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# **Committee on Economic Development**

**Thursday, February 8, 2007  
9:00 a.m – 10:00 a.m.  
Reed Hall**

**Marco Rubio  
Speaker**

**Rep. Don Davis  
Chair**

**COMMITTEE ON ECONOMIC DEVELOPMENT**

**Thursday, February 8, 2007**

**9:00 am – 10:00 am**

**Reed Hall**

- I. Call to Order**
- II. Remarks by Chairman**
- III. Consideration of the following bills:**

- HB 83 – Relating to Capital Formation Representative Grant

*3 AMENDMENTS*

- HB 131 – Relating to Public Records Representative Grant

- IV. ADJOURN**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 83 Capital Formation

SPONSOR(S): Grant

TIED BILLS: HB 131 IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	_____	Brown <i>RB</i>	Croom <i>sc</i>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill creates the Florida Capital Formation Act (Act), which is designed to increase the amount of venture capital investment in Florida.

The bill creates the following:

- **Florida Capital Investment Trust**, a state beneficiary public trust to hold contingent tax credits as a guarantee for investments made under the Act. Tax credits may only reduce tax liabilities for sales and use tax, corporate income tax, insurance premium tax and tax on wet marine and transportation insurance.
- **The Florida Opportunity Fund Management Corporation**, a non-profit corporation, to organize the Florida Opportunity Fund, select an early stage venture capital investment fund allocation manager and manage the business affairs of the Florida Opportunity Fund.
- **The Florida Opportunity Fund**, to invest on a fund-of-funds basis emphasizing investment in seed capital and early stage venture capital funds focusing on opportunities in Florida.

The bill appropriates \$750,000 for fiscal year 2007-2008 from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities. The bill also reserves \$75 million in tax credits as a guarantee of investments made under the Act.

This bill provides an effective date of July 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** - The bill creates the Florida Capital Investment Trust, the Florida Opportunity Fund Management Corporation, and the Florida Opportunity Fund.

The bill appropriates \$750,000 for the fiscal year 2007-2008, from the General Revenue Fund to the Florida Capital Investment Trust to be used for start-up activities necessary to implement the provisions of this act.

#### B. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

##### Venture Capital Industry Overview

Venture capital is money provided by professionals who invest alongside management in young, rapidly growing companies that have the potential to develop into significant economic contributors. Venture capital is an important source of equity for startup companies.<sup>1</sup>

Venture capitalists generally:

- Finance new and rapidly growing companies;
- Purchase equity securities;
- Assist in the development of new products or services;
- Add value to the company through active participation;
- Take higher risks with the expectation of higher rewards; and
- Have a long-term orientation

Venture capitalists actively work with the company's management by contributing their experience and business savvy gained from helping other companies with similar growth challenges. Venture capitalists mitigate the risk of venture investing by developing a portfolio of young companies in a single venture fund.

A venture capitalist may invest before there is a real product or company organized (so called "seed investing"), or may provide capital to a company in its first or second stages of development known as "early stage investing."

Some organizations may include government affiliated investment programs that help startup companies either through state, local or federal programs. One common vehicle is the Small Business Investment Company or SBIC program administered by the Small Business Administration, in which a venture capital firm may augment its own funds with federal funds and leverage its investment in qualified companies.

##### Term of Investment

Depending on the investment focus and strategy of the venture firm, it will seek to exit the investment in the portfolio company within three to five years of the initial investment. While the initial public offering is considered the most heralded type of exit for the venture capitalist and owners of the company, most successful exits of venture investments occur through a merger or acquisition of the company by either the original founders or another company.

<sup>1</sup> Material in this section is taken from the National Venture Capital Association website, available at <http://www.nvca.org/def.html>. (Visited January 31, 2007.)

## Management Fees

As an investment manager, the general partner will typically charge a management fee to cover the costs of managing the committed capital.

## **Venture Capital in Florida:**

Enterprise Florida, Inc. (EFI) reports total venture capital spending in Florida was more than \$555 million for 114 deals in 2003 and 2004. According to the EFI website, there are 30 venture capital firms headquartered in Florida.<sup>2</sup> However, no large early-stage venture capital firms are located in Florida.<sup>3</sup>

EFI also reports that since the late 1990s, venture capital investment in Florida has fallen sharply both in absolute dollar terms and as a share of the U.S. total. Despite being the 4<sup>th</sup> most populous state, Florida ranks 13<sup>th</sup> in the U.S. in terms of venture capital investment in 2004. In 2004, Florida accounted for only \$300 million, or 1.42% of the total venture capital funding in the U.S. A 2007 Development Report Card for the States published by CFED, a national nonprofit focused around expanding economic opportunity, reports that Florida saw a 110 percent loss in venture capital investment dollars between 2000 and 2005; ranking the state 27<sup>th</sup> in the nation for venture capital investment when measuring percent change over the five year period.<sup>4</sup>

Currently, Florida offers venture capital through two programs: the Cypress Equity Fund and the Certified Capital Company Act (CAPCO).

## The Cypress Equity Fund

In 1995, the Enterprise Florida Capital Partnership, Inc.,<sup>5</sup> created the Cypress Equity Fund as part of a strategy to help improve Florida businesses' access to venture capital.<sup>6</sup> The Cypress Equity Fund's purpose is to facilitate initial venture capital investments by Florida private financial institutions and institutional investors, and provide a means to encourage national venture capital managers to consider investment opportunities in Florida.<sup>7</sup> This program invests both public and private funds into privately managed venture capital funds.

