

Bill No. CS for SB 2668

Barcode 434592

CHAMBER ACTION

Senate

House

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The Committee on Governmental Oversight and Productivity
(Margolis) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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 section
288.9621, is created to read:

288.9621 Capital formation.--

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

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

(a) "Company" means the Florida Opportunity Fund.

(b) "Florida Opportunity Fund Allocation Manager" or
"allocation manager" means one or more fund-of-funds
investment managers hired by the Florida Opportunity Fund to
invest assets of the company in venture capital funds.

(c) "Office" means the Governor's Office of Tourism,

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1 Trade, and Economic Development.

2 (d) "Florida-based" means operating in this state at a
3 permanent address and maintaining at least one business unit
4 in this state.

5 (e) "Business unit" means an employing unit, as
6 defined in s. 443.036, which is registered with the Agency for
7 Workforce Innovation for purposes of unemployment compensation
8 or means a subcategory or division of an employing unit that
9 is accepted by the Agency for Workforce Innovation as a
10 reporting unit.

11 (3) FLORIDA CAPITAL INVESTMENT.--

12 (a) The Governor's Office of Tourism, Trade, and
13 Economic Development shall account for the funds separately
14 within the Economic Development Trust Fund created in s.
15 288.095 for moneys transferred under this section. The office
16 shall make all funds available for investment by the State
17 Board of Administration or its investment manager as requested
18 by the State Board of Administration. The State Board of
19 Administration or its designated investment manager shall
20 invest and reinvest the moneys in accordance with s. 215.47
21 and subject to the terms of any trust agreement between the
22 State Board of Administration and the office. Fees and
23 expenses incurred by the State Board of Administration for
24 investing the moneys shall be deducted as provided in a trust
25 agreement. Upon request of the office, the State Board of
26 Administration shall liquidate investments and advance the
27 proceeds to the company as required to fund its investments
28 pursuant to this section as well as its reasonable and
29 necessary operational expenses. The exercise by the State
30 Board of Administration or its designated investment manager
31 of powers conferred by this section shall be deemed and held

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1 to be the performance of essential public purposes.

2 (b) The State Board of Administration or its
3 designated investment manager shall invest and reinvest any
4 funds returned by the company in accordance with s. 215.47 and
5 subject to the terms of any trust agreement between the State
6 Board of Administration and the office. The company shall
7 maintain necessary working capital moneys; obtain funding from
8 the trust fund for its investments, reasonable and necessary
9 operating costs, or replenishment of working capital balances;
10 and return for liquidity investment any moneys received in
11 excess of its working capital needs.

12 (4) FLORIDA OPPORTUNITY FUND; CREATION; POWERS AND
13 DUTIES.--

14 (a) Enterprise Florida, Inc., shall organize the
15 Florida Opportunity Fund as a wholly owned, private,
16 not-for-profit limited liability Florida company. Enterprise
17 Florida, Inc., shall be the company's sole owner. The Florida
18 Opportunity Fund is not a public company or instrumentality of
19 the state. Enterprise Florida, Inc., shall annually evaluate
20 and report to the Governor, the President of the Senate, and
21 the Speaker of the House of Representatives whether the
22 company is being operated and state funds are being invested
23 in the best interest of the state.

24 (b) The Florida Opportunity Fund shall be governed by
25 a board of directors consisting of five members who have
26 expertise in the area of the selection and supervision of
27 early-stage investment managers or in the fiduciary management
28 of investment funds or who have expertise in other areas
29 considered appropriate by the appointment committee. The vice
30 chair of Enterprise Florida, Inc., shall select from among its
31 board of directors a five-person appointment committee to

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1 appoint the company's initial board of directors. After
 2 selection of the initial board of directors, vacancies on the
 3 board of directors shall be filled by appointment by
 4 Enterprise Florida, Inc. The board of directors shall be
 5 appointed to serve staggered 3-year terms in accordance with
 6 the company's organizational documents. Members of the board
 7 of directors, the officers, and employees are subject to any
 8 restrictions on conflicts of interest specified in the
 9 organizational documents and may not have an interest in the
 10 Florida Opportunity Fund Allocation Manager or in any
 11 investments made by the company. Members of the board of
 12 directors shall serve without compensation, but members,
 13 officers, and employees may be reimbursed for all reasonable,
 14 necessary, and actual expenses, as determined by the board and
 15 approved by Enterprise Florida, Inc.

16 (c) The company shall have all powers granted under
 17 chapter 608 and may indemnify members of the board of
 18 directors to the broadest extent permissible under state law.
 19 However, the members, officers, and employees shall have a
 20 fiduciary duty with respect to the management of company
 21 assets and selection and oversight of its allocation manager
 22 and shall discharge those duties in the best interest of the
 23 state.

24 (d) The company shall be subject to chapter 119,
 25 relating to public meetings, and s. 286.011, relating to
 26 public records.

27 (e) The company shall select a Florida Opportunity
 28 Fund Allocation Manager who has a demonstrated expertise in
 29 the successful management and fund allocation of investments
 30 in venture capital funds. In selecting a manager, the company
 31 shall consider, among other pertinent factors, each

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1 candidate's level of experience, quality of management
2 performance, investment philosophy and process, prior
3 investment fund results, and potential for achieving the
4 purposes of this section.

