ Attorney General Opinion 85-62.

²⁵ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

²⁶ Section 119.15, F.S.

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.²⁷

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?²⁸

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.²⁹ 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

²⁷ Section 119.15(6)(b), F.S.

²⁸ Section 119.15(6)(a), F.S.

²⁹ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

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

III. **Effect of Proposed Changes:**

SPB 7014 implements the recommendations in Senate Interim Report 2012-302.

Section 1: Removes the scheduled repeal date of October 2, 2012, in s. 288.075, F.S.

Section 2: Specifies the bill takes effect upon becoming a law.

SPB 7014 requires passage by a two-thirds vote of the Senate and the House of Representatives, of the members present and voting, in order to become law.

Other Potential Implications:

If the Legislature chooses not to retain the public-records exemption for the information obtained by economic development agencies, then the exemption will expire on October 2, 2012. Without the exemption, certain types of proprietary business information will become public – at least, what is not otherwise protected under federal law. DEO, EFI, Space Florida, local economic development organizations, and other entities that rely on this exemption during the economic recruitment efforts contend the loss of the exemption would hamper their ability to recruit new businesses to Florida and to retain existing businesses.

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

SB 7014 retains the substance of an existing public records exemption and existing public meetings exemption. It also complies with the requirement of Art. I, s. 24 of the Florida Constitution that public-records exemptions be addressed in legislation separate from substantive law changes. Finally, the proposed committee bill complies with s. 119.15(4)(c), F.S., which specifies that only existing exemptions that are substantially amended must undergo another scheduled repeal in 5 years.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Commerce and Tourism

577-00662-12

20127014__

1 A bill to be entitled

2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 288.075, F.S., which
4 provides public records exemptions for information
5 held by economic development agencies; saving from
6 repeal the exemption concerning plans, intentions, or
7 interests of a private corporation, partnership, or
8 person to locate, relocate, or expand any of its
9 business activities in this state; saving from repeal
10 the exemption for trade secrets; saving from repeal
11 the exemption for proprietary confidential business
12 information; saving from repeal the exemption for
13 identification, account, and registration numbers and
14 sales, wage, and tax data relating to a recipient of
15 an economic development incentive; removing the
16 scheduled repeal of the exemptions; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (8) of section 288.075, Florida
22 Statutes, is amended to read:

23 288.075 Confidentiality of records.—

24 ~~(8) LEGISLATIVE REVIEW OF EXEMPTIONS.—This section is~~
25 ~~subject to the Open Government Sunset Review Act in accordance~~
26 ~~with s. 119.15 and shall stand repealed on October 2, 2012,~~
27 ~~unless reviewed and saved from repeal through reenactment by the~~
28 ~~Legislature.~~

29 Section 2. This act shall take effect July 1, 2012.



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

¹⁸ Adapted from Senate Interim Project Report 2006-205, *Open Government Sunset Review of s. 288.075, F.S., Economic Development Agencies*. Available at: http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-205cm.pdf. Site last visited Oct. 25, 2011.

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.

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:

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.:

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).

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.
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 ecodevelopment 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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Tourism

BILL: SPB 7020

INTRODUCER: Commerce and Tourism Committee

SUBJECT: OGSR/the Florida Opportunity Fund and the Institute for the Commercialization of Public Research

DATE: October 31, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pugh</u>	<u>Hrdlicka</u>	_____	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

In 2007, the Legislature created the Florida Opportunity Fund (FOF) and the Institute for the Commercialization of Public Research (institute) to provide certain types of businesses access to capital – both public and private investments – that would assist them in reaching their full potential as job-creators. Additionally, the Legislature created exemptions from the state’s public records and public meetings laws, under specified circumstances, for both entities. The exemptions will expire October 2, 2012, unless saved from repeal through reenactment by the Legislature.

SPB 7020 is the result of Interim Report 2012-303,¹ the Commerce and Tourism Committee’s Open Government Sunset Review of the public records and public meetings exemptions for the FOF and the institute. The report recommended re-enactment of the public records exemption and public meetings exemption in s. 288.9626, F.S., with a few changes. The key recommended change is to create a separate statute for the institute’s exemptions. These changes will clarify, but not expand, the scope of the current statutory exemptions.

