

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: SB 1048

INTRODUCER: Senator Oelrich

SUBJECT: Innovation Incentive Program

DATE: February 6, 2012 REVISED: _____

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

I. Summary:

SB 1048 amends s. 288.1089, F.S., regarding the release of funds for the Innovation Incentive Program (IIP)

Without reference to the amount of an IIP award, s. 288.1089(7), F.S., currently requires the Governor to consult with the President of the Senate and the Speaker of the House of Representatives before approving the award and, upon review and approval by the Legislative Budget Commission (LBC), authorizes the Governor’s Office to release the funds. The present bill amends the process based on the amount of an IIP award, as follows:

- If an award is over \$5 million, the Department of Economic Opportunity (DEO) may not release the funds until the award is reviewed and approved by the LBC;
- If an award is over \$2 million but not over \$5 million, at least 10 days before the funds are released, the Governor shall submit a description and evaluation of the award to the chair and vice chair of the LBC. If the chair or vice chair, the President of the Senate, or the Speaker of the House of Representatives timely advises the Governor that such action exceeds the Governor’s delegated authority or is contrary to the legislative policy or intent, the Governor shall void the release of funds and instruct DEO to immediately change such action until the LBC or the Legislature addresses the issue; and
- If an award is not over \$2 million, the Governor may approve the award and DEO may release the funds without legislative notice or review.

This bill substantially amends s. 288.1089, F.S.

II. Present Situation:

Overview of the Innovation Incentive Program

The Legislature in 2006 established the Innovation Incentive Program (IIP) within the Department of Economic Opportunity (DEO, formerly the Office of Tourism, Trade, and Economic Development¹). The purpose of the IIP is “to ensure that sufficient resources are available to allow the state to respond expeditiously to extraordinary economic opportunities and to compete effectively for high-value research and development, innovation business, and alternative and renewable energy projects.”²

To be eligible for consideration for an IIP award, an innovation business,³ a research and development entity,⁴ or an alternative and renewable energy company⁵ must submit a written application to DEO before making a decision to locate new operations in the state or expand an existing operation in the state.⁶ The application must include, among other things, existing business information, projected operations (e.g., location, full-time equivalent jobs, average annual wage, project investment from all sources, etc.), and an explanation of why the IIP award is needed.⁷ To qualify for review by DEO, the applicant must establish that the jobs created by the project must pay an estimated annual wage equaling at least 130 percent of the average private sector wage, with certain exceptions.⁸ In addition, research and development projects must serve as a catalyst for an emerging or evolving technology cluster, demonstrate a plan for significant higher education collaboration, provide the state at least a break-even return on investment within a 20-year period, and be provided with a one-to-one match from the local community, with certain exceptions.⁹

¹ Ch. 2011-142, s. 4, L.O.F., transferred the functions and trust funds of the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor (OTTED) to DEO.

² Section 288.1089(1), F.S.

³ “Innovation business” is defined as “a business expanding or locating in this state that is likely to serve as a catalyst for the growth of an existing or emerging technology cluster or will significantly impact the regional economy in which it is to expand or locate.” Section 288.1089(2)(h), F.S.

⁴ “Research and development” is defined as “basic and applied research in the sciences or engineering, as well as the design, development, and testing of prototypes or processes of new or improved products. Research and development does not include market research, routine consumer product testing, sales research, research in the social sciences or psychology, nontechnological activities, or technical services.” Section 288.1089(2)(n), F.S. Moreover, “research and development facility” is defined as “a facility that is predominately engaged in research and development activities. For purposes of this paragraph, the term ‘predominately’ means at least 51 percent of the time.” Section 288.1089(2)(o), F.S.

⁵ “Alternative and renewable energy” is defined as “electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: ethanol, cellulosic ethanol, biobutanol, biodiesel, biomass, biogas, hydrogen fuel cells, ocean energy, hydrogen, solar, hydro, wind, or geothermal.” Section 288.1089(2)(a), F.S.

⁶ Section 288.1089(3), F.S. As part of its business recruitment efforts, Enterprise Florida, Inc. (EFI), identifies businesses that may be eligible to take advantage of this program.

⁷ Section 288.1089(3)(a)-(j), F.S.

⁸ Section 288.1089(4)(a), F.S.

⁹ Innovation businesses and alternative and renewable energy projects respectively have their own additional requirements (*see* s. 288.1089(4)(c)-(d), F.S.), but to date all funds have been awarded to research and development entities. DEO 2011 Annual Report, at 55 (Dec. 30, 2011) (available at <http://www.floridajobs.org/about%20awi/12.31.2011%20--%20DEO%20Annual%20Report%202012.pdf>).

