

1 A bill to be entitled
2 An act relating to capital formation for infrastructure
3 projects; amending ss. 288.9621, 288.9622, and 288.9623,
4 F.S.; conforming a short title, revising legislative
5 findings and intent, and providing definitions for the
6 Florida Capital Formation Act; conforming cross-
7 references; creating s. 288.9627, F.S.; providing for
8 creation of the Florida Infrastructure Fund Partnership;
9 providing the partnership's purpose and duties; providing
10 for management of the partnership by the Florida
11 Opportunity Fund; authorizing the fund to lend moneys to
12 the partnership; requiring the partnership to raise funds
13 from investment partners; providing for commitment
14 agreements with and issuance of certificates to investment
15 partners; authorizing the partnership to invest in certain
16 infrastructure projects; requiring the partnership to
17 submit an annual report to the Governor and Legislature;
18 prohibiting the partnership from pledging the credit or
19 taxing power of the state or its political subdivisions;
20 prohibiting the partnership from investing in projects
21 with or accepting investments from certain companies;
22 creating s. 288.9628, F.S.; creating the Florida
23 Infrastructure Investment Trust; providing for powers and
24 duties, a board of trustees, and an administrative officer
25 of the trust; providing for the trust's issuance of
26 certificates to investment partners; specifying that the
27 certificates guarantee the availability of tax credits
28 under certain conditions; authorizing the trust and the

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29 fund to charge fees; limiting the amount of tax credits
30 that may be claimed or applied against state taxes in any
31 year; providing for the redemption of certificates or sale
32 of tax credits; providing for the issuance of the tax
33 credits by the Department of Revenue; specifying the taxes
34 against which the credits may be applied; limiting the
35 period within which tax credits may be used; providing for
36 the state's obligation for use of the tax credits;
37 limiting the liability of the fund; providing for the
38 transferability of certificates and tax credits; requiring
39 the department to provide a certain written assurance to
40 the trust under certain circumstances; specifying that
41 certain provisions regulating securities transactions do
42 not apply to certificates and tax credits transferred or
43 sold under the act; amending s. 213.053, F.S.; authorizing
44 the department to disclose certain information to the
45 partnership and the trust relative to certain tax credits;
46 providing an effective date.

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

49
50 Section 1. Section 288.9621, Florida Statutes, is amended
51 to read:

52 288.9621 Short title.—This part ~~Sections 288.9621-288.9625~~
53 may be cited as the "Florida Capital Formation Act."

54 Section 2. Subsections (1) and (2) of section 288.9622,
55 Florida Statutes, are amended to read:

56 288.9622 Findings and intent.—

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

65 (2) It is the intent of the Legislature that this part ss.
66 ~~288.9621-288.9625~~ serve to mobilize private investment in a
67 broad variety of venture capital partnerships in diversified
68 industries and geographies; retain private sector investment
69 criteria focused on rate of return; use the services of highly
70 qualified managers in the venture capital industry regardless of
71 location; facilitate the organization of the Florida Opportunity
72 Fund as an investor in seed and early stage businesses,
73 infrastructure projects, venture capital funds, infrastructure
74 funds, and angel funds; and precipitate capital investment and
75 extensions of credit to and in the Florida Opportunity Fund.

76 Section 3. Section 288.9623, Florida Statutes, is amended
77 to read:

78 288.9623 Definitions.—As used in this part, the term ss.
79 ~~288.9621-288.9625~~:

80 (1) "Board" means the board of directors of the Florida
81 Opportunity Fund.

82 (2) "Certificate" means a contract between the trust and
83 an investment partner that guarantees the availability of tax
84 credits for use by the partner, or for transfer or sale under s.

85 288.9628, in order to guarantee the partner's investment capital
86 in the partnership.

87 (3) "Commitment agreement" means a contract between the
88 partnership and an investment partner under which the partner
89 commits to providing a specified amount of investment capital in
90 exchange for an ownership interest in the partnership.

91 (4) ~~(2)~~ "Fund" means the Florida Opportunity Fund.

92 (5) "Infrastructure project" means a capital project in
93 the state for a facility or other infrastructure need in the
94 state with respect to any of the following: water or wastewater
95 system, communication system, power system, transportation
96 system, renewable energy system, ancillary or support system for
97 any of these types of projects, or other strategic
98 infrastructure located within the state.

99 (6) "Investment capital" means the total capital committed
100 by the investment partner for an equity interest in the
101 partnership pursuant to a commitment agreement.

102 (7) "Investment partner" or "partner" means a person,
103 other than the partnership, the fund, or the trust, who
104 purchases an ownership interest in the partnership or a
105 transferee of such interest.