This proposed committee bill substantially amends s. 288.9626, F.S., and creates. 288.9627, F.S. It must pass each chamber of the Legislature by a two-thirds vote of the members present and voting.

¹ “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.” Report available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-303cm.pdf>. Site last visited October 19, 2011.

II. Present Situation:

Background on the FOF

Initial Responsibility

Created by the Legislature in 2007, the Florida Opportunity Fund (FOF)² was intended to attract venture capital investment into targeted Florida industries by providing a state match.³ The FOF is organized as a private, not-for-profit corporation under ch. 617, F.S., with a five-member board of directors selected by an Enterprise Florida, Inc., (EFI) appointments committee.⁴ 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 2007-2008.⁵

Originally, 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 each \$1 in state investment with \$2 of their own. The initial 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 financing.⁶ 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.⁷ Currently, the FOF has invested \$27 million of the original \$29.5 million appropriation.⁸

Recent developments

In 2009, the Florida Legislature amended s. 288.9624, F.S., to allow the FOF to make loans and other direct investments to 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.⁹

² Section 288.9624, F.S. Also, the FOF's website is <http://www.floridaopportunityfund.com/HomePage.asp>. Site last visited October 19, 2011.

³ 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 Oct. 19, 2011. These SBA programs are separate from the FOF.

⁴ 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.

⁵ This appropriation was included in Section 4 of the substantive legislation, ch. 2007-189, L.O.F., which created the FOF.

⁶ 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 Oct. 19, 2011.

⁷ 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 Oct. 19, 2011.

⁸ Information on file with the Senate Commerce and Tourism Committee.

⁹ Sections 25-26, ch. 2009-51, L.O.F.

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 now-defunct Florida Energy and Climate Commission, which at the time was the lead entity for state energy and climate-change programs and policies.¹⁰ 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 \$32.4 million in federal funds through the 2009 American Recovery and Reinvestment Act¹¹ 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 invested \$12 million of the \$32.4 million in federal funds into three Florida companies, matching \$80 million in private investment.¹²

Lastly, in mid-2011, EFI entered into an agreement with the Florida Department of Economic Opportunity (DEO) for use of \$43.5 million in federal funds from the U.S. State Small Business Credit Initiative.¹³ These funds will be used by the FOF to make direct investments in eligible businesses.¹⁴ EFI estimates that it can leverage the \$43.5 million into \$652.5 million in private investment. The U.S. Treasury has approved DEO's application to access Florida's full share of \$97.6 million in federal funds, and in September, the Legislative Budget Commission approved the release of a portion of the federal funds.

Background on the institute

Created in the same legislation as the FOF, the Institute for the Commercialization of Public Research (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.¹⁵ 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

¹⁰ The commission's statutes were repealed and its responsibilities transferred to the Florida Department of Agriculture and Consumer Services (DACCS) by the Legislature in the 2011 session. See s. 500, ch. 2011-142, L.O.F.

¹¹ The website at <http://www.recovery.gov/pages/default.aspx> has links to the federal law and other program information.

¹² Information on file with the Senate Committee on Commerce and Tourism.

¹³ 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 Oct. 19, 2011.

¹⁴ Florida's total share of the federal funding is \$97.6 million. The monies not allocated to EFI for the investment program are earmarked for small business loans, export financing, and credit enhancement programs. More information on file with the Senate Commerce and Tourism Committee.

¹⁵ Section 288.9625, F.S. The institute's website is <http://www.florida-institute.com>. Site last visited Oct. 19, 2011.

publicly supported organizations within the state.¹⁶

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.

Governance of the institute

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 five-member board of directors¹⁷ 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 director¹⁸ and an executive assistant. The institute is based in Boca Raton, and is preparing to open a second administrative office in Gainesville.

