

oppaga

Special Review

November 2002

Report No. 02-59



Statutes Authorizing Technology Commercialization and Development Initiatives Should Be Re-Enacted

at a glance

Certain sections of the *Florida Statutes* authorizing Enterprise Florida, Inc., to establish technology commercialization and development programs will be repealed December 31, 2003, unless re-enacted by the Legislature. Enterprise Florida, Inc., should play a central role in fostering technology commercialization and development in the state. It is presently implementing several initiatives to increase the number of technology-based companies and jobs in Florida.

We recommend that the Legislature

- re-enact s. 288.9511, *Florida Statutes*, that defines technology-related terms;
- re-enact s. 288.9515(5), *Florida Statutes*, that authorizes Enterprise Florida, Inc., to create technology commercialization programs in partnership with private enterprises, educational institutions, and other institutions;
- amend s. 288.9515(1)(a)-(f), *Florida Statutes*, that authorize Enterprise Florida, Inc., to create technology applications services;
- re-enact s. 288.9515(3) and (4), *Florida Statutes*, relating to the Technology Research Investment Fund; and
- not re-enact s. 288.9517, *Florida States*, relating to audits and examinations by the Auditor General and OPPAGA. This section is redundant with other sections of the statutes.

Purpose

Chapter 2002-265, *Laws of Florida*, directs OPPAGA to review certain sections of the *Florida Statutes* relating to Enterprise Florida Inc.'s authority to establish technology commercialization and development programs.¹ These sections, which were initially created by legislation passed by the 1993 Legislature, are noted below.

- Section 288.9511, *Florida Statutes*, includes definitions of terms for technology commercialization and development.
- Section 288.9515, *Florida Statutes*, authorizes Enterprise Florida, Inc., to create technology commercialization and development programs, and
- Section 288.9517, *Florida Statutes*, authorizes the Auditor General and OPPAGA to conduct audits and examinations of these programs.

These sections of the statutes will be repealed December 31, 2003, unless re-enacted by the Legislature.²

¹ Enterprise Florida, Inc., is a public-private partnership created by the Legislature to serve as the state's principal economic development organization.

² Chapter 93-187, *Laws of Florida*.

Background

In 1993, the Legislature authorized the Enterprise Florida Innovation Partnership, a predecessor to Enterprise Florida, Inc., to establish several technology commercializations and transfer programs.³

- Under the authority granted by s. 288.9515(5), *Florida Statutes*, the partnership created regional innovation and commercialization centers, which were intended to help entrepreneurs bring new high technology products to the market.⁴ Six innovation and commercialization centers were initially established in Gainesville, Jacksonville, Orlando, Palm Beach, Tallahassee, and Tampa.

The innovation and commercialization centers are no longer affiliated with Enterprise Florida, Inc. They were formally separated from Enterprise Florida, Inc., in 1999. During that year, Governor Bush vetoed state funding for these entities. A 1998 OPPAGA report had noted that some of the centers were on the verge of becoming financially self-supporting and these centers would continue to operate if state funding was eliminated. Presently, three innovation and commercialization centers are still operating. These centers receive no state funding and no longer have contractual or

funding relationships with Enterprise Florida, Inc.

- Under the authority granted by s. 288.9515(1)(a)–(f), *Florida Statutes*, the partnership established the Florida Manufacturing Technology Center, which was created to assist small to medium sized manufacturers in using off-the-shelf technologies and methods to improve their efficiency and operations.

The center was separated from Enterprise Florida, Inc., in 1999 following the Governor's veto of state funding for this entity. The center (now operating as the Florida Manufacturing Extension Partnership) is funded by the U.S. Department of Commerce's National Institute of Standards and Technology.

- Section 288.9515(3) and (4), *Florida Statutes*, created the Technology Investment Research Fund. It was established to partner the private sector and the state's research universities to develop marketable technologies. The fund was to invest in projects that had potential to generate marketable products beneficial to the state's economy.

Enterprise Florida, Inc., still administers the Technology Research Investment Fund. It presently administers contracts with 14 entities that were disbursed a total of \$2,403,871 from the fund during Fiscal Years 1997-98 and 1998-99. The fund's balance as of June 30, 2002, was \$717,287.

