

By Senator Atwater

25-1482B-06

1 A bill to be entitled

2 An act relating to capital formation; creating

3 s. 288.996, F.S., the Florida Capital Formation

4 Act; providing legislative findings and intent;

5 providing definitions; creating the Florida

6 Capital Investment Trust, a state beneficiary

7 public trust to be administered by the Florida

8 Capital Investment Trust Board of Trustees;

9 providing for the membership of the board;

10 providing qualifications and duties of the

11 board of trustees; specifying that the records

12 and meetings of the board are subject to

13 public-records requirements, except as

14 otherwise provided by law; providing for the

15 trust to receive and hold certain tax credits,

16 subject to certain limitations; providing for

17 the transfer and sale of tax credits, subject

18 to certain notice requirements and limitations;

19 authorizing the Department of Revenue to adopt

20 rules governing the documentation required for

21 transferred tax credits; requiring that tax

22 credits be sold by competitive bid; requiring

23 Enterprise Florida, Inc., to facilitate the

24 creation of the Florida Opportunity Fund

25 Management Corporation as a private,

26 not-for-profit corporation; providing for a

27 board of directors for the corporation;

28 providing for filling vacancies on the board of

29 directors and for terms of office; specifying

30 duties of the corporation with respect to the

31 operations of the Florida Opportunity Fund;

1 requiring a national solicitation for
2 investment proposals from venture capital
3 managers; authorizing certain management fees
4 and compensation for expenses; establishing the
5 Florida Opportunity Fund as a for-profit
6 limited partnership or limited liability
7 corporation incorporated by the Florida
8 Opportunity Fund Management Corporation;
9 providing requirements for investments;
10 providing for the corporation to be paid a
11 management fee; authorizing investments in the
12 fund by state-chartered banks and insurance
13 companies; authorizing additional investments
14 without benefit of certificates from the board;
15 requiring that the board issue an annual report
16 to the Governor and the Legislature; providing
17 an appropriation of funds from the General
18 Revenue Fund to the Florida Capital Investment
19 Trust; amending s. 213.053, F.S.; authorizing
20 the Department of Revenue to provide
21 information to the Florida Capital Investment
22 Trust Board of Trustees concerning claimed tax
23 credits; amending ss. 220.02 and 624.509, F.S.;
24 providing the order for applying the tax credit
25 granted under the act; providing an effective
26 date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Section 288.996, Florida Statutes, is
31 created to read:

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

3 (2) FINDINGS AND INTENT.--

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

11 (b) It is the intent of the Legislature that the
12 Florida Capital Formation Act serve to mobilize private
13 investment in a broad variety of venture capital partnerships
14 in diversified industries and geographies; retain
15 private-sector investment that is focused on rate of return;
16 use the services of highly qualified managers in the venture
17 capital industry, regardless of location; facilitate the
18 organization of the Florida Opportunity Fund as a
19 fund-of-funds investor in seed and early-stage venture capital
20 and angel funds; and precipitate capital investment and
21 extensions of credit to and in the Florida Opportunity Fund.

22 (c) It is the intent of the Legislature to mobilize
23 venture equity capital for investment in such a manner so as
24 to create a significant potential to establish new businesses
25 and jobs that are based on technologies, products, or services
26 having a high potential for growth and that will further
27 diversify the economy of this state.

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

29 (a) "Board" means the Florida Capital Investment Trust
30 Board of Trustees.

31

1 **(b) "Certificate" means a contract between the trust**
2 **and a designated investor evidencing the terms of a guarantee**
3 **or incentive granted to a designated investor.**

4 **(c) "Designated investor" means a person, other than**
5 **the board, who purchases an equity interest in the Florida**
6 **Opportunity Fund or is a party to a certificate, or who is a**
7 **lender to the Florida Opportunity Fund and is a party to a**
8 **certificate.**

9 **(d) "Florida Capital Investment Trust" means a state**
10 **beneficiary public trust created pursuant to this section.**

11 **(e) "Florida Opportunity Fund" means the private,**
12 **for-profit limited partnership or limited liability company in**
13 **which a designated investor purchases an equity interest or to**
14 **which a designated investor extends credit.**

