

By the Committees on Governmental Operations; Commerce; and
Senator Ring

585-2551-07

1 A bill to be entitled
2 An act relating to venture capital funds;
3 creating s. 288.9621, F.S.; providing a short
4 title; creating s. 288.9622, F.S.; providing
5 legislative findings and intent; creating s.
6 288.9623, F.S.; providing definitions; creating
7 s. 288.9624, F.S.; requiring Enterprise
8 Florida, Inc., to facilitate creation of the
9 Florida Opportunity Fund; specifying criteria
10 of the fund; providing for appointment of an
11 appointment committee; providing for selection
12 of a board of directors of the fund by
13 Enterprise Florida, Inc.; specifying criteria;
14 providing for terms and requirements of the
15 directors; providing purposes of the fund;
16 providing duties and responsibilities of the
17 fund; authorizing the fund to negotiate all
18 contract terms; providing for reimbursement for
19 travel and other direct expenses; providing for
20 powers of the fund; providing investment
21 requirements for the fund; requiring the board
22 of directors to issue an annual report on the
23 activities of the fund; providing report
24 requirements; providing an appropriation;
25 providing an effective date.

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

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29 Section 1. Sections 288.9621, 288.9622, 288.9623, and
30 288.9624, Florida Statutes, are created to read:

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1 288.9621 Short title.--Sections 288.9621-288.9624 may
2 be cited as the "Florida Capital Formation Act."

3 288.9622 Findings and intent.--

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

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

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

28 288.9623 Definitions.--As used in ss.
29 288.9621-288.9624, the term:

30 (1) "Board" means the board of directors of the
31 Florida Opportunity Fund.

1 (2) "Fund" means the Florida Opportunity Fund.
2 288.9624 Florida Opportunity Fund; creation; duties.--
3 (1)(a) Enterprise Florida, Inc., shall facilitate the
4 creation of the Florida Opportunity Fund, a private,
5 not-for-profit corporation organized and operated under
6 chapter 617. Enterprise Florida, Inc., shall be the fund's
7 sole shareholder or member. The fund is not a public
8 corporation or instrumentality of the state. The fund shall
9 manage its business affairs and conduct business consistently
10 with its organizational documents and the purposes set forth
11 in this section. Notwithstanding the powers granted under
12 chapter 617, the corporation may not amend, modify, or repeal
13 a bylaw or article of incorporation without the express
14 written consent of Enterprise Florida, Inc.
15 (b) The vice chair of Enterprise Florida, Inc., shall
16 select from among its sitting board of directors a five-person
17 appointment committee. The appointment committee shall select
18 five initial members of a board of directors for the fund.
19 (c) The persons selected to the initial board of
20 directors by the appointment committee shall include persons
21 who have expertise in the area of the selection and
22 supervision of early stage investment managers or in the
23 fiduciary management of investment funds and other areas of
24 expertise as considered appropriate by the appointment
25 committee.
26 (d) After selection of the initial board of directors,
27 vacancies on the board shall be filled by vote of the board of
28 directors of Enterprise Florida, Inc., and board members shall
29 serve terms as provided in the fund's organizational
30 documents.
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1 (e) Members of the board are subject to any
2 restrictions on conflicts of interest specified in the
3 organizational documents and may not have an interest in any
4 venture capital investment selected by the fund under ss.
5 288.9621-288.9624.

6 (f) Members of the board shall serve without
7 compensation, but members, the president of the board, and
8 other board employees may be reimbursed for all reasonable,
9 necessary, and actual expenses as determined and approved by
10 the board pursuant to s. 112.061.

11 (g) The fund shall have all powers granted under its
12 organizational documents and shall indemnify members to the
13 broadest extent permissible under the laws of this state.

