

1 A bill to be entitled
2 An act relating to capital formation; creating a new pt. X
3 of ch. 288, F.S.; providing a short title; providing
4 legislative findings and intent; providing definitions;
5 creating the Florida Capital Investment Trust as a state
6 beneficiary public trust; providing for administration by
7 a board of trustees; providing for appointment of board
8 members; providing for terms; providing for serving
9 without compensation; providing for travel and other
10 direct expenses; providing criteria for trustees;
11 providing for powers and duties of trustees; providing for
12 hiring employees; providing for meetings of the board;
13 authorizing the trust to receive, hold, use, transfer, and
14 sell certain tax credits for certain purposes; providing
15 requirements and limitations; authorizing the Department
16 of Revenue to adopt rules for certain purposes; requiring
17 Enterprise Florida, Inc., to facilitate establishment of
18 the Florida Opportunity Fund Management Corporation;
19 specifying criteria of the corporation; providing for
20 appointment of a board of directors selection committee;
21 providing for selection of a board of directors of the
22 corporation by Enterprise Florida, Inc.; specifying
23 criteria; providing for terms and requirements of
24 directors; providing purposes of the corporation;
25 providing duties and responsibilities of the corporation;
26 authorizing the corporation to charge a management fee for
27 certain purposes; providing for travel and other direct
28 expenses; providing for powers of the corporation;

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29 creating the Florida Opportunity Fund as a for-profit,
30 limited partnership or a limited liability corporation to
31 be organized and incorporated by the Florida Opportunity
32 Fund Management Corporation; authorizing certain entities
33 to contract with Enterprise Florida, Inc., for certain
34 purposes; providing investment requirements for the fund;
35 requiring the board of trustees to issue annual reports on
36 activities of the fund; providing report requirements;
37 amending s. 213.053, F.S.; authorizing the Department of
38 Revenue to provide certain tax credit information to the
39 board of trustees; amending s. 220.02, F.S.; including tax
40 credits transferred or sold by the board of trustees
41 within the priority list of applied credits against
42 certain taxes; amending s. 624.509, F.S.; including tax
43 credits transferred or sold by the board of trustees
44 within the order of taking credits or deductions against
45 the insurance premium tax; providing an appropriation;
46 providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Parts X and XI of chapter 288, Florida
51 Statutes, are redesignated as parts XI and XII, respectively,
52 and a new part X of that chapter, consisting of sections
53 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9626,
54 288.9627, and 288.9628, is created to read:

55 288.9621 Short title.--This part may be cited as the
56 "Florida Capital Formation Act."

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57 288.9622 Findings and intent.--

58 (1) The Legislature finds and declares that there is need
59 to increase the availability of seed capital and early stage
60 venture equity capital for emerging companies in the state,
61 including, without limitation, enterprises in life sciences,
62 information technology, advanced manufacturing processes,
63 aviation and aerospace, and homeland security and defense, as
64 well as other strategic technologies.

65 (2) It is the intent of the Legislature that this part
66 serve to mobilize private investment in a broad variety of
67 venture capital partnerships in diversified industries and
68 geographies; retain private-sector investment criteria focused
69 on rate of return; use the services of highly qualified managers
70 in the venture capital industry regardless of location;
71 facilitate the organization of the Florida Opportunity Fund as a
72 fund-of-funds investor in seed and early stage venture capital
73 and angel funds; and precipitate capital investment and
74 extensions of credit to and in the Florida Opportunity Fund.

75 (3) It is the intent of the Legislature to mobilize
76 venture equity capital for investment in such a manner as to
77 result in a significant potential to create new businesses and
78 jobs in this state that are based on high growth potential
79 technologies, products, or services and that will further
80 diversify the economy of this state.

81 288.9623 Definitions.--As used in this part:

82 (1) "Board" means the board of trustees of the Florida
83 Capital Investment Trust.

84 (2) "Certificate" means a contract between the trust and a
 85 designated investor evidencing the terms of a guarantee or
 86 incentive granted to a designated investor.

87 (3) "Corporation" means the Florida Opportunity Fund
 88 Management Corporation created under this part.

