

1 A bill to be entitled
2 An act relating to capital formation; creating s.
3 288.9621, F.S.; providing a short title; providing
4 definitions; requiring the Office of Tourism, Trade, and
5 Economic Development to account for certain moneys
6 separately within the Economic Development Trust Fund;
7 requiring the office to make certain funds available for
8 investment by the State Board of Administration; providing
9 for deducting certain fees and expenses; requiring the
10 State Board of Administration to liquidate investments and
11 advance proceeds to the Florida Opportunity Fund for
12 certain purposes; providing investment requirements for
13 the State Board of Administration; providing operational
14 requirements for the Florida Opportunity Fund; requiring
15 Enterprise Florida, Inc., to organize the Florida
16 Opportunity Fund as a wholly owned private, not-for-profit
17 limited liability Florida-based company; requiring
18 Enterprise Florida, Inc., to annually evaluate the company
19 and report to the Governor and Legislature; providing for
20 a board of directors for the company; providing for
21 appointment and terms of board members; providing
22 requirements and limitations for board members; requiring
23 board members to serve without compensation; providing for
24 reimbursement of expenses of board members and company
25 officers and employees; specifying powers of the company;
26 authorizing the company to indemnify board members;
27 specifying a fiduciary duty of board members and company

28 officers and employees; subjecting the company to public
29 meetings and public records requirements; specifying
30 duties of the company; requiring the company to select a
31 Florida Opportunity Fund allocation manager; specifying
32 duties and requirements of the allocation manager;
33 requiring the company to guarantee private capital
34 investments in the company; providing requirements for
35 such guarantees; specifying investment requirements for
36 the company; specifying investment limitations and
37 prohibitions for the company; requiring the company to
38 issue an annual report to the Governor and the
39 Legislature; specifying report requirements; providing for
40 an independent audit; providing for a transfer of
41 nonrecurring funds in the General Revenue Fund to the
42 Economic Development Trust Fund for subsequent investment
43 in the Florida Opportunity Fund; providing for retention
44 of balances in the trust fund each year; providing for
45 continuing appropriation and use of such moneys for a
46 certain time period; providing for return of certain funds
47 to the General Revenue Fund; requiring the company to
48 continue administering investments for certain purposes;
49 providing for continuous reinvestment of certain funds by
50 the company; providing for reversion of assets and funds
51 of the company to the General Revenue Fund under certain
52 circumstances; prohibiting Enterprise Florida, Inc., from
53 selling or transferring ownership of the company;
54 providing an effective date.

55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81

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

Section 1. Parts X and XI of chapter 288, Florida Statutes, are redesignated as parts XI and XII, respectively, and a new part X, consisting of section 288.9621, Florida Statutes, is added to that chapter to read:

288.9621 Capital formation.--

(1) SHORT TITLE.--This section may be cited as the "Florida Capital Formation Act."

(2) DEFINITIONS.--As used in this section, the term:

(a) "Business unit" means an employing unit, as defined in s. 443.036, which is registered with the Agency for Workforce Innovation for purposes of unemployment compensation or a subcategory or division of an employing unit that is accepted by the agency as a reporting unit.

(b) "Certificate" means a contract between a company and a designated investor evidencing the terms of a guarantee granted to a designated investor of an investment of funds in the company.

(c) "Company" means the Florida Opportunity Fund.

(d) "Designated investor" means a person, entity, or lender who is a party to a certificate.

(e) "Florida Opportunity Fund allocation manager" or "allocation manager" means one or more fund-of-funds investment managers hired by the Florida Opportunity Fund to raise capital and invest assets of the company in venture capital funds.

82 (f) "Florida-based" means operating in this state at a
83 permanent address and maintaining at least one business unit in
84 this state.

85 (g) "Office" means the Governor's Office of Tourism,
86 Trade, and Economic Development.

