

Bill No. SB 1762

Barcode 071216

CHAMBER ACTION

Senate

House

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The Committee on Commerce (Ring) 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 sections 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9627, and 288.9628, is created to read:

PART X

FLORIDA CAPITAL FORMATION

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

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1 sciences, information technology, advanced manufacturing
2 processes, aviation and aerospace, and homeland security and
3 defense, as well as other strategic technologies.

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

15 (3) It is the intent of the Legislature to mobilize
16 venture equity capital for investment in such a manner as to
17 result in a significant potential to create new businesses and
18 jobs in this state that are based on high growth potential
19 technologies, products, or services and that will further
20 diversify the economy of this state.

21 288.9623 Definitions.--As used in this part:

22 (1) "Board" means the board of trustees of the Florida
23 Capital Investment Trust.

24 (2) "Certificate" means a contract between the trust
25 and a designated investor evidencing the terms of a guarantee
26 or incentive granted to a designated investor.

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

29 (4) "Designated investor" means a person, other than
30 the board, who purchases an equity interest in the Florida
31 Opportunity Fund and is a party to a certificate or who is a

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1 lender to the Florida Opportunity Fund and is a party to a
2 certificate.

3 (5) "Florida Capital Investment Trust" or "trust"
4 means the state beneficiary public trust created under this
5 part.

6 (6) "Florida Opportunity Fund" or "fund" means the
7 private, limited liability company formed by Enterprise
8 Florida, Inc., in which a designated investor purchases an
9 equity interest or to which a designated investor extends
10 credit.

11 (7) "Tax credit" means a contingent tax credit issued
12 under this part or subsequent legislative action that is
13 available to offset tax liabilities imposed by this state,
14 provided the proceeds of such tax are payable to the General
15 Revenue Fund. A tax credit is not eligible to offset tax
16 liabilities imposed by a political subdivision within this
17 state.

18 288.9624 Florida Capital Investment Trust.--

19 (1) The Florida Capital Investment Trust is created as
20 a state beneficiary public trust to be administered by the
21 board. The exercise by the board of powers conferred by this
22 part is deemed and held to be the performance of essential
23 public purposes.

24 (2)(a) The board shall consist of five voting trustees
25 and two nonvoting ex officio trustees. A majority of voting
26 trustees shall constitute a quorum.

27 (b) Three voting trustees shall be appointed by the
28 Governor, one voting trustee shall be appointed by the
29 President of the Senate, and one voting trustee shall be
30 appointed by the Speaker of the House of Representatives. The
31 Governor shall appoint one trustee to a term ending April 30,

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1 2008, and two trustees to terms ending April 30, 2010. The
 2 President of the Senate and the Speaker of the House of
 3 Representatives shall each appoint one trustee to a term
 4 ending April 30, 2010. Thereafter, each voting trustee shall
 5 be appointed for a 3-year term.

6 (c) One nonvoting ex officio trustee shall be the
 7 designee of Enterprise Florida, Inc., and one nonvoting ex
 8 officio trustee shall be the designee of the Florida Research
 9 Consortium. Ex officio trustees serve annual terms at the
 10 pleasure of their appointing organizations and may be
 11 reappointed. A trustee's term shall end on April 30 of his or
 12 her term expiration year.

13 (d) Vacancies shall be filled in the same manner as
 14 the appointment of the original trustee to whom a successor is
 15 sought. Trustees whose terms have expired may continue to
 16 serve until their replacements have been duly appointed.

17 (3) Trustees shall serve on the board without
 18 compensation in the form of fees, per diem, or salary.
 19 Trustees may receive compensation or reimbursement for direct
 20 expenses, mileage, and other travel expenses related to the
 21 performance of their duties. Trustees shall be selected based
 22 upon demonstrated expertise and competence in the supervision
 23 of early stage investment managers, the fiduciary management
 24 of funds, the administration and management of a publicly
 25 listed company, or experience and competence in public
 26 accounting, auditing, and fiduciary responsibilities. Trustees
 27 may not have an interest in any entity to which a certificate
 28 is issued.

29 (4) The trust may engage advisors and consultants on
 30 behalf of the trust, expend funds, invest funds, contract,
 31 bond or insure against loss, provide guarantees or other

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1 incentives, hold transferable tax credits, sell tax credits,
 2 or enter into any financial or other transaction or perform
 3 any other act necessary to carry out its purpose under this
 4 part. The trust, in conjunction with the Department of
 5 Revenue, shall develop a system for registration of any tax
 6 credits received by the trust and transferred under this part.
 7 The board shall also create a system of documentation that
 8 permits verification that any tax credit claimed upon a tax
 9 return is validly held by the person claiming such tax credit
 10 and properly taken in the year of claim and that any transfers
 11 of the tax credit are made in accordance with the requirements
 12 of this part.