106 (8) "Net capital loss" means an amount equal to the
107 difference between the total investment capital actually
108 advanced by the investment partner to the partnership and the
109 amount of the aggregate actual distributions received by the
110 investment partner.

111 (9) "Partnership" means the Florida Infrastructure Fund
112 Partnership.

113 (10) "Tax credits" means credits issued against the taxes
114 specified in s. 288.9628(7)(c).

115 (11) "Trust" means the Florida Infrastructure Investment
116 Trust.

117 Section 4. Section 288.9627, Florida Statutes, is created
118 to read:

119 288.9627 Florida Infrastructure Fund Partnership;
120 creation; duties.—

121 (1) The Florida Opportunity Fund shall facilitate the
122 creation of the Florida Infrastructure Fund Partnership, which
123 shall be organized and operated under chapter 620 as a private,
124 for-profit limited partnership or limited liability partnership
125 with the fund as a general partner. The partnership shall manage
126 its business affairs and conduct business consistent with its
127 organizing documents and the purposes described in this section.
128 However, the partnership is not an instrumentality of the state.

129 (2) The primary purpose of the partnership is to raise
130 investment capital and invest the capital in infrastructure
131 projects in the state that promote economic development.

132 (3)(a) The fund, as the general partner of the
133 partnership, shall manage the partnership's business affairs,
134 including, but not limited to:

135 1. Hiring one or more investment managers to assist with
136 management of the partnership through a solicitation for
137 qualified investment managers for the raising and investing of
138 capital by the partnership. Any such investment manager must
139 have maintained an office in the state for at least 2 years
140 before such solicitation with a full-time investment

141 professional. The evaluation of an investment manager candidate
142 must address the investment manager's level of experience,
143 quality of management, investment philosophy and process,
144 demonstrable success in fundraising, and prior investment
145 results.

146 2. Soliciting and negotiating the terms of, contracting
147 for, and receiving investment capital with the assistance of the
148 investment managers or other service providers.

149 3. Receiving investment returns.

150 4. Disbursing returns to investment partners.

151 5. Approving investments.

152 6. Engaging in other activities necessary to operate the
153 partnership.

154 (b) The fund may lend up to \$750,000 to the partnership to
155 pay the initial expenses of organizing the partnership and
156 soliciting investment partners.

157 (4)(a) The partnership shall raise funds from investment
158 partners for investment in infrastructure projects in the state
159 by entering into commitment agreements with such partners on
160 terms approved by the fund's board.

161 (b) The Florida Infrastructure Investment Trust shall,
162 pursuant to s. 288.9628, concurrently with the execution of a
163 commitment agreement with an investment partner, issue a
164 certificate.

165 (c) The partnership shall provide a copy of each
166 commitment agreement to the trust upon execution of the
167 agreement by all parties.

168 (d) The partnership may enter into commitment agreements

169 with investment partners beginning July 1, 2011. The total
170 principal investment capital payable to the partnership under
171 all commitment agreements may not exceed the total aggregate
172 amount of \$700 million. However, if the partnership does not
173 obtain commitment agreements totaling at least \$100 million by
174 December 1, 2012, the partnership must cancel any executed
175 agreement and return the investment capital of each investment
176 partner who executed an agreement.

177 (5) (a) The partnership may only invest in an
178 infrastructure project:

179 1. That fulfills an important infrastructure need in the
180 state.

181 2. That raises funding from other sources so that the
182 total amount invested in the project is at least twice the
183 amount invested by the partnership, inclusive of the
184 partnership's investment.

185 3. For which legal measures exist, appropriate to the
186 individual project, to ensure that the project is not
187 fraudulently closed to the detriment of the residents of the
188 state.

189 (b) The partnership may not invest more than 20 percent of
190 its total available investment capital in any single
191 infrastructure project.

192 (c) The partnership may not invest in any infrastructure
193 project that involves any phase of a project authorized under
194 the Florida Rail Enterprise Act, ss. 341.8201-341.842.

195 (6) The partnership may only invest in an infrastructure
196 project based on an evaluation of the following:

197 (a) A written business plan for the project, including all
198 expected revenue sources.

199 (b) The likelihood of the project's attracting operating
200 capital from investment partners, grants, or other lenders.

201 (c) The management team for the proposed project.

202 (d) The project's potential for job creation in the state.

203 (e) The financial resources of the entity proposing the
204 project.

205 (f) The partnership's assessment that the project
206 reasonably provides a continuing benefit for residents of the
207 state.

208 (g) Other factors not inconsistent with this section that
209 are deemed by the partnership as relevant to the likelihood of
210 the project's success.

