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1
2 An act relating to Florida business entities; amending
3 s. 20.60, F.S.; deleting the requirement that the
4 Department of Economic Opportunity manage certain
5 activities related to the commercialization of
6 specified products, services, and ideas; specifying
7 that the Institute for Commercialization of Florida
8 Technology is not an appropriate direct-support
9 organization; amending s. 288.9621, F.S.; designating
10 an additional section as being included in the Florida
11 Capital Formation Act; amending s. 288.9622, F.S.;
12 revising legislative intent; amending s. 288.9623,
13 F.S.; defining terms; amending s. 288.9625, F.S.;
14 redesignating the Institute for the Commercialization
15 of Public Research as the Institute for
16 Commercialization of Florida Technology; specifying
17 that the institute is not subject to control,
18 supervision, or direction by the department; revising
19 the institute's responsibilities; requiring that the
20 investment-related affairs of the institute be managed
21 by the private fund manager and overseen by the board
22 of directors; restructuring the board of directors and
23 the selection process for the board of directors;
24 specifying term limits of the board members under
25 certain circumstances; requiring the board of

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26 | directors to amend the bylaws of the institute under
27 | certain circumstances; providing that a director is
28 | subject to restrictions on certain conflicts of
29 | interest; prohibiting a director from having a
30 | financial interest in certain investments; authorizing
31 | a director to be reimbursed for certain expenses;
32 | granting the institute certain powers; requiring the
33 | institute to indemnify certain persons; delegating
34 | certain duties to the board of directors; revising to
35 | whom the board must provide a copy of the annual
36 | report and who may require and receive supplemental
37 | data relative to the institute's operation; requiring
38 | that certain requirements be met before the private
39 | fund manager is authorized to make an investment in a
40 | company, on behalf of the institute; deleting
41 | provisions relating to certain duties of the
42 | institute; deleting provisions relating to certain
43 | fees charged by the institute and the prohibition on
44 | using capital in support of certain entities;
45 | specifying that the annual report is considered a
46 | public record, subject to certain exemptions; revising
47 | the requirements of the institute's annual report;
48 | listing requirements and prohibitions for the private
49 | fund manager; stating the purpose of the institute's
50 | use of the private fund manager; requiring the private

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51 fund manager to assume the management of certain
52 assets; authorizing the private fund manager to act on
53 behalf of the institute for certain purposes;
54 requiring that the private fund manager be paid
55 certain fees; authorizing the private fund manager to
56 undertake certain activities on behalf of the
57 institute; requiring the private fund manager to issue
58 an annual report to the board of directors by a
59 specific date; specifying that the annual report is
60 considered a public record subject to certain
61 exemptions; requiring that the report contain certain
62 information; requiring that the institute transfer any
63 funds received from a specific appropriation after a
64 specified date to the General Revenue Fund; requiring
65 that all assets held by the institute and the Florida
66 Technology Seed Capital Fund be immediately liquidated
67 if the institute receives such an appropriation;
68 providing that all the proceeds resulting from such
69 liquidation revert to the General Revenue Fund;
70 amending s. 288.96255, F.S.; revising the purpose of
71 the technology fund; requiring that certain proceeds
72 be returned to the fund after the payment of certain
73 costs and fees; requiring the institute to employ a
74 private fund manager; requiring the private fund
75 manager to perform specific duties; requiring that the

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76 private fund manager receive certain fees and costs at
77 a specified time; requiring the private fund manager
78 to use a certain process to evaluate a proposal;
79 requiring the private fund manager to consider certain
80 factors when approving a company for investment;
81 deleting specific requirements for the investment of
82 funds; authorizing the private fund manager, in
83 addition to the institute, to perform certain tasks;
84 amending s. 288.9627, F.S.; conforming provisions to
85 changes made by this act; amending s. 607.512, F.S.;
86 authorizing the omission of certain confidential
87 information from an annual benefit report of a social
88 purpose corporation; amending s. 607.612, F.S.;
89 authorizing the omission of certain confidential
90 information from an annual benefit report of a benefit
91 corporation; amending s. 658.23, F.S.; authorizing the
92 modification of form articles of incorporation to
93 include provisions required for a social purpose or
94 benefit corporation; amending s. 658.30, F.S.;
95 providing that certain provisions of the act extend to
96 financial institutions in certain circumstances;
97 authorizing stockholders, directors, and committees of
98 financial institutions to hold meetings as authorized
99 by the act; amending s. 658.36, F.S.; authorizing a
100 financial institution to approve special stock

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101 offering plans notwithstanding provisions of the act;
 102 providing an effective date.

103

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

105

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

109 20.60 Department of Economic Opportunity; creation; powers
 110 and duties.—

111 (4) The purpose of the department is to assist the
 112 Governor in working with the Legislature, state agencies,
 113 business leaders, and economic development professionals to
 114 formulate and implement coherent and consistent policies and
 115 strategies designed to promote economic opportunities for all
 116 Floridians. To accomplish such purposes, the department shall:

117 (e) Manage the activities of public-private partnerships
 118 and state agencies in order to avoid duplication and promote
 119 coordinated and consistent implementation of programs in areas
 120 including, but not limited to, tourism; international trade and
 121 investment; business recruitment, creation, retention, and
 122 expansion; minority and small business development; rural
 123 community development; ~~commercialization of products, services,~~
 124 ~~or ideas developed in public universities or other public~~
 125 ~~institutions;~~ and the development and promotion of professional

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126 and amateur sporting events.