As of June 30, 2002, Enterprise Florida, Inc., had received \$52,839 in royalty payments from companies receiving financial support from the fund. The amount of royalty payments Enterprise Florida, Inc., received through June 30, 2002, is generally consistent with what would be expected for these types of programs. A 1995 OPPAGA report noted that technology commercialization programs are long-term in nature. It often takes a number of years before a project develops a technology that can be refined,

³The Florida Legislature established the Enterprise Florida Innovation Partnership in 1993 as a public-private partnership charged with fostering the growth of small and midsize high technology manufacturers and increasing the number of high technology jobs in Florida. In 1996, the Innovation Partnership was renamed the Enterprise Florida Technology Development Board and brought under the umbrella of Enterprise Florida, Inc., the state's primary economic development. The Technology Development Board was eliminated as a separate entity within Enterprise Florida, Inc., in 1999.

⁴For prior OPPAGA reviews of the Innovation and Commercialization Center Program and the Florida Manufacturing Technology Center, see *Review of the Enterprise Florida Innovation Partnership*, [Report No. 95-07](#), October 1995; *Follow-up Report on the Enterprise Florida Innovation Partnership and the Florida Technology Research Investment Fund*, [Report No. 97-28](#), January 1998; *Review of the Technology Development Board of Enterprise Florida, Inc.*, [Report No. 98-30](#), December 1998.

manufactured, and marketed by a commercial business. Additional time is required for product sales to generate royalty payments.

Statutory provisions authorizing Enterprise Florida, Inc., to establish technology commercialization and development programs will be repealed December 31, 2003, unless re-enacted by the Legislature. If the Legislature allowed statutory provisions creating the Technology Research Investment Fund to be repealed, any rights or interests in the fund would vest in the state under the control of the State Board of Administration.

Findings

The Legislature should re-enact statutory provisions authorizing Enterprise Florida to establish technology commercialization and development programs

Statutory provisions authorizing Enterprise Florida, Inc., to develop technology commercialization and development programs should be retained or amended by the Legislature. Enterprise Florida, Inc., is in the process of reinvigorating its efforts to help develop and recruit technology-based companies, and is planning to do more in this area in the future.

Although Enterprise Florida, Inc., is no longer affiliated with some programs authorized by the 1993 legislation, there are several reasons why the Legislature should re-enact statutory provisions authorizing the corporation to create technology commercialization and development programs.

- It is appropriate for Enterprise Florida, Inc., as the state's economic development agency, to spearhead efforts to increase the number of technology-based companies and jobs in Florida. Enterprise Florida, Inc., recognizes

that the growth of technology-based businesses is a key factor in diversifying the state's economy.

- Enterprise Florida, Inc., is in the process of expanding its efforts to support the development of technology-based companies and to encourage such companies to move to Florida. For example, Enterprise Florida, Inc., has made the need for developing a statewide entrepreneurship strategy for growing Florida's "Innovation Economy" a key focus in developing the Statewide Strategic Plan for Economic Development for 2003. This focus highlights the importance of technology transfer and commercialization for the creation of new businesses in Florida.

As part of the process of developing the 2003 strategic plan, Enterprise Florida, Inc., sponsored a workshop on technology transfer and commercialization issues in October 2002. It also recently implemented a marketing campaign to promote Florida as the "Innovation Hub of the Americas." Such efforts would be impeded if the Legislature allowed the statutory provisions to be repealed.

- Enterprise Florida, Inc., officials said they view the Technology Research Investment Fund as an important tool in supporting technology commercialization initiatives in the state. They also said they would like the Legislature to re-design the fund so that it could serve as a seed capital fund to help finance the creation of new high technology businesses in the state. A 1998 OPPAGA report concluded that the lack of seed capital was a factor that limited efforts to increase the number of technologies commercialized by Florida companies.⁵

⁵ Review of the Technology Development Board of Enterprise Florida, Inc., [Report No. 98-30](#), December 1998.

Recommendations

We recommend that the Legislature take the actions below regarding ss. 288.9511, 288.9515, and 288.9517, *Florida Statutes*.

- The Legislature should re-enact s. 288.9511, *Florida Statutes*. This section provides definitions of terms, such as technology commercialization and development.
- The Legislature should re-enact s. 288.9515(5), *Florida Statutes*, which authorizes Enterprise Florida, Inc., to create technology commercialization programs in partnership with private enterprises, educational institutions, and other institutions. This would underscore Enterprise Florida, Inc., as having a key role in supporting technology commercialization and development in the state.
- The Legislature should amend and re-enact s. 288.9515(1)(a)–(f), *Florida Statutes*. These sections presently authorize Enterprise Florida, Inc., to create technology applications services, and to serve as an umbrella organization for technology applications service providers in the state. Section 288.9511(6), *Florida Statutes*, defines technology applications as the introduction and adaptation of off-the-shelf technologies and state-of-the-art management practices to the specific circumstances of an individual firm. Technology application services were provided by the former Florida Manufacturing Technology Center, which, as we previously noted, is no longer affiliated with Enterprise Florida, Inc.
- Enterprise Florida, Inc., proposes to have s. 288.9515(1)(a)–(f), *Florida Statutes*,

amended so as to eliminate references to technology application services, and to broaden their focus to authorizing the corporation to provide services to technology-based businesses. Enterprise Florida, Inc.'s specific recommendations for amending these and other statutory provisions are presented in their entirety in Appendix A. We have reviewed these recommendations and conclude that they are reasonable.

