

CHAMBER ACTION

1 The Transportation & Economic Development Appropriations
2 Committee recommends 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 s.
8 288.9621, F.S.; providing a short title; providing
9 definitions; requiring the Office of Tourism, Trade, and
10 Economic Development to account for certain moneys
11 separately within the Economic Development Trust Fund;
12 requiring the office to make certain funds available for
13 investment by the State Board of Administration; providing
14 for deducting certain fees and expenses; requiring the
15 State Board of Administration to liquidate investments and
16 advance proceeds to the Florida Opportunity Fund for
17 certain purposes; providing investment requirements for
18 the State Board of Administration; providing operational
19 requirements for the Florida Opportunity Fund; requiring
20 Enterprise Florida, Inc., to organize the Florida
21 Opportunity Fund as a wholly owned private, not-for-profit
22 limited liability Florida-based company; requiring
23 Enterprise Florida, Inc., to annually evaluate the company

24 | and report to the Governor and Legislature; providing for
25 | a board of directors for the company; providing for
26 | appointment and terms of board members; providing
27 | requirements and limitations for board members; requiring
28 | board members to serve without compensation; providing for
29 | reimbursement of expenses of board members and company
30 | officers and employees; specifying powers of the company;
31 | authorizing the company to indemnify board members;
32 | specifying a fiduciary duty of board members and company
33 | officers and employees; subjecting the company to public
34 | meetings and public records requirements; specifying
35 | duties of the company; requiring the company to select a
36 | Florida Opportunity Fund allocation manager; specifying
37 | duties and requirements of the allocation manager;
38 | requiring the company to guarantee private capital
39 | investments in the company; providing requirements for
40 | such guarantees; specifying investment requirements for
41 | the company; specifying investment limitations and
42 | prohibitions for the company; requiring the company to
43 | issue an annual report to the Governor and the
44 | Legislature; specifying report requirements; providing for
45 | an independent audit; providing for a transfer of
46 | nonrecurring funds in the General Revenue Fund to the
47 | Economic Development Trust Fund for subsequent investment
48 | in the Florida Opportunity Fund; providing for retention
49 | of balances in the trust fund each year; providing for
50 | continuing appropriation and use of such moneys for a
51 | certain time period; providing for return of certain funds

52 | to the General Revenue Fund; requiring the company to
 53 | continue administering investments for certain purposes;
 54 | providing for continuous reinvestment of certain funds by
 55 | the company; providing for reversion of assets and funds
 56 | of the company to the General Revenue Fund under certain
 57 | circumstances; prohibiting Enterprise Florida, Inc., from
 58 | selling or transferring ownership of the company;
 59 | providing an effective date.

60 |
 61 | Be It Enacted by the Legislature of the State of Florida:
 62 |

63 | Section 1. Parts X and XI of chapter 288, Florida
 64 | Statutes, are redesignated as parts XI and XII, respectively,
 65 | and a new part X, consisting of section 288.9621, Florida
 66 | Statutes, is added to that chapter to read:

67 | 288.9621 Capital formation.--

68 | (1) SHORT TITLE.--This section may be cited as the
 69 | "Florida Capital Formation Act."

70 | (2) DEFINITIONS.--As used in this section, the term:

71 | (a) "Business unit" means an employing unit, as defined in
 72 | s. 443.036, which is registered with the Agency for Workforce
 73 | Innovation for purposes of unemployment compensation or a
 74 | subcategory or division of an employing unit that is accepted by
 75 | the agency as a reporting unit.

76 | (b) "Certificate" means a contract between a company and a
 77 | designated investor evidencing the terms of a guarantee granted
 78 | to a designated investor of an investment of funds in the
 79 | company.

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80 (c) "Company" means the Florida Opportunity Fund.

81 (d) "Designated investor" means a person, entity, or
82 lender who is a party to a certificate.

83 (e) "Florida Opportunity Fund allocation manager" or
84 "allocation manager" means one or more fund-of-funds investment
85 managers hired by the Florida Opportunity Fund to raise capital
86 and invest assets of the company in venture capital funds.

87 (f) "Florida-based" means operating in this state at a
88 permanent address and maintaining at least one business unit in
89 this state.

90 (g) "Office" means the Governor's Office of Tourism,
91 Trade, and Economic Development.