These and many other relevant applicant criteria are comprehensively reviewed by DEO, the Department of Agriculture and Consumer Services, and Enterprise Florida, Inc (EFI).¹⁰ In negotiating the amount of an IIP award, DEO shall consider the amount of the incentive needed to cause the applicant to locate or expand in the state in conjunction with other relevant applicant impact and cost information and analysis. Particular emphasis shall be given to the potential for the project to stimulate additional private investment and high-quality employment opportunities.¹¹ In recommending approval of an award, DEO shall include proposed performance conditions that the applicant must meet in order to obtain incentive funds and any other conditions that must be met before the receipt of any incentive funds.¹²

Upon receipt of DEO's evaluation and recommendation, the Governor shall approve or deny an IIP award. Regardless of the amount of the award, the Governor shall consult with the President of the Senate and the Speaker of the House of Representatives before giving approval for an award. Upon review and approval by the Legislative Budget Commission (LBC), the Governor's Office shall release the funds.¹³

DEO and the applicant shall then enter into an agreement that sets forth the condition for payment of the incentive funds. The agreement must include, among other things, the total amount of funds awarded, performance conditions that must be met in order to obtain the award or portions of the award, demonstration of a baseline of current service and a measure of enhanced capability, the methodology for validating performance, and sanctions for failure to meet performance conditions.¹⁴ DEO as part of its annual report shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a summary of the activities and accomplishments of the recipients of IIP grants during the previous 12 months and an evaluation of whether the recipients are catalysts for additional direct and indirect economic development in Florida.¹⁵

DEO's 2011 Annual Report

In its 2011 Annual Report, DEO advises that since its inception in 2006, the IIP has awarded 8 entities a combined total of \$449.69 million, but that the actual payments to date total \$362.44 million, as the payments are based both on prior year results and projected current year needs.¹⁶

¹⁰ Section 288.1089(5), F.S. (incorporating s. 288.061, F.S.)

¹¹ Section 288.1089(6), F.S.

¹² Section 288.1089(7), F.S.

¹³ *Id.*

¹⁴ Section 288.1089(8), F.S.

¹⁵ Section 288.1089(11)(a), F.S.

¹⁶The eight entities are: (1) Sanford-Burnham Medical Research Institute, (2) Torrey Pines Institute for Molecular Studies, (3) SRI International, (4) Human Institute for Human Genomics, (5) Max Planck Florida Corporation, (6) Vaccine Gene Therapy Institute Florida, (7) The Charles Stark Draper Laboratory, Inc., and (8) IRX Therapeutics, Inc. Detailed summaries of each are included in DEO's 2011 Annual Report, at 57-63. Note that the Scripps Research Institute and The Centers for Excellence Program were funded by legislation pre-dating the IIP, and therefore do not fall within its ambit. See The Florida Senate Interim Report 2009-107, Review of OTTED's Oversight of the Innovation Incentive Grant Program, at 1-2 (Oct. 2008) (available at http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-107cm.pdf).

The report sets forth the following chart indicating that the 8 entities are required to ultimately create a combined total of 1,771 jobs, with 748.15 of those jobs already in existence.¹⁷

Innovation Incentive Program Agreement Term and Award Information

In Thousands

	Sanford-Burnham Institute for Medical Research	Torrey Pines Institute for Molecular Studies	SRI Int'l	Hussman Institute for Human Genomics	Max Planck Florida Institute	Vaccine and Gene Therapy Institute of Florida	Draper Labs	IRX Therapeutics
Funding Agreement Effective Date	10/31/06	11/16/06	11/22/06	01/09/08	03/12/08	04/17/08	06/30/08	10/28/11
Funding Agreement Term	20 years	20 years	20 years	12 years	20 years	20 years	20 years	20 years
Total Amount Awarded	\$155,272	\$24,728	\$20,000	\$80,000	\$94,090	\$60,000	\$15,000	\$600
Current Amount Received as of 12/13/11	\$101,505	\$19,000	\$19,649	\$59,200	\$94,090	\$55,000	\$14,000	\$0
Total Jobs Required through Measurement Period	303 by 2016	189 by 2015	200 by 2016	296 by 2016	135 by 2018	200 by 2018	165 by 2015	283 by 2017
Current Jobs Actual	185.2 as of 09/11	104 as of 09/11	87.3 as of 09/11	199.65 as of 11/11	60 as of 09/11	62 as of 09/11	50 as of 09/11	N/A

