

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 Commerce and Tourism

BILL: CS/SB 1314

INTRODUCER: Commerce and Tourism Committee and Senator Brandes

SUBJECT: Florida Capital Formation Act

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1314 creates the Institute for Commercialization of Florida Technology (institute) to increase the availability of seed and early stage investment capital in Florida without requiring an ongoing state expenditure for such support.

The institute will replace the Institute for Commercialization of Public Research (ICPR). The institute will differ from the ICPR in several ways. Namely, the institute will:

- Be operated by a private fund manager who will be paid from fees based on the institute's investment activities, rather than a professional staff;
- No longer partner with publicly supported universities or research institutes to support their commercialization efforts; and
- Not be supported by or function under the Department of Economic Opportunity (department).

Like the ICPR, however, the institute will partner with innovation and target industry businesses to foster investment funding, especially in seed-stage, startup, and early stage companies; advise companies about successful management, operations, and development processes; and provide opportunities to attract further investment.

As part of its annual report, the institute will be subject to an independent audit of its reported net profits.

II. Present Situation:

Venture Capital and Early Stage Business Investments

Venture capital (VC) is money provided by investors who choose to fund young companies that have the potential to develop into profitable businesses. VC is an important source of equity for startup companies because its investment does not typically require security (such as a guarantee of repayment) from the business.¹

VC investments are typically made in lieu of traditional bank loans because the start-up or expansion-oriented companies they fund have a higher level of investment risk. As a result, the investor may eventually share in the risk of a failed business, or the reward of a successful one. VC investments are also characterized by a higher level of equity participation in the business by the investor, including mentorship or networking to assist the company with management and other obstacles.²

VC investment in a technology or idea that has not yet been developed into a fully-fledged product or business is also known as “seed investing” or “early-stage investing.”³

As of September 2017, there were approximately 38 VC firms in Florida.⁴ Although the VC industry has grown in the last 20 years, it has done so only in limited geographic regions—generally limiting the investment of VC in businesses in or near those regions.⁵

Institute for the Commercialization of Public Research

In 2007, the Legislature passed the Florida Capital Formation Act, to address the need to increase the availability of seed capital and early stage venture equity capital for emerging Florida companies.⁶ In part, the act created the ICPR, a private-public partnership that operates as a non-profit corporation. The department’s Division of Strategic Business Development provides support for, and works closely with, the ICPR.⁷ The ICPR also operates with the support of mentors, advisors, and donors.⁸

¹ National Venture Capital Association, *Funding Innovation: How Venture Funded Startups Grow, Transform and Impact the U.S. Economy*, available at <https://nvca.org/ecosystem/funding-innovation/> (last visited Feb. 5, 2018).

² See note 1, *supra* National Venture Capital Association.

³ Florida Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs*, p. 37, (Jan. 2018), available at <http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf> (last visited Feb. 5, 2018).

⁴ Florida Trend, *Business FLORIDA: Your 2018 Florida Opportunity Guide, Florida’s Venture Capital Firms*, (Sept. 22, 2017) available at <http://www.floridatrend.com/article/17615/floridas-venture-capital-firms--2015> (last visited Feb. 5, 2018).

⁵ Cromwell Schmisser, *Program Evaluation of the US Department of Treasury State Small Business Credit Initiative* p. 61 (Oct. 2016), available at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_pe2016_Full_Report.pdf (last visited Feb. 5, 2018).

⁶ Chapter 2007-189, L.O.F., codified as ss. 288.9621-288.9625, F.S.

⁷ Section 20.60, F.S.; Florida Department of Economic Opportunity, *Long Range Program Plan Fiscal Year 2018-2019 through 2022-2023*, p 19 (September 29, 2017) available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=17087&DocType=PDF> (last visited Feb. 5, 2018).

⁸ Florida Department of Economic Opportunity, *Long Range Program Plan Fiscal Year 2018-2019 through 2022-2023*, see note 7, *supra* at p. 42.

The ICPR assists in the commercialization of products developed by research and development activities of innovation businesses, publicly supported universities and colleges, research institutes, and other publicly supported organizations within Florida. Specifically, the ICPR administers company support services and seed capital funding programs to help early-stage businesses or ideas for businesses grow and thrive in Florida.⁹

The ICPR has two primary locations, one at the University of Florida in Gainesville and the other at Florida Atlantic University in Boca Raton. A board of directors governs the ICPR and is responsible for managing the ICPR's funds, presenting the ICPR's annual report, and overseeing the ICPR's general affairs.¹⁰ The board of directors is composed of the executive director of the department; the president of the university where the ICPR is located, or when the ICPR is located at multiple universities, the presidents' agreed upon designee; and three directors appointed by the Governor.