The Cypress Equity Fund was designed as a "fund of funds" to invest in national private venture capital funds that, in turn, would invest in companies with high growth potential. However, investments may be made in venture capital funds located anywhere in the country and therefore are not required to target in-state companies.<sup>8</sup>

The Cypress Equity Fund obtained \$35.5 million in commitments from five private financial institutions (\$20.5 million) and one public institutional investor, the Florida State Board of Administration (SBA) (\$15 million). The Cypress Equity Fund Management Corporation, an entity established by the Capital Development Board, is responsible for overall management of the fund. The corporation, in turn, contracts with a private equity manager to invest fund assets with national venture capital firms.

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<sup>2</sup> Information from Enterprise Florida's website listing of Florida-based venture capital firms located at: <http://www.eflorida.com/businessadvantages/1/venturecapital.asp?level1=24&level2=152>. (Last visited January 31, 2007.)

<sup>3</sup> See generally *In Full Bloom*, Entrepreneur, July 2006, available online at <http://www.entrepreneur.com/magazine/entrepreneur/2006/july/159800.html>. The article provides Entrepreneur magazine's list of the top 100 early-stage venture capital firms in the nation.

<sup>4</sup> See 2007 Overview Development Report Card for the States, available online at <http://www.cfed.org/go/drc>.

<sup>5</sup> In 1996, the Legislature replaced Enterprise Florida Capital Partnership, Inc., with the Capital Development Board.

<sup>6</sup> Office of Program Policy Analysis and Government Accountability (OPPAGA) *Review of the Enterprise Florida, Inc. Capital Development Board's Cypress Equity Fund*, Report No. 98-33.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2.

In its report on the Cypress Equity Fund, OPPAGA concluded that the fund has not contributed to the achievement of its more important goal of improving Florida businesses' access to venture capital because its investments were not targeted at in-state companies.<sup>9</sup>

EFI staff report that the Cypress Equity Fund's net compound annual internal rate of return, since inception, is 22.9 percent.

### Certified Capital Companies

The 1998 Florida Legislature enacted the Certified Capital Company Act.<sup>10</sup> This program encourages private investment in venture capital by providing direct tax credits for investment in qualified businesses. The stated purpose of this act is to stimulate a substantial increase in venture capital investments in Florida by providing an incentive for insurance companies to invest in state-certified capital companies (CAPCOs) which, in turn, will invest in new or expanding businesses.<sup>11</sup> Eligible insurance companies are granted insurance premium tax credits in amounts equal to investments in CAPCOs. The increase in investment capital is intended to contribute to employment growth, create high-paying jobs, and expand or diversify Florida's economy.

To date, the insurance industry has invested \$150 million in three state-certified CAPCOs. The insurance companies may claim insurance premium tax credits totaling \$15 million each year for ten years.

According to information in the most recent annual OPPAGA report on the CAPCO program, there were 47 qualified businesses in which the CAPCOs had invested as of December 31, 2004.<sup>12</sup> Examples of industries represented by the qualified businesses are electronic imaging, medical technology, boat manufacturing, credit card payment processing, vehicle fleet management systems, an internet portal for fishermen, and a cookie manufacturer. The most recent investments include businesses predominantly in the child daycare, landscaping, and restaurant industries. The total number of full-time jobs in qualified businesses at the time of the initial investments in the 47 companies was 1,218. The total number of full-time jobs in all qualified businesses as of December 31, 2004 was 1,009.

While as many as nine states have created CAPCOs, this type of program is increasingly viewed by researchers as the more "problematic" of the Venture Capital Funds (VCF) programs, in terms of

"...its high cost, poor design and target-inefficiency. Unlike any other VCF program, the CAPCO program provides a 100% premium tax credit to insurance company investors. In effect, the government underwrites the entire investment risk."<sup>13</sup>

### Biotechnology Investment

Although not through traditional venture capital promotion, Florida offered \$300 million to attract the Scripps Research Institute as a means to catalyze a biotech cluster in South Florida and to eventually attract a venture capital presence in Florida.<sup>14</sup> The National Association of Seed and Venture Funds noted this unique program under the category of venture capital "culture bending initiatives." Although it

<sup>9</sup> Id.

<sup>10</sup> Section 288.99, F.S.

<sup>11</sup> Section 288.99(2), F.S.

<sup>12</sup> Section 288.99(12), F.S., requires OTTED to report annually on the performance of the CAPCO program. The following information was compiled from the latest annual report issued in 2004. Executive Office of the Governor, Office of Tourism, Trade & Economic Development, *Certified Capital Company Act Annual Report on Performance*, June 2005.

<sup>13</sup> Statement of Professor Daniel Sandler, University of Western Ontario, London; senior research fellow of the Taxation Law and Policy Research Institute, Melbourne; associated with Minden Gross Grafstein & Greenstein LLP, Toronto. See Daniel Sandler, *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States* (Toronto: Canadian Tax Foundation, 2004).

<sup>14</sup> For a background on the state's offer to the Scripps Research Institute, see Cynthia Barnett, *Biotechnology: Rolling the Dice*, Florida Trend, January 2004.

is too early to determine the long-term venture capital impacts of the Scripps project, Florida has successfully recruited at least three other biotechnology businesses in the last year (Torrey Pines, SRI, and the Burnham Institute).