15 **(f) "Tax credit" means a contingent tax credit issued**
16 **pursuant to this section, or subsequent legislative action,**
17 **which is available to offset tax liabilities imposed by the**
18 **state if the proceeds of such tax are payable to the General**
19 **Revenue Fund. A tax credit is not eligible to offset tax**
20 **liabilities imposed by a political subdivision within this**
21 **state.**

22 **(g) "Trust" means the Florida Capital Investment**
23 **Trust.**

24 **(4) FLORIDA CAPITAL INVESTMENT TRUST.--**

25 **(a) There is created the Florida Capital Investment**
26 **Trust, a state beneficiary public trust to be administered by**
27 **the Florida Capital Investment Trust Board of Trustees. The**
28 **exercise by the board of powers conferred by this section**
29 **shall be deemed and held to be the performance of essential**
30 **public purposes.**

31

1 (b) The board shall consist of five voting trustees
2 and two nonvoting, ex officio trustees. A majority of voting
3 trustees constitutes a quorum.

4 (c) Three voting trustees shall be appointed by the
5 Governor, one voting trustee shall be appointed by the
6 President of the Senate, and one voting trustee shall be
7 appointed by the Speaker of the House of Representatives. The
8 Governor shall appoint trustees to terms ending April 30,
9 2007, April 30, 2009, and April 30, 2009. The President of the
10 Senate and the Speaker of the House of Representatives shall
11 each appoint trustees to terms ending April 30, 2008.
12 Thereafter, each voting trustee shall be appointed for a
13 3-year term.

14 (d) One nonvoting, ex officio trustee shall be the
15 designee of Enterprise Florida, Inc., and one nonvoting, ex
16 officio trustee shall be the designee of the Florida Research
17 Consortium. Each ex officio trustee shall be appointed to an
18 annual term at the pleasure of their appointing organizations
19 and may be reappointed. A trustee's term shall end on April 30
20 of his or her term-expiration year. Trustees whose terms have
21 expired may continue to serve until their replacement has been
22 appointed. Vacancies shall be filled in the same manner as the
23 appointment of the original trustee to whom a successor is
24 sought.

25 (e) Trustees shall serve on the board without
26 compensation in the form of a fee, per diem, or salary.
27 Trustees are entitled to receive compensation or reimbursement
28 for direct expenses, mileage, and other travel expenses
29 related to the performance of their duties in accordance with
30 s. 112.061. Trustees shall be selected based upon demonstrated
31 expertise and competence in the supervision of early-stage

1 investment managers, the fiduciary management of funds, the
2 administration and management of a publicly listed company, or
3 public accounting, auditing, and fiduciary responsibilities.
4 Trustees may not have an interest in any entity to which a
5 certificate is issued.

6 (f) The board may engage consultants, expend funds,
7 invest funds, enter into contracts, bond or insure against
8 loss, provide guarantees or other incentives, hold
9 transferable tax credits, sell tax credits, enter into any
10 financial or other transaction, or perform any other act
11 necessary to carry out its purpose as allowed under state law.
12 The board, in conjunction with the Department of Revenue,
13 shall develop a system for the registration of any tax credits
14 received by the trust and transferred pursuant to this
15 section. The board shall also create a system of documentation
16 that permits verification that any tax credit claimed upon a
17 tax return is validly held by the person claiming such tax
18 credit and properly taken in the year of the claim, and that
19 any transfers of the tax credit are made in accordance with
20 the requirements of this section.

21 (g) If the board elects to employ a staff, such
22 persons shall be selected by the board based upon knowledge
23 and leadership in the field for which the person performs
24 services for the board. The board shall charge fees for its
25 guaranties to designated investors or for other services such
26 that the board's operations may be conducted without
27 subsequent legislative appropriation.

28 (h) Records and meetings of the board are subject to
29 s. 24, Art. I of the State Constitution and ss. 119.07(1) and
30 286.011, except that the board shall maintain the
31 confidentiality of information concerning securities acquired

1 and held by the Florida Opportunity Fund as otherwise provided
2 by law.

3 (5) ISSUANCE OF TAX CREDITS.--

4 (a) The trust shall receive and hold for the purposes
5 of this section tax credits that may be used to reduce any tax
6 liability imposed under chapter 220, s. 624.509, s. 624.510,
7 or state sales and use tax imposed under chapter 212. The
8 total amount of tax credits authorized for transfer to the
9 trust may not exceed \$75 million. The tax credits shall be
10 transferable by the board pursuant to this section; however,
11 such tax credits may not be transferred before July 1, 2011,
12 or after July 1, 2036.

