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A bill to be entitled

An act relating to the Florida Economic Development Act; providing a popular name; providing a purpose; providing definitions; providing for application and designation of a manager; providing manager applicant requirements and criteria; providing duties and requirements of the Office of Tourism, Trade, and Economic Development; providing for a fund allocation date; providing duties and responsibilities of the manager; providing certain economic development project investment requirements; providing for forfeit of certain fees under certain circumstances; requiring payment of certain funds into the Special Disability Trust Fund; providing certain fund investment and profits distribution limitations; providing for certain investor offsets against certain assessments; providing offset requirements, criteria, and limitations; specifying that the general revenue service charge payable to the Special Disability Trust Fund not be reduced by offsets; requiring certain reports by the manager; providing report requirements; requiring an annual audited financial statement by the manager; providing for act nonapplicability to the manager under certain circumstances; providing an effective date.

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

Section 1. Popular name.--This is the "Florida Economic Development Act."

Section 2. Purpose.--The purpose of the Florida Economic Development Act is to provide assistance in the formation and

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31 expansion of new and existing businesses which create jobs in  
 32 this state by providing for the availability of venture capital  
 33 financing to entrepreneurs, managers, inventors, and other  
 34 individuals for the development and operation of qualified  
 35 businesses in this state.

36 Section 3. Definitions.--As used in this section:

37 (1) "Affiliate" means, with respect to any person:

38 (a) A person who directly or indirectly:

39 1. Beneficially owns at least 10 percent of the  
 40 outstanding voting securities or other ownership interests of  
 41 the other person, whether through rights, options, convertible  
 42 interests, or otherwise; or

43 2. Controls or holds power to vote at least 10 percent of  
 44 the outstanding voting securities or other ownership interests  
 45 of the other person;

46 (b) A person with at least 10 percent of the outstanding  
 47 voting securities or other ownership interests, of which are  
 48 directly or indirectly:

49 1. Beneficially owned by the other person, whether through  
 50 rights, options, convertible interest, or otherwise; or

51 2. Controlled or held with power to vote by the other  
 52 person;

53 (c) A partnership in which the other person is a general  
 54 partner; or

55 (d) An officer, employee, or agent of the other person or  
 56 an immediate family member of the officer, employee, or agent.

57 (2) "Assessments" means the assessments required pursuant  
 58 to s. 440.49, Florida Statutes.

59 (3) "Conversion cost" means, for each FEDA manager, all  
 60 costs and expenses of closing its FEDA fund, including, without

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61 limitation, legal, accounting, and trustee fees and expenses and  
 62 any costs of insuring the obligations of the FEDA manager to the  
 63 investing investors incurred in connection with the FEDA fund or  
 64 any original issue discount in connection with the obligations.

65 (4) "Economic development project" means a project or  
 66 business that has been approved by the FEDA investment board and  
 67 that meets requirements of the Small Business Administration or  
 68 the following criteria at the time of the investment:

69 (a) The project or business is headquartered in this state  
 70 and its principal operations are located in this state, at least  
 71 50 percent of the employees of the project or business are  
 72 employed in this state, or the project or business has committed  
 73 in writing to move at least 50 percent of its employees into  
 74 this state as a condition of the investment.

75 (b) The project or business fosters economic development  
 76 in this state as determined by the FEDA investment board.

77 (c) There are sufficient resources or the forecast or  
 78 business plan for the project or business projects that the  
 79 project or business will have sufficient resources to meet any  
 80 obligations due to the FEDA manager as a result of the  
 81 investment.

82 (5) "FEDA" means the Florida Economic Development Act.

83 (6) "FEDA costs" means:

84 (a) The bona fide costs and expenses of managing and  
 85 operating the FEDA manager, including, without limitation,  
 86 professional expenses and an annual management fee that is not  
 87 to exceed 2.5 percent of the full offset amount.

88 (b) Distributions to direct or indirect parent entities of  
 89 the FEDA manager, if the FEDA is taxed as a partnership, equal  
 90 to any projected increase in federal or state income taxes of

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91 such entities, resulting from the earnings of the FEDA manager,  
 92 without regard to any revenues or expenses from other operations  
 93 of affiliates of the FEDA manager, to the extent that the  
 94 increase is related to the ownership, management, or operations  
 95 of the FEDA manager.

96 (7) "FEDA fund" means the full offset amount less  
 97 conversion costs and the structuring fee.

98 (8) "FEDA investment board" means a representative from  
 99 the office, a representative from the FEDA manager, and a third  
 100 member chosen by the two designated members.

101 (9) "FEDA investment pool" means the fund created through  
 102 the assessment offsets granted in section 5, which must be  
 103 invested in economic development projects by the FEDA manager in  
 104 accordance with this act.

105 (10) "FEDA manager" means an entity designated pursuant to  
 106 this act to receive investment funds from investors and invest  
 107 such funds in economic development projects.

108 (11) "Full offset amount" means the full face amount of  
 109 any permitted debt instruments offered to the FEDA manager,  
 110 issued by its investors evidencing such investors' investment  
 111 with the FEDA manager.