The ICPR matches commercially viable technologies with management talent and capital. Additionally, the ICPR focuses on technologies and companies that originate from publicly supported organizations across the state and companies in Florida's target industries.¹¹

The ICPR accepts business partners through an application process that requires a recommendation from a publicly supported organization and a review of the business' plans and technology information.

Florida Technology Seed Capital Fund¹²

The ICPR also administers the Florida Technology Seed Capital Fund (the Fund) as a corporate subsidiary. The Fund was preceded by the Florida Research Commercialization matching Grant Program and the ICPR's Seed Capital Accelerator Program (SCAP), which expired in 2013 by effect of law.¹³

A company is eligible to receive investment from the Fund only after undergoing a peer-reviewed process undertaken by the Fund's investor advisor board, which examines:¹⁴

- The company's overall health and ability for growth, including its intellectual property position, management capability, paths to market or commercialization, growth-potential, and ability to leverage additional funding;
- Whether the company was identified by a publicly funded research institution;

⁹ See note 7, *supra*, Fla. Dept. of Economic Opportunity at 21; Florida Institute for Commercialization of Public Research, *Who We Are*, <http://www.florida-institute.com/who-we-are> (last visited Feb. 5, 2018).

¹⁰ Section 288.9625, F.S. Florida Institute for Commercialization of Public Research, *Who We Are: Board of Directors*, available at <http://www.florida-institute.com/about/board-of-directors> (last visited Feb. 5, 2018).

¹¹ Section 288.106(2)(g), F.S.

¹² Ch. 2007-189, L.O.F., s. 288.9625, F.S., Florida Institute for Commercialization of Public Research, *Company Funding*, available at <http://www.florida-institute.com/programs/company-funding> (last visited Feb. 5, 2018).

¹³ See s. 288.9552, F.S. (2011), ch. 2010-147, Laws of Fla.

¹⁴ Section 288.96255(3)-(4), F.S.

- If the company is a target industry business, as defined in s. 288.106(2), F.S., relating to the Innovation Incentive Program;¹⁵
- If the company was identified by a private-sector lead investor who has performed industry-standard due diligence; and
- The company's proposal, and found it satisfactory.

Through the Fund, the ICPR provides seed funding in amounts of \$50,000 to \$300,000 to qualified startups, either as debt or equity. As of the end of fiscal year 2015, the ICPR funded 39 companies.¹⁶

Economic Impact

The ICPR reports that, in fiscal year 2017, it contributed to the creation of 2,214 jobs in Florida and generated a total economic impact of \$340 million.¹⁷ Since 2007, the Legislature has appropriated an estimated \$33 million in state funds to the ICPR for operating costs, grants, loans, and seed stage funds.¹⁸ The ICPR did not receive any funding in fiscal year 2017.¹⁹

III. Effect of Proposed Changes:

Institute for Commercialization of Florida Technology

CS/SB 1314 creates the Institute for Commercialization of Florida Technology (institute) as a successor to the ICPR. The institute differs from the ICPR in several ways. Namely, the institute: (1) will be operated by a private fund manager rather than a professional staff; (2) will no longer partner with publicly supported universities or research institutes to support their commercialization efforts; and (3) will not be supported by or function under the department.

Section 3 amends s. 288.9622, F.S., to evince legislative intent to permit the use of a private fund manager in the effort to reduce the operational costs of the Fund and the SCAP in order to increase the availability of investment capital for Florida's emerging businesses. It is the goal of the Legislature to operate these entities without requiring ongoing state expenditures.

¹⁵ An innovation business is "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."

¹⁶ Florida Institute for Commercialization of Public Research, *New Study Unveils Economic Impacts of Institute for Commercialization of Public Research*, available at <http://www.florida-institute.com/news/new-study-unveils-economic-impacts-of-institute-commercialization-of-public-research-0> (last visited Feb. 5, 2018). *See also*, Daszkal Bolton, note 14, *supra*.

¹⁷ Washington Economics Group, Inc., *The FY-2017 Economic Development Impacts of the Florida Institute for the Commercialization of Public Research* (Aug. 21, 2017), on file with the Committee on Commerce and Tourism. *See also*, Florida Institute for Commercialization of Public Research, *Institute for Commercialization of Public Research Delivers \$970 Million Impact to Florida Seven-Year Impacts Increased Significantly as Companies Continued to Grow*, available at <http://www.florida-institute.com/news/institute-commercialization-of-public-research-delivers-970-million-impact-florida-seven-year> (last visited Feb. 5, 2018).

¹⁸ Florida Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs* p. 43-45 (Jan. 2018), available at <http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf> (last visited Feb. 5, 2018).