13 (b) The board may transfer and sell tax credits solely
14 for the purpose of fulfilling, in whole or in part, any
15 certificate obligation issued by the board. The board shall
16 immediately notify the Governor, the President of the Senate,
17 the Speaker of the House of Representatives, and the
18 Department of Revenue in writing, if any tax credit is
19 transferred. The board shall be notified immediately of any
20 transfers of tax credits by persons or businesses other than
21 the board and shall notify the Department of Revenue, in
22 writing, of such transfers.

23 (c) The board shall ensure that no more than \$20
24 million tax credits are transferred which may be claimed and
25 used to reduce taxes payable to the General Revenue Fund for
26 any one state fiscal year. The board shall clearly indicate
27 upon the face of the document transferring the tax credit the
28 principal amount of the tax credit and the state fiscal year
29 or years for which the credit may be claimed. Tax credits may
30 be transferred in increments of not less than \$100,000. A copy
31 of the document transferring the tax credit shall be

1 transmitted to the executive director of the Department of
2 Revenue, who shall allow the credit to be claimed against the
3 tax liabilities of the person or business, consistent with the
4 terms appearing in the transfer document.

5 (d) If the tax liabilities of the taxpayer are
6 insufficient to exhaust the tax credit for which the taxpayer
7 is eligible, the balance of the tax credit may be refunded by
8 the state. If a tax credit granted under this section is not
9 claimed in the year designated for claiming it on the transfer
10 document, any return for the year in which it was eligible to
11 be claimed may be amended to claim it within the time
12 specified by ss. 95.091 and 215.26.

13 (e) Persons or businesses to which tax credits under
14 this section are transferred must retain documentation
15 supporting their eligibility to claim the tax credits, and
16 evidence of the transfer of the tax credits, if applicable,
17 until the time provided to audit the tax returns on which the
18 tax credits were claimed has passed.

19 (f) The Department of Revenue, in conjunction with the
20 board, may adopt rules governing the manner and form of
21 documentation required to claim tax credits granted or
22 transferred under this section, and may establish guidelines
23 as to the requisites for an affirmative showing of
24 qualification for tax credits granted or transferred under
25 this section.

26 (g) An insurance company claiming a credit against
27 premium tax liability under this section is not required to
28 pay any additional retaliatory tax levied pursuant to s.
29 624.5091 as a result of claiming such credit. Because credits
30 under this section are available to an insurance company, s.
31 624.5091 does not limit such credit in any manner.

1 (h) Any original sale of tax credits by the board
2 shall be by competitive bidding unless the sale is for the
3 full face value thereof.

4 (6) FLORIDA OPPORTUNITY FUND MANAGEMENT CORPORATION.--

5 (a) At the request of the board, Enterprise Florida,
6 Inc., shall facilitate the creation of the Florida Opportunity
7 Fund Management Corporation as a private, not-for-profit
8 corporation. Enterprise Florida, Inc., shall be the
9 corporation's sole member. The Florida Opportunity Fund
10 Management Corporation is not a public corporation or
11 instrumentality of the state.

12 (b) The vice chair of Enterprise Florida, Inc., shall
13 select from among its sitting board of directors a five-person
14 appointment committee. The appointment committee shall select
15 five initial directors for the Florida Opportunity Fund
16 Management Corporation. The persons selected for the initial
17 board of directors by the appointment committee shall include
18 persons who have expertise in the area of the selection and
19 supervision of early-stage investment managers or in the
20 fiduciary management of investment funds, and who have
21 expertise in other areas as considered appropriate by the
22 appointment committee. After selection of the initial board of
23 directors, vacancies on the board of directors of the
24 corporation shall be filled by selection of the remaining
25 directors of the corporation. The board of directors shall be
26 appointed to serve terms that may not exceed 4 years as
27 provided in the corporation's organizational documents.
28 Members of the board of directors are subject to any
29 restrictions on conflicts of interest specified in the
30 organizational documents and may not have an interest in any
31 venture capital investment fund allocation manager selected by

1 the corporation pursuant to this section or in any investments
2 made by the Florida Opportunity Fund.