DEO in its report also states that the IIP is in its first quarter of implementation,¹⁸ and that it is thus too early to definitively state that the IIP fund recipients are catalysts for additional direct and indirect economic development in Florida. DEO elaborates that the first IIP fund agreement in Florida was not executed until October 31, 2006, and that agreements are typically for 20 years, with job creation ramping up during the first 7 to 10 years.¹⁹

DEO nevertheless points to some early results reported by The Florida BioDatabase (maintained by the University of Florida's Sid Martin Biotechnology Incubator in Alachua) that Florida has seen a surge in investment and a 26 percent jump in the number of biotech companies since 2008, while the biotechnology industry has weakened across the United States. DEO quotes the editor of The Florida BioDatabase, Dr. Michael Schmitt, as saying in a news alert that Florida

¹⁷ DEO 2011 Annual Report, at 56. EFI includes similar data about IIP in its comprehensive 2011 Annual Incentives Report, at 14 (Table 3-Incentive Awards Granted—Grants); 19 (Table 7-Program Activity—Grants); 20 (Table 8-Program Results—Grants); 31 (Table 19-Incentive Applications and Projects—Fiscal Year 2011); 36 (Table 25-Incentive Payments—Fiscal Year 2011); and 56-61 (Table 41—Incentive Payments—Fiscal Year 2011). The report is available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf.

¹⁸ By "first quarter of implementation," DEO appears to mean that about 5 years of the 20-year IIP agreement term (i.e., one quarter of the 20-year term) has elapsed since the first few IIP agreements in late 2006.

¹⁹ DEO 2011 Annual Report, at 63.

“has the key ingredients for growth including a strong research base and an increasing trend in venture capital funding.” It also cites Dr. Schmitt in confirming that:

- Florida is one of the nation’s top 10 biotech centers, according to Ernst & Young;
- Florida is one of the top five regions for biotech, according to Fierce Biotech;
- Florida has more than 171 biotech research and development companies, up 26 percent since 2008, resulting in more than 26,000 jobs for Floridians, including more than 4,000 researchers and technicians; and
- While PricewaterhouseCoopers LLP and the National Venture Capital Association showed marked decreases in venture capital funding for the life sciences sector, including biotechnology and medical devices, Florida’s trend is positive; venture capital funding for Florida went from \$27 million in 2010 to \$61 million through the third quarter of 2011.²⁰

Comparison With the Quick Action Closing Fund

The Quick Action Closing Fund (QACF) is a similar incentive program with a separate but related focus of ensuring that sufficient resources shall be available for the state to respond to extraordinary economic opportunities and to compete effectively for high impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities, with up to 20 percent of the resources allowed to be used for projects to retain or create high-technology jobs that are directly associated with developing a more diverse aerospace economy in the state.²¹ The criteria and application process for the QACF are analogous to those of the IIP,²² and the QACF used to have a somewhat similar procedure for approval by the Governor.

Specifically, back in 2010, the Governor was required to provide the Office of Tourism, Trade, and Economic Development’s (OTTED, now DEO) evaluation of QACF projects recommended for approval to the President of the Senate and the Speaker of the House of Representatives, and consult with them before giving final approval for a project. At least 14 days before releasing funds for the project, the Governor’s Office was required to recommend approval of the project and release of funds by delivering notice of such action pursuant to legislative consultation and review requirements regarding appropriations under s. 216.177, F.S. If the chair or vice chair of the LBC or the President of the Senate or the Speaker of the House of Representatives timely advised the Governor’s Office that such action exceeded the delegated authority of the Governor’s Office or was contrary to legislative policy or intent, the Governor’s Office was required to void the release of funds and instruct OTTED (now DEO) to immediately change such action until the LBC or the Legislature addressed the issue. Notwithstanding such requirement, any project exceeding \$2 million had to be approved by the LBC prior to the funds being released.²³

Significantly, however, the Legislature in 2011 amended this process for the QACF as follows:

²⁰ *Id.* For a history, status, review, and recommendations regarding the IIP as of October 2008, see The Florida Senate Interim Report 2009-107, Review of OTTED’s Oversight of the Innovation Incentive Grant Program.

²¹ Section 288.1088(1)(c), F.S.

²² Compare s. 288.1088(2)-(3), F.S. (criteria and application process for the QACF), with s. 288.1089(3)-(7), F.S. (criteria and application process for the IIP).

²³ Section 288.1088(3)(c), F.S. (2010).

