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PUBLIC BUSINESS COMMERCIAL DEVELOPMENT AND CAPITAL IMPROVEMENTS

### **288.9622 Findings and intent.—**

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

(2) It is the intent of the Legislature that ss. [288.9621-288.96255](#) serve to mobilize private investment in a broad variety of partnerships in diversified industries and geographies; retain private sector investment criteria focused on rate of return; allow the Institute for Commercialization of Florida Technology to use highly qualified private fund managers experienced in the seed and early stage development industry in this state; outline the use, qualifications, and activities of the private management, without any financial support or specific appropriations from the state, by a private fund manager of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio of the Institute for Commercialization of Florida Technology; facilitate the organization of the Florida Opportunity Fund as an investor in seed and early stage businesses, infrastructure projects, venture capital funds, and angel funds; and precipitate capital investment and extensions of credit to and in the Florida Opportunity Fund.

(3) It is the intent of the Legislature to mobilize investment capital in such a manner as to result in a significant potential to create new businesses and jobs in this state which are based on high growth potential technologies, products, or services and which will further diversify the economy of this state.

(4) It is the intent of the Legislature to reduce the ongoing operational cost and burden of managing the Florida Technology Seed Capital Fund and the Seed Capital Accelerator Program to this state and eliminate any financial support or specific appropriations from the state by engaging a private asset management entity in this state which is familiar with the seed and early stage investment industry in this state. This entity would be responsible for the management of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio without requiring ongoing budget expenditures by this state or receiving any financial support or specific appropriations from the state.

**History.**—s. 1, ch. 2007-189; s. 25, ch. 2009-51; s. 3, ch. 2018-139.

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**288.9623** Definitions.—As used in ss. [288.9621-288.96255](#), the term:

- (1) “Accelerator program” means the Seed Capital Accelerator Program managed by the institute.
- (2) “Board” means the board of directors of the Florida Opportunity Fund.
- (3) “Fund” means the Florida Opportunity Fund.
- (4) “Institute” means the Institute for Commercialization of Florida Technology.
- (5) “Investment portfolio” means individual or collective investment assets held under the technology fund.
- (6) “Net profits” means the total gross proceeds received from the sale or liquidation of an asset of the investment portfolio less any costs, legal fees, professional fees, consulting fees, government fees, brokerage fees, taxes, management fees pursuant to s. [288.9625\(12\)\(b\)](#), disbursement to private investors pursuant to s. [288.96255\(6\)](#), or other fees, costs, and expenses incurred in the sale or liquidation of any of the investment portfolio assets.
- (7) “Portfolio companies” means the companies that are part of the Florida Technology Seed Capital Fund investment portfolio.
- (8) “Private fund manager” means the private entity, or its designee, selected to manage the investment portfolio on behalf of the institute.
- (9) “Technology fund” means the Florida Technology Seed Capital Fund managed by the institute.

History.—s. 1, ch. 2007-189; s. 4, ch. 2018-139; s. 43, ch. 2019-3.

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[View Entire Chapter](#)**288.9624 Florida Opportunity Fund; creation; duties.—**

(1)(a) Enterprise Florida, Inc., shall facilitate the creation of the Florida Opportunity Fund, a private, not-for-profit corporation organized and operated under chapter 617. Enterprise Florida, Inc., shall be the fund's sole shareholder or member. The fund is not a public corporation or instrumentality of the state. The fund shall manage its business affairs and conduct business consistent with its organizational documents and the purposes set forth in this section. Notwithstanding the powers granted under chapter 617, the corporation may not amend, modify, or repeal a bylaw or article of incorporation without the express written consent of Enterprise Florida, Inc.

(b) The board of directors of the Florida Opportunity Fund shall have five members, appointed by vote of the board of directors of Enterprise Florida, Inc. Board members shall serve terms as provided in the fund's organizational documents. Within 90 days before an anticipated vacancy by expiration of the term of a board member, the board of directors of the fund shall submit a list of three eligible nominees, which may include the incumbent, to the board of directors of Enterprise Florida, Inc. The board of directors of Enterprise Florida, Inc., may appoint a board member from the nominee list or may request and appoint from a new list of three nominees not included on the previous list.

(c) The persons appointed to the board of directors shall include persons who have expertise in the area of the selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise as considered appropriate.

(d) Members of the board are subject to any restrictions on conflicts of interest specified in the organizational documents and may not have an interest in any venture capital investment selected by the fund under ss. [288.9621-288.9624](#).

