



1 provide certain tax credit information to the  
2 board of trustees; amending s. 220.02, F.S.;  
3 including tax credits transferred or sold by  
4 the board of trustees within the priority list  
5 of applied credits against certain taxes;  
6 amending s. 624.509, F.S.; including tax  
7 credits transferred or sold by the board of  
8 trustees within the order of taking credits or  
9 deductions against the insurance premium tax;  
10 providing an appropriation; directing the  
11 Office of Program Policy Analysis and  
12 Governmental Accountability to conduct a review  
13 of the effectiveness and viability of the  
14 capital formation act; providing an effective  
15 date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Parts X and XI of chapter 288, Florida  
20 Statutes, are redesignated as parts XI and XII, respectively,  
21 and a new part X of that chapter, consisting of sections  
22 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9627,  
23 and 288.9628, is created to read:

24 PART X

25 FLORIDA CAPITAL FORMATION

26 288.9621 Short title.--This part may be cited as the  
27 "Florida Capital Formation Act."

28 288.9622 Findings and intent.--

29 (1) The Legislature finds and declares that there is  
30 need to increase the availability of seed capital and early  
31 stage venture equity capital for emerging companies in the

1 state, including, without limitation, enterprises in life  
2 sciences, information technology, advanced manufacturing  
3 processes, aviation and aerospace, and homeland security and  
4 defense, as well as other strategic technologies.

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

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

22 288.9623 Definitions.--As used in this part:

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

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

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

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

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

6 (5) "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 (6) "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,

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

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.

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

1 claim the credit within the time specified by ss. 95.091 and  
2 215.26.

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

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

15 (7) An insurance company claiming a credit against  
16 premium tax liability under this section shall not be required  
17 to pay any additional retaliatory tax levied pursuant to s.  
18 624.5091 as a result of claiming such credit. Because credits  
19 under this section are available to an insurance company, s.  
20 624.5091 does not limit such credit in any manner.

21 288.9627 Florida Opportunity Fund.--

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

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



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

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

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

23 (5) Upon organization, the fund 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 fund. Any  
27 proposed investment plan must address the applicant's level of  
28 experience, quality of management, investment philosophy and  
29 process, provability of success in fundraising, prior  
30 investment fund results, and plan for achieving the purposes  
31 of this part. The fund shall select only a venture capital

1 investment fund allocation manager having demonstrated  
2 expertise in the management and fund allocation of investments  
3 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,

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

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

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

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

15           624.509 Premium tax; rate and computation.--

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

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

30           Section 6. Before the 2012 Regular Session of the  
31 Legislature, the Office of Program Policy Analysis and

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

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

16  
17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
18 COMMITTEE SUBSTITUTE FOR  
19 Senate Bill 1762

20 This CS differs from the bill as filed by:

- 21 - Deleting provisions that create the Florida Opportunity  
22 Management Corporation;  
23 - Designating the Florida Opportunity Fund as a limited  
24 liability company formed by Enterprise Florida, Inc.;  
25 - Changing from July 1, 2012, to July 1, 2010, the earliest  
26 date at which the transferred tax credits, if any, may be  
27 claimed against state tax liabilities; and  
28 - Deleting from the Florida Capital Investment Trust's  
29 annual report the requirement to include the number of  
30 jobs created by the investment program, and replacing it  
31 with the amount of capital attracted to the state.