89 (4) "Designated investor" means a person, other than the
 90 board, who purchases an equity interest in the Florida
 91 Opportunity Fund or is a party to a certificate or who is a
 92 lender to the Florida Opportunity Fund and is a party to a
 93 certificate.

94 (5) "Florida Capital Investment Trust" or "trust" means a
 95 state beneficiary public trust created under this part.

96 (6) "Florida Opportunity Fund" or "fund" means the
 97 private, for-profit limited partnership or limited liability
 98 company in which a designated investor purchases an equity
 99 interest or to which a designated investor extends credit.

100 (7) "Tax credit" means a contingent tax credit issued
 101 under this part or subsequent legislative action that is
 102 available to offset tax liabilities imposed by this state,
 103 provided the proceeds of such tax are payable to the General
 104 Revenue Fund. A tax credit is not eligible to offset tax
 105 liabilities imposed by a political subdivision within this
 106 state.

107 288.9624 Florida Capital Investment Trust.--

108 (1) The Florida Capital Investment Trust is created as a
 109 state beneficiary public trust to be administered by the board.
 110 The exercise by the board of powers conferred by this part is

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111 deemed and held to be the performance of essential public
112 purposes.

113 (2) (a) The board shall consist of five voting trustees and
114 two nonvoting ex officio trustees. A majority of voting trustees
115 shall constitute a quorum.

116 (b) Three voting trustees shall be appointed by the
117 Governor; one voting trustee shall be appointed by the President
118 of the Senate; and one voting trustee shall be appointed by the
119 Speaker of the House of Representatives. The Governor shall
120 appoint one trustee to a term ending April 30, 2007, and two
121 trustees to terms ending April 30, 2009. The President of the
122 Senate and the Speaker of the House of Representatives shall
123 each appoint trustees to terms ending April 30, 2008.

124 Thereafter, each voting trustee shall be appointed for a 3-year
125 term.

126 (c) One nonvoting ex officio trustee shall be the designee
127 of Enterprise Florida, Inc., and one nonvoting ex officio
128 trustee shall be the designee of the Florida Research
129 Consortium. Ex officio trustees serve annual terms at the
130 pleasure of their appointing organizations and may be
131 reappointed. A trustee's term shall end on April 30 of his or
132 her term expiration year. Trustees whose terms have expired may
133 continue to serve until their replacements have been duly
134 appointed.

135 (d) Vacancies shall be filled in the same manner as the
136 appointment of the original trustee to whom a successor is
137 sought.

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138 (3) Trustees shall serve on the board without compensation
139 in the form of fees, per diem, or salary. Trustees may receive
140 compensation or reimbursement for direct expenses, mileage, and
141 other travel expenses related to the performance of their duties
142 pursuant to s. 112.061. Trustees shall be selected based upon
143 demonstrated expertise and competence in the supervision of
144 early stage investment managers, the fiduciary management of
145 funds, the administration and management of a publicly listed
146 company, or experience and competence in public accounting,
147 auditing, and fiduciary responsibilities. Trustees may not have
148 an interest in any entity to which a certificate is issued.

149 (4) The board may engage consultants, expend funds, invest
150 funds, contract, bond or insure against loss, provide guarantees
151 or other incentives, hold transferable tax credits, sell tax
152 credits, or enter into any financial or other transaction or
153 perform any other act necessary to carry out its purpose under
154 this part. The board, in conjunction with the Department of
155 Revenue, shall develop a system for registration of any tax
156 credits received by the trust and transferred under this part.
157 The board shall also create a system of documentation that
158 permits verification that any tax credit claimed upon a tax
159 return is validly held by the person claiming such tax credit
160 and properly taken in the year of claim and that any transfers
161 of the tax credit are made in accordance with the requirements
162 of this part.

163 (5) If the board elects to hire employees, such persons
164 shall be selected by the board based upon knowledge and
165 leadership in the field for which the person performs services

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166 for the board. The board shall charge fees for its guarantees to
167 designated investors or for other services such that the board's
168 operations may be conducted without subsequent legislative
169 appropriation.