### Other States and Lessons Learned

There are approximately eight different state-sponsored venture capital models across the country.<sup>15</sup> Michigan, New Mexico, Oklahoma, Arkansas, Maine, Iowa, Hawaii, Indiana, Illinois, Wyoming, South Carolina, Oregon, and many other states currently operate a “fund-of-fund” model for venture capital investment.<sup>16</sup> Other popular models include direct investments in business, or providing direct tax credits for investment in either private business or venture funds. The National Association of Seed and Venture Funds suggests the following guidelines for a successful program.<sup>17</sup> The program should:

- Be private-sector driven with private-sector management. Programs with government as a direct business investor have a poor track record.
- Have a long-term perspective. States should not expect measurable results for a minimum of five years.
- Be created with the state as a valuable financial partner, with an opportunity for a financial return that is proportionate with the risk taken.
- Build on existing momentum.
- Expect the investment manager to make money.
- Have achievable outcomes with measures set from the beginning to keep track of program results.
- Be governed by simple and not overly-complex legislation.

### **EFFECT OF PROPOSED CHANGES:**

The bill creates the Florida Capital Formation Act (Act), and provides legislative findings and definitions related to this Act.

#### **Florida Capital Investment Trust**

HB 83 creates the Florida Capital Investment Trust as a state beneficiary public trust to hold contingent tax credits as a guarantee for investments made under the Act.<sup>18</sup> Tax credits may only reduce tax liabilities for sales and use tax, corporate income tax, insurance premium tax and tax on wet marine and transportation insurance. The tax credits may be used from July 1, 2012 to July 1, 2037.

The Florida Capital Investment Trust will be governed by a board of trustees. The bill details the appointment of trustees and duties of the board in accordance with s. 20.052, F.S. Pursuant to that section, the board will serve without compensation, but may receive compensation or reimbursement for board-related travel. The board is charged with creating a system of documentation to verify tax credit claims.

#### **The Florida Opportunity Fund Management Corporation**

The bill directs EFI to establish the Florida Opportunity Fund Management Corporation as a non-profit corporation to organize the Florida Opportunity Fund, select an early stage venture capital investment fund allocation manager, and manage the business affairs of the Florida Opportunity Fund.

<sup>15</sup> Strommer, Susan P. and George Lipper, “State and Venture Capital – State Experiences and Options”, National Association of Seed and Venture Funds, May 2006, available online at <http://www.nasvf.org>.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Contingent tax credits are designed to limit the state’s financial investment in the program. The credits are used to guarantee a rate of return to a private investor. As long as the investment performs at the minimum rate of return guaranteed, no credits need to be sold. Otherwise, tax credits are sold as a revenue source to repay the investor.



## The Florida Opportunity Fund

HB 83 creates the Florida Opportunity Fund to invest on a “fund-of-funds” model emphasizing investment in seed capital and early stage venture capital funds focusing on opportunities in Florida. The Opportunity Fund is “not precluded from investing in funds with a wider geographic spread of portfolio investment,” but it must require an investment fund to have a record of successful investment in Florida, be based in Florida, or have an office in Florida. The Opportunity Fund has three additional criteria:

- Investments may not be direct investments with individual businesses, but must consist of partnership interests in private venture capital funds (the “fund of funds” approach);
- Investments must have received capital from other sources “in an amount greater than the investment of the Florida Opportunity Fund, such that the amount invested in an entity in this state by the receiving venture capital fund is at least twice the amount invested by the [Opportunity Fund].”
- The corporation may negotiate contract provisions with receiving venture capital funds regarding the “draw back” of management fees, as well as other provisions “to maximize investment in seed and early stage companies” in Florida.

## Annual Report

The board of the trustees of the Florida Capital Investment Trust is required to provide an annual report on its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include the following:

- A copy of the independent audit of the Opportunity Fund;
- A valuation of the assets of the Opportunity Fund;
- A review of the progress of the manager in implementing the Opportunity Fund’s investment plan;
- The benefits of the state resulting from this program;
- A list of venture capital funds that the Opportunity Fund has invested in;
- The number of businesses created and their associated industry; and
- The number of jobs created.

The effective date of the bill is July 1, 2007.

### C. SECTION DIRECTORY:

**Section 1.** – Creates Part X of ch. 288, including ss. 288.9621-288.9628, F.S., relating to the Capital Formation Act.

**Section 2.** – Amends s. 213.053, F.S., to authorize the Department of Revenue to provide tax credit information to the Board of Trustees of the Florida Capital Investment Trust.

**Section 3.** – Amends s. 220.02, F.S., to include tax credits created in the Capital Formations Act in a list of available tax credits.

**Section 4.** – Amends s. 624.509, F.S., include tax credits created in the Capital Formations Act in a list of credits and deductions against the premium tax.

**Section 5.** – Provides an appropriation.

**Section 6.** – Provides an effective date of July 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill authorizes the transfer of up to \$20 million per year of contingent tax credits as a guarantee for investments made under this Act. The total value of tax credits that may be claimed is \$75 million. However, the tax credits are exercisable from July 1, 2012 to July 1, 2037. After July 1, 2012, state revenues may be reduced by up to \$20 million per year if transferees claim such credits.

The bill appropriates \$750,000 for fiscal year 2007-2008 from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities as necessary to implement the provisions of this Act.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

### D. FISCAL COMMENTS:

According to the Department of Revenue, funding would be required to develop, program, and test a registration tracking system, and to fund one accountant to verify, monitor, and track the tax credits to ensure proper application. The Department estimates a one-time need of \$54,726 to establish a tracking system and a recurring need of \$46,023 for 1 FTE and related salaries and expense. The Department may be able to absorb these costs with current resources.

