

1 A bill to be entitled

2 An act relating to capital formation; creating a new pt. X
3 of ch. 288, F.S.; providing a short title; providing
4 legislative findings and intent; providing definitions;
5 creating the Florida Capital Investment Trust as a state
6 beneficiary public trust; providing for administration by
7 a board of trustees; providing for appointment of board
8 members; providing for terms; providing for serving
9 without compensation; providing for travel and other
10 direct expenses; providing criteria for trustees;
11 providing for powers and duties of trustees; providing for
12 hiring employees; providing for meetings of the board;
13 authorizing the trust to receive, hold, use, transfer, and
14 sell certain tax credits for certain purposes; providing
15 requirements and limitations; authorizing the Department
16 of Revenue to adopt rules for certain purposes; requiring
17 Enterprise Florida, Inc., to facilitate establishment of
18 the Florida Opportunity Fund Management Corporation;
19 specifying criteria of the corporation; providing for
20 appointment of a board of directors selection committee;
21 providing for selection of a board of directors of the
22 corporation by Enterprise Florida, Inc.; specifying
23 criteria; providing for terms and requirements of
24 directors; providing purposes of the corporation;
25 providing duties and responsibilities of the corporation;
26 authorizing the corporation to charge a management fee for
27 certain purposes; providing for travel and other direct
28 expenses; providing for powers of the corporation;

29 creating the Florida Opportunity Fund as a for-profit,
 30 limited partnership or a limited liability corporation to
 31 be organized and incorporated by the Florida Opportunity
 32 Fund Management Corporation; authorizing certain entities
 33 to contract with Enterprise Florida, Inc., for certain
 34 purposes; providing investment requirements for the fund;
 35 requiring the board of trustees to issue annual reports on
 36 activities of the fund; providing report requirements;
 37 amending s. 213.053, F.S.; authorizing the Department of
 38 Revenue to provide certain tax credit information to the
 39 board of trustees; amending s. 220.02, F.S.; including tax
 40 credits transferred or sold by the board of trustees
 41 within the priority list of applied credits against
 42 certain taxes; amending s. 624.509, F.S.; including tax
 43 credits transferred or sold by the board of trustees
 44 within the order of taking credits or deductions against
 45 the insurance premium tax; providing an appropriation;
 46 providing an effective date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Parts X and XI of chapter 288, Florida
 51 Statutes, are redesignated as parts XI and XII, respectively,
 52 and a new part X of that chapter, consisting of sections
 53 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9626,
 54 288.9627, and 288.9628, is created to read:

55 PART X

56 FLORIDA CAPITAL FORMATION

57 288.9621 Short title.--This part may be cited as the
 58 "Florida Capital Formation Act."

59 288.9622 Findings and intent.--

60 (1) The Legislature finds and declares that there is need
 61 to increase the availability of seed capital and early stage
 62 venture equity capital for emerging companies in the state,
 63 including, without limitation, enterprises in life sciences,
 64 information technology, advanced manufacturing processes,
 65 aviation and aerospace, and homeland security and defense, as
 66 well as other strategic technologies.

67 (2) It is the intent of the Legislature that this part
 68 serve to mobilize private investment in a broad variety of
 69 venture capital partnerships in diversified industries and
 70 geographies; retain private-sector investment criteria focused
 71 on rate of return; use the services of highly qualified managers
 72 in the venture capital industry regardless of location;
 73 facilitate the organization of the Florida Opportunity Fund as a
 74 fund-of-funds investor in seed and early stage venture capital
 75 and angel funds; and precipitate capital investment and
 76 extensions of credit to and in the Florida Opportunity Fund.

77 (3) It is the intent of the Legislature to mobilize
 78 venture equity capital for investment in such a manner as to
 79 result in a significant potential to create new businesses and
 80 jobs in this state that are based on high growth potential
 81 technologies, products, or services and that will further
 82 diversify the economy of this state.

83 288.9623 Definitions.--As used in this part:

84 (1) "Board" means the board of trustees of the Florida

85 Capital Investment Trust.

86 (2) "Certificate" means a contract between the trust and a
 87 designated investor evidencing the terms of a guarantee or
 88 incentive granted to a designated investor.

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

91 (4) "Designated investor" means a person, other than the
 92 board, who purchases an equity interest in the Florida
 93 Opportunity Fund or is a party to a certificate or who is a
 94 lender to the Florida Opportunity Fund and is a party to a
 95 certificate.

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

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

102 (7) "Tax credit" means a contingent tax credit issued
 103 under this part or subsequent legislative action that is
 104 available to offset tax liabilities imposed by this state,
 105 provided the proceeds of such tax are payable to the General
 106 Revenue Fund. A tax credit is not eligible to offset tax
 107 liabilities imposed by a political subdivision within this
 108 state.

