

HB 1467

2006
CS

CHAMBER ACTION

1 The Economic Development, Trade & Banking Committee recommends
2 the following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

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

Page 1 of 15

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1467-01-c1

HB 1467

2006
CS

24 specifying criteria of the corporation; providing for
25 appointment of a board of directors selection committee;
26 providing for selection of a board of directors of the
27 corporation by Enterprise Florida, Inc.; specifying
28 criteria; providing for terms and requirements of
29 directors; providing purposes of the corporation;
30 providing duties and responsibilities of the corporation;
31 authorizing the corporation to charge a management fee for
32 certain purposes; providing for travel and other direct
33 expenses; providing for powers of the corporation;
34 creating the Florida Opportunity Fund as a for-profit,
35 limited partnership or a limited liability corporation to
36 be organized and incorporated by the Florida Opportunity
37 Fund Management Corporation; authorizing certain entities
38 to contract with Enterprise Florida, Inc., for certain
39 purposes; providing investment requirements for the fund;
40 requiring the board of trustees to issue annual reports on
41 activities of the fund; providing report requirements;
42 amending s. 213.053, F.S.; authorizing the Department of
43 Revenue to provide certain tax credit information to the
44 board of trustees; amending s. 220.02, F.S.; including tax
45 credits transferred or sold by the board of trustees
46 within the priority list of applied credits against
47 certain taxes; amending s. 624.509, F.S.; including tax
48 credits transferred or sold by the board of trustees
49 within the order of taking credits or deductions against
50 the insurance premium tax; providing an appropriation;
51 providing an effective date.

Page 2 of 15

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1467-01-c1

HB 1467

2006
CS52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79

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

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

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

288.9622 Findings and intent.--

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

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

HB 1467

2006
CS

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

86 288.9623 Definitions.--As used in this part:

87 (1) "Board" means the board of trustees of the Florida
88 Capital Investment Trust.

89 (2) "Certificate" means a contract between the trust and a
90 designated investor evidencing the terms of a guarantee or
91 incentive granted to a designated investor.

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

94 (4) "Designated investor" means a person, other than the
95 board, who purchases an equity interest in the Florida
96 Opportunity Fund or is a party to a certificate or who is a
97 lender to the Florida Opportunity Fund and is a party to a
98 certificate.

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

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

105 (7) "Tax credit" means a contingent tax credit issued
106 under this part or subsequent legislative action that is
107 available to offset tax liabilities imposed by this state,

HB 1467

2006
CS

108 provided the proceeds of such tax are payable to the General
109 Revenue Fund. A tax credit is not eligible to offset tax
110 liabilities imposed by a political subdivision within this
111 state.

112 288.9624 Florida Capital Investment Trust.--

113 (1) The Florida Capital Investment Trust is created as a
114 state beneficiary public trust to be administered by the board.
115 The exercise by the board of powers conferred by this part is
116 deemed and held to be the performance of essential public
117 purposes.

118 (2) (a) The board shall consist of five voting trustees and
119 two nonvoting ex officio trustees. A majority of voting trustees
120 shall constitute a quorum.

121 (b) Three voting trustees shall be appointed by the
122 Governor; one voting trustee shall be appointed by the President
123 of the Senate; and one voting trustee shall be appointed by the
124 Speaker of the House of Representatives. The Governor shall
125 appoint one trustee to a term ending April 30, 2007, and two
126 trustees to terms ending April 30, 2009. The President of the
127 Senate and the Speaker of the House of Representatives shall
128 each appoint trustees to terms ending April 30, 2008.
129 Thereafter, each voting trustee shall be appointed for a 3-year
130 term.

131 (c) One nonvoting ex officio trustee shall be the designee
132 of Enterprise Florida, Inc., and one nonvoting ex officio
133 trustee shall be the designee of the Florida Research
134 Consortium. Ex officio trustees serve annual terms at the
135 pleasure of their appointing organizations and may be

HB 1467

2006
CS

136 reappointed. A trustee's term shall end on April 30 of his or
137 her term expiration year. Trustees whose terms have expired may
138 continue to serve until their replacements have been duly
139 appointed.