The Office of Tourism, Trade and Economic Development (OTTED) reports funding would be required to implement this legislation. OTTED estimates a one-time need of \$25,000 for contractual and startup activities, and a recurring need of \$210,000 for staffing needs at both Enterprise Florida, Inc. and OTTED to monitor the program. It appears OTTED may be able to absorb these costs with current resources.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes the Department of Revenue, in conjunction with the board of trustees of the Florida Capital Investment Trust, to adopt rules and establish guidelines to specify the logistics of the tax credit documentation.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

This bill increases the amount of money available to finance new businesses in the state. Scripps and other biotech firms will generate startups and spin-offs. In order to keep them and their high-value jobs in state, we will need more venture capital than currently exists here. Venture capitalists generally choose to invest within 75 miles of their home base, and new businesses follow the financing. By establishing incentives for venture capitalists, we can keep the new high-tech, high-wage jobs in Florida.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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

HB 83

2007

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

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

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

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.--



HB 83

2007

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.

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.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 01 (for drafter's use only)

Bill No. **HB 83**

COUNCIL/COMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                              \_\_\_ (Y/N)  
OTHER                                    \_\_\_\_\_

1 Council/Committee hearing bill: Committee on Economic  
2 Development

3 Representative(s) Grant offered the following:

4  
5           **Amendment**

6           Remove line(s) 324-328 and insert:

7  
8           capital from other sources in an amount at least equal to the  
9           investment of the Florida Opportunity Fund, such that the total  
10          invested in Florida-based companies by the receiving venture  
11          capital fund totals at least twice the investment of the Florida  
12          Opportunity Fund. Investments must be made in Florida-based  
13          companies, including, without limitation, enterprises in life  
14          sciences, information technology, advanced manufacturing  
15          processes, aviation and aerospace, and homeland security and  
16          defense, as well as other strategic technologies. The  
17          corporation and its partners and shareholders

18  
19  
000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 02 (for drafter's use only)

Bill No. **HB 83**

COUNCIL/COMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                              \_\_\_ (Y/N)  
OTHER                                    \_\_\_\_\_

1 Council/Committee hearing bill: Committee on Economic  
2 Development

3 Representative(s) Grant offered the following:

4  
5       **Amendment (with title amendment)**

6       Remove line(s) 410 and insert:

7  
8       Section 6. Prior to the 2012 Regular Session of the  
9 Legislature, the Office of Program Policy Analysis and  
10 Government Accountability shall conduct an interim review and  
11 evaluation of the effectiveness and viability of the Capital  
12 Formation Act. The office shall specifically evaluate the total  
13 capital investment in the state, private-sector investment,  
14 rate-of-return, creation of new business and jobs, debt  
15 incurred, and industries impacted. The office shall also  
16 recommend outcome measures for further evaluation of the  
17 program. The Office shall submit a report of its findings and  
18 recommendations to the Governor, the President of the Senate,  
19 and the Speaker of the House of Representatives no later than  
20 January 1, 2012. In 2036 the office shall conduct a final review  
21 in accordance with this section and shall make a final written

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 02 (for drafter's use only)

22 report to the Governor, the President of the Senate, and the  
23 Speaker of the House of Representatives no later than January 1,  
24 2037.

25 Section 7. This act shall take effect July 1, 2007.  
26  
27

28 ===== T I T L E A M E N D M E N T =====

29 Remove line(s) 46 and insert:  
30 directing the Office of Program Policy Analysis and Government  
31 Accountability to conduct a study; providing an effective date.  
32

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 03 (for drafter's use only)

Bill No. **HB 83**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Council/Committee hearing bill: Committee on Economic  
2 Development  
3 Representative(s) Grant offered the following:

**Amendment (with title amendment)**

Remove line(s) 178-179 and insert:

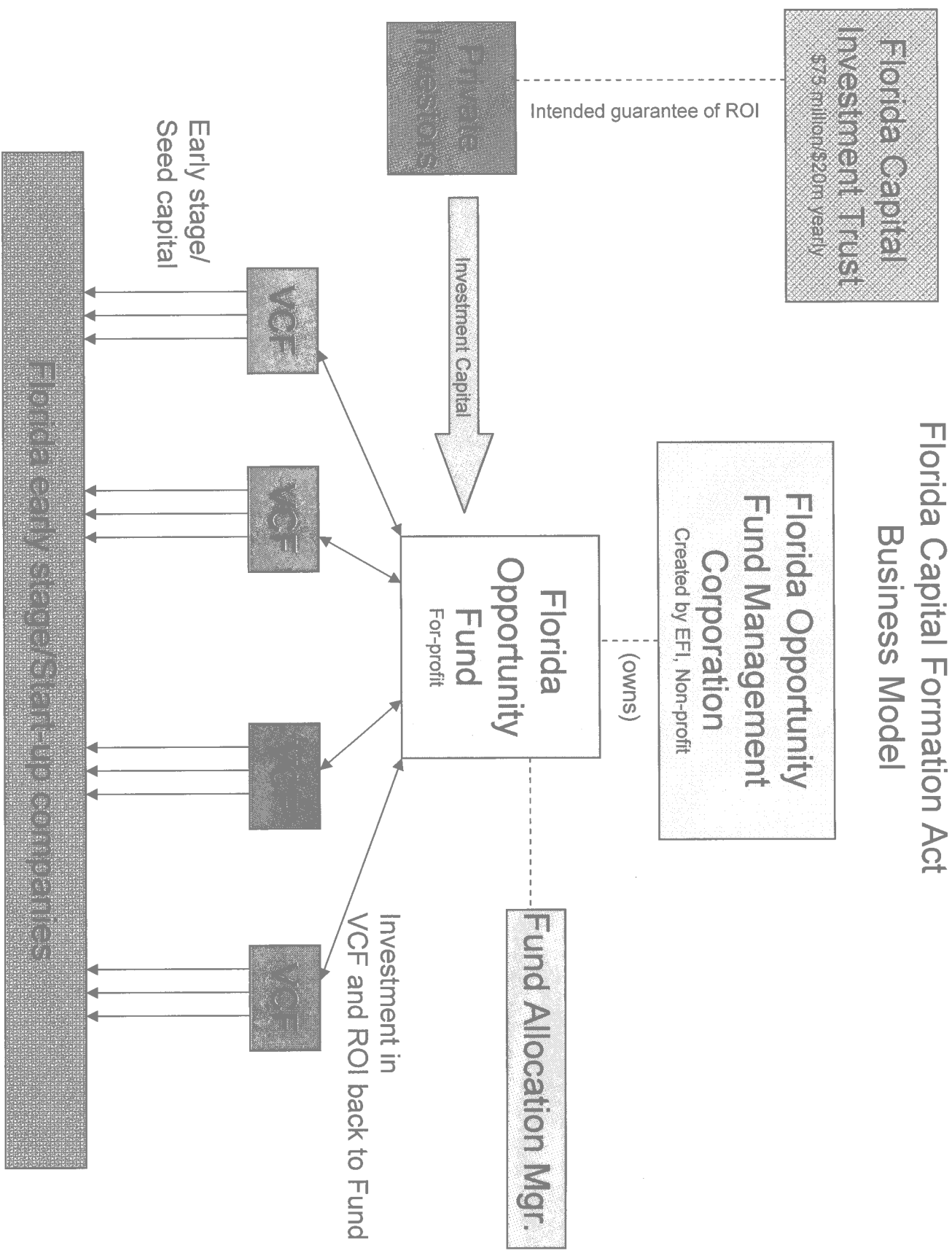
this part, provided no such tax credit shall be transferred or  
exercisable before July 1, 2012, or after June 30, 2037.

===== T I T L E A M E N D M E N T =====

Remove line(s) and insert:

000000

# Florida Capital Formation Act Business Model



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 131


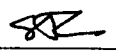
Public Records

SPONSOR(S): Grant

TIED BILLS: HB 83

IDEN./SIM. BILLS:

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Expansion &amp; Infrastructure Council</u>	_____	Brown 	Croom 
2) <u>Policy &amp; Budget Council</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

---

**SUMMARY ANALYSIS**

The bill creates a public records exemption for certain information relating to venture capital investment in Florida businesses under the Florida Capital Formation Act created by HB 83. Specifically, the bill makes confidential and exempt for 10 years proprietary confidential business information held by the Florida Opportunity Fund or the Florida Opportunity Fund Management Corporation regarding alternative investments. It defines "proprietary confidential business information" and specifically excludes certain information from this definition.

The bill authorizes access to inspect or copy a particular public record if requested, and if a proprietor fails to verify certain required information through a written declaration. In addition, any person may petition the appropriate court in Orange County, Florida, for the disclosure of any record made confidential and exempt by the bill.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill does not grant rulemaking authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

**The bill requires a two-thirds vote of the members present and voting for passage.**



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** - The bill decreases access to public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### Florida Capital Formation Act

HB 83 creates the Florida Capital Formation Act, which is intended to enhance venture capital investment in Florida businesses. The bill creates:

- The Florida Opportunity Fund, which will invest on a “fund-of-funds” basis in venture capital firms that invest in Florida startup businesses. The Fund will not make direct investments in Florida businesses;
- The Florida Opportunity Fund Management Corporation, a subsidiary non-profit corporation of Enterprise Florida, Inc., which will manage the Florida Opportunity Fund; and
- The Florida Capital Investment Trust, which will hold \$75 million in sales, corporate income and insurance premium contingent tax credits to secure private investments in the Florida Opportunity Fund.

The Management Corporation is charged with:

- Selecting an early stage venture capital investment fund allocation manager;
- Negotiating the terms of a contract with the venture capital investment fund allocation manager;
- Executing the contract with the selected venture capital investment fund allocation manager on behalf of the Florida Opportunity Fund;
- Managing the business affairs of the Florida Opportunity Fund such as accounting, audit, insurance, and related requirements;
- Receiving investment returns from the Florida Opportunity Fund; and
- Reinvesting the investment returns in the Florida Opportunity Fund in order to provide additional venture capital investments in Florida.

##### Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state’s public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed by general law.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

##### Open Government Sunset Review Act

Section 119.15, F.S., the “Open Government Sunset Review Act,” sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the

Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

Public Records Exemption for Alternative Investments: Definitions

The bill provides definitions for a new public records exemption for the Florida Opportunity Fund and Florida Opportunity Management Corporation.

The bill defines an alternative investment as "an investment...in a private equity fund, venture fund, or angel fund or a direct investment in a portfolio company through a distribution of securities to its partners or shareholders by an alternative investment vehicle."