State Funding for the institute

In 2007, the Legislature appropriated \$900,000 in general revenue to the institute for its operations.¹⁹ An additional \$600,000 was appropriated in 2009, as a transfer from the Florida Small Business Technology Growth Trust Fund administered by EFI.²⁰ 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.²¹ 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.²² The institute and DEO have entered into a contract that specifies how the funds may be spent, including a low-interest loan program for eligible companies.

¹⁶ Section 288.9625(2), F.S.

¹⁷ 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.

¹⁸ 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.

¹⁹ Section 4, ch. 2007-189, L.O.F.

²⁰ Section 72, ch. 2009-81, L.O.F.

²¹ Section 56, ch. 2010-147, L.O.F.

²² Section 39(3), ch. 2011-76, L.O.F.

Responsibilities of the institute²³

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.

In 2010, the Legislature created the Research Commercialization Matching Grant Program, to leverage existing federal grant programs for small businesses, and directed the institute to manage it.²⁴ The grant 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.²⁵ A second round of grants is not planned for FY 2011-2012.

²³ Section 288.9625(8), F.S.

²⁴ 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 Oct. 20, 2011.

²⁵ The Office of Program Policy and Government Accountability is preparing an evaluation of the Commercialization Matching Grant Program. The evaluation may be published by December 2011.

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 2007.²⁶ 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.²⁷

²⁶ Chapter 2007-190, L.O.F.

²⁷ 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; and
- 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.²⁸

Section 288.9626(3), F.S., creates a 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.²⁹

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:³⁰

- 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

²⁸ Section 299.9626(1)(g)2., F.S.

²⁹ Section 288.9626(5), F.S.

³⁰ Section 2, ch. 2007-190, L.O.F.

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.
- 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.

General Background on Florida's Public Records and Public Meetings Laws

Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.³¹ 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.³²

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,³³ 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.

³¹ Sections 1390 and 1391, F.S. (Rev. 1892)

³² Article I, s. 24, of the State Constitution.

³³ Chapter 119, F.S.

Unless specifically exempted, all agency³⁴ 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.”³⁵

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.³⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.³⁷

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.³⁸ 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.³⁹ A bill enacting an exemption⁴⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁴¹

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

³⁴ 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.”

³⁵ Section 119.011(12), F.S.

³⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

³⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

³⁸ Article I, s. 24(c), of the State Constitution.

³⁹ *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).

⁴⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁴¹ Article I, s. 24(c), of the State Constitution.

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.⁴² If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁴³

The Open Government Sunset Review Act (the act)⁴⁴ 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.⁴⁵

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?⁴⁶

⁴² Attorney General Opinion 85-62.

⁴³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁴⁴ Section 119.15, F.S.

⁴⁵ Section 119.15(6)(b), F.S.

⁴⁶ Section 119.15(6)(a), F.S.

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.⁴⁷ 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.⁴⁸ 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.⁴⁹

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.⁵⁰ 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.⁵¹

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 proceedings, holding in camera hearings, sealing the records of the

⁴⁷ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

⁴⁸ 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).

⁴⁹ Section 688.002(4), F.S.

⁵⁰ Section 688.003, F.S.

⁵¹ Section 688.004, F.S.

action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.⁵²

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.⁵³ 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.

III. Effect of Proposed Changes:

SPB 7020 incorporates the findings and recommendations of Senate Interim Report 2012-303. The report recommended reenacting s. 288.9626, F.S., with some technical changes – primarily, to give the FOF and the institute separate statutes for public records exemptions and public meetings exemptions more closely tied to their individual responsibilities and missions. None of the recommended changes expands the scope of the existing exemptions in s. 288.9626, F.S.

⁵² Section 688.006, F.S.

⁵³ Attorney General Opinion 92-43.

Section 1: Amends s. 288.9626, F.S., to:

- Remove references to the institute from s. 288.9626, F.S., so that it applies only to the FOF;
- Reduce from 10 years to 7 years the period of time that investment, loan, or other confidential and exempt information may be shielded from public review;
- Modify certain definitions to better reflect the full extent of the FOF's investment responsibilities, without expanding their scope; and
- Clarify and make consistent terminology in s. 288.9626, F.S.