170 (6) Meetings of the board shall be subject to the
171 provisions of s. 286.011, except information on securities
172 acquired and held by the Florida Opportunity Fund shall be
173 maintained in confidence.

174 288.9625 Issuance of tax credits.--

175 (1) The trust shall receive and hold for the purposes of
176 this part tax credits under this part that may be used to reduce
177 any tax liability imposed by the state under chapter 212,
178 chapter 220, s. 624.509, or s. 624.510. The total amount of tax
179 credits issued and transferred to the trust is \$75 million. The
180 tax credits shall be transferable by the board as provided in
181 this part, provided no such transferred tax credit shall be
182 exercisable before July 1, 2011, or after July 1, 2036.

183 (2) The board may transfer and sell tax credits solely for
184 the purpose of fulfilling, in whole or in part, any certificate
185 obligation issued by the board. The board shall immediately
186 notify the Governor, the President of the Senate, the Speaker of
187 the House of Representatives, and the Department of Revenue, in
188 writing, if any tax credit is transferred. The board shall be
189 notified immediately of any transfers of tax credits by persons
190 or businesses other than the board and shall notify the
191 Department of Revenue, in writing, of such transfers.

192 (3) The board shall ensure that no more than \$20 million
193 in tax credits is transferred that may be claimed and used to

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194 reduce taxes payable to the General Revenue Fund for any single
195 state fiscal year. The board shall clearly indicate upon the
196 face of the document transferring the tax credit the principal
197 amount of the tax credit and the state fiscal year or years
198 during which the credit may be claimed. Tax credits may be
199 transferred in increments of no less than \$100,000. A copy of
200 the document transferring the tax credit shall be transmitted to
201 the executive director of the Department of Revenue, who shall
202 allow the credit to be claimed against tax liabilities of the
203 person or business consistent with the terms appearing in the
204 transfer document.

205 (4) If the tax liabilities of the taxpayer are
206 insufficient to exhaust the tax credit for which the taxpayer is
207 eligible, the balance of the tax credit may be refunded by the
208 state. If a tax credit granted under this section is not claimed
209 in the year designated for claiming the credit on the transfer
210 document, any return for the year in which the credit was
211 eligible to be claimed may be amended to claim the credit within
212 the time specified by ss. 95.091 and 215.26

213 (5) Persons or businesses to which tax credits under this
214 section are transferred shall retain documentation supporting
215 eligibility to claim the tax credits and evidence of the
216 transfer of the tax credits, if applicable, until the time
217 period provided to audit the tax returns on which the tax
218 credits were claimed has passed.

219 (6) The Department of Revenue, in conjunction with the
220 board, may adopt rules governing the manner and form of
221 documentation required to claim tax credits granted or

222 transferred under this section and may establish guidelines as
 223 to the requisites for an affirmative showing of qualification
 224 for tax credits granted or transferred under this section.

225 (7) An insurance company claiming a credit against premium
 226 tax liability under this section shall not be required to pay
 227 any additional retaliatory tax levied pursuant to s. 624.5091 as
 228 a result of claiming such credit. Because credits under this
 229 section are available to an insurance company, s. 624.5091 does
 230 not limit such credit in any manner.

231 (8) Any original sale of tax credits by the board shall be
 232 by competitive bidding unless the sale is for the full face
 233 value of the credits.

234 288.9626 Florida Opportunity Fund Management
 235 Corporation.--

236 (1) At the request of the board, Enterprise Florida, Inc.,
 237 shall facilitate the creation of the Florida Opportunity Fund
 238 Management Corporation as a private, not-for-profit corporation.
 239 Enterprise Florida, Inc., shall be the corporation's sole
 240 member. The corporation is not a public corporation or
 241 instrumentality of the state.