92 (3) FLORIDA CAPITAL INVESTMENT.--

93 (a) The office shall account for moneys transferred under
94 this section separately within the Economic Development Trust
95 Fund created in s. 288.095. The office shall make all such funds
96 available for investments by the State Board of Administration
97 or its designated investment manager as requested by the State
98 Board of Administration. The State Board of Administration or
99 its designated investment manager shall invest and reinvest the
100 moneys in accordance with s. 215.47 and subject to the terms of
101 any trust agreement between the State Board of Administration
102 and the office. Fees and expenses incurred by the State Board of
103 Administration for investing the moneys shall be deducted as
104 provided in a trust agreement. Upon request of the office, the
105 State Board of Administration shall liquidate investments and
106 advance the proceeds to the company as required to fund
107 certificate obligations pursuant to this section as well as the

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

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108 company's reasonable and necessary operational expenses. The
109 exercise by the State Board of Administration or its designated
110 investment manager of powers conferred by this section is deemed
111 the performance of essential public purposes.

112 (b) The State Board of Administration or its designated
113 investment manager shall invest and reinvest any funds returned
114 by the company in accordance with s. 215.47 and subject to the
115 terms of any trust agreement between the State Board of
116 Administration and the office. The company shall maintain
117 necessary working capital moneys; obtain funding from the trust
118 fund for certificate obligations, reasonable and necessary
119 operating costs, or replenishment of working capital balances;
120 and return for liquidity investment any moneys received in
121 excess of the company's working capital needs.

122 (4) FLORIDA OPPORTUNITY FUND; CREATION; POWERS AND
123 DUTIES.--

124 (a) Enterprise Florida, Inc., shall organize the Florida
125 Opportunity Fund as a wholly owned, private, not-for-profit,
126 limited liability Florida-based company. Enterprise Florida,
127 Inc., shall be the company's sole owner. The Florida Opportunity
128 Fund is not a public company or instrumentality of the state.
129 Enterprise Florida, Inc., shall annually evaluate and report to
130 the Governor, the President of the Senate, and the Speaker of
131 the House of Representatives whether the company is being
132 operated and state funds are being obligated in the best
133 interest of the state.

134 (b) The Florida Opportunity Fund shall be governed by a
135 board of directors consisting of five members who have expertise

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136 in the area of the selection and supervision of early-stage
137 investment managers or in the fiduciary management of investment
138 funds or who have expertise in other areas considered
139 appropriate by the appointment committee. The vice chair of
140 Enterprise Florida, Inc., shall select from among its board of
141 directors a five-person appointment committee to appoint the
142 company's initial board of directors. After appointment of the
143 initial board of directors, vacancies on the board of directors
144 shall be filled by appointment by Enterprise Florida, Inc. The
145 board of directors shall be appointed to serve staggered 3-year
146 terms in accordance with the company's organizational documents.
147 Members of the board of directors and officers and employees of
148 the company are subject to any restrictions on conflicts of
149 interest specified in the organizational documents of the
150 company and may not have an interest in the Florida Opportunity
151 Fund allocation manager or in any investments made by the
152 company. Members of the board of directors shall serve without
153 compensation, but board members and officers and employees of
154 the company may be reimbursed for all reasonable, necessary, and
155 actual expenses, as determined by the board and approved by
156 Enterprise Florida, Inc.

157 (c) The company has all of the powers specified under
158 chapter 608 for limited liability companies and may indemnify
159 members of the board of directors to the broadest extent
160 permissible under the laws of this state. However, board members
161 and officers and employees of the company have a fiduciary duty
162 with respect to the management of company assets and selection

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163 and oversight of the company's allocation manager and shall
164 discharge those duties in the best interest of the state.

165 (d) The company is subject to chapter 119, relating to
166 public meetings, and s. 286.011, relating to public records.

167 (e) The company shall select a Florida Opportunity Fund
168 allocation manager for the raising and investing of capital by
169 the company. The allocation manager shall demonstrate expertise
170 in the successful management and fund allocation of investments
171 in venture capital funds. In selecting an allocation manager,
172 the company shall consider, among other pertinent factors, each
173 candidate's level of experience, probability of success in
174 fundraising, quality of management performance, investment
175 philosophy and process, prior investment fund results, and
176 potential for achieving the purposes of this section.