(e) Members of the board shall serve without compensation, but members, the president of the board, and other board employees may be reimbursed for all reasonable, necessary, and actual expenses as determined and approved by the board pursuant to s. [112.061](#).

(f) The fund shall have all powers granted under its organizational documents and shall indemnify members to the broadest extent permissible under the laws of this state.

(2) Upon organization, the board shall conduct a national solicitation for investment plan proposals from qualified venture capital investment managers for the raising and investing of capital by the Florida Opportunity Fund. Any proposed investment plan must address the applicant's level of experience, quality of management, investment philosophy and process, provability of success in fundraising, prior investment fund results, and plan for achieving the purposes of ss. [288.9621-288.9624](#). The board shall select only venture capital investment managers having demonstrated expertise in the management of and investment in companies.

(3) The board is responsible for negotiating the terms of a contract with the Florida Opportunity Fund investment manager; executing the contract with the selected venture capital investment fund manager on behalf of the Florida Opportunity Fund; managing the business affairs of the Florida Opportunity Fund, such as accounting, audit, insurance, and related requirements; soliciting and negotiating the terms of, contracting for, and receiving investment capital and loan proceeds with the assistance of the investment manager; receiving investment returns; paying investors and debtors; and reinvesting the investment returns in the fund in order to provide additional venture capital investments designed to result in a significant potential to create new businesses and jobs in this state and further diversify the economy of this state.

(4) For the purpose of mobilizing investment in a broad variety of Florida-based, new technology companies and generating a return sufficient to continue reinvestment, the fund shall:

(a) Invest in seed and early stage venture capital funds that have experienced managers or management teams with demonstrated experience, expertise, and a successful history in the investment of venture capital funds, focusing on opportunities in this state. The fund also may make direct investments, including loans, in individual businesses and infrastructure projects. While not precluded from investing in venture capital funds that have investments outside this state, the fund must require a venture capital fund to show a record of successful investment in this state, to be based in this state, or to have an office in this state staffed with a full-time, professional venture investment executive in order to be eligible for investment.

(b) Negotiate for investment capital or loan proceeds from private, institutional, or banking sources.

(c) Negotiate any and all terms and conditions for its investments.

(d) Invest only in funds, businesses, and infrastructure projects that have raised capital from other sources so that the amount invested in such funds, businesses, or infrastructure projects is at least twice the amount invested by the fund. Direct investments must be made in Florida infrastructure projects or businesses that are Florida-based or have significant business activities in Florida and operate in technology sectors that are strategic to Florida, including, but not limited to, enterprises in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense, as well as other strategic technologies.

(e) Form or operate other entities and accept additional funds from other public and private sources to further its purpose.

The Opportunity Fund may not use its original legislative appropriation of \$29.5 million for direct investments, including loans, in businesses or infrastructure projects, or for any purpose not specified in chapter 2007-189, Laws of Florida.

(5) By December 1 of each year, the board shall issue an annual report concerning the activities conducted by the fund to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report, at a minimum, must include:

- (a) An accounting of the amount of investments disbursed by the fund and the progress of the fund, including the progress of business and infrastructure projects that have been provided direct investment by the fund.
- (b) A description of the benefits to this state resulting from the fund, including the number of businesses created, associated industries started, the number of jobs created, and the growth of related research projects.
- (c) Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for personnel, administration, and operational costs of the fund.

History.—s. 1, ch. 2007-189; s. 26, ch. 2009-51; s. 191, ch. 2011-142.

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**288.9626 Exemptions from public records and public meetings requirements for the Florida Opportunity Fund.—**