3 (c) The purposes of the corporation shall be to
4 organize the Florida Opportunity Fund; to select an
5 early-stage venture capital investment fund allocation
6 manager; to negotiate the terms of a contract with the venture
7 capital investment fund allocation manager; to execute the
8 contract with the selected venture capital investment fund
9 manager on behalf of the Florida Opportunity Fund; to manage
10 the business affairs of the Florida Opportunity Fund such as
11 accounting, audit, insurance, and related requirements; to
12 receive investment returns from the Florida Opportunity Fund;
13 and to reinvest the investment returns in additional venture
14 capital investments that are designed to result in significant
15 creation of new businesses and jobs in the state and further
16 diversify the state's economy.

17 (d) Upon organization, the Florida Opportunity Fund
18 Management Corporation shall conduct a national solicitation
19 for investment plan proposals from qualified venture capital
20 investment fund allocation managers for the raising and
21 investing of capital by the Florida Opportunity Fund
22 Management Corporation. Any proposed investment plan must
23 address the applicant's level of experience, quality of
24 management, investment philosophy and process, provability of
25 success in fundraising, prior investment fund results, and
26 plan for achieving the purposes of this section. The
27 corporation shall select only a venture capital investment
28 fund allocation manager having demonstrated expertise in the
29 management and fund allocation of investments in venture
30 capital funds.

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1 (e) The Florida Opportunity Fund Management
2 Corporation may charge a management fee on assets under
3 management in the Florida Opportunity Fund. The fee shall be
4 in addition to any fee charged to the Florida Opportunity Fund
5 by the venture capital investment fund allocation manager, but
6 the fee shall be charged only to pay for reasonable and
7 necessary costs of the Florida Opportunity Fund Management
8 Corporation.

9 (f) Directors of the Florida Opportunity Fund
10 Management Corporation shall be compensated for direct
11 expenses and mileage but may not receive a fee or salary for
12 service as directors.

13 (g) The corporation shall have all powers granted
14 under its organizational documents and shall indemnify
15 directors to the broadest extent permissible under state law.

16 (7) FLORIDA OPPORTUNITY FUND.--

17 (a) The Florida Opportunity Fund is a for-profit
18 limited partnership or limited liability corporation that
19 shall be organized and incorporated in this state by the
20 Florida Opportunity Fund Management Corporation upon the
21 request of the board. The board, the Florida Opportunity Fund
22 Management Corporation, or the Florida Opportunity Fund may
23 contract with Enterprise Florida, Inc., for provision of
24 services necessary for continuing operations.

25 (b) The Florida Opportunity Fund shall invest on a
26 fund-of-funds basis and emphasize investment in seed and
27 early-stage venture capital funds, focusing on opportunities
28 in this state. While not precluded from investing in funds
29 having a wider geographic spread of portfolio investment, the
30 Florida Opportunity Fund must require an investment fund to
31 show a record of investment in this state, to be based in this

1 state, or to have an office in this state which is staffed
2 with a full-time, professional venture investment executive in
3 order to be eligible for investment. The investments by the
4 Florida Opportunity Fund shall be in partnership interests in
5 private venture capital funds and not in direct investments in
6 individual businesses. The Florida Opportunity Fund shall
7 invest in venture capital funds having experienced managers or
8 management teams with demonstrated expertise and a successful
9 history in the investment of early-stage venture capital
10 funds. The Florida Opportunity Fund may invest in newly
11 created early-stage venture capital funds as long as the
12 manager or management teams of the funds have experience,
13 expertise, and a successful history in the investment of
14 venture capital funds. The Florida Opportunity Fund may not
15 invest in a fund unless that fund has raised capital from
16 other sources in an amount greater than the investment of the
17 Florida Opportunity Fund. The Florida Opportunity Fund
18 Management Corporation and its partners or shareholders may
19 negotiate any and all terms and conditions for its
20 investments, including the claw back of management fees and
21 other provisions that maximize investment in seed and
22 early-stage Florida-based companies.

23 (c) The interest of the Florida Opportunity Management
24 Corporation in the Florida Opportunity Fund shall be to serve
25 as general partner or manager and to be paid a management fee
26 to cover its costs.