5 (f) The company shall invest on a fund-of-funds basis
6 in seed and early-stage venture capital funds having
7 experienced managers or management teams with demonstrated
8 experience, expertise, and a successful history in the
9 investment of venture capital funds, focusing on opportunities
10 in this state. The company may not make direct investments in
11 individual businesses. While not precluded from investing in
12 venture capital funds that have investments outside this
13 state, the company must require a venture capital fund to show
14 a record of successful investment in this state, to be based
15 in this state, or to have an office in this state staffed with
16 a full-time, professional venture investment executive in
17 order to be eligible for investment. The company may negotiate
18 any and all terms and conditions for its investments,
19 including the clawback of management fees and other provisions
20 that maximize investment in seed and early-stage Florida-based
21 companies.

22 (g) The company may not invest in a venture capital
23 fund unless that venture capital fund has raised capital from
24 other sources in an amount at least equal to the investment of
25 the company, such that the total invested in Florida-based
26 companies by the receiving venture capital fund totals at
27 least twice the investment of the company. Investments must be
28 made in Florida-based companies, including, without
29 limitation, enterprises in life sciences, information
30 technology, advanced manufacturing processes, aviation and
31 aerospace, and homeland security and defense, as well as other

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1 strategic technologies.

2 (5) ANNUAL REPORT.--The company shall submit an annual
3 report of its activities to the Governor, the President of the
4 Senate, and the Speaker of the House of Representatives within
5 3 months after the end of its fiscal year. The annual report
6 must include a copy of the independent audit of the company
7 and a valuation of the assets of the company, a review of the
8 progress of the Florida Opportunity Fund Allocation Manager in
9 implementing its investment plan, the rate of return, and the
10 benefits to the state resulting from this program, including
11 the amount of capital deployed and the amount of investment.
12 The annual report must also include a list of venture capital
13 funds in which investments were made and the number of Florida
14 businesses created and their associated industry.

15 Section 2. For the 2006-2007 fiscal year, the sum of
16 \$300,000 is appropriated from the General Revenue Fund to the
17 Economic Development Trust Fund in the Office of Tourism,
18 Trade, and Economic Development to be used for start-up
19 activities necessary to implement this act, including creation
20 of the Florida Opportunity Fund and the solicitation, and
21 related due diligence, required for contracting the services
22 of the Florida Opportunity Fund Allocation Manager.

23 Section 3. For the 2006-2007 fiscal year, the sum of
24 \$35 million is transferred from nonrecurring moneys in the
25 General Revenue Fund to the Economic Development Trust Fund in
26 the Office of Tourism, Trade, and Economic Development for
27 subsequent investment in the Florida Opportunity Fund as
28 described in this act. Notwithstanding s. 216.301, Florida
29 Statutes, and pursuant to s. 216.351, Florida Statutes, any
30 balance remaining at the end of any fiscal year shall remain
31 in the trust fund and shall be available for carrying out the

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1 purposes of this section. The transferred amount and any
2 earnings thereon are appropriated and may be used for the
3 purposes of this act until July 1, 2020, at which time the sum
4 of \$35 million or the balance of funds, whichever is less,
5 shall be returned to the General Revenue Fund. The Florida
6 Opportunity Fund shall continue to administer its investments
7 after July 1, 2020, until such investments are liquidated.
8 Proceeds from liquidation of investments and any proceeds in
9 excess of \$35 million may be retained for continuous
10 reinvestment by the Florida Opportunity Fund, if an amount of
11 not less than \$35 million has been returned to the General
12 Revenue Fund on or before July 1, 2020. If at any time
13 Enterprise Florida, Inc., dissolves the Florida Opportunity
14 Fund, all assets of the Florida Opportunity Fund and any funds
15 remaining for the purpose of this section shall revert to the
16 General Revenue Fund. Enterprise Florida, Inc., may not sell
17 or transfer ownership of the company.

18 Section 4. This act shall take effect July 1, 2006.

21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete everything before the enacting clause

25 and insert:

26 A bill to be entitled

27 An act relating to capital formation; creating
28 s. 288.9621, F.S., the Florida Capital
29 Formation Act; providing definitions; requiring
30 Enterprise Florida, Inc., to organize the
31 Florida Opportunity Fund as a wholly owned

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1 private, not-for-profit limited liability
2 company; providing for a board of directors for
3 the company; providing for filling vacancies on
4 the board of directors and for terms of office;
5 specifying duties of the company; requiring the
6 company to select a Florida Opportunity Fund
7 Allocation Manager; providing requirements for
8 investments; requiring the Florida Opportunity
9 Fund to issue an annual report to the Governor
10 and the Legislature; providing for a transfer
11 of nonrecurring funds from the General Revenue
12 Fund to the Economic Development Trust Fund for
13 subsequent investment in the Florida
14 Opportunity Fund; providing for return of funds
15 to the General Revenue Fund; providing for
16 future dissolution of the company; providing an
17 effective date.

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