- The Legislature should amend and re-enact s. 288.9515(3) and (4), *Florida Statutes*, relating to the Technology Research Investment Fund. Enterprise Florida, Inc., still administers Technology Research Investment Fund projects and has begun to receive royalty payments from projects that resulted in commercialized products. We recommend that the Legislature amend these sections to allow Enterprise Florida, Inc., to use the Technology Investment Fund as a seed capital fund to help finance the creation of new high technology businesses in the state and use moneys currently in the fund for that purpose.
- The Legislature should not re-enact s. 288.9517, *Florida Statutes*, relating to audits and examinations by the Auditor General and OPPAGA. The Auditor General and OPPAGA already have authority under other sections of the statutes to audit and examine Enterprise Florida, Inc., and its programs.

Agency Response

For a complete copy of Enterprise Florida, Inc.'s response, see Appendix B, page 8.

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John W. Turcotte, OPPAGA Director

Appendix A

Enterprise Florida, Inc.'s Recommended Changes to Statutory Provisions

Current Legislation with Proposed Changes	Retain/ Modify/Delete
s.288.9511 Definitions.--As used in ss. 288.9511-288.9517, the term:	RETAIN.
(1) "Educational institutions" means Florida technical institutes and vocational schools, and public and private community colleges, colleges, and universities in the state.	General Rationale for Re-enactment of s.288.9511: Definitions continue to serve their intended purpose, and should be retained. If not retained, there could be more misinterpretation of authority.
(2) "Enterprise" means a firm with its principal place of business in this state which is engaged, or proposes to be engaged, in this state in agricultural industries, natural-resource-based or other manufacturing, research and development, or the provision of knowledge-based services.	
(3) "Person" means any individual, partnership, corporation, or joint venture that carries on business, or proposes to carry on business, within the state.	
(4) "Product" means any product, device, technique, or process that is, or may be, developed or marketed commercially; the term does not refer, however, to basic research, but rather to products, devices, techniques, or processes that have advanced beyond the theoretical stage and are in a prototype or industry practice stage.	
(5) "Qualified security" means a public or private financial arrangement that involves any note, security, debenture, evidence of indebtedness, certificate of interest of participation in any profit-sharing agreement, preorganization certificate or subscription, transferable security, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or application thereof, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a security or any certificate for, receipt for, guarantee of, or option warrant or right to subscribe to or purchase any of the foregoing to the extent allowed by law.	
(6) "Technology application" means the introduction and adaptation of off-the-shelf technologies and state-of-the-art management practices to the specific circumstances of an individual firm.	
(7) "Technology commercialization" means the process of bringing an investment-grade technology out of an enterprise, university, or federal laboratory for first-run application in the marketplace.	
(8) "Technology development" means strategically focused research aimed at developing investment-grade technologies essential to market competitiveness.	
s. 288.9515 Authorized technology development programs.--	RETAIN AND MODIFY
(1) Enterprise Florida, Inc., may create technology development and applications services, and may serve as an umbrella organization for the coordination of information that provides technology applications service providers throughout the state which provide critical, managerial, technological, scientific, and related financial and business expertise essential for international and domestic competitiveness to small-sized and medium-sized manufacturing and knowledge-based service firms. Enterprise Florida, Inc., is authorized the following powers in order to carry out these functions:	General Rationale for Re-enactment of s. 288.9515: Technology development and applications services will continue to be an element of entrepreneurial growth in Florida. As a sharper focus is achieved on emerging technologies and knowledge-based job growth and wealth creation, the rationale becomes even stronger to retain the authority and expand the program of work. Elimination of authority would eliminate needed tools for entrepreneurial growth.
(a) Providing communication and coordination services among technology development and applications service providers throughout the state.	(1) More accurately describes EFI activities and deletes designated service providers (FMTC)
(b) Providing coordinated marketing services to small-sized and medium-sized manufacturers in the state on behalf of, and in partnership with, technology applications service providers.	Rationale for Specific Subsections: (a) Retain (b) Delete, not proper focus of EFI marketing function