- The Governor may now approve QACF projects without consulting the Legislature for projects requiring less than \$2 million in funding;
- For projects requiring funding in the amount of \$2 million to \$5 million, the Governor is now required to provide a written description and evaluation of a QACF project recommended for approval to the chair and vice chair of the LBC at least 10 days prior to giving final approval for a project. The Governor is no longer required to provide the evaluation to the President of the Senate and the Speaker of the House of Representatives, nor is the Governor required to comply with the legislative consultation and review requirements regarding appropriations under s. 216.177, F.S. The requirement remains that if the chair or vice chair of the LBC or the President of the Senate or the Speaker of the House of Representatives timely advises the Governor's Office that the action at issue exceeds the delegated authority of the Governor's Office or is contrary to legislative policy or intent, the Governor's Office is required to void the release of funds and instruct DEO to immediately change such action until the LBC or the Legislature addresses the issue; and
- Notwithstanding such requirement, any project exceeding \$5 million (as opposed to \$2 million) must be approved by the LBC Commission prior to the funds being released.²⁴

III. Effect of Proposed Changes:

SB 1048 amends s. 288.1089, F.S., regarding the IIP.

Section 1: Without reference to the amount of an IIP award, s. 288.1089(7), F.S., currently requires the Governor to consult with the President of the Senate and the Speaker of the House of Representatives before approving the award and, upon review and approval by the Legislative Budget Commission (LBC), authorizes the Governor's Office to release the funds. Much like last year's amendments to the QACF, the present bill amends the IIP process based on the amount of the award, as follows:

- If an award is over \$5 million, DEO may not release the funds until the award is reviewed and approved by the LBC;
- If an award is over \$2 million but not over \$5 million, at least 10 days before the funds are released, the Governor shall submit a written description and evaluation of the award to the chair and vice chair of the LBC. If the chair or vice chair, the President of the Senate, or the Speaker of the House of Representatives timely advises the Governor's Office in writing that such action or proposed action exceeds the delegated authority of the Governor's Office or is contrary to the legislative policy or intent, the Governor's Office shall void the release of funds and instruct DEO to immediately change such action or proposed action until the LBC or the Legislature addresses the issue; and
- If an award is not over \$2 million, the Governor may approve the award and DEO may release the funds without legislative notice or review.

The bill also updates a reference to OTTED.²⁵

²⁴ Ch. 2011-142, s. 154, L.O.F. For the corresponding staff analysis, see Bill Analysis and Fiscal Impact Statement on SB 2156 (April 2, 2011), at 6 & 23 (available at <http://www.flsenate.gov/Session/Bill/2011/2156/Analyses/gd=PL=dOKcIWTjGtHd2Osc6XNkw7mU=%7C7/Public/Bills/2100-2199/2156/Analysis/2011s2156.bc.PDF>). Ch. 2011-142, s. 18, L.O.F., also amended s. 288.061, F.S., regarding the general review and approval process for applications by businesses seeking state economic incentives. For the corresponding staff analysis, see Bill Analysis on SB 2156, at 18.

Section 2: The bill provides for an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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:

The bill requires the Governor to submit a written description and evaluation of in IIP award to the chair and vice chair of the LBC, but not to the President of the Senate and the Speaker of the House of Representatives. Yet all four of those people are authorized to timely advise the Governor's Office that the action at issue exceeds the delegated authority of the Governor's Office or is contrary to legislative policy or intent. In order to effectively so advise the Governor, it would seem that the President of the Senate and the Speaker of the House of Representatives (not just the chair and vice chair of the LBC) would likewise need to receive the written description and evaluation of an IIP award.

VII. Related Issues:

EFI submits that the changes at issue will provide a quicker, more market reactive incentive approval process; increased ability to attract high-wage, innovative jobs to the state; a sharpened competitive edge for Florida through a more level playing field with its regional and national

²⁵ Ch. 2011-142, s. 4, L.O.F., transferred the functions and trust funds of OTTED in the Executive Office of the Governor to DEO.

competitors; and a more efficient utilization of a key incentive tool. In identifying the present bill as a legislative priority, EFI elaborates:

As economic conditions have changed so too have the economic development needs of businesses. More businesses qualifying for an Innovation Incentive award are only in need of a small amount of capital to offset expenditures in order to grow and create jobs. Not only is the incentive award important to a business but the speed and certainty of the timeline is crucial.

During the early use of the program, larger amounts of money were usually awarded and it was fiscally prudent of the state for the LBC to review and provide final approval [for] all awards before they were granted. Now that smaller awards are needed in a shorter time frame it is imperative that the approval process reflect that. Therefore, EFI recommends updating the Innovation Incentive Approval Process to mirror the process for the Quick Action Closing Fund.²⁶

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁶ Informational sheet titled "Enterprise Florida 2012 Legislative Priorities, Update the Innovation Incentive Approval Process" (on file with the Senate Committee on Commerce and Tourism).