242 (2) The vice chair of Enterprise Florida, Inc., shall
 243 select from among its sitting board of directors a five-person
 244 appointment committee. The appointment committee shall select
 245 five initial members of a board of directors for the
 246 corporation. The persons elected to the initial board of
 247 directors by the appointment committee shall include persons who
 248 have expertise in the area of the selection and supervision of
 249 early stage investment managers or in the fiduciary management

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250 of investment funds and other areas of expertise as deemed
251 appropriate by the appointment committee. After election of the
252 initial board of directors, vacancies on the board of directors
253 of the corporation shall be elected by the board of directors of
254 Enterprise Florida, Inc., and shall serve terms as provided in
255 the corporation's organizational documents. Members of the board
256 of directors shall be subject to any restrictions on conflicts
257 of interest specified in the organizational documents and shall
258 have no interest in any venture capital investment fund
259 allocation manager selected by the corporation pursuant to the
260 provisions of this part or in any investments made by the
261 Florida Opportunity Fund.

262 (3) The purposes of the corporation shall be to organize
263 the Florida Opportunity Fund, select an early stage venture
264 capital investment fund allocation manager, negotiate the terms
265 of a contract with the venture capital investment fund
266 allocation manager, execute the contract with the selected
267 venture capital investment fund allocation manager on behalf of
268 the Florida Opportunity Fund, manage the business affairs of the
269 Florida Opportunity Fund such as accounting, audit, insurance,
270 and related requirements, receive investment returns from the
271 Florida Opportunity Fund, and reinvest the investment returns in
272 the Florida Opportunity Fund in order to provide additional
273 venture capital investments designed to result in a significant
274 potential to create new businesses and jobs in this state and
275 further diversify the economy of this state.

276 (4) Upon organization, the corporation shall conduct a
277 national solicitation for investment plan proposals from

278 qualified venture capital investment fund allocation managers
 279 for the raising and investing of capital by the corporation. Any
 280 proposed investment plan shall address the applicant's level of
 281 experience, quality of management, investment philosophy and
 282 process, provability of success in fundraising, prior investment
 283 fund results, and plan for achieving the purposes of this part.
 284 The corporation shall select only a venture capital investment
 285 fund allocation manager with demonstrated expertise in the
 286 management and fund allocation of investments in venture capital
 287 funds.

288 (5) The corporation may charge a management fee on assets
 289 under management in the Florida Opportunity Fund. The fee shall
 290 be in addition to any fee charged to the Florida Opportunity
 291 Fund by the venture capital investment fund allocation manager,
 292 but the fee shall be charged only to pay for reasonable and
 293 necessary costs of the corporation.

294 (6) Directors of the corporation shall be compensated for
 295 direct expenses and mileage pursuant to s. 112.061 but shall not
 296 receive a fee or salary for service as directors.

297 (7) The corporation shall have all powers granted under
 298 its organizational documents and shall indemnify directors to
 299 the broadest extent permissible under the laws of this state.

300 288.9627 Florida Opportunity Fund.--

301 (1) The Florida Opportunity Fund is created as a for-
 302 profit limited partnership or limited liability corporation that
 303 shall be organized and incorporated in this state by the Florida
 304 Opportunity Fund Management Corporation upon request by the
 305 board. The board, the corporation, or the fund may contract with

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306 Enterprise Florida, Inc., for provision of services necessary
307 for continuing operations.

308 (2) The fund shall invest on a fund-of-funds basis and
309 emphasize investment in seed capital and early stage venture
310 capital funds focusing on opportunities in this state. While not
311 precluded from investing in funds with a wider geographic spread
312 of portfolio investment, the fund shall require an investment
313 fund to have a record of investment in this state, be based in
314 this state, or have an office in this state staffed with a full-
315 time, professional venture investment executive to be eligible
316 for investment. The investments by the fund shall be on
317 partnership interests in private venture capital funds and not
318 in direct investments in individual businesses. The fund shall
319 invest in venture capital funds with experienced managers or
320 management teams with demonstrated expertise and a successful
321 history in the investment of early stage venture capital funds.
322 The fund may invest in newly created early stage venture capital
323 funds as long as the manager or management teams of the funds
324 have experience, expertise, and a successful history in the
325 investment of venture capital funds. The Florida Opportunity
326 Fund may not invest in a fund unless that fund has raised
327 capital from other sources in an amount greater than the
328 investment of the Florida Opportunity Fund. The corporation and
329 its partners or shareholders may negotiate any and all terms and
330 conditions for its investments, including draw back of
331 management fees and other provisions that maximize investment in
332 seed and early stage companies based in this state.