109 288.9624 Florida Capital Investment Trust.--

110 (1) The Florida Capital Investment Trust is created as a
 111 state beneficiary public trust to be administered by the board.
 112 The exercise by the board of powers conferred by this part is

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113 deemed and held to be the performance of essential public
114 purposes.

115 (2) (a) The board shall consist of five voting trustees and
116 two nonvoting ex officio trustees. A majority of voting trustees
117 shall constitute a quorum.

118 (b) Three voting trustees shall be appointed by the
119 Governor, one voting trustee shall be appointed by the President
120 of the Senate, and one voting trustee shall be appointed by the
121 Speaker of the House of Representatives. The Governor shall
122 appoint one trustee to a term ending April 30, 2008, and two
123 trustees to terms ending April 30, 2010. The President of the
124 Senate and the Speaker of the House of Representatives shall
125 each appoint one trustee to a term ending April 30, 2009.
126 Thereafter, each voting trustee shall be appointed for a 3-year
127 term.

128 (c) One nonvoting ex officio trustee shall be the designee
129 of Enterprise Florida, Inc., and one nonvoting ex officio
130 trustee shall be the designee of the Florida Research
131 Consortium. Ex officio trustees serve annual terms at the
132 pleasure of their appointing organizations and may be
133 reappointed. A trustee's term shall end on April 30 of his or
134 her term expiration year.

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

139 (3) Trustees shall serve on the board without compensation
140 in the form of fees, per diem, or salary. Trustees may receive

141 compensation or reimbursement for direct expenses, mileage, and
142 other travel expenses related to the performance of their duties
143 pursuant to s. 112.061. Trustees shall be selected based upon
144 demonstrated expertise and competence in the supervision of
145 early stage investment managers, the fiduciary management of
146 funds, the administration and management of a publicly listed
147 company, or experience and competence in public accounting,
148 auditing, and fiduciary responsibilities. Trustees may not have
149 an interest in any entity to which a certificate is issued.

150 (4) The board may engage consultants, expend funds, invest
151 funds, contract, bond or insure against loss, provide guarantees
152 or other incentives, hold transferable tax credits, sell tax
153 credits, or enter into any financial or other transaction or
154 perform any other act necessary to carry out its purpose under
155 this part. The board, in conjunction with the Department of
156 Revenue, shall develop a system for registration of any tax
157 credits received by the trust and transferred under this part.
158 The board shall also create a system of documentation that
159 permits verification that any tax credit claimed upon a tax
160 return is validly held by the person claiming such tax credit
161 and properly taken in the year of claim and that any transfers
162 of the tax credit are made in accordance with the requirements
163 of this part.

164 (5) If the board elects to hire employees, such persons
165 shall be selected by the board based upon knowledge and
166 leadership in the field for which the person performs services
167 for the board. The board shall charge fees for its guarantees to
168 designated investors or for other services such that the board's

169 operations may be conducted without subsequent legislative
170 appropriation.

171 288.9625 Issuance of tax credits.--

172 (1) The trust shall receive and hold for the purposes of
173 this part tax credits under this part that may be used to reduce
174 any tax liability imposed by the state under chapter 212,
175 chapter 220, s. 624.509, or s. 624.510. The total amount of tax
176 credits issued and transferred to the trust is \$75 million. The
177 tax credits shall be transferable by the board as provided in
178 this part, provided no such transferred tax credit shall be
179 exercisable before July 1, 2012, or after July 1, 2037.

180 (2) The board may transfer and sell tax credits solely for
181 the purpose of fulfilling, in whole or in part, any certificate
182 obligation issued by the board. The board shall immediately
183 notify the Governor, the President of the Senate, the Speaker of
184 the House of Representatives, and the Department of Revenue, in
185 writing, if any tax credit is transferred. The board shall be
186 notified immediately of any transfers of tax credits by persons
187 or businesses other than the board and shall notify the
188 Department of Revenue, in writing, of such transfers.

189 (3) The board shall ensure that no more than \$20 million
190 in tax credits is transferred that may be claimed and used to
191 reduce taxes payable to the General Revenue Fund for any single
192 state fiscal year. The board shall clearly indicate upon the
193 face of the document transferring the tax credit the principal
194 amount of the tax credit and the state fiscal year or years
195 during which the credit may be claimed. Tax credits may be
196 transferred in increments of no less than \$100,000. A copy of

197 the document transferring the tax credit shall be transmitted to
198 the executive director of the Department of Revenue, who shall
199 allow the credit to be claimed against tax liabilities of the
200 person or business consistent with the terms appearing in the
201 transfer document.