127 (9) The executive director shall:

128 (b) Serve as the manager for the state with respect to
 129 contracts with Enterprise Florida, Inc., ~~the Institute for the~~
 130 ~~Commercialization of Public Research,~~ and all applicable direct-
 131 support organizations. To accomplish the provisions of this
 132 section and applicable provisions of chapter 288, and
 133 notwithstanding the provisions of part I of chapter 287, the
 134 director shall enter into specific contracts with Enterprise
 135 Florida, Inc., ~~the Institute for the Commercialization of Public~~
 136 ~~Research,~~ and other appropriate direct-support organizations.
 137 Such contracts may be for multiyear terms and must ~~shall~~ include
 138 specific performance measures for each year. For purposes of
 139 this section, the Florida Tourism Industry Marketing Corporation
 140 and the Institute for Commercialization of Florida Technology
 141 are not ~~is not an~~ appropriate direct-support organizations
 142 ~~organization.~~

143 Section 2. Section 288.9621, Florida Statutes, is amended
 144 to read:

145 288.9621 Short title.—Sections 288.9621-288.96255 ~~Sections~~
 146 ~~288.9621-288.9625~~ may be cited as the "Florida Capital Formation
 147 Act."

148 Section 3. Section 288.9622, Florida Statutes, is amended
 149 to read:

150 288.9622 Findings and intent.—

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151 (1) The Legislature finds and declares that there is a
 152 need to increase the availability of seed capital and early
 153 stage investment ~~venture equity~~ capital for emerging companies
 154 in the state, including, without limitation, businesses
 155 ~~enterprises~~ in life sciences, information technology, advanced
 156 manufacturing processes, aviation and aerospace, and homeland
 157 security and defense, as well as other industries of strategic
 158 importance to this state ~~strategic technologies~~.

159 (2) It is the intent of the Legislature that ss. 288.9621-
 160 288.96255 ~~ss. 288.9621-288.9625~~ serve to mobilize private
 161 investment in a broad variety of ~~venture capital~~ partnerships in
 162 diversified industries and geographies; retain private sector
 163 investment criteria focused on rate of return; allow the
 164 Institute for Commercialization of Florida Technology to use the
 165 ~~services of~~ highly qualified private fund managers experienced
 166 in the seed and early stage development industry in this state;
 167 outline the use, qualifications, and activities of the private
 168 management, without any financial support or specific
 169 appropriations from the state, by a private fund manager of the
 170 assets of the Seed Capital Accelerator Program and the Florida
 171 Technology Seed Capital Fund investment portfolio of the
 172 Institute for Commercialization of Florida Technology ~~venture~~
 173 ~~capital industry regardless of location~~; facilitate the
 174 organization of the Florida Opportunity Fund as an investor in
 175 seed and early stage businesses, infrastructure projects,

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176 | venture capital funds, and angel funds; and precipitate capital
177 | investment and extensions of credit to and in the Florida
178 | Opportunity Fund.

179 | (3) It is the intent of the Legislature to mobilize
180 | investment ~~venture equity~~ capital ~~for investment~~ in such a
181 | manner as to result in a significant potential to create new
182 | businesses and jobs in this state which ~~that~~ are based on high
183 | growth potential technologies, products, or services and which
184 | ~~that~~ will further diversify the economy of this state.

185 | (4) It is the intent of the Legislature to reduce the
186 | ongoing operational cost and burden of managing the Florida
187 | Technology Seed Capital Fund and the Seed Capital Accelerator
188 | Program to this state and eliminate any financial support or
189 | specific appropriations from the state by engaging a private
190 | asset management entity in this state which is familiar with the
191 | seed and early stage investment industry in this state. This
192 | entity would be responsible for the management of the assets of
193 | the Seed Capital Accelerator Program and the Florida Technology
194 | Seed Capital Fund investment portfolio without requiring ongoing
195 | budget expenditures by this state or receiving any financial
196 | support or specific appropriations from the state ~~that an~~
197 | ~~institute be created to mentor, market, and attract capital to~~
198 | ~~such commercialization ventures throughout the state.~~

199 | Section 4. Section 288.9623, Florida Statutes, is amended
200 | to read:

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201 288.9623 Definitions.—As used in ss. 288.9621-288.96255,
 202 the term ss. ~~288.9621-288.9625~~:

203 (1) "Accelerator program" means the Seed Capital
 204 Accelerator Program managed by the institute.

205 (2)~~(1)~~ "Board" means the board of directors of the Florida
 206 Opportunity Fund.

207 (3)~~(2)~~ "Fund" means the Florida Opportunity Fund.

208 (4) "Institute" means the Institute for Commercialization
 209 of Florida Technology.