13 (5) If the trust elects to hire employees, such
 14 persons shall be selected by the board based upon knowledge
 15 and leadership in the field for which the person performs
 16 services for the trust. The board shall charge fees for its
 17 guarantees to designated investors or for other services such
 18 that the board's day-to-day operations after start-up
 19 activities may be conducted without subsequent legislative
 20 appropriation.

21 288.9625 Issuance of tax credits.--

22 (1) The trust shall receive and hold for the purposes
 23 of this part transferrable tax credits under this part that
 24 may be used to reduce any tax liability imposed by the state
 25 under chapter 212, chapter 220, s. 624.509, or s. 624.510. The
 26 total amount of tax credits issued and transferred to the
 27 trust is \$75 million and such tax credits are allowed to the
 28 trust. The tax credits shall be transferable by the board as
 29 provided in this part, provided no such transferred tax credit
 30 shall be exercisable before July 1, 2010, or after June 30,
 31 2037.

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1 (2) The trust may transfer and sell tax credits solely
2 for the purpose of fulfilling, in whole or in part, any
3 certificate obligation issued by the trust. The board shall
4 immediately notify the Governor, the President of the Senate,
5 the Speaker of the House of Representatives, and the
6 Department of Revenue, in writing, if any tax credit is
7 transferred. The board shall be notified immediately of any
8 transfers of tax credits by persons or businesses other than
9 the board and shall notify the Department of Revenue, in
10 writing, of such transfers.

11 (3) The board shall ensure that no more than \$20
12 million in tax credits is transferred that may be initially
13 claimed and used to reduce taxes payable to the General
14 Revenue Fund for any single state fiscal year. The board shall
15 clearly indicate upon the face of the document transferring
16 the tax credit the principal amount of the tax credit and the
17 state fiscal year or years during which the credit may be
18 claimed. Tax credits may be transferred in increments of no
19 less than \$100,000. A copy of the document transferring the
20 tax credit shall be transmitted to the executive director of
21 the Department of Revenue, who shall allow the credit to be
22 claimed against tax liabilities of the person or business
23 consistent with the terms appearing in the transfer document.

24 (4) If the tax liabilities of the taxpayer are
25 insufficient to exhaust the tax credit for which the taxpayer
26 is eligible, the balance of the tax credit may be refunded by
27 the state. If a tax credit granted under this section is not
28 claimed in the year or years designated for claiming the
29 credit on the transfer document, any return for the year in
30 which the credit was eligible to be claimed may be amended to
31 claim the credit within the time specified by ss. 95.091 and

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1 215.26.

2 (5) Persons or businesses to which tax credits under
3 this section are transferred shall retain documentation
4 supporting eligibility to claim the tax credits and evidence
5 of the transfer of the tax credits, if applicable, until the
6 time period provided to audit the tax returns on which the tax
7 credits were claimed has passed.

8 (6) The Department of Revenue, in conjunction with the
9 board, may adopt rules governing the manner and form of
10 documentation required to claim tax credits granted or
11 transferred under this section and may establish guidelines as
12 to the requisites for an affirmative showing of qualification
13 for tax credits granted or transferred under this section.

14 (7) An insurance company claiming a credit against
15 premium tax liability under this section shall not be required
16 to pay any additional retaliatory tax levied pursuant to s.
17 624.5091 as a result of claiming such credit. Because credits
18 under this section are available to an insurance company, s.
19 624.5091 does not limit such credit in any manner.

20 288.9627 Florida Opportunity Fund.--

21 (1) The Florida Opportunity Fund shall be created as a
22 limited liability corporation that shall be organized and
23 incorporated in this state by Enterprise Florida, Inc., upon
24 request by the board. The board or the fund may contract with
25 Enterprise Florida, Inc., for provision of services necessary
26 for continuing operations.

27 (2) The vice chair of Enterprise Florida, Inc., shall
28 select from among its sitting board of directors a
29 five-person appointment committee. The appointment committee
30 shall select five initial members of a board of directors for
31 the fund. The persons elected to the initial board of

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1 directors by the appointment committee shall include persons
 2 who have expertise in the area of the selection and
 3 supervision of early stage investment managers or in the
 4 fiduciary management of investment funds and other areas of
 5 expertise as deemed appropriate by the appointment committee.
 6 After election of the initial board of directors, vacancies on
 7 the board of directors of the corporation shall be elected by
 8 the board of directors of Enterprise Florida, Inc., and shall
 9 serve terms as provided in the corporation's
 10 organizational documents. Members of the board of directors
 11 shall be subject to any restrictions on conflicts of interest
 12 specified in the organizational documents and may not have an
 13 interest in any venture capital investment fund allocation
 14 manager selected by the corporation pursuant to this part or
 15 in any investments made by the Florida Opportunity Fund.