202 (4) If the tax liabilities of the taxpayer are
203 insufficient to exhaust the tax credit for which the taxpayer is
204 eligible, the balance of the tax credit may be refunded by the
205 state. If a tax credit granted under this section is not claimed
206 in the year designated for claiming the credit on the transfer
207 document, any return for the year in which the credit was
208 eligible to be claimed may be amended to claim the credit within
209 the time specified by ss. 95.091 and 215.26.

210 (5) Persons or businesses to which tax credits under this
211 section are transferred shall retain documentation supporting
212 eligibility to claim the tax credits and evidence of the
213 transfer of the tax credits, if applicable, until the time
214 period provided to audit the tax returns on which the tax
215 credits were claimed has passed.

216 (6) The Department of Revenue, in conjunction with the
217 board, may adopt rules governing the manner and form of
218 documentation required to claim tax credits granted or
219 transferred under this section and may establish guidelines as
220 to the requisites for an affirmative showing of qualification
221 for tax credits granted or transferred under this section.

222 (7) An insurance company claiming a credit against premium
223 tax liability under this section shall not be required to pay
224 any additional retaliatory tax levied pursuant to s. 624.5091 as

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225 a result of claiming such credit. Because credits under this
 226 section are available to an insurance company, s. 624.5091 does
 227 not limit such credit in any manner.

228 (8) Any original sale of tax credits by the board shall be
 229 by competitive bidding unless the sale is for the full face
 230 value of the credits.

231 288.9626 Florida Opportunity Fund Management
 232 Corporation.--

233 (1) At the request of the board, Enterprise Florida, Inc.,
 234 shall facilitate the creation of the Florida Opportunity Fund
 235 Management Corporation as a private, not-for-profit corporation.
 236 Enterprise Florida, Inc., shall be the corporation's sole
 237 member. The corporation is not a public corporation or
 238 instrumentality of the state.

239 (2) The vice chair of Enterprise Florida, Inc., shall
 240 select from among its sitting board of directors a five-person
 241 appointment committee. The appointment committee shall select
 242 five initial members of a board of directors for the
 243 corporation. The persons elected to the initial board of
 244 directors by the appointment committee shall include persons who
 245 have expertise in the area of the selection and supervision of
 246 early stage investment managers or in the fiduciary management
 247 of investment funds and other areas of expertise as deemed
 248 appropriate by the appointment committee. After election of the
 249 initial board of directors, vacancies on the board of directors
 250 of the corporation shall be elected by the board of directors of
 251 Enterprise Florida, Inc., and shall serve terms as provided in
 252 the corporation's organizational documents. Members of the board

253 of directors shall be subject to any restrictions on conflicts
254 of interest specified in the organizational documents and shall
255 have no interest in any venture capital investment fund
256 allocation manager selected by the corporation pursuant to the
257 provisions of this part or in any investments made by the
258 Florida Opportunity Fund.

259 (3) The purposes of the corporation shall be to organize
260 the Florida Opportunity Fund, select an early stage venture
261 capital investment fund allocation manager, negotiate the terms
262 of a contract with the venture capital investment fund
263 allocation manager, execute the contract with the selected
264 venture capital investment fund allocation manager on behalf of
265 the Florida Opportunity Fund, manage the business affairs of the
266 Florida Opportunity Fund, such as accounting, audit, insurance,
267 and related requirements, receive investment returns from the
268 Florida Opportunity Fund, and reinvest the investment returns in
269 the Florida Opportunity Fund in order to provide additional
270 venture capital investments designed to result in a significant
271 potential to create new businesses and jobs in this state and
272 further diversify the economy of this state.

273 (4) Upon organization, the corporation shall conduct a
274 national solicitation for investment plan proposals from
275 qualified venture capital investment fund allocation managers
276 for the raising and investing of capital by the corporation. Any
277 proposed investment plan shall address the applicant's level of
278 experience, quality of management, investment philosophy and
279 process, provability of success in fundraising, prior investment
280 fund results, and plan for achieving the purposes of this part.

281 The corporation shall select only a venture capital investment
 282 fund allocation manager with demonstrated expertise in the
 283 management and fund allocation of investments in venture capital
 284 funds.

285 (5) The corporation may charge a management fee on assets
 286 under management in the Florida Opportunity Fund. The fee shall
 287 be in addition to any fee charged to the Florida Opportunity
 288 Fund by the venture capital investment fund allocation manager,
 289 but the fee shall be charged only to pay for reasonable and
 290 necessary costs of the corporation.

291 (6) Directors of the corporation shall be compensated for
 292 direct expenses and mileage pursuant to s. 112.061 but shall not
 293 receive a fee or salary for service as directors.

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

297 288.9627 Florida Opportunity Fund.--

298 (1) The Florida Opportunity Fund is created as a for-
 299 profit limited partnership or limited liability corporation that
 300 shall be organized and incorporated in this state by the Florida
 301 Opportunity Fund Management Corporation upon request by the
 302 board. The board, the corporation, or the fund may contract with
 303 Enterprise Florida, Inc., for provision of services necessary
 304 for continuing operations.