140 (d) Vacancies shall be filled in the same manner as the
141 appointment of the original trustee to whom a successor is
142 sought.

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

154 (4) The board may engage consultants, expend funds, invest
155 funds, contract, bond or insure against loss, provide guarantees
156 or other incentives, hold transferable tax credits, sell tax
157 credits, or enter into any financial or other transaction or
158 perform any other act necessary to carry out its purpose under
159 this part. The board, in conjunction with the Department of
160 Revenue, shall develop a system for registration of any tax
161 credits received by the trust and transferred under this part.
162 The board shall also create a system of documentation that
163 permits verification that any tax credit claimed upon a tax

HB 1467

2006
CS

164 return is validly held by the person claiming such tax credit
 165 and properly taken in the year of claim and that any transfers
 166 of the tax credit are made in accordance with the requirements
 167 of this part.

168 (5) If the board elects to hire employees, such persons
 169 shall be selected by the board based upon knowledge and
 170 leadership in the field for which the person performs services
 171 for the board. The board shall charge fees for its guarantees to
 172 designated investors or for other services such that the board's
 173 operations may be conducted without subsequent legislative
 174 appropriation.

175 288.9625 Issuance of tax credits.--

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

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

HB 1467

2006
CS

191 or businesses other than the board and shall notify the
 192 Department of Revenue, in writing, of such transfers.

193 (3) The board shall ensure that no more than \$20 million
 194 in tax credits is transferred that may be claimed and used to
 195 reduce taxes payable to the General Revenue Fund for any single
 196 state fiscal year. The board shall clearly indicate upon the
 197 face of the document transferring the tax credit the principal
 198 amount of the tax credit and the state fiscal year or years
 199 during which the credit may be claimed. Tax credits may be
 200 transferred in increments of no less than \$100,000. A copy of
 201 the document transferring the tax credit shall be transmitted to
 202 the executive director of the Department of Revenue, who shall
 203 allow the credit to be claimed against tax liabilities of the
 204 person or business consistent with the terms appearing in the
 205 transfer document.

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

214 (5) Persons or businesses to which tax credits under this
 215 section are transferred shall retain documentation supporting
 216 eligibility to claim the tax credits and evidence of the
 217 transfer of the tax credits, if applicable, until the time

HB 1467

2006
CS

218 | period provided to audit the tax returns on which the tax
 219 | credits were claimed has passed.

220 | (6) The Department of Revenue, in conjunction with the
 221 | board, may adopt rules governing the manner and form of
 222 | documentation required to claim tax credits granted or
 223 | transferred under this section and may establish guidelines as
 224 | to the requisites for an affirmative showing of qualification
 225 | for tax credits granted or transferred under this section.

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

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

235 | 288.9626 Florida Opportunity Fund Management
 236 | Corporation.--

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

243 | (2) The vice chair of Enterprise Florida, Inc., shall
 244 | select from among its sitting board of directors a five-person
 245 | appointment committee. The appointment committee shall select

HB 1467

2006
CS

246 five initial members of a board of directors for the
247 corporation. The persons elected to the initial board of
248 directors by the appointment committee shall include persons who
249 have expertise in the area of the selection and supervision of
250 early stage investment managers or in the fiduciary management
251 of investment funds and other areas of expertise as deemed
252 appropriate by the appointment committee. After election of the
253 initial board of directors, vacancies on the board of directors
254 of the corporation shall be elected by the board of directors of
255 Enterprise Florida, Inc., and shall serve terms as provided in
256 the corporation's organizational documents. Members of the board
257 of directors shall be subject to any restrictions on conflicts
258 of interest specified in the organizational documents and shall
259 have no interest in any venture capital investment fund
260 allocation manager selected by the corporation pursuant to the
261 provisions of this part or in any investments made by the
262 Florida Opportunity Fund.