16 (3) Directors of the corporation shall be compensated
 17 for direct expenses and mileage but may not receive a fee or
 18 salary for service as directors.

19 (4) The corporation shall have all powers granted
 20 under its organizational documents and shall indemnify
 21 directors to the broadest extent permissible under the laws of
 22 this state.

23 (5) Upon organization, the corporation shall conduct a
 24 national solicitation for investment plan proposals from
 25 qualified venture capital investment fund allocation managers
 26 for the raising and investing of capital by the corporation.
 27 Any proposed investment plan must address the applicant's
 28 level of experience, quality of management, investment
 29 philosophy and process, provability of success in fundraising,
 30 prior investment fund results, and plan for achieving the
 31 purposes of this part. The corporation shall select only a

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1 venture capital investment fund allocation manager having
2 demonstrated expertise in the management and fund allocation
3 of investments in venture capital funds.

4 (6) The fund shall invest on a fund-of-funds basis and
5 emphasize investment in seed capital and early stage venture
6 capital funds focusing on opportunities in this state. While
7 not precluded from investing in funds with a wider geographic
8 spread of portfolio investment, the fund shall require an
9 investment fund to have a record of investment in this state,
10 be based in this state, or have an office in this state
11 staffed with a full-time, professional venture investment
12 executive to be eligible for investment, or have adopted
13 investment strategies acceptable to the trust. The investments
14 by the fund shall be on partnership or equity interests in
15 private venture capital funds and not in direct investments in
16 individual businesses. The fund shall invest in venture
17 capital funds with experienced managers or management teams
18 with demonstrated expertise and a successful history in the
19 investment of early stage venture capital funds. The fund may
20 invest in newly created early stage venture capital funds as
21 long as the manager or management teams of the funds have
22 experience, expertise, and a successful history in the
23 investment of venture capital funds. The Florida Opportunity
24 Fund may not invest in a fund unless that fund has raised
25 capital from other sources in an amount greater than the
26 investment of the Florida Opportunity Fund such that the total
27 amount invested by the receiving venture capital fund in an
28 entity in this state is at least twice the amount invested in
29 that venture capital fund by the Florida Opportunity Fund.

30 Investments must be made in Florida-based companies,
31 including, but not limited to, enterprises in life sciences,

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1 information technology, advanced manufacturing processes,
 2 aviation and aerospace, and homeland security and defense, as
 3 well as other strategic technologies. The fund may negotiate
 4 any and all terms and conditions for its investments,
 5 including draw back of management fees and other provisions
 6 that maximize investment in seed and early stage companies
 7 based in this state.

8 (7) The interest of Enterprise Florida, Inc., in the
 9 fund shall be to serve as sole member or a stockholder as may
 10 be required and to be a successor in interest upon dissolution
 11 of the fund, if required.

12 (8) Investments by designated investors in the fund
 13 shall be deemed permissible investments for state-chartered
 14 banks and for domestic insurance companies under applicable
 15 state law.

16 (9) If the fund is liquidated or has returned all
 17 capital to designated investors in accordance with contractual
 18 agreements, or if the guarantee capacity of the trust, at the
 19 sole discretion of the board, is sufficient for additional
 20 certificates, a new funding of the Florida Opportunity Fund
 21 may be implemented for subsequent venture capital
 22 fund-of-funds investments. If the board takes exception to an
 23 additional funding, such additional funding may only be
 24 implemented without the benefit of certificates from the
 25 board.

26 288.9628 Annual reporting.--The board shall issue an
 27 annual report on the activities conducted by the Florida
 28 Opportunity Fund and present the report to the Governor, the
 29 President of the Senate, and the Speaker of the House of
 30 Representatives. The annual report shall include a copy of the
 31 independent audit of the fund and a valuation of the aggregate

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1 assets of the fund and shall review the progress of the
 2 investment fund allocation manager in implementing the fund's
 3 investment plan, the benefits to the state resulting from this
 4 program, including the number of businesses created and their
 5 associated industry, and the amount of capital attracted to
 6 businesses in this state. The annual report shall also
 7 describe any sale of tax certificates without identifying the
 8 transferees or amounts paid by each and any sale of tax
 9 certificates that is reasonably anticipated by the board to
 10 meet its certificate obligations.

11 Section 2. Paragraph (z) is added to subsection (8) of
 12 section 213.053, Florida Statutes, to read:

13 213.053 Confidentiality and information sharing.--

14 (8) Notwithstanding any other provision of this
 15 section, the department may provide:

16 (z) Information relative to tax credits claimed under
 17 part X of chapter 288 to the board of trustees of the Florida
 18 Capital Investment Trust in the conduct of the trust's
 19 official business.