Section 2: Creates s. 288.9627, F.S., and transfers to it the relevant provisions of s. 288.9626, F.S., pertaining to public records and public meetings exemptions that apply strictly to the institute. The institute's current exemptions are maintained but not expanded.

Section 3: Specifies that SPB 7020 takes effect upon becoming law.

SPB 7020 requires passage by a two-thirds vote of the Senate and the House of Representatives in order to become law. It takes effect upon becoming a law.

Other Potential Implications:

If the Legislature chooses not to retain the public-records exemption for the information obtained by the FOF and the institute, or the public meetings exemption, then they will expire on October 2, 2012. Without the exemption, certain types of proprietary business information, trade secrets, and donor identities will become public, at least, what is not otherwise protected under federal law. The FOF and the institute contend this would hamper their ability to attract private investments and other participation in their programs, thus reducing their programs' ability to encourage economic and job growth.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

SPB 7020 retains the substance of an existing public records exemption and existing public meetings exemption. It also complies with the requirement of Art. I, s. 24, of the Florida Constitution that public-records exemptions be addressed in legislation separate from substantive law changes. Finally, the proposed committee bill complies with s. 119.15(4)(c), F.S., which specifies that only existing exemptions that are substantially amended must undergo another scheduled repeal in 5 years.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Commerce and Tourism

577-00732A-12

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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 288.9626, F.S., which
 4 provides exemptions from public records and open
 5 meeting requirements for the Florida Opportunity Fund
 6 and the Institute for the Commercialization of Public
 7 Research; reorganizing the exemptions by removing
 8 references to the Institute for the Commercialization
 9 of Public Research and transferring the exemptions
 10 relating to the institute to a new statute; saving the
 11 exemptions from repeal under the Open Government
 12 Sunset Review Act; removing the scheduled repeal of
 13 the exemptions; revising definitions; clarifying that
 14 the exemptions pertaining to the Florida Opportunity
 15 Fund apply to prospective investments, alternative
 16 investments, and certain confidential proprietary
 17 information provided by a proprietor; reducing the
 18 time period during which proprietary confidential
 19 business information is confidential and exempt from
 20 disclosure; creating s. 288.9627, F.S.; providing
 21 exemptions from public records and open meetings
 22 requirements relating to the Institute for the
 23 Commercialization of Public Research which were
 24 transferred from s. 288.9626, F.S.; defining terms;
 25 providing exemptions from public records requirements
 26 for information relating to methods of manufacturing,
 27 trade secrets, patents, and research by universities
 28 or other publically supported organizations, materials
 29 supplied by a proprietor, information that would

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30 identify investors or potential investors, and
 31 information that is confidential and exempt under
 32 other laws; reducing the time period during which
 33 proprietary confidential business information is
 34 confidential and exempt from disclosure; requiring the
 35 recording and transcription of closed meetings;
 36 requiring a proprietor of information to prevent the
 37 disclosure of proprietary confidential business
 38 information if a request for the information is made
 39 to the institute; authorizing a person to petition a
 40 court in Palm Beach County or Alachua County for the
 41 release of confidential and exempt information;
 42 requiring a court to make specific findings before the
 43 information may be released; imposing criminal
 44 penalties on a person who willfully and knowingly
 45 violates the public records or public meetings
 46 exemptions pertaining to the institute; providing an
 47 effective date.

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

51 Section 1. Section 288.9626, Florida Statutes, is amended
 52 to read:

53 288.9626 Exemptions from public records and public meetings
 54 requirements for the Florida Opportunity Fund ~~and the Institute~~
 55 ~~for the Commercialization of Public Research.~~

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

57 (a) "Alternative investment" means an investment or
 58 prospective investment through a loan, acquisition of an equity

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59 interest, or other investment method by the Florida Opportunity
 60 Fund in a private equity fund, venture capital fund, or angel
 61 fund; an investment by the Florida Opportunity Fund or an
 62 alternative investment ~~or a direct investment~~ in a portfolio
 63 company; or an investment through a distribution of securities
 64 to its partners or shareholders by an alternative investment
 65 vehicle.