305 (2) The fund shall invest on a fund-of-funds basis and
 306 emphasize investment in seed capital and early stage venture
 307 capital funds focusing on opportunities in this state. While not
 308 precluded from investing in funds with a wider geographic spread

309 of portfolio investment, the fund shall require an investment
310 fund to have a record of investment in this state, be based in
311 this state, or have an office in this state staffed with a full-
312 time, professional venture investment executive to be eligible
313 for investment. The investments by the fund shall be on
314 partnership interests in private venture capital funds and not
315 in direct investments in individual businesses. The fund shall
316 invest in venture capital funds with experienced managers or
317 management teams with demonstrated expertise and a successful
318 history in the investment of early stage venture capital funds.
319 The fund may invest in newly created early stage venture capital
320 funds as long as the manager or management teams of the funds
321 have experience, expertise, and a successful history in the
322 investment of venture capital funds. The Florida Opportunity
323 Fund may not invest in a fund unless that fund has raised
324 capital from other sources in an amount greater than the
325 investment of the Florida Opportunity Fund such that the amount
326 invested in an entity in this state by the receiving venture
327 capital fund is at least twice the amount invested by the
328 corporation. The corporation and its partners or shareholders
329 may negotiate any and all terms and conditions for its
330 investments, including draw back of management fees and other
331 provisions that maximize investment in seed and early stage
332 companies based in this state.

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

336 (4) Investments by designated investors in the fund shall

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337 be deemed permissible investments for state-chartered banks and
338 for domestic insurance companies under applicable state law.

339 (5) If the fund is liquidated or has returned all capital
340 to designated investors in accordance with contractual
341 agreements, or if the guarantee capacity of the trust, at the
342 sole discretion of the board, is sufficient for additional
343 certificates, a new funding of the Florida Opportunity Fund may
344 be implemented for subsequent venture capital fund-of-funds
345 investments. If the board takes exception to an additional
346 funding, such additional funding may only be implemented without
347 the benefit of certificates from the board.

348 288.9628 Annual reporting.--The board shall issue an
349 annual report on the activities conducted by the Florida
350 Opportunity Fund and present the report to the Governor, the
351 President of the Senate, and the Speaker of the House of
352 Representatives. The annual report shall include a copy of the
353 independent audit of the fund and a valuation of the assets of
354 the fund and shall review the progress of the investment fund
355 allocation manager in implementing the fund's investment plan,
356 the benefits to the state resulting from this program, including
357 the number of businesses created and their associated industry,
358 and the number of jobs created. The annual report shall also
359 describe any sale of tax certificates and any sale of tax
360 certificates that is reasonably anticipated by the board to meet
361 its certificate obligations.

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

364 213.053 Confidentiality and information sharing.--

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

367 (z) Information relative to tax credits claimed under part
 368 X of chapter 288 to the board of trustees of the Florida Capital
 369 Investment Trust in the conduct of the trust's official
 370 business.

371
 372 Disclosure of information under this subsection shall be
 373 pursuant to a written agreement between the executive director
 374 and the agency. Such agencies, governmental or nongovernmental,
 375 shall be bound by the same requirements of confidentiality as
 376 the Department of Revenue. Breach of confidentiality is a
 377 misdemeanor of the first degree, punishable as provided by s.
 378 775.082 or s. 775.083.

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

381 220.02 Legislative intent.--

382 (8) It is the intent of the Legislature that credits
 383 against either the corporate income tax or the franchise tax be
 384 applied in the following order: those enumerated in s. 631.828,
 385 those enumerated in s. 220.191, those enumerated in s. 220.181,
 386 those enumerated in s. 220.183, those enumerated in s. 220.182,
 387 those enumerated in s. 220.1895, those enumerated in s. 221.02,
 388 those enumerated in s. 220.184, those enumerated in s. 220.186,
 389 those enumerated in s. 220.1845, those enumerated in s. 220.19,
 390 those enumerated in s. 220.185, those enumerated in s. 220.187,
 391 those enumerated in s. 220.192, ~~and~~ those enumerated in s.
 392 220.193, and those enumerated in part X of chapter 288.

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

395 624.509 Premium tax; rate and computation.--

396 (7) Credits and deductions against the tax imposed by this
397 section shall be taken in the following order: deductions for
398 assessments made pursuant to s. 440.51; credits for taxes paid
399 under ss. 175.101 and 185.08; credits for income taxes paid
400 under chapter 220, the emergency excise tax paid under chapter
401 221 and the credit allowed under subsection (5), as these
402 credits are limited by subsection (6); credits allowed under
403 part X of chapter 288; and all other available credits and
404 deductions.

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

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