

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 Committee on Governmental Oversight and Accountability

BILL: CS/SB 546

INTRODUCER: Commerce and Tourism Committee and Senator Ring

SUBJECT: Targeted Economic Development

DATE: April 2, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	Fav/CS
2.	McKay	McVane	GO	Favorable
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 546 makes several changes to the Institute for the Commercialization of Public Research (the institute). The bill allows the institute to assist in the commercialization of innovation businesses, as defined under current law. The bill allows the institute to provide services to private companies for a fee, provided such services do not interfere with the institute’s core mission.

The bill allows the institute to create a corporate subsidiary called the Florida Technology Seed Capital Fund (the fund). The fund may make seed-stage equity investments in businesses that meet certain qualifications. Proceeds resulting from the sale of any equity in a company must be reinvested by the fund.

The bill substantially amends section 288.9625 of the Florida Statutes., and creates section 288.96255 of the Florida Statutes.

II. Present Situation:

In 2007, the Legislature passed the Florida Capital Formation Act, in part to address the need to increase the availability of seed capital and early stage venture equity capital for emerging Florida companies.¹ The act created two state venture capital efforts: the Florida Opportunity Fund and the Institute for the Commercialization of Public Research.

Florida Opportunity Fund²

The Florida Opportunity Fund (FOF) was originally created in 2007 as a “fund of funds” program for the purpose of investing in seed and early stage venture capital funds managed by managers with demonstrated experience, expertise, and a successful history of investing venture capital funds, with a focus on venture capital opportunities in Florida. In order to receive an investment from the FOF, a venture capital fund must demonstrate a record of successful investment in Florida, be based in the state, or have an office staffed with a full-time, professional venture investment executive. Funds must have raised capital from other sources of at least twice the FOF’s investment. The Legislature provided an initial appropriation of \$29.5 million from the General Revenue Fund for FOF’s venture capital investment efforts.

The scope of the FOF’s purpose was expanded in 2009 to allow it to provide direct investments, including loans, in businesses and infrastructure projects that are Florida-based and operate in technology sectors that are strategic to Florida.³ In order to receive a direct investment, a business or infrastructure project must have raised capital from other sources of at least twice the FOF’s investment.

Enterprise Florida, Inc. (EFI), operates as the FOF’s sponsor and as its sole shareholder or member. FOF’s board of directors is composed of five members, appointed by the EFI board of directors. Members of the FOF’s board of directors must have expertise in the areas of selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise.

Florida First Partners manages the FOF’s, operating three investment programs including: the Fund-of-Funds Program; the Clean Energy Investment Program; and the Florida Venture Capital Program.⁴ The Fund-of-Funds Program invests in seed and early-stage venture capital funds that target investments in Florida.⁵ The Clean Energy Investment Program promotes the adoption of energy efficient or renewable energy products and technologies. The program is administered by the Florida Department of Agriculture and Consumer Services’ Office of Energy, and provides several project funding structures including project financing, asset-based lending, mezzanine financing, and equity investments. The program targets funding opportunities ranging from

¹ Chapter 2007-189, L.O.F., codified as ss. 288.9621-288.9625, F.S.

² Section 288.9624, F.S.

³ Chapter 2009-51, L.O.F.

⁴ Florida Opportunity Fund homepage, available at: <http://www.floridaopportunityfund.com/HomePage.asp>, (last visited on February 11, 2013).

⁵ Fund of Funds Program website, available at: <http://www.floridaopportunityfund.com/About.asp>, (last visited on February 11, 2013).