112 (12) "Fund allocation date" means the date on which the  
 113 FEDA manager receives the investments from its investors in the  
 114 form of a permitted debt instrument that entitles its investors  
 115 to receive an allocation of the full offset amount authorized by  
 116 this act for such FEDA manager.

117 (13) "Investor" means any insurer authorized to transact  
 118 insurance in this state with a liability for assessments under  
 119 s. 440.49, Florida Statutes.

120 (14) "Note receivable" means a debt instrument which:

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121 (a) Has a stated final maturity date of not more than 10  
122 years from the date on which the FEDA manager receives the note  
123 receivable.

124 (b) Is amortized at rate of at least 10 percent per year.

125 (15) "Office" means the Office of Tourism, Trade, and  
126 Economic Development.

127 (16) "Permitted debt instrument" means a debt instrument  
128 issued to the FEDA manager, in the form of a note receivable  
129 from one or more investors that do not own any voting equity  
130 interest in the FEDA manager, which:

131 (a) Is issued in exchange for the investment by the  
132 investors of cash in the FEDA manager and for no other  
133 consideration.

134 (b) Is repayable with interest to the FEDA manager, only  
135 by the availability of offsets to the investor earned as a  
136 result of the investor's investment in the FEDA manager.

137 (c) Does not entitle the investor to any consideration or  
138 compensation based upon the profits, income, or other operation  
139 of the FEDA manager.

140 (d) May not be prepaid by the investor without the consent  
141 of the FEDA manager.

142 (17) "Person" means any natural person, corporation,  
143 limited liability company, partnership, joint venture, trust,  
144 incorporated or unincorporated association, joint stock company,  
145 government, or agency or political subdivision of the  
146 government, or other entity of any kind.

147 (18) "Principal" means:

148 (a) A senior officer or director of a corporation;

149 (b) An individual manager of a limited liability company  
150 or a principal of any entity manager;

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151 (c) An individual general partner of a partnership or  
152 limited partnership or a principal of any entity that serves as  
153 a general partner; or

154 (d) An individual in a position of similar authority in an  
155 entity not specifically named in this subsection.

156 (19) "Structuring fee" means a fee paid to the FEDA  
157 manager for converting the assessment fee offsets into the FEDA  
158 fund in an amount that shall not exceed 5 percent of the full  
159 offset amount.

160 Section 4. FEDA manager application and designation; fund  
161 allocation date.--

162 (1) Within 150 days after the effective date of this act,  
163 the office shall designate a single FEDA manager to be the  
164 exclusive FEDA manager for all purposes under this act in  
165 accordance with the laws of this state. The office may adopt  
166 such regulations as are necessary to effectuate such  
167 designation.

168 (2) Within 90 after the effective date of this act, the  
169 office shall issue a request for a proposal for the designation  
170 of the FEDA manager for all purposes under this act and shall  
171 include a statement of the services sought, the time and date  
172 for the receipt of the proposals and of the public opening, and  
173 all of the terms and conditions applicable to the designation of  
174 the FEDA manager, including the criteria contained in subsection  
175 (3).

176 (3) The FEDA manager applicant shall demonstrate in its  
177 response to the request for a proposal that it meets the  
178 following criteria:

179 (a) The FEDA manager applicant, together with its  
180 affiliates, has raised at least \$40 million in the aggregate for

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181 investment in small and emerging businesses within the past 5  
182 calendar years.

183 (b) The FEDA manager applicant must have at least two  
184 principals who each have had at least 5 years' experience in  
185 either the venture capital industry or the investment banking  
186 industry.

187 (c) The FEDA manager applicant must demonstrate that it  
188 has successfully managed similar portfolios with aggregate  
189 losses of no more than 4 percent of the total capital under  
190 management.

191 (d) No director, officer, or senior manager of the FEDA  
192 manager applicant shall have been guilty of a crime involving  
193 fraud, theft, embezzlement, or moral turpitude.

194 (e) The FEDA manager applicant shall be a bankruptcy-  
195 remote, special purpose entity that has no purpose other than  
196 participation under this act and all related activities.

197 (f) No investor or affiliate of an investor shall own any  
198 voting equity securities in the FEDA manager or any affiliate of  
199 the FEDA manager.

200 (4) The FEDA manager fund allocation date shall be 60 days  
201 following the FEDA manager designation.

202 Section 5. Investment milestones and penalties.--

203 (1) The FEDA manager shall:

204 (a) Within 36 months after the fund allocation date,  
205 invest at least 30 percent of the FEDA investment pool in  
206 economic development projects.

207 (b) Within 60 months after the fund allocation date,  
208 invest at least 50 percent of the FEDA investment pool in  
209 economic development projects.

210 (c) Within 84 months after the fund allocation date,

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211 invest at least 70 percent of the FEDA investment pool in  
 212 economic development projects.

213 (d) Within 120 months after the fund allocation date,  
 214 invest 100 percent of the FEDA investment pool in economic  
 215 development projects.

216 (2) If the FEDA manager fails to meet the investment  
 217 targets of subsection (1), the FEDA manager shall forfeit its  
 218 management fee for that year.