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

- (a) “Alternative investment” means an investment or prospective investment through a loan, acquisition of an equity interest, or other investment method by the Florida Opportunity Fund in a private equity fund, venture capital fund, or angel fund; an investment by the Florida Opportunity Fund or an alternative investment in a portfolio company; or an investment through a distribution of securities to its partners or shareholders by an alternative investment vehicle.
- (b) “Alternative investment vehicle” means the limited partnership, limited liability company, or similar legal fund structure through which funds of, or funds managed by, the Florida Opportunity Fund are invested in a portfolio company.
- (c) “Florida Opportunity Fund” means the Florida Opportunity Fund as defined in s. [288.9623](#).
- (d) “Portfolio company” means a corporation or other issuer, any of whose securities or debt obligations are owned, or are being considered for ownership, by an alternative investment vehicle or the Florida Opportunity Fund and any subsidiary of such corporation or other issuer.
- (e) “Portfolio positions” means individual investments in portfolio companies that are made by an alternative investment vehicle or the Florida Opportunity Fund, including information or specific investment terms associated with any portfolio company investment.
- (f)1. “Proprietary confidential business information” means information that has been designated by the proprietor when provided to the Florida Opportunity Fund as information that is owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:
  - a. Trade secrets as defined in s. [688.002](#).
  - b. Information provided to the Florida Opportunity Fund regarding an existing or prospective alternative investment in a private equity fund, venture capital fund, angel fund, or portfolio company that is proprietary to the provider of the information.
  - c. Financial statements and auditor reports of an alternative investment vehicle or portfolio company, unless publicly released by the alternative investment vehicle or portfolio company.
  - d. Meeting materials of an alternative investment vehicle or portfolio company relating to financial, operating, or marketing information of the alternative investment vehicle or portfolio company.
  - e. Information regarding the portfolio positions in which the alternative investment vehicles or Florida Opportunity Fund invest.
  - f. Capital call and distribution notices to investors or the Florida Opportunity Fund of an alternative investment vehicle.
  - g. Alternative investment agreements and related records.
  - h. Information concerning investors, other than the Florida Opportunity Fund, in an alternative investment vehicle or portfolio company.
- 2. “Proprietary confidential business information” does not include:
  - a. The name, address, and vintage year of an alternative investment vehicle or Florida Opportunity Fund and the identity of the principals involved in the management of the alternative investment vehicle or Florida Opportunity Fund.
  - b. The dollar amount of the commitment made by the Florida Opportunity Fund to each alternative investment vehicle since inception, if any.
  - c. The dollar amount and date of cash contributions made by the Florida Opportunity Fund to each alternative investment vehicle since inception, if any.
  - d. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund from each alternative investment vehicle.
  - e. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund plus the remaining value of alternative-vehicle assets that are attributable to the Florida Opportunity Fund’s investment in each alternative investment vehicle.
  - f. The net internal rate of return of each alternative investment vehicle since inception.
  - g. The investment multiple of each alternative investment vehicle since inception.
  - h. The dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the Florida Opportunity Fund to each alternative investment vehicle.
  - i. The dollar amount of cash profit received by the Florida Opportunity Fund from each alternative investment vehicle on a fiscal-year-end basis.
- (g) “Proprietor” means an alternative investment vehicle or portfolio company in which an alternative investment vehicle or Florida Opportunity Fund invests or which is being considered for investment, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, that controls or owns information.

## (2) PUBLIC RECORDS EXEMPTION.—

(a) The following records held by the Florida Opportunity Fund are confidential and exempt from s. [119.07\(1\)](#) and s. 24(a), Art. I of the State Constitution:

1. Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects and that are provided by a proprietor.
2. Information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the Florida Opportunity Fund.
3. Proprietary confidential business information regarding alternative investments for 7 years after the termination of the alternative investment.

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

## (3) PUBLIC MEETINGS EXEMPTION.—

(a) That portion of a meeting of the board of directors of the Florida Opportunity Fund at which information is discussed which is confidential and exempt under subsection (2) is exempt from s. [286.011](#) and s. 24(b), Art. I of the State Constitution.

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

(c) A transcript and minutes of exempt portions of meetings are confidential and exempt from s. [119.07\(1\)](#) and s. 24(a), Art. I of the State Constitution.

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

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

(b) Notwithstanding the provisions of paragraph (2)(a), a request to inspect or copy a public record that contains proprietary confidential business information shall be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the Florida Opportunity Fund, to verify the following to the Florida Opportunity Fund through a written declaration in the manner provided by s. [92.525](#):

1. That the requested record contains proprietary confidential business information and the specific location of such information within the record;
2. If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in s. [688.002](#);
3. That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and
4. That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.

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

2. Any action under this subsection must be brought in Orange County, and the petition or other initial pleading shall be served on the Florida Opportunity Fund and, if determinable upon diligent inquiry, on the proprietor of the information sought to be released.

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

- a. The record or portion thereof is not a trade secret as defined in s. [688.002](#);
- b. A compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and
- c. The release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, or the Florida Opportunity Fund.

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

History.—s. 1, ch. 2007-190; s. 1, ch. 2012-223.