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

212 (6) "Net profits" means the total gross proceeds received
 213 from the sale or liquidation of an asset of the investment
 214 portfolio less any costs, legal fees, professional fees,
 215 consulting fees, government fees, brokerage fees, taxes,
 216 management fees pursuant to s. 288.9625(12)(b), disbursement to
 217 private investors pursuant to s. 288.96255(6), or other fees,
 218 costs, and expenses incurred in the sale or liquidation of any
 219 of the investment portfolio assets.

220 (7) "Portfolio companies" means the companies who are part
 221 of the Florida Technology Seed Capital Fund investment
 222 portfolio.

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

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

228 Section 5. Section 288.9625, Florida Statutes, is amended
 229 to read:

230 288.9625 Institute for ~~the~~ Commercialization of Florida
 231 Technology Public Research. ~~There is established at a public~~
 232 ~~university or research center in this state the Institute for~~
 233 ~~the Commercialization of Public Research.~~

234 (1) The institute ~~is~~ shall be a nonprofit not-for-profit
 235 corporation registered, incorporated, and operated in accordance
 236 with chapter 617. The institute is not subject to control,
 237 supervision, or direction by the department in any manner,
 238 including, but not limited to, personnel, purchasing,
 239 transactions involving real or personal property, and budgetary
 240 matters.

241 (2) The purpose of the institute is to assist, without any
 242 financial support or specific appropriations from the state, in
 243 the commercialization of products developed by the research and
 244 development activities of an innovation business, including, but
 245 not limited to, those ~~as defined in s. 288.1089; a publicly~~
 246 ~~supported college, university, or research institute; or any~~
 247 ~~other publicly supported organization in this state.~~ The
 248 institute shall fulfill its purpose in the best interests of the
 249 state. The institute:

250 (a) Is a corporation primarily acting as an

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251 instrumentality of the state pursuant to s. 768.28(2), for the
 252 purposes of sovereign immunity;

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

254 (c) Is subject to the open records and meetings
 255 requirements of s. 24, Art. I of the State Constitution, chapter
 256 119, and s. 286.011;

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

258 (e) Is ~~shall be~~ governed by the code of ethics for public
 259 officers and employees as set forth in part III of chapter 112;

260 (f) May create corporate subsidiaries; and

261 (g) May not receive any financial support or specific
 262 appropriations from the state ~~shall support existing~~
 263 ~~commercialization efforts at state universities; and~~

264 ~~(h) May not supplant, replace, or direct existing~~
 265 ~~technology transfer operations or other commercialization~~
 266 ~~programs, including incubators and accelerators.~~

267 (3) The articles of incorporation of the institute must ~~be~~
 268 ~~approved in a written agreement with the department. The~~
 269 ~~agreement and the articles of incorporation shall:~~

270 (a) Provide that the institute shall provide equal
 271 employment opportunities for all persons regardless of race,
 272 color, religion, gender, national origin, age, handicap, or
 273 marital status;

274 (b) Provide that the institute is subject to the public
 275 records and meeting requirements of s. 24, Art. I of the State

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276 Constitution;

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

281 (d) Provide that members of the board of directors of the
 282 institute are responsible for the prudent use of all public and
 283 private funds and that they will ensure that the use of funds is
 284 in accordance with all applicable laws, bylaws, and contractual
 285 requirements, including those in subsection (15); and

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

288 (4) The investment-related affairs of the institute shall
 289 be managed by the private fund manager, and overseen by a board
 290 of directors who shall serve without compensation. Each director
 291 shall have only one vote. The chair of the board of directors
 292 shall be selected by a majority vote of the directors, a quorum
 293 being present. ~~The board of directors shall consist of the~~
 294 ~~following five members:~~

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

297 ~~(b) The president of the university where the institute is~~
 298 ~~located or the president's designee unless multiple universities~~
 299 ~~jointly sponsor the institute, in which case the presidents of~~
 300 ~~the sponsoring universities shall agree upon a designee.~~

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301 (a) ~~(e)~~ The board of directors shall consist of three
302 directors appointed pursuant to the procedures and requirements
303 of this section by the Governor to 3-year staggered terms, to
304 which the directors may be reappointed.

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

310 (c) The bylaws of the institute shall be amended
311 accordingly by the board of directors to reflect the
312 requirements of this section.

313 (d) Upon vacancy, or within 90 days before an anticipated
314 vacancy by the expiration of a term of a director, the private
315 fund manager shall submit a list of three eligible nominees,
316 which may include the incumbent director, to replace the
317 outgoing director. The board of directors, voting along with the
318 private fund manager, may appoint a director from the nominee
319 list or may request and appoint a director from a new list of
320 three nominees that were not included on the previous list.

321 (e) The persons appointed as replacement directors must
322 include persons who have expertise in the area of the selection
323 and supervision of early stage investment managers or in the
324 fiduciary management of investment funds and other areas of
325 expertise as considered appropriate.

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326 (f) Directors are subject to any restrictions on conflicts
 327 of interest specified in the organizational documents and may
 328 not have a financial interest in any venture capital investment
 329 in any portfolio company.