66 (b) "Alternative investment vehicle" means the limited
 67 partnership, limited liability company, or similar legal fund
 68 structure through which funds of, or funds managed by, the
 69 Florida Opportunity Fund are invested ~~may elect to invest~~ in a
 70 portfolio company.

71 (c) "Florida Opportunity Fund" ~~or "fund"~~ means the Florida
 72 Opportunity Fund as defined in s. 288.9623.

73 ~~(d) "Institute for the Commercialization of Public~~
 74 ~~Research" or "institute" means the institute established by s.~~
 75 ~~288.9625.~~

76 ~~(d)(e)~~ "Portfolio company" means a corporation or other
 77 issuer, any of whose securities or debt obligations are owned,
 78 or are being considered for ownership, by an alternative
 79 investment vehicle or the Florida Opportunity Fund and any
 80 subsidiary of such corporation or other issuer.

81 ~~(e)(f)~~ "Portfolio positions" means individual investments
 82 in portfolio companies that are made by an alternative
 83 investment vehicle or the Florida Opportunity Fund, including
 84 information or specific investment terms associated with any
 85 portfolio company investment.

86 ~~(f)(g)~~1. "Proprietary confidential business information"
 87 means information that has been designated by the proprietor

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88 when provided to the Florida Opportunity Fund ~~or the Institute~~
 89 ~~for the Commercialization of Public Research~~ as information that
 90 is owned, held, or controlled by a proprietor; that is intended
 91 to be and is treated by the proprietor as private, the
 92 disclosure of which would harm the business operations of the
 93 proprietor and has not been intentionally disclosed by the
 94 proprietor unless pursuant to a private agreement that provides
 95 that the information will not be released to the public except
 96 as required by law or legal process, or pursuant to law or an
 97 order of a court or administrative body; and that concerns:

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

99 b. Information provided to the Florida Opportunity Fund ~~or~~
 100 ~~the Institute for the Commercialization of Public Research~~
 101 regarding an existing or a prospective alternative investment in
 102 a private equity fund, venture capital fund, angel fund, or
 103 portfolio company that is proprietary to the provider of the
 104 information.

105 c. Financial statements and auditor reports of an
 106 alternative investment vehicle or portfolio company, unless
 107 publicly released by the alternative investment vehicle or
 108 portfolio company.

109 d. Meeting materials of an alternative investment vehicle
 110 or portfolio company relating to financial, operating, or
 111 marketing information of the alternative investment vehicle or
 112 portfolio company.

113 e. Information regarding the portfolio positions in which
 114 the alternative investment vehicles or Florida Opportunity Fund
 115 invest.

116 f. Capital call and distribution notices to investors or

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117 the Florida Opportunity Fund of an alternative investment
 118 vehicle.

119 g. Alternative investment agreements and related records.

120 h. Information concerning investors, other than the Florida
 121 Opportunity Fund, in an alternative investment vehicle or
 122 portfolio company.

123 2. "Proprietary confidential business information" does not
 124 include:

125 a. The name, address, and vintage year of an alternative
 126 investment vehicle or Florida Opportunity Fund and the identity
 127 of the principals involved in the management of the alternative
 128 investment vehicle or Florida Opportunity Fund.

129 b. The dollar amount of the commitment made by the Florida
 130 Opportunity Fund to each alternative investment vehicle since
 131 inception, if any.

132 c. The dollar amount and date of cash contributions made by
 133 the Florida Opportunity Fund to each alternative investment
 134 vehicle since inception, if any.

135 d. The dollar amount, on a fiscal-year-end basis, of cash
 136 or other fungible distributions received by the Florida
 137 Opportunity Fund from each alternative investment vehicle.

138 e. The dollar amount, on a fiscal-year-end basis, of cash
 139 or other fungible distributions received by the Florida
 140 Opportunity Fund plus the remaining value of alternative-vehicle
 141 assets that are attributable to the Florida Opportunity Fund's
 142 investment in each alternative investment vehicle.

143 f. The net internal rate of return of each alternative
 144 investment vehicle since inception.

145 g. The investment multiple of each alternative investment

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146 vehicle since inception.