Current Legislation with Proposed Changes	Retain/ Modify/Delete
<p>(e) (b) Securing additional sources of funds on behalf of, and in partnership with, technology applications service providers based businesses.</p> <p>(d) (c) Developing plans and policies to assist small-sized and medium-sized manufacturing companies or other knowledge-based firms in Florida.</p> <p>(e) Entering into contracts with technology applications service providers for expanded availability of high quality assistance to small sized and medium sized manufacturing companies or knowledge based service firms, including, but not limited to, technological, human resources development, market planning, finance, and interfirm collaboration. Enterprise Florida, Inc., shall ensure that all contracts in excess of \$20,000 for the delivery of such assistance to Florida firms shall be based on competitive requests for proposals and shall establish clear standards for the delivery of services under such contracts. Such standards include, but are not limited to:</p> <ol style="list-style-type: none"> 1. The ability and capacity to deliver services in sufficient quality and quantity. 2. The ability and capacity to deliver services in a timely manner. 3. The ability and capacity to meet the needs of firms in the proposed market area. <p>(f) (d) Assisting other educational institutions, enterprises, or the entities providing business assistance to small-sized and medium-sized manufacturing and knowledge-based services enterprises.</p> <p>(g) Establishing a system to evaluate the effectiveness and efficiency of technology applications services provided to small sized and medium sized enterprises.</p> <p>(h) (e) Establishing special education and informational programs for Florida enterprises and for educational institutions and enterprises providing business assistance to Florida enterprises.</p> <p>(i) (f) Assisting in evaluating and documenting the needs of firms in this state for technology development, and application services, and developing means to ensure that these needs are met, consistent with the powers provided for in this subsection.</p> <p>(j) (g) Maintaining an office in such place or places as the board of directors of Enterprise Florida, Inc., approves.</p> <p>(k) (h) Making and executing contracts with any person, enterprise, educational institution, association, or any other entity necessary or convenient for the performance of its duties and the exercise of the powers and functions of Enterprise Florida, Inc., under this subsection.</p> <p>(l) (i) Receiving funds from any source to carry out the purposes of providing technology development and applications services, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States or of the state, or any enterprise or person, for any purpose consistent with the provisions of this subsection.</p>	<p>(c) Retain, shifts focus to business partners not service providers</p> <p>(d) Retain, enables EFI to continue/develop a grants assistance or delivery program for critical technology supported businesses</p> <p>(e) Delete, applies to service providers an FMTC functions. No longer required by EFI.</p> <p>(f) Retain, expands types of technology businesses that may be assisted</p> <p>(g) Delete – an FMTC function</p> <p>(h) Retain, EFI focuses on information dissemination to other providers</p> <p>(i) Retain, establishes EFI as a partner, broadens areas to evaluate</p> <p>(j) Retain</p> <p>(k) Retain</p> <p>(l) Retain, broadens areas of responsibility</p>
<p>(2) When choosing contractors under this section, preference shall be given to existing institutions, organizations, and enterprises so long as these existing institutions, organizations, and enterprises demonstrate the ability to perform at standards established by Enterprise Florida, Inc., under paragraph (1)(e). Neither the provisions of ss. 288.9511-288.9517 nor the actions taken by Enterprise Florida, Inc., under this section shall impair or hinder the operations, performance, or resources of any existing institution, organization, or enterprise.</p>	<p>(2) Delete section for consistency with deletion of referenced paragraph (1)(e).</p>
<p>(3) Enterprise Florida, Inc., may create a technology development financing fund, to be called the Florida Technology Research Investment Fund. The fund shall increase technology development in this state by investing in technology development projects that have the potential to generate investment-grade technologies of importance to the state's economy as evidenced by the willingness of private businesses to coinvest in such projects. Enterprise Florida, Inc., may also demonstrate and develop effective approaches to, and benefits of, commercially oriented research collaborations between businesses, universities, and state and federal agencies and organizations. Enterprise Florida, Inc., shall endeavor to maintain the fund as a self-supporting fund once the fund is sufficiently capitalized as reflected in the minimum funding report required in 2s. 288.9516 per Enterprise Florida, Inc., program guidelines. The technology research investment projects may include, but are not limited to:</p> <p>(a) Technology development projects expected to lead to a specific investment-grade technology that is of importance to industry in this state.</p> <p>(b) Technology development centers and facilities expected to generate a stream of</p>	<p>(3) Retain, the noted funding report has been deleted from legislation.</p>

