

1 responsibilities of the corporation;
2 authorizing the corporation to charge a
3 management fee for certain purposes; providing
4 for travel and other direct expenses; providing
5 for powers of the corporation; creating the
6 Florida Opportunity Fund as a for-profit,
7 limited partnership or a limited liability
8 corporation to be organized and incorporated by
9 the Florida Opportunity Fund Management
10 Corporation; authorizing certain entities to
11 contract with Enterprise Florida, Inc., for
12 certain purposes; providing investment
13 requirements for the fund; requiring the board
14 of trustees to issue annual reports on
15 activities of the fund; providing report
16 requirements; amending s. 213.053, F.S.;
17 authorizing the Department of Revenue to
18 provide certain tax credit information to the
19 board of trustees; amending s. 220.02, F.S.;
20 including tax credits transferred or sold by
21 the board of trustees within the priority list
22 of applied credits against certain taxes;
23 amending s. 624.509, F.S.; including tax
24 credits transferred or sold by the board of
25 trustees within the order of taking credits or
26 deductions against the insurance premium tax;
27 providing an appropriation; providing an
28 effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Parts X and XI of chapter 288, Florida
2 Statutes, are redesignated as parts XI and XII, respectively,
3 and a new part X of that chapter, consisting of sections
4 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9626,
5 288.9627, and 288.9628, is created to read:

6 PART X

7 FLORIDA CAPITAL FORMATION

8 288.9621 Short title.--This part may be cited as the
9 "Florida Capital Formation Act."

10 288.9622 Findings and intent.--

11 (1) The Legislature finds and declares that there is
12 need to increase the availability of seed capital and early
13 stage venture equity capital for emerging companies in the
14 state, including, without limitation, enterprises in life
15 sciences, information technology, advanced manufacturing
16 processes, aviation and aerospace, and homeland security and
17 defense, as well as other strategic technologies.

18 (2) It is the intent of the Legislature that this part
19 serve to mobilize private investment in a broad variety of
20 venture capital partnerships in diversified industries and
21 geographies; retain private-sector investment criteria focused
22 on rate of return; use the services of highly qualified
23 managers in the venture capital industry regardless of
24 location; facilitate the organization of the Florida
25 Opportunity Fund as a fund-of-funds investor in seed and early
26 stage venture capital and angel funds; and precipitate capital
27 investment and extensions of credit to and in the Florida
28 Opportunity Fund.

29 (3) It is the intent of the Legislature to mobilize
30 venture equity capital for investment in such a manner as to
31 result in a significant potential to create new businesses and

1 jobs in this state that are based on high growth potential
2 technologies, products, or services and that will further
3 diversify the economy of this state.

4 288.9623 Definitions.--As used in this part:

5 (1) "Board" means the board of trustees of the Florida
6 Capital Investment Trust.

7 (2) "Certificate" means a contract between the trust
8 and a designated investor evidencing the terms of a guarantee
9 or incentive granted to a designated investor.

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

12 (4) "Designated investor" means a person, other than
13 the board, who purchases an equity interest in the Florida
14 Opportunity Fund or is a party to a certificate or who is a
15 lender to the Florida Opportunity Fund and is a party to a
16 certificate.

17 (5) "Florida Capital Investment Trust" or "trust"
18 means a state beneficiary public trust created under this
19 part.

20 (6) "Florida Opportunity Fund" or "fund" means the
21 private, for-profit limited partnership or limited liability
22 company in which a designated investor purchases an equity
23 interest or to which a designated investor extends credit.

24 (7) "Tax credit" means a contingent tax credit issued
25 under this part or subsequent legislative action that is
26 available to offset tax liabilities imposed by this state,
27 provided the proceeds of such tax are payable to the General
28 Revenue Fund. A tax credit is not eligible to offset tax
29 liabilities imposed by a political subdivision within this
30 state.

31 288.9624 Florida Capital Investment Trust.--

1 (1) The Florida Capital Investment Trust is created as
2 a state beneficiary public trust to be administered by the
3 board. The exercise by the board of powers conferred by this
4 part is deemed and held to be the performance of essential
5 public purposes.

6 (2)(a) The board shall consist of five voting trustees
7 and two nonvoting ex officio trustees. A majority of voting
8 trustees shall constitute a quorum.

9 (b) Three voting trustees shall be appointed by the
10 Governor, one voting trustee shall be appointed by the
11 President of the Senate, and one voting trustee shall be
12 appointed by the Speaker of the House of Representatives. The
13 Governor shall appoint one trustee to a term ending April 30,
14 2008, and two trustees to terms ending April 30, 2010. The
15 President of the Senate and the Speaker of the House of
16 Representatives shall each appoint one trustee to a term
17 ending April 30, 2009. Thereafter, each voting trustee shall
18 be appointed for a 3-year term.