263 (3) The purposes of the corporation shall be to organize
264 the Florida Opportunity Fund, select an early stage venture
265 capital investment fund allocation manager, negotiate the terms
266 of a contract with the venture capital investment fund
267 allocation manager, execute the contract with the selected
268 venture capital investment fund allocation manager on behalf of
269 the Florida Opportunity Fund, manage the business affairs of the
270 Florida Opportunity Fund such as accounting, audit, insurance,
271 and related requirements, receive investment returns from the
272 Florida Opportunity Fund, and reinvest the investment returns in
273 the Florida Opportunity Fund in order to provide additional

HB 1467

2006
CS

274 venture capital investments designed to result in a significant
275 potential to create new businesses and jobs in this state and
276 further diversify the economy of this state.

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

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

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

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

301 288.9627 Florida Opportunity Fund.--

HB 1467

2006
CS

302 (1) The Florida Opportunity Fund is created as a for-
303 profit limited partnership or limited liability corporation that
304 shall be organized and incorporated in this state by the Florida
305 Opportunity Fund Management Corporation upon request by the
306 board. The board, the corporation, or the fund may contract with
307 Enterprise Florida, Inc., for provision of services necessary
308 for continuing operations.

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

HB 1467

2006
CS

330 invested in an entity in this state by the receiving venture
331 capital fund is at least twice the amount invested by the
332 corporation. The corporation and its partners or shareholders
333 may negotiate any and all terms and conditions for its
334 investments, including draw back of management fees and other
335 provisions that maximize investment in seed and early stage
336 companies based in this state.

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

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

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

352 288.9628 Annual reporting.--The board shall issue an
353 annual report on the activities conducted by the Florida
354 Opportunity Fund and present the report to the Governor, the
355 President of the Senate, and the Speaker of the House of
356 Representatives. The annual report shall include a copy of the
357 independent audit of the fund and a valuation of the assets of

HB 1467

2006
CS

358 | the fund and shall review the progress of the investment fund
 359 | allocation manager in implementing the fund's investment plan,
 360 | the benefits to the state resulting from this program, including
 361 | the number of businesses created and their associated industry,
 362 | and the number of jobs created. The annual report shall also
 363 | describe any sale of tax certificates and any sale of tax
 364 | certificates that is reasonably anticipated by the board to meet
 365 | its certificate obligations.

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

368 | 213.053 Confidentiality and information sharing.--

369 | (7) Notwithstanding any other provision of this section,
 370 | the department may provide:

371 | (y) Information relative to tax credits claimed under part
 372 | X of chapter 288 to the board of trustees of the Florida Capital
 373 | Investment Trust in the conduct of the trust's official
 374 | business.

375 |
 376 | Disclosure of information under this subsection shall be
 377 | pursuant to a written agreement between the executive director
 378 | and the agency. Such agencies, governmental or nongovernmental,
 379 | shall be bound by the same requirements of confidentiality as
 380 | the Department of Revenue. Breach of confidentiality is a
 381 | misdemeanor of the first degree, punishable as provided by s.
 382 | 775.082 or s. 775.083.

383 | Section 3. Subsection (8) of section 220.02, Florida
 384 | Statutes, is amended to read:

385 | 220.02 Legislative intent.--

HB 1467

2006
CS

386 (8) It is the intent of the Legislature that credits
 387 against either the corporate income tax or the franchise tax be
 388 applied in the following order: those enumerated in s. 631.828,
 389 those enumerated in s. 220.191, those enumerated in s. 220.181,
 390 those enumerated in s. 220.183, those enumerated in s. 220.182,
 391 those enumerated in s. 220.1895, those enumerated in s. 221.02,
 392 those enumerated in s. 220.184, those enumerated in s. 220.186,
 393 those enumerated in s. 220.1845, those enumerated in s. 220.19,
 394 those enumerated in s. 220.185, ~~and~~ those enumerated in s.
 395 220.187, and those enumerated in part X of chapter 288.

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

398 624.509 Premium tax; rate and computation.--

399 (7) Credits and deductions against the tax imposed by this
 400 section shall be taken in the following order: deductions for
 401 assessments made pursuant to s. 440.51; credits for taxes paid
 402 under ss. 175.101 and 185.08; credits for income taxes paid
 403 under chapter 220, the emergency excise tax paid under chapter
 404 221 and the credit allowed under subsection (5), as these
 405 credits are limited by subsection (6); credits allowed under
 406 part X of chapter 288; and all other available credits and
 407 deductions.

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

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