Current Legislation with Proposed Changes	Retain/ Modify/Delete
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<p>products and processes with commercial application of importance to industry in this state.</p> <p>(c) Technology development projects that have, or are currently using, other federal or state funds such as federal Small Business Innovation Research awards.</p> <p>(4) Enterprise Florida, Inc., shall invest moneys contained in the Florida Technology Research Investment Fund in technology application research or for technology development projects that have the potential for commercial market application. The partnership shall coordinate any investment in any space-related technology projects with the Spaceport Florida Authority and the Technological Research and Development Authority.</p> <p>(a) The investment of moneys contained in the Florida Technology Research Investment Fund is limited to investments in qualified securities in which a private enterprise in this state coinvests at least 40 percent of the total project costs, in conjunction with other cash or noncash investments from state educational institutions, state and federal agencies, or other institutions.</p> <p>(b) For the purposes of this fund, qualified securities include loans, loans convertible to equity, equity, loans with warrants attached that are beneficially owned by the board, royalty agreements, or any other contractual arrangement in which the board is providing scientific and technological services to any federal, state, county, or municipal agency, or to any individual, corporation, enterprise, association, or any other entity involving technology development.</p> <p>(c) Not more than \$175,000 or 5 percent of the revenues generated by investment of moneys contained in the Florida Technology Research Investment Fund, whichever is greater, may be used <u>on an annual basis</u> to pay operating expenses associated with operation of the Florida Technology Research Investment Fund.</p> <p>(d) In the event of liquidation or dissolution of Enterprise Florida, Inc., or the Florida Technology Research Investment Fund, any rights or interests in a qualified security or portion of a qualified security purchased with moneys invested by the State of Florida shall vest in the state, under the control of the State Board of Administration. The state is entitled to, in proportion to the amount of investment in the fund by the state, any balance of funds remaining in the Florida Technology Research Investment Fund after payment of all debts and obligations upon liquidation or dissolution of Enterprise Florida, Inc., or the fund.</p> <p>(e) The investment of funds contained in the Florida Technology Research Investment Fund does not constitute a debt, liability, or obligation of the State of Florida or of any political subdivision thereof, or a pledge of the faith and credit of the state or of any such political subdivision.</p> <p>(5) Enterprise Florida, Inc., may create technology commercialization programs in partnership with private enterprises, educational institutions, and other institutions to increase the rate at which technologies with potential commercial application are moved from university, public, and industry laboratories into the marketplace. Such programs shall be created based upon research to be conducted by Enterprise Florida, Inc.</p>	<p>(4) Delete section, "partnership" refers to Innovation Partnership; coordination requirements are redundant to the EFI's mandate to coordinate its programs with appropriate OTTED partners.</p> <p>(c) Retain, modification allows annual funding of administrative costs of fund management</p>
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s. 288.9517 Audits; Confidentiality	DELETE
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<p>(1) The Auditor General and the director of the Office of Program Policy Analysis and Government Accountability may, pursuant to their own authority or at the direction of the Legislative Auditing Committee, conduct an audit or examination of the technology development board or the programs or entities created by the board. The audit, examination, or report may not reveal the identity of any person who has anonymously made a donation to the board pursuant to subsection (2).</p> <p>(2) The identity of a donor, prospective donor, or inventor who contributes to the board who desires to remain anonymous and all information identifying such donor, prospective donor, or inventor who contributes to the board are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such anonymity shall be maintained in the report.</p>	<p>Delete: redundant to other language that governs EFI's audit requirements.</p>
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Note: Strikethroughs represent proposed deletions and underscored words represent proposed additions.

Source: Enterprise Florida, Inc.

Appendix B

Agency Response

Enterprise FLORIDA, Inc.

Enterprise Florida, Inc.

Chairman of the Board
The Honorable Jeb Bush
Governor of Florida

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Florida Trend Magazine

November 15, 2002

Mr. John Turcotte, Director
Office of Program Policy Analysis
and Government Accountability
Claude Pepper Building
111 West Madison Street, Room 312
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

I have reviewed the draft OPPAGA Special Review entitled, *Statutes Authorizing Technology Commercialization and Development Initiatives Should Be Re-enacted*. Enterprise Florida, Inc. agrees with your analysis and supports your recommendations.

If you have any questions, please let me know.

Sincerely,

/s/
Darrell Kelley, President and CEO
Enterprise Florida, Inc.

cc: Dr. Pamela Dana, Director
Governors Office of Tourism, Trade and Economic Development