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

333 (h) The institute shall have all powers granted under its
 334 organizational documents and shall indemnify its directors and
 335 the private fund manager to the broadest extent permissible
 336 under the laws of this state.

337 (5) The board of directors shall oversee the private fund
 338 manager to ensure consistency with the Florida Capital Formation
 339 Act, perform those duties as may be delegated to it in the
 340 bylaws of the institute, and provide a copy of the institute's
 341 annual report to the Governor, the President of the Senate, and
 342 the Speaker of the House of Representatives, and the president
 343 of the university at which the institute is located.

344 (6) ~~The department, the president and the board of~~
 345 ~~trustees of the university where the institute is located, the~~
 346 ~~Auditor General,~~ and the Office of Program Policy Analysis and
 347 Government Accountability may require and receive from the
 348 institute or its independent auditor any detail or supplemental
 349 data relative to the operation of the institute.

350 (7) To the extent funds for investment are available in

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351 the technology fund, the private fund manager, on behalf of the
352 institute, may make an investment in a company or organization
353 if the following requirements are met:

354 (a) Before providing assistance, the institute accepted ~~To~~
355 ~~be eligible for assistance,~~ the company or organization
356 attempting to commercialize its product based on the guidelines
357 under s. 288.96255(4) must be accepted by the institute before
358 ~~receiving the institute's assistance.~~

359 (b) The company or organization is based in this state
360 ~~institute shall receive recommendations from any publicly~~
361 ~~supported organization that a company that is commercializing~~
362 ~~the research, technology, or patents from a qualifying publicly~~
363 ~~supported organization should be accepted into the institute.~~

364 (c) ~~The institute shall thereafter review the business~~
365 ~~plans and technology information of each such recommended~~
366 ~~company. If accepted, the institute shall mentor the company,~~
367 ~~develop marketing information on the company, and use its~~
368 ~~resources to attract capital investment into the company, as~~
369 ~~well as bring other resources to the company which may foster~~
370 ~~its effective management, growth, capitalization, technology~~
371 ~~protection, or marketing or business success.~~

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

373 (a) ~~Maintain a centralized location to showcase companies~~
374 ~~and their technologies and products;~~

375 (b) ~~Develop an efficient process to inventory and~~

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376 ~~publicize companies and products that have been accepted by the~~
 377 ~~institute for commercialization;~~

378 ~~(c) Routinely communicate with private investors and~~
 379 ~~venture capital organizations regarding the investment~~
 380 ~~opportunities in its showcased companies;~~

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

383 ~~(e) Hire full-time staff who understand relevant~~
 384 ~~technologies needed to market companies to the angel investors~~
 385 ~~and venture capital investment community; and~~

386 ~~(f) Develop cooperative relationships with publicly~~
 387 ~~supported organizations all of which work together to provide~~
 388 ~~resources or special knowledge that is likely to be helpful to~~
 389 ~~institute companies.~~

390 ~~(8)(9)~~ Except as provided under s. 288.96255, the
 391 institute may not develop or accrue any ownership, royalty,
 392 patent, or other such rights over or interest in companies or
 393 products in the institute except in connection with financing
 394 provided directly to client companies and shall maintain the
 395 confidentiality of proprietary information.

396 ~~(10) The institute may not charge for services provided to~~
 397 ~~state universities and affiliated organizations, community~~
 398 ~~colleges, or state agencies; however, the institute may deliver~~
 399 ~~and charge for services to private companies and affiliated~~
 400 ~~organizations if providing a service does not interfere with the~~

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401 ~~core mission of the institute. The institute may not use its~~
 402 ~~capital in support of private companies or affiliated~~
 403 ~~organizations whose products were not developed by research and~~
 404 ~~development activities of a publicly supported college,~~
 405 ~~university, or research institute, or any other organization.~~

406 (9) ~~(11)~~ By December 1 of each year, the institute shall
 407 issue an annual report concerning its activities to the
 408 Governor, the President of the Senate, and the Speaker of the
 409 House of Representatives. The annual report shall be considered
 410 a public record, as provided in paragraph (3) (b), subject to any
 411 appropriate exemptions under s. 288.9627. The annual report must
 412 ~~shall~~ include the following:

413 (a) Information on any assistance provided by the
 414 institute to an innovation business, as defined in s. 288.1089,
 415 ~~a publicly supported college, university, or research institute,~~
 416 ~~or any other publicly supported organization in the state.~~

417 (b) A description of the benefits to this state resulting
 418 from the institute, including the number of businesses created,
 419 associated industries started, the number of jobs created, and
 420 the growth of related projects.

421 (c) Independently audited financial statements, including
 422 statements that show receipts and expenditures during the
 423 preceding fiscal year for personnel, management fees,
 424 administration, and operational costs of the institute.

425 (10) The private fund manager:

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

429 (b) Shall conduct activities on behalf of the institute
 430 which are consistent with the purposes set forth in this
 431 section.