333 (3) The interest of the corporation in the fund shall be
 334 to serve as general partner or manager and to be paid a
 335 management fee to cover its costs.

336 (4) Investments by designated investors in the fund shall
 337 be deemed permissible investments for state-chartered banks and
 338 for domestic insurance companies under applicable state law.

339 (5) If the fund is liquidated or has returned all capital
 340 to designated investors in accordance with contractual
 341 agreements, or the guarantee capacity of the trust, at the sole
 342 discretion of the board, is sufficient for additional
 343 certificates, a new funding of the Florida Opportunity Fund may
 344 be implemented for subsequent venture capital fund-of-funds
 345 investments. If the board takes exception to an additional
 346 funding, such additional funding may only be implemented without
 347 the benefit of certificates from the board.

348 288.9628 Annual reporting.--The board shall issue an
 349 annual report on the activities conducted by the Florida
 350 Opportunity Fund and present the report to the Governor, the
 351 President of the Senate, and the Speaker of the House of
 352 Representatives. The annual report shall include a copy of the
 353 independent audit of the fund and a valuation of the assets of
 354 the fund and shall review the progress of the investment fund
 355 allocation manager in implementing the fund's investment plan,
 356 the benefits to the state resulting from this program, including
 357 the number of businesses created and their associated industry,
 358 and the number of jobs created. The annual report shall also
 359 describe any sale of tax certificates and any sale of tax

360 certificates that is reasonably anticipated by the board to meet
 361 its certificate obligations.

362 Section 2. Paragraph (y) is added to subsection (7) of
 363 section 213.053, Florida Statutes, to read:

364 213.053 Confidentiality and information sharing.--

365 (7) Notwithstanding any other provision of this section,
 366 the department may provide:

367 (y) Information relative to tax credits claimed under part
 368 X of chapter 288 to the board of trustees of the Florida Capital
 369 Investment Trust in the conduct of the trust's official
 370 business.

371
 372 Disclosure of information under this subsection shall be
 373 pursuant to a written agreement between the executive director
 374 and the agency. Such agencies, governmental or nongovernmental,
 375 shall be bound by the same requirements of confidentiality as
 376 the Department of Revenue. Breach of confidentiality is a
 377 misdemeanor of the first degree, punishable as provided by s.
 378 775.082 or s. 775.083.

379 Section 3. Subsection (8) of section 220.02, Florida
 380 Statutes, is amended to read:

381 220.02 Legislative intent.--

382 (8) It is the intent of the Legislature that credits
 383 against either the corporate income tax or the franchise tax be
 384 applied in the following order: those enumerated in s. 631.828,
 385 those enumerated in s. 220.191, those enumerated in s. 220.181,
 386 those enumerated in s. 220.183, those enumerated in s. 220.182,
 387 those enumerated in s. 220.1895, those enumerated in s. 221.02,

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388 those enumerated in s. 220.184, those enumerated in s. 220.186,
 389 those enumerated in s. 220.1845, those enumerated in s. 220.19,
 390 those enumerated in s. 220.185, ~~and~~ those enumerated in s.
 391 220.187, and those enumerated in part X of chapter 288.

392 Section 4. Subsection (7) of section 624.509, Florida
 393 Statutes, is amended to read:

394 624.509 Premium tax; rate and computation.--

395 (7) Credits and deductions against the tax imposed by this
 396 section shall be taken in the following order: deductions for
 397 assessments made pursuant to s. 440.51; credits for taxes paid
 398 under ss. 175.101 and 185.08; credits for income taxes paid
 399 under chapter 220, the emergency excise tax paid under chapter
 400 221 and the credit allowed under subsection (5), as these
 401 credits are limited by subsection (6); credits allowed under
 402 part X of chapter 288; and all other available credits and
 403 deductions.

404 Section 5. For fiscal year 2006-2007, the sum of \$750,000
 405 is appropriated from the General Revenue Fund to the Florida
 406 Capital Investment Trust to be used for startup activities
 407 necessary to implement part X of chapter 288, Florida Statutes,
 408 as created by this act.

409 Section 6. This act shall take effect July 1, 2006.