219 (3) Within 90 days after the expiration of 10 years after  
 220 the fund allocation date, the FEDA manager shall pay to the  
 221 Special Disability Trust Fund a sum equal to 50 percent of the  
 222 full offset amount granted to investors under section 5.

223 (4) Until the FEDA manager has invested the FEDA  
 224 investment pool in economic development projects, money in the  
 225 FEDA fund shall be used only for short-term investments, which  
 226 can be liquidated within 1 year, approved by the FEDA investment  
 227 board and FEDA costs.

228 (5) No distributions of profits from investments of the  
 229 FEDA investment pool shall be made until the FEDA manager has  
 230 invested the entire FEDA investment pool in economic development  
 231 projects, except for the tax effect of said profits.

232 Section 6. FEDA investor assessment offsets.--

233 (1) Each investor that makes an investment in the FEDA  
 234 manager shall earn vested offsets against future assessments  
 235 under s. 440.49, Florida Statutes, equal to the face amount of  
 236 the permitted debt instrument offered to the FEDA manager,  
 237 issued by the investors and evidencing their investment of cash  
 238 in the FEDA manager. The full offset amount available to  
 239 investors in the form of FEDA manager permitted debt instruments  
 240 shall be \$200 million. Assessment offsets shall be vested on the



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241 fund allocation date and shall be available to the investor  
242 annually, contingent only upon the FEDA manager's compliance  
243 with the investment milestones in section 5 and the investor's  
244 compliance with the terms of the note receivable.

245 (2) Each investor investing in the FEDA manager may:

246 (a) Take the vested assessment offsets against investor  
247 assessments each year in accordance with the terms of the note  
248 receivable, beginning with the annual return filed in the year  
249 following the fund allocation date and continuing for the next  
250 nine consecutive years.

251 (b) Reduce its estimated payments of assessment liability  
252 for each year for which offsets are available to offset  
253 assessment liability by the same percentage as the percentage  
254 payment due on each estimated payment date.

255 (3) The offsets against assessments that are used by an  
256 investor with respect to any year shall not exceed the full  
257 assessment liability of the investor for that year.

258 (4) Any offsets against assessments that an investor is  
259 permitted to use under subsections (1) and (2), but is unable to  
260 use because of subsection (3) may be carried forward  
261 indefinitely and used to offset the investor's assessment  
262 liability in any subsequent year in which the investor has  
263 sufficient assessment liability, including a year in which the  
264 investor also uses assessment offsets that are allocated to that  
265 year pursuant to subsection (2).

266 (5) An investor that has invested in the FEDA manager is  
267 not required to reduce the amount of assessment included by the  
268 investor in connection with the ratemaking for any insurance  
269 contract written because of a reduction in the investor's  
270 assessment derived from the offsets granted under this act.

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271 (6) If the assessments that an investor does not pay by  
272 virtue of the offsets earned under this act would constitute a  
273 credit against another tax or assessment if paid, the investor  
274 shall continue to earn the credit as though the offset  
275 assessments were paid by cash.

276 (7) An investor may transfer the offsets it earns under  
277 this act to another investor provided the transferor delivers to  
278 the Director of the Office of Insurance Regulation of the  
279 Financial Services Commission within 30 days after the transfer  
280 a written notice indicating the name of the transferee, the  
281 amount of offsets being transferred, and the year or years to  
282 which such offsets are allocable as provided in subsection (2).

283 (8) The general revenue service charge payable by the  
284 Special Disability Trust Fund shall not be reduced by the  
285 offsets taken under this act.

286 Section 7. FEDA manager reports.--

287 (1) Within 30 days after the fund allocation date, the  
288 FEDA manager shall report to the office and the Office of  
289 Insurance Regulation:

290 (a) The name of each investor from which an investment was  
291 received, including the investor's identification number.

292 (b) The amount of each investor's investment.

293 (c) The date on which the note receivable was received.

294 (2) Within 90 days after an economic development project  
295 investment made by the FEDA manager, the FEDA manager shall  
296 report to the department:

297 (a) The name and address of each project receiving the  
298 investment and a description of its business.

299 (b) The amount of the investment and a brief description  
300 of the terms.

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301       (c) The date on which the money was received.  
 302       (d) Any other information required by the office.  
 303       (3) Not later than each anniversary of the original fund  
 304 allocation date, the FEDA manager shall report to the office the  
 305 amount the FEDA manager has invested in economic development  
 306 projects during the previous year, the percentage of the FEDA  
 307 investment pool invested along with a copy of the material  
 308 documentation pertaining to the investment, and any other  
 309 information required by the office.  
 310       (4) Not later than April 30 of each year, the FEDA manager  
 311 shall provide to the office an annual audited financial  
 312 statement for the FEDA manager that includes the opinion of an  
 313 independent accountant.  
 314       (5) Upon investments in economic development projects  
 315 equaling the FEDA investment pool and payment of the sums  
 316 required under subsection (3) of section 5, the FEDA manager  
 317 shall no longer be subject to the provisions of this act.  
 318       Section 8. This act shall take effect upon becoming a law.