¹⁹ Nancy Dahlberg, Miami Herald, *Tech Funders, Startups Already Feeling Sting of State Budget Cuts*, (Jul. 12, 2017), available at <http://www.miamiherald.com/news/business/article160608399.html> (last visited Feb. 5, 2018).

The institute's mandate is to assist in the commercialization of products developed by innovation businesses, and to advise them about how to restructure existing management, operations, product development, or service development to attract further business opportunities.

Board of Directors

Section 5 reorganizes the Board of Directors (Board) to consist of three members instead of five and provides for succession of directors whose terms have ended. The Board's duties include oversight of the private fund manager's activities; performance of duties as outlined by the institute's bylaws; and provision of an annual report of the institute's activities to the Governor, President of the Senate, and Speaker of the House. Current law requires the Board to manage the ICPR's affairs and to report to the president of the University where the ICPR is located.

The Board must have expertise in selecting and supervising early stage investment managers or in fiduciary management of investment funds and other pertinent areas of expertise.

The directors may not receive compensation for their service, but may be reimbursed for expenses as approved by the private fund manager pursuant to s. 112.061, F.S. Additionally, the directors may not have a financial interest in any investment in any of the institute's portfolio companies, and are subject to any restriction on conflicts of interest as specified in the institute's organizational documents.

Private Fund Manager

Eligibility

Section 5 provides that the private fund manager (fund manager) must be a for-profit limited liability company or a for-profit corporation that was formed and is governed and operated in accordance with ch. 605 or 607, F.S. Additionally, the fund manager may not be a public corporation or instrumentality of the state, is not subject to ch. 287, F.S., regarding procurement of goods and services; and is not governed by code of ethics provisions in part III of ch. 112, F.S.

The fund manager must be experienced in the field, and must specifically have:

- Expertise and experience in the management and operation of early stage companies in Florida;
- Experience with early stage business ventures investments in Florida;
- Working knowledge and understanding of the institute's investment portfolio and relevant industries of those companies; and
- Individuals in its employ who have knowledge of the institute's investment portfolio and its companies, as well as financial, technical, and business expertise to manage the technology fund's activity.

Duties

Current law directs the Board and professional staff to manage the ICPR; the bill grants management duties of the institute to a fund manager.

Section 5 provides for the fund manager's duties as they relate to the institute; **section 6** provides for the duties as they relate to the Fund. They are substantially the same duties.

The fund manager is required to:

- Manage the investment-related affairs of the institute, including management of the assets of the institute's accelerator program and technology fund investment portfolios;
- Conduct activities on the institute's behalf in accordance with law; and
- Issue an annual report to the Board by November 1 each year. The annual report is a public record, and must include information on any assistance provided to an innovation business; a description of the benefits that accrue to the state as a result of the institute's activity; and independently audited financial statements, including statements of the expenditures for personnel, management fees, administration, and operational costs.

The fund manager is permitted, but not required, to:

- Negotiate terms of investment, sale, and liquidation with portfolio and nonportfolio companies;
- Execute contracts and contract amendments with portfolio and nonportfolio companies;
- Seek new qualified companies to participate in the Fund;
- Receive and remit investment capital from the sale or liquidation of any part of the institute's investment portfolio, loan proceeds, or other investment returns;
- Mentor, assist with the development of marketing information or business plans, and assist with attracting capital investment and other resources to a portfolio company in order to foster its growth, marketing, or business success;
- Market the Fund and accelerator program to potential investors;
- Facilitate meetings between prospective investors and the institute's portfolio companies; and
- Collaborate with publicly supported organizations that may be able to provide further resources or special knowledge to the institute's portfolio companies.

The fund manager is paid reasonable fees consistent with the standard practices of the fund management industry, consisting of:

- An operational management fee, including reimbursement of expenses that is paid from the proceeds of loans repaid to the accelerator program, or other capital, proceeds, and returns available in the Fund;
- A portfolio fee paid from proceeds of each sale or asset liquidation from the institute's investment portfolio; and
- A closing fee paid from the investment amount paid by the Fund to a company at the closing of each investment.

Current law prohibits the ICPR from charging for its services unless they are provided to a private company, as compared to a state university or its affiliated organizations.

Portfolio Companies and Organizations

Section 5 outlines the institute's mission, which is to develop partnerships with, in particular, "innovation businesses" as defined in s. 288.1089, F.S., relating to the Innovation Incentive Program. **Section 6** provides that the institute must also strive to invest in target industry

businesses, as defined in s. 288.106(2)(q), F.S., which represent diverse and stable markets. Unlike the ICPR, the institute will also be able to invest in businesses outside these fields.