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

434 (d) Must have experience with investment in early stage
 435 ventures in this state and have a working knowledge and
 436 understanding of the investment portfolio and the relevant
 437 industries of the portfolio companies in this state.

438 (e) Shall employ personnel and professionals who have
 439 knowledge of the investment portfolio and portfolio companies of
 440 the institute, as well as financial, technical, and business
 441 expertise to manage the technology fund activity.

442 (f) May not be a public corporation or instrumentality of
 443 the state.

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

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

448 (i) Is not subject to chapter 287.

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

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451 (k) May not receive any specific appropriation from the
452 state in any amount.

453 (11) The purpose of the institute's use of a private fund
454 manager is to alleviate the state's burden of the continued and
455 future operational and management costs related to the
456 technology fund and accelerator program without the financial
457 support of or any specific appropriation from the state, while
458 allowing the institute, through the activities of the private
459 fund manager, to continue to foster greater private-sector
460 investment funding, to encourage seed-stage investments in
461 startup and early stage companies, and to advise companies about
462 how to restructure existing management, operations, product
463 development, or service development to attract advantageous
464 business opportunities.

465 (12) The private fund manager shall assume the management
466 of the assets of the accelerator program and the technology fund
467 investment portfolios associated with the institute.

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

470 1. Negotiate investment, sale, and liquidation terms with
471 portfolio and nonportfolio companies;

472 2. Develop and execute contracts, or amendments thereto,
473 with portfolio and nonportfolio companies;

474 3. Seek new qualified companies for the investment of
475 funds from the technology fund;

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476 4. Receive, on behalf of the institute, investment capital
477 from the sale or liquidation of any portion of the investment
478 portfolio, loan proceeds, or other investment returns, and remit
479 such capital, proceeds, and returns to the technology fund
480 pursuant to s. 288.96255, except as otherwise provided in this
481 section and s. 288.96255; and

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

483 (b) The private fund manager shall be paid reasonable fees
484 consistent with industry fund management practices and
485 consisting of:

486 1. An operational management fee, including the
487 reimbursement of expenses, paid from the proceeds of the
488 repayment of loans from the accelerator program or other
489 capital, proceeds, and returns available in the technology fund;

490 2. A portfolio fee paid from the proceeds of each sale or
491 liquidation of assets or portions of the assets of the
492 investment portfolio; and

493 3. A closing fee paid from the investment amount paid by
494 the technology fund to a company at the closing of each
495 investment.

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

498 (a) Mentor, assist with the development of marketing
499 information, and assist with attracting capital investment, as
500 well as bring other resources to the company which may foster

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501 its effective management, growth, capitalization, technology
502 protection, or marketing or business success;

503 (b) Communicate with private investors and venture capital
504 organizations regarding investment opportunities in the
505 portfolio companies of the technology fund and accelerator
506 program;

507 (c) Facilitate meetings between prospective investors and
508 the companies; and

509 (d) Develop cooperative relationships with publicly
510 supported organizations that work together to provide resources
511 or special knowledge likely to be helpful to portfolio
512 companies.

513 (14) By November 1 of each year, the private fund manager
514 shall issue an annual report to the board of directors of the
515 institute concerning the activities the private fund manager
516 conducted which relate to existing accelerator program and
517 technology fund investments in order for the board to be in
518 compliance with its report obligations under subsection (9). The
519 annual report provided by the private fund manager shall be
520 considered a public record, as provided in paragraph (3)(b),
521 subject to any appropriate exemptions under s. 288.9627. The
522 annual report, at a minimum, must include:

523 (a) A description of the benefits to this state resulting
524 from the assets of the accelerator program and technology fund,
525 including the number of jobs created, the amount of capital the

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526 companies raised, and other benefits relating to increased
 527 research expenditures and company growth.

528 (b) Independently audited financial statements related to
 529 the receipt and calculation of the net profits of the investment
 530 portfolio.

531 (15) If the institute receives any specific appropriation
 532 from the state after July 1, 2018, the institute shall
 533 immediately transfer such funds to the General Revenue Fund. The
 534 institute, and all assets held by the institute, including all
 535 assets and ownership interests held by the technology fund
 536 pursuant to s. 288.96255, shall be liquidated immediately after
 537 the receipt of such appropriation, and all proceeds of the sales
 538 of such assets and ownership interests shall revert to the
 539 General Revenue Fund.

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

542 288.96255 Florida Technology Seed Capital Fund; creation;
 543 duties.-

544 (1) The Institute for ~~the~~ Commercialization of Florida
 545 Technology ~~Public Research~~ shall create the Florida Technology
 546 Seed Capital Fund as a corporate subsidiary. The purpose of the
 547 technology fund is, without any financial assistance or specific
 548 appropriations from the state, to foster greater private-sector
 549 investment funding, to encourage seed-stage investments in
 550 start-up companies, and to advise companies about how to

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551 restructure existing management, operation, or production to
 552 attract advantageous business opportunities. The net profits of
 553 the proceeds of each sale or liquidation of assets or portions
 554 of the assets of the investment portfolio must ~~a sale of the~~
 555 ~~equity held by the fund shall~~ be returned to the technology fund
 556 for reinvestment after payment of the applicable costs,
 557 professional fees, expenses, fees pursuant to s.
 558 288.9625(12) (b), and disbursement to private investors pursuant
 559 to paragraph (6) (e).