147 h. The dollar amount of the total management fees and costs
 148 paid on an annual fiscal-year-end basis by the Florida
 149 Opportunity Fund to each alternative investment vehicle.

150 i. The dollar amount of cash profit received by the Florida
 151 Opportunity Fund from each alternative investment vehicle on a
 152 fiscal-year-end basis.

153 ~~(g) (h)~~ "Proprietor" means an alternative investment vehicle
 154 ~~or a~~ portfolio company in which an ~~the~~ alternative investment
 155 vehicle or Florida Opportunity Fund invests, or is considering
 156 for investment ~~is invested~~, or an outside consultant, including
 157 the respective authorized officers, employees, agents, or
 158 successors in interest, that controls or owns information.

159 (2) PUBLIC RECORDS EXEMPTION.—

160 (a) The following records held by the Florida Opportunity
 161 Fund ~~or the Institute for the Commercialization of Public~~
 162 ~~Research~~ are confidential and exempt from s. 119.07(1) and s.
 163 24(a), Art. I of the State Constitution:

164 1. Information Materials that relates ~~relate~~ to methods of
 165 manufacture or production, potential trade secrets, or
 166 patentable material received, generated, ascertained, or
 167 discovered during the course of research or through research
 168 projects and that is included in materials provided by a
 169 proprietor conducted by universities and other publicly
 170 ~~supported organizations in this state.~~

171 2. Information that would identify an investor or potential
 172 investor who desires to remain anonymous in projects reviewed by
 173 the Florida Opportunity Fund ~~or institute.~~

174 3. ~~Any information received from a person from another~~

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175 ~~state or nation or the Federal Government which is otherwise~~
 176 ~~confidential or exempt pursuant to the laws of that state or~~
 177 ~~nation or pursuant to federal law.~~

178 3.4 Proprietary confidential business information
 179 regarding alternative investments for 7 ~~10~~ years after the
 180 termination of the alternative investment.

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

186 (3) PUBLIC MEETINGS EXEMPTION.—

187 (a) That portion of a meeting of the board of directors of
 188 the Florida Opportunity Fund ~~or the board of directors of the~~
 189 ~~Institute for the Commercialization of Public Research~~ at which
 190 information is discussed which is confidential and exempt under
 191 subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of
 192 the State Constitution.

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

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

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

203 (a) Records made confidential and exempt by this section

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204 may be released, upon written request, to a governmental entity
 205 in the performance of its official duties and responsibilities.

206 (b) Notwithstanding the provisions of paragraph (2)(a), a
 207 request to inspect or copy a public record that contains
 208 proprietary confidential business information shall be granted
 209 if the proprietor of the information fails, within a reasonable
 210 period of time after the request is received by the Florida
 211 Opportunity Fund ~~or the Institute for the Commercialization of~~
 212 ~~Public Research~~, to verify the following to the Florida
 213 Opportunity Fund through a written declaration in the manner
 214 provided by s. 92.525:

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

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

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

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

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

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233 2. Any action under this subsection must be brought in
 234 Orange County, and the petition or other initial pleading shall
 235 be served on the Florida Opportunity Fund ~~or the institute,~~
 236 ~~whichever is applicable,~~ and, if determinable upon diligent
 237 inquiry, on the proprietor of the information sought to be
 238 released.

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

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

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

246 c. The release of the record will not cause damage to or
 247 adversely affect the interests of the proprietor of the released
 248 information, other private persons or business entities, or the
 249 ~~fund, or any trust fund the assets of which are invested by the~~
 250 Florida Opportunity Fund.

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

254 ~~(6) OPEN GOVERNMENT SUNSET REVIEW. This section is subject~~
 255 ~~to the Open Government Sunset Review Act in accordance with s.~~
 256 ~~119.15 and shall stand repealed on October 2, 2012, unless~~
 257 ~~reviewed and saved from repeal through reenactment by the~~
 258 ~~Legislature.~~

259 Section 2. Section 288.9627, Florida Statutes, is created
 260 to read:

261 288.9627 Exemptions from public records and public meetings

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262 requirements for the Institute for the Commercialization of
 263 Public Research.—

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

265 (a) "Institute for the Commercialization of Public
 266 Research" or "institute" means the institute established by s.
 267 288.9625.