The institute may select a company or organization for partnership with the institute or for funding from the Fund only after the fund manager, using processes modeled on the investment industry's standard practices, has evaluated whether the company:

- Has a strong intellectual property position and an identifiable method to commercialization of its technology or product;
- Is capable of creating jobs and providing additional capital;
- Will be able to garner additional funding;
- Is a target industry business as defined in s. 288.106(2), F.S., which requires that the business show capacity for future growth and economic stability; contribute toward an expansion or diversification of Florida's economy and be independent from Florida's unique markets or resources; and have an overall positive economic impact on the state, especially by paying relatively high wages to its workers; and
- Was identified by a private-sector lead investor who performed industry-standard due diligence in selecting the company.

Additionally, the company or organization must be based in Florida.

Applicant companies who wish to partner with the institute or receive funding from the Fund are subjected to a substantially similar review process.

Although portfolio companies that receive funding from the current Fund are limited to initial investments of \$50,000-\$300,000, the bill does not impose any such limits on investment under the amended Fund.

Partnership with Florida's Universities, Colleges, and Publicly-Supported Research Institutions

The institute, unlike the ICPR, is required neither to be located at a Florida University or research center, nor to assist such institutions with the commercialization of their developing technology.

Disassociation from the Department

Section 1 amends s. 20.60, F.S. to remove management of the ICPR and promotion of the commercialization of products, services, or ideas developed in public universities or institutions from the department's duties and purposes.

Section 5 amends s. 288.9625 to remove the requirement that the ICPR's articles of incorporation be approved by the department.

Public Records and Meetings Exemption

Section 7 amends s. 288.9627, F.S., to transfer the public records and meetings exemption that previously applied to the ICPR to the institute.

This section makes the following materials held by the institute exempt from disclosure pursuant to s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- Documents and materials that related to a business' methods of manufacture or production, potential trade secrets, or patentable material that is provided to the institute by a proprietor;
- Information that would identify an anonymous investor or potential investor;
- Information received from another person, state, nation, or the Federal Government, which is confidential or exempt pursuant to the originator's laws; and
- Proprietary confidential business information.

Additionally, the bill makes exempt from Florida's public meetings laws those portions of the institute's meetings wherein information that is confidential and exempt according to Florida law is discussed.

Miscellaneous

Section 2 makes conforming changes to s. 288.9621, F.S.

Section 4 provides definitions for terms used in the Florida Capital Formation Act.

Section 8 provides an effective date of July 1, 2018.

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:

Depending on the financial performance of the Fund and the institute, there may be a reduction in the funds available for investment in private businesses that seek investment capital.

C. Government Sector Impact:

Although the ICPR did not receive any legislative appropriation in fiscal year 2017-2018, the bill may result in a reduction in appropriations to the successor institute for its management and related expenses, by permitting the institute to fund itself through its activities.

University and other publicly funded research institutes may see a reduction in funds available for the commercialization of their technology because of the privatization of the institute.

The ICPR's staff and related expenses will no longer be necessary. According to an independent audit of the ICPR completed in fiscal year 2016, the total program expenses were \$3,732,937.²⁰ The fund manager will require expenditures pursuant to statute, but these will be made from profits of the institute, rather than state appropriation.

VI. Technical Deficiencies:

It is unclear whether the duties outlined in s. 288.9625(5), F.S., apply to the Board of Directors or the fund manager.

VII. Related Issues:

The bill refers to the SCAP or "Accelerator Program." The Accelerator Program expired in 2013, and therefore does not require any ongoing operational funding. The Accelerator Program, however, does have outstanding loans that will not be due until December 2019, and therefore may require actions by the fund manager for purposes of collection and reinvestment of the funds.²¹

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

The bill requires that a company or organization be "based in" Florida to receive assistance from the institute. This term may need to be defined to provide clarity in interpretation.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.60, 288.9621, 288.9622, 288.9623, 288.9625, 288.96255, and 288.9627.

²⁰ Daszkal Bolton, *Institute for Commercialization of Public Research, Inc.: Consolidated Financial Statements with Supplemental Schedule and Information* (Jun. 30, 2016), available at https://flauditor.gov/pages/nonprofit_forprofit%20rpts/2016%20institute%20for%20commercialization%20of%20public%20research.pdf (last visited Feb. 5, 2018).

²¹ See note 21, Daszkal Bolton, *supra* at p. 21.

IX. Additional Information:

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

CS by Commerce and Tourism on February 6, 2018:

The CS clarifies the terms for directors appointed before July 1, 2018, and the succession of any director appointed thereafter.

- B. **Amendments:**

None.