The bill also defines "proprietary confidential business information" as information which has been designated by a proprietor as meeting all three of the following criteria:

Proprietary Confidential Business Information Criteria	Elements of the Criteria
1. <i>Owned or controlled by a proprietor.</i>	A proprietor is defined as "an alternative investment vehicle, a portfolio company in which the alternative investment vehicle is invested, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, which controls or owns information provided to the Florida Opportunity Fund of the Florida Opportunity Fund Management Corporation."
2. <i>Intended to be and is treated by the proprietor as private.</i>	The disclosure of this information must harm the business operations of the proprietor. The information must not have been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process or pursuant to law or an order of a court or administrative body.
3. <i>Relates to any of the designated areas.</i>	<p>These designated areas include:</p> <ul style="list-style-type: none"> <li>- Trade secrets as defined in the Uniform Trade Secrets Act.</li> <li>- Information provided to the Florida Opportunity Fund or the Florida Opportunity Fund Management Corporation regarding a prospective investment in a private equity fund, venture fund, angel fund, or portfolio company which is proprietary to the provider of the information.</li> </ul>

Proprietary Confidential Business Information Criteria	Elements of the Criteria
	<ul style="list-style-type: none"> <li>- Financial statements and auditor reports of an alternative investment vehicle.</li> <li>- Meeting materials of an alternative investment vehicle relating to financial, operating, or marketing information of the alternative investment vehicle.</li> <li>- Information regarding the portfolio positions in which the alternative investment vehicles invest.</li> <li>- Capital call and distribution notices to investors of an alternative investment vehicle.</li> <li>- Alternative investment agreements and related records.</li> <li>- Information concerning investors, other than the Florida Opportunity Fund, in an alternative investment vehicle.</li> </ul>

The bill also defines what information does not meet the definition of proprietary confidential business information and which would continue to be available as a public record:

1. The name, address, and vintage year of an alternative investment vehicle and the identity of the principals involved in the management of the alternative investment vehicle.
2. The dollar amount of the commitment made by the Florida Opportunity Fund to each alternative investment vehicle since inception.
3. The dollar amount and date of cash contributions made by the Florida Opportunity Fund to each alternative investment vehicle since inception.
4. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund from each alternative investment vehicle.
5. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund plus the remaining value of alternative-vehicle assets that are attributable to the Florida Opportunity Fund's investment in each alternative investment vehicle.
6. The net internal rate of return of each alternative investment vehicle since inception.
7. The investment multiple of each alternative investment vehicle since inception.
8. The dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the Florida Opportunity Fund to each alternative investment vehicle.
9. The dollar amount of cash profit received by the Florida Opportunity Fund from each alternative investment vehicle on a fiscal-year-end basis.

The bill also provides definitions for "alternative investment vehicle," "portfolio company," and "portfolio positions."

### Public Records Exemption for Alternative Investments: Operation

The bill makes proprietary confidential business information held by the Florida Opportunity Fund or the Florida Opportunity Fund Management Corporation confidential and exempt<sup>1</sup> from public records requirements for 10 years after the termination of the alternative investment. The bill, however, permits access to inspect or copy a particular record if a proprietor, within a reasonable period after the public records request is received by the Florida Opportunity Fund or the Florida Opportunity Fund Management Corporation, fails to verify through a written declaration<sup>2</sup> that a particular record contains the following information:

- The identity of the proprietary confidential business information and its specific location in the requested record;
- If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in the Uniform Trade Secrets Act;<sup>3</sup>
- That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and
- That the disclosure of such information to the public would harm the business operations of the proprietor.

### Public Records Exemption for Alternative Investments: Petition for Public Release

Any person may petition a court of competent jurisdiction in Orange County, Florida for an order for the public release of those portions of any record made confidential and exempt by operation of this bill. The petition must be served, along with any other initial pleadings, on the Florida Opportunity Fund or the Florida Opportunity Management Corporation and on the proprietor of the information sought to be released, if the proprietor can be determined through diligent inquiry.

The court must make three findings in any order for the release of a public record:

- That the record or portion thereof is not a trade secret as defined in the Uniform Trade Secrets Act;
- That a compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and
- That the release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, the Florida Opportunity Fund, the Florida Opportunity Fund Management Corporation, or any trust fund, the assets of which are invested by the Florida Opportunity Fund.

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<sup>1</sup> There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

<sup>2</sup> Pursuant to s. 92.525, F.S., verification may be accomplished under oath or affirmation taken or administered before an officer authorized to administer oaths, or by the signing of a written declaration. A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration must be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

<sup>3</sup> S. 688.002, F. S.

Public Records Exemption for Alternative Investments: Other

The bill provides for future review and repeal of the exemption on October 2, 2012, provides a public necessity statement, and provides an effective date contingent on the passage of HB 83 or similar legislation.

C. SECTION DIRECTORY:

**Section 1** - Creates s. 288.96275, F.S., creating a public records exemption for the Florida Opportunity Fund.

**Section 2** - Provides a public necessity statement.

**Section 3** - Provides a contingent effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

**[See Fiscal Comments]**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

**[See Fiscal Comments]**

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a fiscal impact on Orange County because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, Orange County could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c), Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c), Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

This bill increases the amount of money available to finance new businesses in the state. Scripps and other biotech firms will generate startups and spin-offs. In order to keep them and their high-value jobs in state, we will need more venture capital than currently exists here. Venture capitalists generally choose to invest within 75 miles of their home base, and new businesses follow the financing. By establishing incentives for venture capitalists, we can keep the new high-tech, high-wage jobs in Florida.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**



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A bill to be entitled  
An act relating to public records; creating s. 288.96275,  
F.S.; providing definitions; defining "proprietary  
confidential business information" and specifying  
information that does not constitute proprietary  
confidential business information; creating an exemption  
from public records requirements for proprietary  
confidential business information held by the Florida  
Opportunity Fund or the Florida Opportunity Fund  
Management Corporation regarding alternative investments;  
providing for limited duration of the exemption;  
authorizing the inspection and copying of confidential and  
exempt records if the proprietor of the information fails  
to verify that a record contains certain information  
within a specified period of time; authorizing a court to  
order the release of confidential and exempt records upon  
making certain findings; providing for future review and  
repeal; providing a statement of public necessity;  
providing a contingent effective date.