87 (3) FLORIDA CAPITAL INVESTMENT.--

88 (a) The office shall account for moneys transferred under
89 this section separately within the Economic Development Trust
90 Fund created in s. 288.095. The office shall make all such funds
91 available for investments by the State Board of Administration
92 or its designated investment manager as requested by the State
93 Board of Administration. The State Board of Administration or
94 its designated investment manager shall invest and reinvest the
95 moneys in accordance with s. 215.47 and subject to the terms of
96 any trust agreement between the State Board of Administration
97 and the office. Fees and expenses incurred by the State Board of
98 Administration for investing the moneys shall be deducted as
99 provided in a trust agreement. Upon request of the office, the
100 State Board of Administration shall liquidate investments and
101 advance the proceeds to the company as required to fund
102 certificate obligations pursuant to this section as well as the
103 company's reasonable and necessary operational expenses. The
104 exercise by the State Board of Administration or its designated
105 investment manager of powers conferred by this section is deemed
106 the performance of essential public purposes.

107 (b) The State Board of Administration or its designated
108 investment manager shall invest and reinvest any funds returned

109 | by the company in accordance with s. 215.47 and subject to the
110 | terms of any trust agreement between the State Board of
111 | Administration and the office. The company shall maintain
112 | necessary working capital moneys; obtain funding from the trust
113 | fund for certificate obligations, reasonable and necessary
114 | operating costs, or replenishment of working capital balances;
115 | and return for liquidity investment any moneys received in
116 | excess of the company's working capital needs.

117 | (4) FLORIDA OPPORTUNITY FUND; CREATION; POWERS AND
118 | DUTIES.--

119 | (a) Enterprise Florida, Inc., shall organize the Florida
120 | Opportunity Fund as a wholly owned, private, not-for-profit,
121 | limited liability Florida-based company. Enterprise Florida,
122 | Inc., shall be the company's sole owner. The Florida Opportunity
123 | Fund is not a public company or instrumentality of the state.
124 | Enterprise Florida, Inc., shall annually evaluate and report to
125 | the Governor, the President of the Senate, and the Speaker of
126 | the House of Representatives whether the company is being
127 | operated and state funds are being obligated in the best
128 | interest of the state.

129 | (b) The Florida Opportunity Fund shall be governed by a
130 | board of directors consisting of five members who have expertise
131 | in the area of the selection and supervision of early-stage
132 | investment managers or in the fiduciary management of investment
133 | funds or who have expertise in other areas considered
134 | appropriate by the appointment committee. The vice chair of
135 | Enterprise Florida, Inc., shall select from among its board of

136 directors a five-person appointment committee to appoint the
137 company's initial board of directors. After appointment of the
138 initial board of directors, vacancies on the board of directors
139 shall be filled by appointment by Enterprise Florida, Inc. The
140 board of directors shall be appointed to serve staggered 3-year
141 terms in accordance with the company's organizational documents.
142 Members of the board of directors and officers and employees of
143 the company are subject to any restrictions on conflicts of
144 interest specified in the organizational documents of the
145 company and may not have an interest in the Florida Opportunity
146 Fund allocation manager or in any investments made by the
147 company. Members of the board of directors shall serve without
148 compensation, but board members and officers and employees of
149 the company may be reimbursed for all reasonable, necessary, and
150 actual expenses, as determined by the board and approved by
151 Enterprise Florida, Inc.

152 (c) The company has all of the powers specified under
153 chapter 608 for limited liability companies and may indemnify
154 members of the board of directors to the broadest extent
155 permissible under the laws of this state. However, board members
156 and officers and employees of the company have a fiduciary duty
157 with respect to the management of company assets and selection
158 and oversight of the company's allocation manager and shall
159 discharge those duties in the best interest of the state.

160 (d) The company is subject to chapter 119, relating to
161 public meetings, and s. 286.011, relating to public records.

162 (e) The company shall select a Florida Opportunity Fund
163 allocation manager for the raising and investing of capital by
164 the company. The allocation manager shall demonstrate expertise
165 in the successful management and fund allocation of investments
166 in venture capital funds. In selecting an allocation manager,
167 the company shall consider, among other pertinent factors, each
168 candidate's level of experience, probability of success in
169 fundraising, quality of management performance, investment
170 philosophy and process, prior investment fund results, and
171 potential for achieving the purposes of this section.