14 (2) Upon organization, the board shall conduct a
15 national solicitation for investment plan proposals from
16 qualified venture capital investment managers for the raising
17 and investing of capital by the Florida Opportunity Fund. Any
18 proposed investment plan must address the applicant's level of
19 experience, quality of management, investment philosophy and
20 process, provability of success in fundraising, prior
21 investment fund results, and plan for achieving the purposes
22 of this act. The board shall select only venture capital
23 investment managers that have demonstrated expertise in the
24 management of and investment in companies.

25 (3) The board is responsible for negotiating the terms
26 of a contract with the Florida Opportunity Fund investment
27 manager; executing the contract with the selected venture
28 capital investment fund manager on behalf of the Florida
29 Opportunity Fund; managing the business affairs of the Florida
30 Opportunity Fund, such as accounting, audit, insurance, and
31 related requirements; soliciting and negotiating the terms of,

1 contracting for, and receiving investment capital and loan
2 proceeds with the assistance of the investment manager;
3 receiving investment returns; paying investors and debtors;
4 and reinvesting the investment returns in the fund in order to
5 provide additional venture capital investments designed to
6 result in a significant potential to create new businesses and
7 jobs in this state and further diversify the economy of this
8 state.

9 (4) For the purpose of mobilizing investment in a
10 broad variety of Florida-based, new technology companies and
11 generating a return sufficient to continue reinvestment, the
12 fund shall:

13 (a) Invest directly only in seed and early stage
14 venture capital funds that have experienced managers or
15 management teams with demonstrated experience, expertise, and
16 a successful history in the investment of venture capital
17 funds, focusing on opportunities in this state. The fund may
18 not make direct investments in individual businesses. While
19 not precluded from investing in venture capital funds that
20 have investments outside this state, the fund must require a
21 venture capital fund to show a record of successful investment
22 in this state, to be based in this state, or to have an office
23 in this state staffed with a full-time, professional venture
24 investment executive in order to be eligible for investment.

25 (b) Negotiate for investment capital or loan proceeds
26 from private, institutional, or banking sources.

27 (c) Negotiate any and all terms and conditions for its
28 investments.

29 (d) Invest only in funds that have raised capital from
30 other sources so that the amount invested in an entity in this
31 state is at least twice the amount invested by the fund.

1 (5) By December 1 of each year, the board shall issue
2 an annual report concerning the activities conducted by the
3 fund to the Governor, the President of the Senate, and the
4 Speaker of the House of Representatives. The annual report, at
5 a minimum, must include:

6 (a) An accounting of the amount of investments
7 disbursed by the fund and the progress of the fund.

8 (b) A description of the benefits to this state
9 resulting from the fund, including the number of businesses
10 created, associated industries started, the number of jobs
11 created, and the growth of related research projects.

12 (c) Independently audited financial statements,
13 including statements that show receipts and expenditures
14 during the preceding fiscal year for personnel,
15 administration, and operational costs of the fund.

16 Section 2. The nonrecurring sum of \$30 million is
17 appropriated from the General Revenue Fund to Enterprise
18 Florida, Inc., for the Florida Opportunity Fund for the
19 2007-2008 fiscal year. Of these funds, \$500,000 shall be for
20 the purpose of initiating activities necessary to implement
21 the fund's responsibilities under this act, and \$29.5 million
22 is provided for the purpose of making investments under s.
23 288.9624, Florida Statutes.

24 Section 3. This act shall take effect July 1, 2007.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 1762
4 Provides that Enterprise Florida, Inc., must incorporate the
5 Florida Opportunity Fund as a private, not-for-profit,
6 corporation. Provides that Enterprise Florida, Inc., must be
7 the fund's sole shareholder or member.
8 Provides that the fund must invest in seed and early stage
9 venture capital funds.
10 Eliminates \$75 million in contingent tax credits to be used as
11 guarantees for the private investments. Appropriates \$30
12 million from General Revenue Fund to Enterprise Florida, Inc.,
13 for the Florida Opportunity Fund for the 2007-2009 fiscal
14 year. Limits start-up costs for the fund to \$500,000.
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