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

Section 1. Section 288.96275, Florida Statutes, is created  
to read:

288.96275 Trade secret information; identification and  
performance information; public records exemption.--

(1) As used in this section, the term:

(a) "Alternative investment" means an investment by the



29 Florida Opportunity Fund in a private equity fund, venture  
 30 capital fund, or angel fund or a direct investment in a  
 31 portfolio company through a distribution of securities to its  
 32 partners or shareholders by an alternative investment vehicle.

33 (b) "Alternative investment vehicle" means the limited  
 34 partnership, limited liability company, or similar legal  
 35 structure through which the Florida Opportunity Fund invests in  
 36 a portfolio company.

37 (c) "Florida Opportunity Fund" means the Florida  
 38 Opportunity Fund authorized in s. 288.9627.

39 (d) "Florida Opportunity Fund Management Corporation"  
 40 means the Florida Opportunity Fund Management Corporation  
 41 authorized in s. 288.9626.

42 (e) "Portfolio company" means a corporation or other  
 43 issuer, any of whose securities are owned by an alternative  
 44 investment vehicle or the Florida Opportunity Fund and any  
 45 subsidiary of such corporation or other issuer.

46 (f) "Portfolio positions" means individual investments in  
 47 portfolio companies that are made by the alternative investment  
 48 vehicles, including information or specific investment terms  
 49 associated with any portfolio company investment.

50 (g) "Proprietor" means an alternative investment vehicle,  
 51 a portfolio company in which the alternative investment vehicle  
 52 is invested, or an outside consultant, including the respective  
 53 authorized officers, employees, agents, or successors in  
 54 interest, that controls or owns information provided to the  
 55 Florida Opportunity Fund.

56 (h)1. "Proprietary confidential business information"

57 | means information that has been designated by the proprietor  
 58 | when provided to the Florida Opportunity Fund or the Florida  
 59 | Opportunity Fund Management Corporation as information that is  
 60 | owned or controlled by a proprietor; that is intended to be and  
 61 | is treated by the proprietor as private, the disclosure of which  
 62 | would harm the business operations of the proprietor and has not  
 63 | been intentionally disclosed by the proprietor unless pursuant  
 64 | to a private agreement that provides that the information will  
 65 | not be released to the public except as required by law or legal  
 66 | process, or pursuant to law or an order of a court or  
 67 | administrative body; and that concerns:

- 68 |     a. Trade secrets as defined in s. 688.002.
- 69 |     b. Information provided to the Florida Opportunity Fund or  
 70 | the Florida Opportunity Fund Management Corporation regarding a  
 71 | prospective investment in a private equity fund, venture capital  
 72 | fund, angel fund, or portfolio company that is proprietary to  
 73 | the provider of the information.
- 74 |     c. Financial statements and auditor reports of an  
 75 | alternative investment vehicle.
- 76 |     d. Meeting materials of an alternative investment vehicle  
 77 | relating to financial, operating, or marketing information of  
 78 | the alternative investment vehicle.
- 79 |     e. Information regarding the portfolio positions in which  
 80 | the alternative investment vehicles invest.
- 81 |     f. Capital call and distribution notices to investors of  
 82 | an alternative investment vehicle.
- 83 |     g. Alternative investment agreements and related records.
- 84 |     h. Information concerning investors, other than the

85 Florida Opportunity Fund, in an alternative investment vehicle.

86 2. "Proprietary confidential business information" does  
 87 not include:

88 a. The name, address, and vintage year of an alternative  
 89 investment vehicle and the identity of the principals involved  
 90 in the management of the alternative investment vehicle.

91 b. The dollar amount of the commitment made by the Florida  
 92 Opportunity Fund to each alternative investment vehicle since  
 93 inception.

94 c. The dollar amount and date of cash contributions made  
 95 by the Florida Opportunity Fund to each alternative investment  
 96 vehicle since inception.

97 d. The dollar amount, on a fiscal-year-end basis, of cash  
 98 or other fungible distributions received by the Florida  
 99 Opportunity Fund from each alternative investment vehicle.

100 e. The dollar amount, on a fiscal-year-end basis, of cash  
 101 or other fungible distributions received by the Florida  
 102 Opportunity Fund plus the remaining value of alternative-vehicle  
 103 assets that are attributable to the Florida Opportunity Fund's  
 104 investment in each alternative investment vehicle.

105 f. The net internal rate of return of each alternative  
 106 investment vehicle since inception.

107 g. The investment multiple of each alternative investment  
 108 vehicle since inception.

109 h. The dollar amount of the total management fees and  
 110 costs paid on an annual fiscal-year-end basis by the Florida  
 111 Opportunity Fund to each alternative investment vehicle.