19 (c) One nonvoting ex officio trustee shall be the
20 designee of Enterprise Florida, Inc., and one nonvoting ex
21 officio trustee shall be the designee of the Florida Research
22 Consortium. Ex officio trustees serve annual terms at the
23 pleasure of their appointing organizations and may be
24 reappointed. A trustee's term shall end on April 30 of his or
25 her term expiration year.

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

30 (3) Trustees shall serve on the board without
31 compensation in the form of fees, per diem, or salary.

1 Trustees may receive compensation or reimbursement for direct
2 expenses, mileage, and other travel expenses related to the
3 performance of their duties pursuant to s. 112.061. Trustees
4 shall be selected based upon demonstrated expertise and
5 competence in the supervision of early stage investment
6 managers, the fiduciary management of funds, the
7 administration and management of a publicly listed company, or
8 experience and competence in public accounting, auditing, and
9 fiduciary responsibilities. Trustees may not have an interest
10 in any entity to which a certificate is issued.

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

25 (5) If the board elects to hire employees, such
26 persons shall be selected by the board based upon knowledge
27 and leadership in the field for which the person performs
28 services for the board. The board shall charge fees for its
29 guarantees to designated investors or for other services such
30 that the board's operations may be conducted without
31 subsequent legislative appropriation.

1 288.9625 Issuance of tax credits.--

2 (1) The trust shall receive and hold for the purposes
3 of this part tax credits under this part that may be used to
4 reduce any tax liability imposed by the state under chapter
5 212, chapter 220, s. 624.509, or s. 624.510. The total amount
6 of tax credits issued and transferred to the trust is \$75
7 million. The tax credits shall be transferable by the board as
8 provided in this part, provided no such transferred tax credit
9 shall be exercisable before July 1, 2012, or after July 1,
10 2037.

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

21 (3) The board shall ensure that no more than \$20
22 million in tax credits is transferred that may be claimed and
23 used to reduce taxes payable to the General Revenue Fund for
24 any single state fiscal year. The board shall clearly indicate
25 upon the face of the document transferring the tax credit the
26 principal amount of the tax credit and the state fiscal year
27 or years during which the credit may be claimed. Tax credits
28 may be transferred in increments of no less than \$100,000. A
29 copy of the document transferring the tax credit shall be
30 transmitted to the executive director of the Department of
31 Revenue, who shall allow the credit to be claimed against tax

1 liabilities of the person or business consistent with the
2 terms appearing in the transfer document.

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

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

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

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

29 (8) Any original sale of tax credits by the board
30 shall be by competitive bidding unless the sale is for the
31 full face value of the credits.

1 288.9626 Florida Opportunity Fund Management
2 Corporation.--
3 (1) At the request of the board, Enterprise Florida,
4 Inc., shall facilitate the creation of the Florida Opportunity
5 Fund Management Corporation as a private, not-for-profit
6 corporation. Enterprise Florida, Inc., shall be the
7 corporation's sole member. The corporation is not a public
8 corporation or instrumentality of the state.
9 (2) The vice chair of Enterprise Florida, Inc., shall
10 select from among its sitting board of directors a five-person
11 appointment committee. The appointment committee shall select
12 five initial members of a board of directors for the
13 corporation. The persons elected to the initial board of
14 directors by the appointment committee shall include persons
15 who have expertise in the area of the selection and
16 supervision of early stage investment managers or in the
17 fiduciary management of investment funds and other areas of
18 expertise as deemed appropriate by the appointment committee.
19 After election of the initial board of directors, vacancies on
20 the board of directors of the corporation shall be elected by
21 the board of directors of Enterprise Florida, Inc., and shall
22 serve terms as provided in the corporation's organizational
23 documents. Members of the board of directors shall be subject
24 to any restrictions on conflicts of interest specified in the
25 organizational documents and shall have no interest in any
26 venture capital investment fund allocation manager selected by
27 the corporation pursuant to the provisions of this part or in
28 any investments made by the Florida Opportunity Fund.
29 (3) The purposes of the corporation shall be to
30 organize the Florida Opportunity Fund, select an early stage
31 venture capital investment fund allocation manager, negotiate

1 the terms of a contract with the venture capital investment
2 fund allocation manager, execute the contract with the
3 selected venture capital investment fund allocation manager on
4 behalf of the Florida Opportunity Fund, manage the business
5 affairs of the Florida Opportunity Fund, such as accounting,
6 audit, insurance, and related requirements, receive investment
7 returns from the Florida Opportunity Fund, and reinvest the
8 investment returns in the Florida Opportunity Fund in order to
9 provide additional venture capital investments designed to
10 result in a significant potential to create new businesses and
11 jobs in this state and further diversify the economy of this
12 state.

13 (4) Upon organization, the corporation shall conduct a
14 national solicitation for investment plan proposals from
15 qualified venture capital investment fund allocation managers
16 for the raising and investing of capital by the corporation.
17 Any proposed investment plan shall address the applicant's
18 level of experience, quality of management, investment
19 philosophy and process, provability of success in fundraising,
20 prior investment fund results, and plan for achieving the
21 purposes of this part. The corporation shall select only a
22 venture capital investment fund allocation manager with
23 demonstrated expertise in the management and fund allocation
24 of investments in venture capital funds.