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

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

280 b. Financial statements and internal or external auditor
 281 reports of a proprietor corporation, partnership, or person
 282 requesting confidentiality under this statute, unless publicly
 283 released by the proprietor.

284 c. Meeting materials related to financial, operating,
 285 investment, or marketing information of the proprietor
 286 corporation, partnership, or person.

287 d. Information concerning private investors in the
 288 proprietor corporation, partnership, or person.

289 2. "Proprietary confidential business information" does not
 290 include:

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- 291 a. The identity and primary address of the proprietor's
 292 principals.
- 293 b. The dollar amount and date of the financial commitment
 294 or contribution made by the institute.
- 295 c. The dollar amount, on a fiscal-year-end basis, of cash
 296 repayments or other fungible distributions received by the
 297 institute from each proprietor.
- 298 d. The dollar amount, if any, of the total management fees
 299 and costs paid on an annual fiscal-year-end basis by the
 300 institute.
- 301 (c) "Proprietor" means a corporation, partnership, or
 302 person that has applied for or received assistance, financial or
 303 otherwise, from the institute and that controls or owns the
 304 proprietary confidential business information.
- 305 (2) PUBLIC RECORDS EXEMPTION.—
- 306 (a) The following records held by the institute are
 307 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 308 of the State Constitution:
- 309 1. Information that relates to methods of manufacture or
 310 production, potential trade secrets, or patentable material
 311 received, generated, ascertained, or discovered during the
 312 course of research or through research projects conducted by
 313 universities and other publicly supported organizations in this
 314 state and that is included in materials provided to the
 315 institute by a proprietor.
- 316 2. Information that would identify an investor or potential
 317 investor who desires to remain anonymous in projects reviewed by
 318 the institute for assistance.
- 319 3. Any information received from a person from another

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- 320 state or nation or the Federal Government which is otherwise
 321 confidential or exempt pursuant to the laws of that state or
 322 nation or pursuant to federal law.
- 323 4. Proprietary confidential business for 7 years after the
 324 termination of the institute's financial commitment to the
 325 company.
- 326 (b) At the time any record made confidential and exempt by
 327 this subsection, or portion thereof, is legally available or
 328 subject to public disclosure for any other reason, that record,
 329 or portion thereof, shall no longer be confidential and exempt
 330 and shall be made available for inspection and copying.
- 331 (3) PUBLIC MEETINGS EXEMPTION.—
- 332 (a) That portion of a meeting of the institute's board of
 333 directors at which information is discussed which is
 334 confidential and exempt under subsection (2) is exempt from s.
 335 286.011 and s. 24(b), Art. I of the State Constitution.
- 336 (b) Any exempt portion of a meeting shall be recorded and
 337 transcribed. The board of directors shall record the times of
 338 commencement and termination of the meeting, all discussion and
 339 proceedings, the names of all persons present at any time, and
 340 the names of all persons speaking. An exempt portion of any
 341 meeting may not be off the record.
- 342 (c) A transcript and minutes of exempt portions of meetings
 343 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 344 I of the State Constitution.
- 345 (4) REQUEST TO INSPECT OR COPY A RECORD.—
- 346 (a) Records made confidential and exempt by this section
 347 may be released, upon written request, to a governmental entity
 348 in the performance of its official duties and responsibilities.

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

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

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

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

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

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

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

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378 information sought to be released.

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

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

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

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

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

393 Section 3. This act shall take effect upon becoming law.



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.



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



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

September 27, 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 for the week of October 3rd for personal reasons that will keep me in Fort Lauderdale for the week.

Thank you in advance for considering this request to be excused from legislative business for the week of October 3rd. Please do not hesitate to contact me if you have any questions.

Sincerely,

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

Jeremy Ring
Senator District 32

Handwritten notes and initials: "approved" written vertically, the date "9/27/11", and a circled set of initials "JAW".

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