27 (d) Investments by designated investors in the Florida
28 Opportunity Fund shall be deemed permissible investments for
29 state-chartered banks and for domestic insurance companies
30 under applicable state law.
31

1 (e) If the Florida Opportunity Fund is liquidated or
2 has returned all capital to designated investors in accordance
3 with contractual agreements, or if the guarantee capacity of
4 the trust, in the sole discretion of the board, is sufficient
5 for additional certificates, a new funding of the Florida
6 Opportunity Fund may be implemented for subsequent venture
7 capital fund-of-funds investments.

8 (8) ANNUAL REPORTING.--The board shall issue an annual
9 report of the activities conducted by the Florida Opportunity
10 Fund and present the report to the Governor, the President of
11 the Senate, and the Speaker of the House of Representatives.
12 The annual report must include a copy of the independent audit
13 of the Florida Opportunity Fund and a valuation of the assets
14 of the Florida Opportunity Fund, a review of the progress of
15 the investment fund allocation manager in implementing its
16 investment plan, the benefits to the state resulting from this
17 program, including the number of businesses created and their
18 associated industry, and the number of jobs created. The
19 annual report must also describe any sale of tax certificates
20 and any sale of tax certificates which is reasonably
21 anticipated by the board to meet its certificate obligations.

22 Section 2. For the 2006-2007 fiscal year, the sum of
23 \$750,000 is appropriated from the General Revenue Fund to the
24 Florida Capital Investment Trust to be used for start-up
25 activities necessary to implement this act.

26 Section 3. Paragraph (y) is added to subsection (7) of
27 section 213.053, Florida Statutes, to read:

28 213.053 Confidentiality and information sharing.--

29 (7) Notwithstanding any other provision of this
30 section, the department may provide:
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1 (y) Information relative to tax credits claimed under
2 the provisions of s. 288.996 to the Florida Capital Investment
3 Trust Board of Trustees in the conduct of its official
4 business.

5
6 Disclosure of information under this subsection shall be
7 pursuant to a written agreement between the executive director
8 and the agency. Such agencies, governmental or
9 nongovernmental, shall be bound by the same requirements of
10 confidentiality as the Department of Revenue. Breach of
11 confidentiality is a misdemeanor of the first degree,
12 punishable as provided by s. 775.082 or s. 775.083.

13 Section 4. Subsection (8) of section 220.02, Florida
14 Statutes, is amended to read:

15 220.02 Legislative intent.--

16 (8) It is the intent of the Legislature that credits
17 against either the corporate income tax or the franchise tax
18 be applied in the following order: those enumerated in s.
19 631.828, those enumerated in s. 220.191, those enumerated in
20 s. 220.181, those enumerated in s. 220.183, those enumerated
21 in s. 220.182, those enumerated in s. 220.1895, those
22 enumerated in s. 221.02, those enumerated in s. 220.184, those
23 enumerated in s. 220.186, those enumerated in s. 220.1845,
24 those enumerated in s. 220.19, those enumerated in s. 220.185,
25 ~~and~~ those enumerated in s. 220.187, and those enumerated in s.
26 288.996.

27 Section 5. Subsection (7) of section 624.509, Florida
28 Statutes, is amended to read:

29 624.509 Premium tax; rate and computation.--

30 (7) Credits and deductions against the tax imposed by
31 this section shall be taken in the following order: deductions

1 for assessments made pursuant to s. 440.51; credits for taxes
2 paid under ss. 175.101 and 185.08; credits for income taxes
3 paid under chapter 220, the emergency excise tax paid under
4 chapter 221 and the credit allowed under subsection (5), as
5 these credits are limited by subsection (6); credits allowed
6 under s. 288.996; all other available credits and deductions.

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

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10 SENATE SUMMARY

11 Creates the Florida Capital Investment Trust, a public
12 trust to be administered by a board of trustees, for the
13 purpose of receiving and selling tax credits, subject to
14 certain limitations. Provides for the creation of the
15 Florida Opportunity Fund, a for-profit partnership or
16 corporation to be managed by a management corporation
17 created by Enterprise Florida, Inc. Provides investment
18 requirements and authorizes investments in early-stage
19 venture capital funds. Authorizes investments by state
20 banks and insurance companies. Requires an annual report
21 to the Governor and the Legislature concerning the
22 activities of the fund. Authorizes the Department of
23 Revenue to provide information to the board of trustees
24 concerning tax credits. Provides requirements for
25 claiming tax credits. (See bill for details.)
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