20
 21 Disclosure of information under this subsection shall be
 22 pursuant to a written agreement between the executive director
 23 and the agency. Such agencies, governmental or
 24 nongovernmental, shall be bound by the same requirements of
 25 confidentiality as the Department of Revenue. Breach of
 26 confidentiality is a misdemeanor of the first degree,
 27 punishable as provided by s. 775.082 or s. 775.083.

28 Section 3. Subsection (8) of section 220.02, Florida
 29 Statutes, is amended to read:

30 220.02 Legislative intent.--

31 (8) It is the intent of the Legislature that credits

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1 against either the corporate income tax or the franchise tax
 2 be applied in the following order: those enumerated in s.
 3 631.828, those enumerated in s. 220.191, those enumerated in
 4 s. 220.181, those enumerated in s. 220.183, those enumerated
 5 in s. 220.182, those enumerated in s. 220.1895, those
 6 enumerated in s. 221.02, those enumerated in s. 220.184, those
 7 enumerated in s. 220.186, those enumerated in s. 220.1845,
 8 those enumerated in s. 220.19, those enumerated in s. 220.185,
 9 those enumerated in s. 220.187, those enumerated in s.
 10 220.192, ~~and~~ those enumerated in s. 220.193, and those
 11 enumerated in part X of chapter 288.

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

14 624.509 Premium tax; rate and computation.--

15 (7) Credits and deductions against the tax imposed by
 16 this section shall be taken in the following order: deductions
 17 for assessments made pursuant to s. 440.51; credits for taxes
 18 paid under ss. 175.101 and 185.08; credits for income taxes
 19 paid under chapter 220, the emergency excise tax paid under
 20 chapter 221 and the credit allowed under subsection (5), as
 21 these credits are limited by subsection (6); credits allowed
 22 under part X of chapter 288; and all other available credits
 23 and deductions.

24 Section 5. For fiscal year 2007-2008, the sum of
 25 \$750,000 is appropriated from the General Revenue Fund to the
 26 Florida Capital Investment Trust to be used for startup
 27 activities necessary to implement part X of chapter 288,
 28 Florida Statutes, as created by this act.

29 Section 6. Before the 2012 Regular Session of the
 30 Legislature, the Office fo Program Policy and Analysis and
 31 Governmental Accountability shall conduct an interim review

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1 and evaluation of the effectiveness and viability of the
2 Capital Formation Act. The office shall specifically evaluate
3 the total capital investment in the state, private-sector
4 investment, rate-of-return, creation of new business and jobs,
5 debt incurred, and industries affected. The office shall also
6 recommend outcome measures for further evaluation of the
7 program. The office shall submit a report of its findings and
8 recommendations to the Governor, the President of the Senate,
9 and the Speaker of the House of Representatives by January 1,
10 2012. In 2036, the office shall conduct a final review in
11 accordance with this section and shall make a final written
12 report to the Governor, the President of the Senate, and the
13 Speaker fo the House of Representatives by January 1, 2037.

Section 7. This act shall take effect July 1, 2007.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to capital formation; creating
a new pt. X of ch. 288, F.S.; providing a short
title; providing legislative findings and
intent; providing definitions; creating the
Florida Capital Investment Trust as a state
beneficiary public trust; providing for
administration by a board of trustees;
providing for appointment of board members;
providing for terms; providing for serving

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1 without compensation; providing for travel and
2 other direct expenses; providing criteria for
3 trustees; providing for powers and duties of
4 trustees; providing for hiring employees;
5 providing for meetings of the board;
6 authorizing the trust to receive, hold, use,
7 transfer, and sell certain tax credits for
8 certain purposes; providing requirements and
9 limitations; authorizing the Department of
10 Revenue to adopt rules for certain purposes;
11 creating the Florida Opportunity Fund as a
12 for-profit, limited partnership or a limited
13 liability corporation to be organized and
14 incorporated by the Enterprise Florida, Inc.;
15 authorizing certain entities to contract with
16 Enterprise Florida, Inc., for certain purposes;
17 providing investment requirements for the fund;
18 requiring the board of trustees to issue annual
19 reports on activities of the fund; providing
20 report requirements; amending s. 213.053, F.S.;
21 authorizing the Department of Revenue to
22 provide certain tax credit information to the
23 board of trustees; amending s. 220.02, F.S.;
24 including tax credits transferred or sold by
25 the board of trustees within the priority list
26 of applied credits against certain taxes;
27 amending s. 624.509, F.S.; including tax
28 credits transferred or sold by the board of
29 trustees within the order of taking credits or
30 deductions against the insurance premium tax;
31 providing an appropriation; directing the

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1 Office of Program Policy Analysis and
2 Governmental Accountability to conduct a review
3 of the effectiveness and viability of the
4 capital formation act; providing an effective
5 date.

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