560 (3) The institute shall employ a private fund manager
 561 pursuant to s. 288.9625 ~~professionals who have both technical~~
 562 ~~and business expertise to manage~~ the investment portfolio and
 563 technology fund activity. The private fund manager ~~institute~~
 564 ~~shall establish an investor advisory board comprised of venture~~
 565 ~~capital professionals and early stage investors from this and~~
 566 ~~other states who shall advise~~ the institute and guide the ~~fund~~
 567 management of the technology fund and make funding
 568 recommendations, provided that capital for investment is
 569 available in the technology fund. The private fund manager shall
 570 receive reasonable fees consistent with industry practices for
 571 performing due diligence and an investment closing fee paid out
 572 of the technology fund at the closing of each investment in
 573 addition to reasonable attorney fees, other fees prescribed in
 574 s. 288.9625(12) (b), and other costs in connection with making an
 575 investment. ~~Administrative costs paid out of the fund shall be~~

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576 ~~determined by the investor advisory board.~~

577 (4) The private fund manager institute shall use a
 578 thorough and detailed process that is modeled after investment
 579 industry practices ~~the best practices of the investment industry~~
 580 to evaluate a proposal. In order to approve a company for
 581 investment, the private fund manager, on behalf of the
 582 institute, must consider if:

583 (a) The company has a strong intellectual property
 584 position, a capable management team, readily identifiable paths
 585 to market or commercialization, significant job-growth
 586 potential, the ability to provide other sources of capital to
 587 leverage the state's investment, and the potential to attract
 588 additional funding;

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

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

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

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

600 (5) ~~(a)~~ Seed Funds from the technology fund may be

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601 | invested if the institute approves a company and the initial
 602 | seed-stage investment. ~~The initial seed stage investment must be~~
 603 | ~~at least \$50,000, but no more than \$300,000. The initial seed-~~
 604 | ~~stage investment requires a one-to-one, private-sector match of~~
 605 | ~~investment.~~

606 | ~~(b) Additional seed funds may be invested in a company if~~
 607 | ~~approved by the institute. The cumulative total of investment in~~
 608 | ~~a single company may not exceed \$500,000. Any additional~~
 609 | ~~investment amount requires a two-to-one, private-sector match of~~
 610 | ~~investment.~~

611 | (6) The institute or private fund manager may:

612 | (a) Provide a company with value-added support services in
 613 | the areas of business plan development and strategy, the
 614 | preparation of investor presentations, and other critical areas
 615 | identified by the private fund manager ~~institute~~ to increase its
 616 | chances for long-term viability and success;

617 | (b) Encourage appropriate investment funds to become
 618 | preapproved to match investment funds;

619 | (c) Market the attractiveness of the state as an early-
 620 | stage investment location; ~~and~~

621 | (d) Collaborate with state economic-development
 622 | organizations, national associations of seed and angel funds,
 623 | and other innovation-based associations to create an enhanced
 624 | state entrepreneurial ecosystem; ~~and.~~

625 | (e) Transfer any portion of the assets of the investment

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626 | portfolio, on behalf of the institute, into a private fund or
 627 | special purpose vehicle, receive additional private investment
 628 | in the private fund or special purpose vehicle, manage the
 629 | private fund or special purpose vehicle, and distribute to the
 630 | technology fund and the private investors the respective pro
 631 | rata portion of any net profits from the sale or liquidation of
 632 | the assets of such private fund or special purpose vehicle.

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

636 | Section 7. Section 288.9627, Florida Statutes, is amended
 637 | to read:

638 | 288.9627 Exemptions from public records and public
 639 | meetings requirements for the Institute for ~~the~~
 640 | Commercialization of Florida Technology Public Research.—

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

642 | (a) "Institute for ~~the~~ Commercialization of Florida
 643 | Technology Public Research" or "institute" means the institute
 644 | established by s. 288.9625.

645 | (b)1. "Proprietary confidential business information"
 646 | means information that has been designated by the proprietor
 647 | when provided to the institute as information that is owned or
 648 | controlled by a proprietor; that is intended to be and is
 649 | treated by the proprietor as private, the disclosure of which
 650 | would harm the business operations of the proprietor and has not

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651 | been intentionally disclosed by the proprietor unless pursuant
 652 | to a private agreement that provides that the information will
 653 | not be released to the public except as required by law or legal
 654 | process, or pursuant to law or an order of a court or
 655 | administrative body; and that concerns:

656 | a. Trade secrets as defined in s. 688.002.

657 | b. Financial statements and internal or external auditor
 658 | reports of a proprietor corporation, partnership, or person
 659 | requesting confidentiality under this statute, unless publicly
 660 | released by the proprietor.

661 | c. Meeting materials related to financial, operating,
 662 | investment, or marketing information of the proprietor
 663 | corporation, partnership, or person.

