

Bill No. SB 2668

Barcode 694530

CHAMBER ACTION

Senate

House

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The Committee on Commerce and Consumer Services (Saunders)
recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 288.996, Florida Statutes, is
created to read:

288.996 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.

(3) FLORIDA CAPITAL INVESTMENT ACCOUNT.--

(a) The Governor's Office of Tourism, Trade, and
Economic Development shall account for the funds separately

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1 within the Economic Development Trust Fund created in s.
2 288.095 for moneys transferred under this act. The office
3 shall make all funds available for investment by the State
4 Board of Administration or its investment manager as requested
5 by the State Board of Administration. The State Board of
6 Administration or its designated investment manager shall
7 invest and reinvest the moneys in accordance with s. 215.47
8 and subject to the terms of any trust agreement between the
9 State Board of Administration and the office. Fees and
10 expenses incurred by the State Board of Administration for
11 investing the moneys shall be deducted as provided in a trust
12 agreement. Upon request of the office, the State Board of
13 Administration shall liquidate investments and advance the
14 proceeds to the company as required to fund its investments
15 pursuant to this section as well as its reasonable and
16 necessary operational expenses. The exercise by the State
17 Board of Administration or its designated investment manager
18 of powers conferred by this section shall be deemed and held
19 to be the performance of essential public purposes.

20 (b) The State Board of Administration or its
21 designated investment manager shall invest and reinvest any
22 funds returned to the account by the company in accordance
23 with s. 215.47 and subject to the terms of any trust agreement
24 between the State Board of Administration and the office. The
25 company shall maintain necessary working capital moneys,
26 obtain funding from the account for its investments,
27 reasonable and necessary operating costs, or replenishment of
28 working capital balances, and return for liquidity investment
29 any moneys received in excess of its working capital needs.

30 (4) FLORIDA OPPORTUNITY FUND; CREATION; POWERS AND
31 DUTIES.--

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1 (a) Enterprise Florida, Inc., shall organize the
2 Florida Opportunity Fund as a wholly owned, private,
3 not-for-profit limited liability Florida company. The Florida
4 Opportunity Fund is not a public company or instrumentality of
5 the state.

6 (b) The Florida Opportunity Fund shall be governed by
7 a board of directors consisting of five members who have
8 expertise in the area of the selection and supervision of
9 early-stage investment managers or in the fiduciary management
10 of investment funds or who have expertise in other areas
11 considered appropriate by the appointment committee. The vice
12 chair of Enterprise Florida, Inc., shall select from among its
13 board of directors a five-person appointment committee to
14 appoint the company's initial board of directors. After
15 selection of the initial board of directors, vacancies on the
16 board of directors shall be filled by appointment by
17 Enterprise Florida, Inc. The board of directors shall be
18 appointed to serve terms in accordance with the company's
19 organizational documents. Members of the board of directors
20 are subject to any restrictions on conflicts of interest
21 specified in the organizational documents and may not have an
22 interest in the Florida Opportunity Fund Allocation Manager or
23 in any investments made by the company. Members of the board
24 of directors shall serve without compensation, but members,
25 the president, and staff may be reimbursed for all reasonable,
26 necessary, and actual expenses, as determined by the board.

27 (c) The company shall have all powers granted under
28 chapter 608 and may indemnify directors to the broadest extent
29 permissible under state law. However, the directors and
30 investment staff shall have a fiduciary duty with respect to
31 the management of company assets and selection and oversight

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1 of its allocation manager.

2 (d) The company shall select a Florida Opportunity
3 Fund Allocation Manager with a demonstrated expertise in the
4 successful management and fund allocation of investments in
5 venture capital funds. In selecting a manager, the company
6 shall consider, among other pertinent factors, each
7 candidate's level of experience, quality of management,
8 investment philosophy and process, prior investment fund
9 results, and potential for achieving the purposes of this
10 section.

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

28 (f) The company may not invest in a venture capital
29 fund unless that venture capital fund has raised capital from
30 other sources in an amount at least equal to the investment of
31 the company, such that the total invested in Florida-based

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1 companies by the receiving venture capital fund totals at
 2 least twice the investment of the company. Investments must be
 3 made in Florida-based companies, including, without
 4 limitation, enterprises in life sciences, information
 5 technology, advanced manufacturing processes, aviation and
 6 aerospace, and homeland security and defense, as well as other
 7 strategic technologies.

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

22 Section 2. For the 2006-2007 fiscal year, the sum of
 23 \$300,000 is appropriated from the General Revenue Fund to the
 24 Economic Development Trust Fund in the Office of Tourism,
 25 Trade, and Economic Development to be used for start-up
 26 activities necessary to implement this act, including creation
 27 of the Florida Opportunity Fund and the solicitation, and
 28 related due diligence, required for contracting the services
 29 of the Florida Opportunity Fund Allocation Manager.

30 Section 3. For the 2006-2007 fiscal year, the sum of
 31 \$_____ is transferred from nonrecurring moneys in the

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1 General Revenue Fund to the Economic Development Trust Fund in
2 the Office of Tourism, Trade, and Economic Development for
3 subsequent investment in the Florida Opportunity Fund as
4 described in this act. Notwithstanding s. 216.301, Florida
5 Statutes, and pursuant to s. 216.351, Florida Statutes, any
6 balance in the account at the end of any fiscal year shall
7 remain in the account at the end of the year and shall be
8 available for carrying out the purposes of the account. The
9 transferred amount and any earnings thereon are appropriated
10 and may be used for the purposes of this act until July 1,
11 2020, at which time \$ _____ or the balance of funds,
12 whichever is less, shall be returned to the General Revenue
13 Fund. The Florida Opportunity Fund shall continue to
14 administer its investments after July 1, 2020, until such
15 investments are liquidated. Proceeds from liquidation of
16 investments and any proceeds in excess of \$ _____ may be
17 retained for continuous reinvestment by the Florida
18 Opportunity Fund, if an amount of not less than \$ _____ has
19 been returned to the General Revenue Fund on or before July 1,
20 2020. If at any time the Florida Opportunity Fund dissolves,
21 all assets of the Florida Opportunity Fund and any funds
22 remaining for the purpose of this section will revert to the
23 General Revenue Fund.

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

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

28 And the title is amended as follows:

29 Delete everything before the enacting clause

31 and insert:

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A bill to be entitled

An act relating to capital formation; creating s. 288.996, F.S., the Florida Capital Formation Act; providing definitions; requiring Enterprise Florida, Inc., to organize the Florida Opportunity Fund as a wholly-owned private, not-for-profit limited liability company; providing for a board of directors for the company; providing for filling vacancies on the board of directors and for terms of office; specifying duties of the company; requiring the company to select a Florida Opportunity Fund Allocation Manager; providing requirements for investments; requiring the Florida Opportunity Fund to issue an annual report to the Governor and the Legislature; providing a transfer of nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund for subsequent investment in the Florida Opportunity Fund; providing for future dissolution of the account; providing an effective date.