112 i. The dollar amount of cash profit received by the

113 Florida Opportunity Fund from each alternative investment  
114 vehicle on a fiscal-year-end basis.

115 (2) Proprietary confidential business information held by  
116 the Florida Opportunity Fund or the Florida Opportunity Fund  
117 Management Corporation regarding alternative investments is  
118 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
119 of the State Constitution for 10 years after the termination of  
120 the alternative investment.

121 (3) Notwithstanding the provisions of subsection (2), a  
122 request to inspect or copy a public record that contains  
123 proprietary confidential business information shall be granted  
124 if the proprietor of the information fails, within a reasonable  
125 period of time after the request is received by the Florida  
126 Opportunity Fund or the Florida Opportunity Fund Management  
127 Corporation, to verify the following to the Florida Opportunity  
128 Fund or the Florida Opportunity Fund Management Corporation  
129 through a written declaration in the manner provided by s.  
130 92.525:

131 (a) That the requested record contains proprietary  
132 confidential business information and the specific location of  
133 such information within the record;

134 (b) If the proprietary confidential business information  
135 is a trade secret, a verification that it is a trade secret as  
136 defined in s. 688.002;

137 (c) That the proprietary confidential business information  
138 is intended to be and is treated by the proprietor as private,  
139 is the subject of efforts of the proprietor to maintain its  
140 privacy, and is not readily ascertainable or publicly available

141 from any other source; and

142 (d) That the disclosure of the proprietary confidential  
 143 business information to the public would harm the business  
 144 operations of the proprietor.

145 (4) (a) Any person may petition a court of competent  
 146 jurisdiction for an order for the public release of those  
 147 portions of any record made confidential and exempt by  
 148 subsection (2).

149 (b) Any action under this subsection must be brought in  
 150 Orange County, Florida, and the petition or other initial  
 151 pleading shall be served on the Florida Opportunity Fund or the  
 152 Florida Opportunity Fund Management Corporation, whichever is  
 153 applicable, and, if determinable upon diligent inquiry, on the  
 154 proprietor of the information sought to be released.

155 (c) In any order for the public release of a record under  
 156 this subsection, the court shall make a finding that:

157 1. The record or portion thereof is not a trade secret as  
 158 defined in s. 688.002;

159 2. A compelling public interest is served by the release  
 160 of the record or portions thereof which exceed the public  
 161 necessity for maintaining the confidentiality of such record;  
 162 and

163 3. The release of the record will not cause damage to or  
 164 adversely affect the interests of the proprietor of the released  
 165 information, other private persons or business entities, the  
 166 Florida Opportunity Fund Management Corporation, the Florida  
 167 Opportunity Fund, or any trust fund, the assets of which are  
 168 invested by the Florida Opportunity Fund.

169        (5) This section is subject to the Open Government Sunset  
 170 Review Act in accordance with s. 119.15 and shall stand repealed  
 171 on October 2, 2012, unless reviewed and saved from repeal  
 172 through reenactment by the Legislature.

173        Section 2. The Legislature finds that it is a public  
 174 necessity that proprietary confidential business information  
 175 held by the Florida Opportunity Fund and the Florida Opportunity  
 176 Fund Management Corporation regarding alternative investments be  
 177 held confidential and exempt from s. 119.07(1), Florida  
 178 Statutes, and s. 24(a), Art. I of the State Constitution for 10  
 179 years after the termination of the alternative investment.  
 180 Disclosing proprietary confidential business information,  
 181 including trade secrets as defined in s. 688.002, Florida  
 182 Statutes, used in determining how private equity investments are  
 183 made or managed by private partnerships investing assets on  
 184 behalf of the Florida Opportunity Fund would negatively affect  
 185 the business interests of private partnerships that rely heavily  
 186 on their information advantage to generate investment returns,  
 187 and competitor partnerships could gain an unfair competitive  
 188 advantage if provided access to such information. The release of  
 189 proprietary confidential business information, including trade  
 190 secrets, revealing how alternative investments are made could  
 191 result in inadequate returns and ultimately frustrate attainment  
 192 of the investment objective of the Florida Opportunity Fund and  
 193 the Florida Opportunity Fund Management Corporation. It is the  
 194 Legislature's intent to allow the public access to sufficient  
 195 information in order to be informed regarding the alternative  
 196 investments of the Florida Opportunity Fund and to balance the

197 public's right to information against the right of private  
198 business entities to be protected from harmful disclosure of  
199 confidential and exempt proprietary confidential business  
200 information, the disclosure of which would injure them in the  
201 marketplace. It is also the Legislature's intent to establish  
202 consistency with regard to the classification of information  
203 relating to alternative investments by the Florida Opportunity  
204 Fund as either confidential or suitable for public disclosure.  
205 In finding that the public records exemption created by this act  
206 is a public necessity, the Legislature finds that the public and  
207 private harm in disclosing proprietary confidential business  
208 information relating to alternative investments by the Florida  
209 Opportunity Fund significantly outweighs any public benefit  
210 derived from disclosure; that the exemption created by this act  
211 will enhance the ability of the Florida Opportunity Fund to  
212 fulfill its duties as an investment fiduciary by making it more  
213 effective and competitive in the marketplace as an investor that  
214 is able to gain access to the best alternative investment  
215 vehicles; and that the public's ability to be informed regarding  
216 the alternative investments made by the Florida Opportunity Fund  
217 is preserved by the disclosure of information excepted from the  
218 created exemption.

219 Section 3. This act shall take effect July 1, 2007, if  
220 House Bill 83 or similar legislation is adopted in the same  
221 legislative session or an extension thereof and becomes law.