177 (f) The company shall guarantee private capital
178 investments in the company pursuant to this section and shall
179 issue certificates to designated investors evidencing the terms
180 of a guarantee. The company shall invest on a fund-of-funds
181 basis in seed and early-state venture capital funds having
182 experienced managers or management teams with demonstrated
183 experience and expertise and a successful history in the
184 investment of venture capital funds, focusing on opportunities
185 in this state. The company may not make direct investments in
186 individual businesses. While not precluded from investing in
187 venture capital funds that have investments outside this state,
188 the company must require a venture capital fund to show a record
189 of successful investment in this state, to be based in this
190 state, or to have an office in this state staffed with a full-

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191 time, professional venture investment executive in order to be
192 eligible for investment. The company may negotiate any terms and
193 conditions for its investments, including the clawback of
194 management fees and other provisions that maximize investment in
195 seed and early-state Florida-based companies. The company may
196 charge fees and earn a rate of return for its guarantees such
197 that the company can pay for its operational expenses and
198 reinvest in venture capital funds to create new businesses and
199 jobs in this state and further diversify the economy of this
200 state.

201 (g) The company may not invest in a venture capital fund
202 unless that venture capital fund has raised capital from other
203 sources in an amount at least equal to the investment of the
204 company, such that the total invested in Florida-based companies
205 by the receiving venture capital fund totals at least twice the
206 investment of the company. Investments must be made in Florida-
207 based companies, including, without limitation, enterprises in
208 life sciences, information technology, advanced manufacturing
209 processes, aviation and aerospace, and homeland security and
210 defense, as well as other strategic technologies.

211 (5) ANNUAL REPORT.--The company shall submit an annual
212 report of its activities to the Governor, the President of the
213 Senate, and the Speaker of the House of Representatives within 3
214 months after the end of the company's fiscal year. The annual
215 report must include a copy of an independent audit of the
216 company and a valuation of the assets of the company, a review
217 of the progress of the Florida Opportunity Fund allocation
218 manager in implementing the allocation manager's investment

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219 plan, the rate of return, and the benefits to the state
220 resulting from this program, including the amount of capital
221 raised and deployed and the amount of investment. The annual
222 report must also include a list of venture capital funds in
223 which investments were made and the number of Florida-based
224 businesses created and their associated industry.

225 Section 2. (1) For the 2006-2007 fiscal year, the sum of
226 \$300,000 is appropriated from the General Revenue Fund to the
227 Economic Development Trust Fund in the Office of Tourism, Trade,
228 and Economic Development to be used for startup activities
229 necessary to implement s. 288.9621, Florida Statutes, including
230 creation of the Florida Opportunity Fund and the solicitation
231 and related due diligence required for contracting the services
232 of the Florida Opportunity Fund allocation manager.

233 (2) For the 2006-2007 fiscal year, the sum of \$15 million
234 is transferred from nonrecurring moneys in the General Revenue
235 Fund to the Economic Development Trust Fund in the Office of
236 Tourism, Trade, and Economic Development for subsequent
237 investment in the Florida Opportunity Fund pursuant to s.
238 288.9621, Florida Statutes. Notwithstanding s. 216.301, Florida
239 Statutes, any balance remaining in the trust fund at the end of
240 any fiscal year shall remain in the trust fund and shall be
241 available for carrying out the purposes of s. 288.9621, Florida
242 Statutes. The transferred amount and any earnings on such amount
243 are appropriated and may be used for the purposes of s.
244 288.9621, Florida Statutes, until July 1, 2020, at which time
245 the sum of \$15 million or the balance of funds in the trust
246 fund, whichever is less, shall be returned to the General

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247 Revenue Fund and any obligated funds for outstanding
248 certificates shall remain until these certificates expire or are
249 terminated. The Florida Opportunity Fund shall continue to
250 administer its investments after July 1, 2020, until such
251 investments are liquidated. Proceeds from liquidation of
252 investments and any proceeds in excess of \$15 million may be
253 retained for continuous reinvestment by the Florida Opportunity
254 Fund, if an amount of not less than \$15 million has been
255 returned to the General Revenue Fund on or before July 1, 2020.
256 If at any time Enterprise Florida, Inc., dissolves the Florida
257 Opportunity Fund, all assets of the Florida Opportunity Fund and
258 any funds remaining for the purpose of this section shall revert
259 to the General Revenue Fund. Enterprise Florida, Inc., may not
260 sell or transfer ownership of the company.

261 Section 3. This act shall take effect July 1, 2006.