25 (5) The corporation may charge a management fee on
26 assets under management in the Florida Opportunity Fund. The
27 fee shall be in addition to any fee charged to the Florida
28 Opportunity Fund by the venture capital investment fund
29 allocation manager, but the fee shall be charged only to pay
30 for reasonable and necessary costs of the corporation.
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1 (6) Directors of the corporation shall be compensated
2 for direct expenses and mileage pursuant to s. 112.061 but
3 shall not receive a fee or salary for service as directors.

4 (7) The corporation shall have all powers granted
5 under its organizational documents and shall indemnify
6 directors to the broadest extent permissible under the laws of
7 this state.

8 288.9627 Florida Opportunity Fund.--

9 (1) The Florida Opportunity Fund is created as a
10 for-profit limited partnership or limited liability
11 corporation that shall be organized and incorporated in this
12 state by the Florida Opportunity Fund Management Corporation
13 upon request by the board. The board, the corporation, or the
14 fund may contract with Enterprise Florida, Inc., for provision
15 of services necessary for continuing operations.

16 (2) The fund shall invest on a fund-of-funds basis and
17 emphasize investment in seed capital and early stage venture
18 capital funds focusing on opportunities in this state. While
19 not precluded from investing in funds with a wider geographic
20 spread of portfolio investment, the fund shall require an
21 investment fund to have a record of investment in this state,
22 be based in this state, or have an office in this state
23 staffed with a full-time, professional venture investment
24 executive to be eligible for investment. The investments by
25 the fund shall be on partnership interests in private venture
26 capital funds and not in direct investments in individual
27 businesses. The fund shall invest in venture capital funds
28 with experienced managers or management teams with
29 demonstrated expertise and a successful history in the
30 investment of early stage venture capital funds. The fund may
31 invest in newly created early stage venture capital funds as

1 long as the manager or management teams of the funds have
2 experience, expertise, and a successful history in the
3 investment of venture capital funds. The Florida Opportunity
4 Fund may not invest in a fund unless that fund has raised
5 capital from other sources in an amount greater than the
6 investment of the Florida Opportunity Fund such that the
7 amount invested in an entity in this state by the receiving
8 venture capital fund is at least twice the amount invested by
9 the corporation. The corporation and its partners or
10 shareholders may negotiate any and all terms and conditions
11 for its investments, including draw back of management fees
12 and other provisions that maximize investment in seed and
13 early stage companies based in this state.

14 (3) The interest of the corporation in the fund shall
15 be to serve as general partner or manager and to be paid a
16 management fee to cover its costs.

17 (4) Investments by designated investors in the fund
18 shall be deemed permissible investments for state-chartered
19 banks and for domestic insurance companies under applicable
20 state law.

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

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1 288.9628 Annual reporting.--The board shall issue an
2 annual report on the activities conducted by the Florida
3 Opportunity Fund and present the report to the Governor, the
4 President of the Senate, and the Speaker of the House of
5 Representatives. The annual report shall include a copy of the
6 independent audit of the fund and a valuation of the assets of
7 the fund and shall review the progress of the investment fund
8 allocation manager in implementing the fund's investment plan,
9 the benefits to the state resulting from this program,
10 including the number of businesses created and their
11 associated industry, and the number of jobs created. The
12 annual report shall also describe any sale of tax certificates
13 and any sale of tax certificates that is reasonably
14 anticipated by the board to meet its certificate obligations.

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

17 213.053 Confidentiality and information sharing.--

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

20 (z) Information relative to tax credits claimed under
21 part X of chapter 288 to the board of trustees of the Florida
22 Capital Investment Trust in the conduct of the trust's
23 official business.

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

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

3 220.02 Legislative intent.--

4 (8) It is the intent of the Legislature that credits
5 against either the corporate income tax or the franchise tax
6 be applied in the following order: those enumerated in s.
7 631.828, those enumerated in s. 220.191, those enumerated in
8 s. 220.181, those enumerated in s. 220.183, those enumerated
9 in s. 220.182, those enumerated in s. 220.1895, those
10 enumerated in s. 221.02, those enumerated in s. 220.184, those
11 enumerated in s. 220.186, those enumerated in s. 220.1845,
12 those enumerated in s. 220.19, those enumerated in s. 220.185,
13 those enumerated in s. 220.187, those enumerated in s.
14 220.192, ~~and~~ those enumerated in s. 220.193, and those
15 enumerated in part X of chapter 288.

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

18 624.509 Premium tax; rate and computation.--

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

28 Section 5. For fiscal year 2007-2008, the sum of
29 \$750,000 is appropriated from the General Revenue Fund to the
30 Florida Capital Investment Trust to be used for startup
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1 activities necessary to implement part X of chapter 288,
2 Florida Statutes, as created by this act.

3 Section 6. This act shall take effect July 1, 2007.
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