\$500,000 to \$5 million.⁶ The Florida Venture Capital Program provides funding opportunities including equity investments and convertible debt instruments ranging from \$1 million to \$3 million. The program seeks to provide funding for emerging Florida companies with perceived long-term growth potential. Investments are directed to businesses in Florida's targeted industries, including: aerospace and aviation; alternative and clean energy technology; financial and professional services; homeland security and defense; information technology; life sciences; and manufacturing.⁷

Institute for the Commercialization of Public Research⁸

The Institute for the Commercialization of Public Research (the institute) was established as a non-profit corporation to assist in the commercialization efforts at Florida's universities by working collaboratively with the technology licensing and commercialization offices of Florida's public universities and private research institutions receiving public funds.⁹

The institute has primary locations at the University of Florida in Gainesville and Florida Atlantic University in Boca Raton. The institute is governed by a board of directors, who are responsible for the institute's funds, presenting the institute's annual report, and managing the institute's general affairs. The board of directors is composed of: the executive director of the Department of Economic Opportunity; the president of the university where the institute is located, or in the case where the institute is located at multiple universities, the presidents' agreed upon designee; and three directors appointed by the Governor.

The institute matches commercially-viable technologies with management talent and capital, and showcases technologies and companies originating from publicly supported organizations across the state. The institute focuses on technologies and companies in Florida's target industries.¹⁰

Before the institute facilitates a company or organization's efforts to commercialize its products, it must be accepted by the institute through an application process. Publicly supported organizations may recommend that a company attempting to commercialize its research, technology, or patents be accepted by the institute. Upon acceptance by the institute, a company receives mentoring and other services, which includes developing marketing information on the company, using institute resources to attract capital investment into the company, and other resources that may encourage effective management, growth, capitalization technology protection, or marketing or business success.

In 2011 the institute received a \$10 million appropriation, which it used primarily to develop and implement the Seed Capital Accelerator Program.¹¹ The accelerator program offers repayable

⁶ Clean Energy Program website, available at: <http://www.floridaopportunityfund.com/EnergyAbout.asp>, (last visited on February 11, 2013). Funding for this program was provided by the U.S. Department of Energy through the American Recovery and Reinvestment Act.

⁷ Florida Venture Capital Program website, available at: <http://www.floridaopportunityfund.com/VentureAbout.asp>, (last visited on: February 11, 2013). Funding for this program is provided through the federal Small Business Jobs Act of 2010 and the State Small Business Credit Initiative.

⁸ Section 288.9625, F.S.

⁹ Florida Institute for the Commercialization of Public Research, *Annual Report 2011*, (June 30, 2011). (On file with the Senate Commerce and Tourism Committee).

¹⁰ *Id.*

loans ranging from \$50,000-\$300,000 to qualified companies approved by the institute. Companies must provide a 1:1 match against the loan through private capital sources.¹²

In addition to its charge of matching publicly-developed research with private commercialization efforts, the institute is also required to implement and administer the Research Commercialization Matching Grant Program.¹³ The grant program is designed to provide matching funds for projects and businesses that have been awarded or are applying for Phase I or Phase II federal Small Business Innovation Research Program grants and Small Business Technology Transfer Program grants through the U.S. Small Business Administration's Office of Technology.

The institute is prohibited from charging a fee for services provided.

By December of each year, the institute is required to submit an annual report on its activities to the Governor and the Legislature.

III. Effect of Proposed Changes:

Section 1 amends s. 288.9625, F.S., relating to the Institute for the Commercialization of Public Research (the institute). The bill expands the purpose of the institute to include the commercialization of products developed by innovation businesses as defined by s. 288.1089, F.S. Current law defines an innovation business 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."¹⁴ Innovation businesses may qualify for the Innovation Incentive Program.

The bill allows the institute to deliver and charge for services to private companies and affiliated organizations, so long as the services do not interfere with the institute's core mission. The bill prohibits the institute from using its capital to support private companies whose products were not developed by a publicly supported college, university, research institute, or other organization.

Section 2 creates s. 288.96255, F.S., to allow the institute to create a corporate subsidiary to be named the Florida Technology Seed Capital Fund (the fund). The institute is directed to administer the fund. Administrative costs are to be determined by the fund's investor advisory board. The bill specifies that the fund's purposes are:

- Fostering greater private sector investment funding;
- Encouraging seed-stage investments in start-up companies; and
- Advising companies on restructuring existing management, operations, or production to attract business opportunities.