664 | d. Information concerning private investors in the
 665 | proprietor corporation, partnership, or person.

666 | 2. "Proprietary confidential business information" does
 667 | not include:

668 | a. The identity and primary address of the proprietor's
 669 | principals.

670 | b. The dollar amount and date of the financial commitment
 671 | or contribution made by the institute.

672 | c. The dollar amount, on a fiscal-year-end basis, of cash
 673 | repayments or other fungible distributions received by the
 674 | institute from each proprietor.

675 | d. The dollar amount, if any, of the total management fees

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676 | and costs paid on an annual fiscal-year-end basis by the
 677 | institute.

678 | (c) "Proprietor" means a corporation, partnership, or
 679 | person that has applied for or received assistance, financial or
 680 | otherwise, from the institute and that controls or owns the
 681 | proprietary confidential business information.

682 | (2) PUBLIC RECORDS EXEMPTION.—

683 | (a) The following records held by the institute are
 684 | confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 685 | of the State Constitution:

686 | 1. Materials that relate to methods of manufacture or
 687 | production, potential trade secrets, or patentable material
 688 | received, generated, ascertained, or discovered during the
 689 | course of research or through research projects conducted by
 690 | universities and other publicly supported organizations in this
 691 | state and that are provided to the institute by a proprietor.

692 | 2. Information that would identify an investor or
 693 | potential investor who desires to remain anonymous in projects
 694 | reviewed by the institute for assistance.

695 | 3. Any information received from a person from another
 696 | state or nation or the Federal Government which is otherwise
 697 | confidential or exempt pursuant to the laws of that state or
 698 | nation or pursuant to federal law.

699 | 4. Proprietary confidential business information for 7
 700 | years after the termination of the institute's financial

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701 | commitment to the company.

702 | (b) At the time any record made confidential and exempt by
703 | this subsection, or portion thereof, is legally available or
704 | subject to public disclosure for any other reason, that record,
705 | or portion thereof, shall no longer be confidential and exempt
706 | and shall be made available for inspection and copying.

707 | (3) PUBLIC MEETINGS EXEMPTION.—

708 | (a) That portion of a meeting of the institute's board of
709 | directors at which information is discussed which is
710 | confidential and exempt under subsection (2) is exempt from s.
711 | 286.011 and s. 24(b), Art. I of the State Constitution.

712 | (b) Any exempt portion of a meeting shall be recorded and
713 | transcribed. The board of directors shall record the times of
714 | commencement and termination of the meeting, all discussion and
715 | proceedings, the names of all persons present at any time, and
716 | the names of all persons speaking. An exempt portion of any
717 | meeting may not be off the record.

718 | (c) A transcript and minutes of exempt portions of
719 | meetings are confidential and exempt from s. 119.07(1) and s.
720 | 24(a), Art. I of the State Constitution.

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

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

725 | (b) Notwithstanding the provisions of paragraph (2)(a), a

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726 request to inspect or copy a public record that contains
 727 proprietary confidential business information shall be granted
 728 if the proprietor of the information fails, within a reasonable
 729 period of time after the request is received by the institute,
 730 to verify the following to the institute through a written
 731 declaration in the manner provided by s. 92.525:

732 1. That the requested record contains proprietary
 733 confidential business information and the specific location of
 734 such information within the record;

735 2. If the proprietary confidential business information is
 736 a trade secret, a verification that it is a trade secret as
 737 defined in s. 688.002;

738 3. That the proprietary confidential business information
 739 is intended to be and is treated by the proprietor as private,
 740 is the subject of efforts of the proprietor to maintain its
 741 privacy, and is not readily ascertainable or publicly available
 742 from any other source; and

743 4. That the disclosure of the proprietary confidential
 744 business information to the public would harm the business
 745 operations of the proprietor.

746 (c)1. Any person may petition a court of competent
 747 jurisdiction for an order for the public release of those
 748 portions of any record made confidential and exempt by
 749 subsection (2).

750 2. Any action under this subsection must be brought in

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751 | Palm Beach County or Alachua County, and the petition or other
 752 | initial pleading shall be served on the institute and, if
 753 | determinable upon diligent inquiry, on the proprietor of the
 754 | information sought to be released.

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

757 | a. The record or portion thereof is not a trade secret as
 758 | defined in s. 688.002;

759 | b. A compelling public interest is served by the release
 760 | of the record or portions thereof which exceed the public
 761 | necessity for maintaining the confidentiality of such record;
 762 | and

763 | c. The release of the record will not cause damage to or
 764 | adversely affect the interests of the proprietor of the released
 765 | information, other private persons or business entities, or the
 766 | institute.

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

770 | Section 8. Subsection (4) is added to section 607.512,
 771 | Florida Statutes, to read:

772 | 607.512 Preparation of annual benefit report.—

773 | (4) Notwithstanding the requirements of this section,
 774 | information that is required to be included in the annual
 775 | benefit report but that is otherwise required by applicable

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776 regulatory state or federal law to be kept confidential may be
 777 omitted from the annual benefit report. If such information is
 778 omitted, the annual benefit report shall expressly state that
 779 information required by this section has been omitted in
 780 reliance on this subsection.