172 (f) The company shall guarantee private capital
173 investments in the company pursuant to this section and shall
174 issue certificates to designated investors evidencing the terms
175 of a guarantee. The company shall invest on a fund-of-funds
176 basis in seed and early-state venture capital funds having
177 experienced managers or management teams with demonstrated
178 experience and expertise and a successful history in the
179 investment of venture capital funds, focusing on opportunities
180 in this state. The company may not make direct investments in
181 individual businesses. While not precluded from investing in
182 venture capital funds that have investments outside this state,
183 the company must require a venture capital fund to show a record
184 of successful investment in this state, to be based in this
185 state, or to have an office in this state staffed with a full-
186 time, professional venture investment executive in order to be
187 eligible for investment. The company may negotiate any terms and
188 conditions for its investments, including the clawback of

189 management fees and other provisions that maximize investment in
190 seed and early-state Florida-based companies. The company may
191 charge fees and earn a rate of return for its guarantees such
192 that the company can pay for its operational expenses and
193 reinvest in venture capital funds to create new businesses and
194 jobs in this state and further diversify the economy of this
195 state.

196 (g) The company may not invest in a venture capital fund
197 unless that venture capital fund has raised capital from other
198 sources in an amount at least equal to the investment of the
199 company, such that the total invested in Florida-based companies
200 by the receiving venture capital fund totals at least twice the
201 investment of the company. Investments must be made in Florida-
202 based companies, including, without limitation, enterprises in
203 life sciences, information technology, advanced manufacturing
204 processes, aviation and aerospace, and homeland security and
205 defense, as well as other strategic technologies.

206 (5) ANNUAL REPORT.--The company shall submit an annual
207 report of its activities to the Governor, the President of the
208 Senate, and the Speaker of the House of Representatives within 3
209 months after the end of the company's fiscal year. The annual
210 report must include a copy of an independent audit of the
211 company and a valuation of the assets of the company, a review
212 of the progress of the Florida Opportunity Fund allocation
213 manager in implementing the allocation manager's investment
214 plan, the rate of return, and the benefits to the state
215 resulting from this program, including the amount of capital

216 raised and deployed and the amount of investment. The annual
217 report must also include a list of venture capital funds in
218 which investments were made and the number of Florida-based
219 businesses created and their associated industry.

220 Section 2. (1) For the 2006-2007 fiscal year, the sum of
221 \$300,000 is appropriated from the General Revenue Fund to the
222 Economic Development Trust Fund in the Office of Tourism, Trade,
223 and Economic Development to be used for startup activities
224 necessary to implement s. 288.9621, Florida Statutes, including
225 creation of the Florida Opportunity Fund and the solicitation
226 and related due diligence required for contracting the services
227 of the Florida Opportunity Fund allocation manager.

228 (2) For the 2006-2007 fiscal year, the sum of \$15 million
229 is appropriated from nonrecurring moneys in the General Revenue
230 Fund to the Economic Development Trust Fund in the Office of
231 Tourism, Trade, and Economic Development for subsequent
232 investment in the Florida Opportunity Fund pursuant to s.
233 288.9621, Florida Statutes. Notwithstanding s. 216.301, Florida
234 Statutes, any balance remaining in the trust fund at the end of
235 any fiscal year shall remain in the trust fund and shall be
236 available for carrying out the purposes of s. 288.9621, Florida
237 Statutes. The transferred amount and any earnings on such amount
238 are appropriated and may be used for the purposes of s.
239 288.9621, Florida Statutes, until July 1, 2020, at which time
240 the sum of \$15 million or the balance of funds in the trust
241 fund, whichever is less, shall be returned to the General
242 Revenue Fund and any obligated funds for outstanding

243 | certificates shall remain until these certificates expire or are
244 | terminated. The Florida Opportunity Fund shall continue to
245 | administer its investments after July 1, 2020, until such
246 | investments are liquidated. Proceeds from liquidation of
247 | investments and any proceeds in excess of \$15 million may be
248 | retained for continuous reinvestment by the Florida Opportunity
249 | Fund, if an amount of not less than \$15 million has been
250 | returned to the General Revenue Fund on or before July 1, 2020.
251 | If at any time Enterprise Florida, Inc., dissolves the Florida
252 | Opportunity Fund, all assets of the Florida Opportunity Fund and
253 | any funds remaining for the purpose of this section shall revert
254 | to the General Revenue Fund. Enterprise Florida, Inc., may not
255 | sell or transfer ownership of the company.

256 | Section 3. This act shall take effect July 1, 2006.