¹¹ Chapter 2011-76, L.O.F.

¹² Institute for the Commercialization of Public Research website, "Seed Capital Accelerator Program" page, available at: <http://www.florida-institute.com/index.cfm?fuseaction=funding.scap>, (last visited on February 12, 2013).

¹³ Section 288.9552, F.S.

¹⁴ Section 288.1089(2)(h), F.S.

The bill allows the fund to make seed-stage equity investments in companies. Any proceeds resulting from the sale of the equity held by the fund in companies must be returned to the fund for reinvestment.

The bill requires the institute to establish an investor advisory board composed of venture capital professionals and early-stage investors to guide and advise the fund's management, and to make funding recommendations. The institute is also directed to hire employees with expertise to manage the fund's activity.

Investment proposals are required to be evaluated based on investment industry best practices. The bill provides the requirements that the institute must consider prior to approving an investment by the fund. In order for a company to be approved for investment, it must:

- Have a strong intellectual property position, a capable management team, readily identifiable paths to market or commercialization, significant job growth potential, the ability to provide other sources of capital to leverage the state's investment, and the potential to attract additional funding;
- Be identified by a publicly funded research institution;
- Operate in a targeted industry as designated pursuant to s. 288.106(2), F.S.;
- Be identified and approved by a private-sector lead investor who has demonstrated due diligence in evaluating the company; and
- Be recommended by the investor advisory board and fund manager.

Once a company has been approved by the institute, an investment of between \$50,000 and \$300,000 can be made if the company provides a one-to-one private sector match. Additional seed investments require a two-to-one private sector match, and can reach a cumulative total of up to \$500,000 for a single company.

The services offered by the institute through the fund include:

- Providing companies with value-added support services, such as business plan development and preparation of investor presentations;
- Encouraging appropriate investment funds to become preapproved to match investment funds;
- Marketing the state as an attractive early-stage investment location; and
- Collaborating with state economic development organizations, national seed and angel funds associations, and other innovation associations to enhance the state's entrepreneurial ecosystem.

The bill requires the institute to evaluate the activities and results of the fund, and must take into account in the evaluation that seed investment horizons span from 3 to 7 years.

Section 3 provides for an effective date of July 1, 2013.

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:

To the extent that the bill will assist additional start-ups and early stage-companies, and facilitate technology development, the bill could have a positive impact on the private sector.

C. Government Sector Impact:

The bill has an indeterminate impact on the Institute for the Commercialization of Public Research.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current law provides a public records exemption for specified records held by the Institute for the Commercialization of Public Research (institute).¹⁵ This bill creates the Florida Technology Seed Capital Fund (fund) as a corporate subsidiary of the institute. It is unclear whether the existing public records exemption for the institute would also apply to public records held by a newly-created subsidiary such as the fund. Because the bill appears to assign the institute all responsibilities relating to the fund, however, it is possible that the institute, not the fund, would be the custodian of any related public records. Even if that is the case, it is unclear whether public records generated in relation to the fund would constitute an expansion of the records currently protected by the institute's public records exemption.

The bill provides that the institute must create the fund; the Legislature could directly create the fund.

¹⁵ Section 288.9627(2), F.S.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 18, 2013:

- Removes the requirement for the fund to consist of \$50 million.
- Removes the requirement that administrative fees may not exceed 5 percent of the total appropriation for the fund and instead states that administrative costs are to be determined by the investor advisory board.
- Specifies that a company operating in a targeted industry designated under s. 288.106(2), F.S., is a requirement for investment by the fund rather than a company operating in a targeted industry as designated by Enterprise Florida, Inc.
- Clarifies provisions relating to the initial investment and private-sector matching fund requirements.

- B. **Amendments:**

None.