781 Section 9. Subsection (5) is added to section 607.612,
 782 Florida Statutes, to read:

783 607.612 Preparation of annual benefit report.—

784 (5) Notwithstanding the requirements of this section,
 785 information that is required to be included in the annual
 786 benefit report but that is otherwise required by applicable
 787 regulatory state or federal law to be kept confidential may be
 788 omitted from the annual benefit report. If such information is
 789 omitted, the annual benefit report shall expressly state that
 790 information required by this section has been omitted in
 791 reliance on this subsection.

792 Section 10. Subsection (2) of section 658.23, Florida
 793 Statutes, is amended to read:

794 658.23 Submission of articles of incorporation; contents;
 795 form; approval; filing; commencement of corporate existence;
 796 bylaws.—

797 (2) The articles of incorporation shall contain:

798 (a) The name of the proposed bank or trust company.

799 (b) The general nature of the business to be transacted or
 800 a statement that the corporation may engage in any activity or

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801 business permitted by law. Such statement shall authorize all
802 such activities and business by the corporation.

803 (c) The amount of capital stock authorized, showing the
804 maximum number of shares of par value common stock and of
805 preferred stock, and of every kind, class, or series of each,
806 together with the distinguishing characteristics and the par
807 value of all shares.

808 (d) The amount of capital with which the corporation will
809 begin business, which may not be less than the amount required
810 by the office pursuant to s. 658.21.

811 (e) A provision that the corporation is to have perpetual
812 existence unless existence is terminated pursuant to the
813 financial institutions codes.

814 (f) The initial street address of the main office of the
815 corporation, which shall be in this state.

816 (g) The number of directors, which shall be five or more,
817 and the names and street addresses of the members of the initial
818 board of directors.

819 (h) A provision for preemptive rights, if applicable.

820 (i) A provision authorizing the board of directors to
821 appoint additional directors, pursuant to s. 658.33, if
822 applicable.

823
824 The office shall provide to the proposed directors form articles
825 of incorporation which must include only those provisions

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826 required under this section or under ~~part I~~ of chapter 607. The
 827 form articles may be modified by the applicant to include any of
 828 the additional provisions required by part II or part III of
 829 chapter 607 which are necessary for a corporation to be a social
 830 purpose or benefit corporation. The form articles shall be
 831 acknowledged by the proposed directors and returned to the
 832 office for filing with the Department of State.

833 Section 11. Section 658.30, Florida Statutes, is amended
 834 to read:

835 658.30 Application of the Florida Business Corporation
 836 Act.—

837 (1) When not in direct conflict with or superseded by
 838 specific provisions of the financial institutions codes, the
 839 provisions of the Florida Business Corporation Act, part I of
 840 chapter 607, and, if applicable, part II or part III of chapter
 841 607, extend to state banks and trust companies formed under the
 842 financial institutions codes. This section shall be liberally
 843 construed to accomplish the purposes stated herein.

844 (2) Without limiting the generality of subsection (1),
 845 stockholders, directors, and committees of state banks and trust
 846 companies may hold meetings in any manner authorized by part I
 847 of chapter 607, and, if applicable, part II or part III of
 848 chapter 607, and any action by stockholders, directors, or
 849 committees required or authorized to be taken at a meeting may
 850 be taken without a meeting in any manner authorized by part I of

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851 chapter 607.

852 Section 12. Subsection (3) of section 658.36, Florida
853 Statutes, is amended to read:

854 658.36 Changes in capital.—

855 (3) If a bank or trust company's capital accounts have
856 been diminished by losses to less than the minimum required
857 pursuant to the financial institutions codes, the market value
858 of its shares of capital stock is less than the present par
859 value, and the bank or trust company cannot reasonably issue and
860 sell new shares of stock to restore its capital accounts at a
861 share price of par value or greater of the previously issued
862 capital stock, the office, notwithstanding any other provisions
863 of part I of chapter 607 and, if applicable, part II or part III
864 of chapter 607, or the financial institutions codes, may approve
865 special stock offering plans.

866 (a) Such plans may include, but are not limited to,
867 mechanisms for stock splits including reverse splits;
868 revaluations of par value of outstanding stock; changes in
869 voting rights, dividends, or other preferences; and creation of
870 new classes of stock.

871 (b) The plan must be approved by majority vote of the bank
872 or trust company's entire board of directors and by holders of
873 two-thirds of the outstanding shares of stock.

874 (c) The office shall disapprove a plan that provides
875 unfair or disproportionate benefits to existing shareholders,

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876 | directors, executive officers, or their related interests. The
877 | office shall also disapprove any plan that is not likely to
878 | restore the capital accounts to sufficient levels to achieve a
879 | sustainable, safe, and sound financial institution.

880 | (d) For any bank or trust company that the office
881 | determines to be a failing financial institution pursuant to s.
882 | 655.4185, the office may approve special stock offering plans
883 | without a vote of the shareholders.

884 | Section 13. This act shall take effect July 1, 2018.