211 (7) By December 1 of each year beginning in 2011, the
212 partnership shall submit an annual report of its activities to
213 the Governor, the President of the Senate, and the Speaker of
214 the House of Representatives. The annual report must include, at
215 a minimum:

216 (a) An accounting of the amounts of investment capital
217 raised and disbursed by the partnership and the progress of the
218 partnership, including the progress of each infrastructure
219 project in which the partnership has invested.

220 (b) A description of the costs and benefits to the state
221 that result from the partnership's investments, including a list
222 of infrastructure projects; the costs and benefits of those
223 projects to the state and, if applicable, the county or
224 municipality; the number of businesses and associated industries

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affected; the number, types, and average annual wages of the jobs created or retained; and the impact on the state's economy.

(c) Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for the operational costs of the partnership.

(8) The partnership may not pledge the credit or taxing power of the state or any political subdivision thereof and may not make its debts payable from any moneys or resources except those of the partnership. An obligation of the partnership is not an obligation of the state or any political subdivision thereof but is an obligation of the partnership, payable exclusively from the partnership's resources.

(9) The partnership may not invest in an infrastructure project with, or accept investment capital from, a company described in s. 215.472 or a scrutinized company as defined in s. 215.473, and the entity owning an infrastructure project in which the partnership has invested must provide reasonable assurances to the partnership that the entity will not provide such a company or scrutinized company with an ownership interest in the infrastructure project.

Section 5. Section 288.9628, Florida Statutes, is created to read:

288.9628 Florida Infrastructure Investment Trust; creation; duties; issuance of certificates; applications for tax credits.—

(1)(a) There is created the Florida Infrastructure Investment Trust, which shall be organized as a state

253 beneficiary public trust to be administered by a board of
254 trustees. The powers and duties of the board of trustees under
255 this section are deemed to be performed for essential public
256 purposes.

257 (b) The board of trustees shall consist of the executive
258 director of the Department of Revenue, the director of the
259 Office of Tourism, Trade, and Economic Development, and the vice
260 chair of Enterprise Florida, Inc., or their designees. The board
261 of trustees shall appoint an administrative officer who may act
262 on behalf of the trust under the direction of the board of
263 trustees.

264 (c) Members of the board of trustees and the board's
265 administrative officer shall serve without compensation but are
266 entitled to reimbursement of their expenses. Each member of the
267 board of trustees has a duty of care to the trust in his or her
268 capacity as a trustee. Neither a member nor the administrative
269 officer may have a financial interest in any investment partner.

270 (2) The trust may hire consultants, retain professional
271 services, issue certificates, sell tax credits in accordance
272 with paragraph (5) (b), expend funds, invest funds, contract,
273 bond or insure against loss, or perform any other act necessary
274 to administer this section.

275 (3) (a) The trust shall, pursuant to s. 288.9627 and this
276 section, issue certificates to investment partners in the
277 Florida Infrastructure Fund Partnership, or their assignees,
278 guaranteeing the availability of tax credits of a maximum amount
279 equal to the investment capital committed by such investment
280 partners to the partnership.

281 (b) The trust and the fund may each seek reimbursement of
282 their respective reasonable costs and expenses from the
283 partnership by charging a fee for the issuance of certificates
284 to investment partners of up to 0.25 percent of the aggregate
285 investment capital committed to the partnership by the
286 investment partners who are issued certificates.

287 (c) The total aggregate amount of all tax credits made
288 available under the terms of certificates issued by the trust
289 may not exceed \$700 million, and each certificate must include
290 the maximum amount of the tax credits that may be issued under
291 such certificate, which shall be the total amount of investment
292 capital committed to the partnership by the investment partner.

293 (d) A certificate shall be issued concurrently with a
294 commitment agreement between the investment partner and the
295 partnership. A certificate issued by the trust must include a
296 specific calendar year maturity date designated by the trust of
297 at least 12 years after issuance. Contingent tax credits may not
298 be claimed or redeemed except by an investment partner or
299 purchaser in accordance with this section and the terms of a
300 certificate issued by the trust.

301 (e) Once investment capital is committed to the
302 partnership by an investment partner pursuant to his or her
303 commitment agreement, the certificate is binding, and the
304 partnership, the trust, and the Department of Revenue may not
305 modify, terminate, or rescind the certificate, except for
306 administrative items, including the assignment or sale of tax
307 credits guaranteed to be available under the terms of a
308 certificate.

309 (4) (a) The partnership shall provide written notice to
310 each investment partner if, on the maturity date of his or her
311 certificate, the partner has a net capital loss. The notice must
312 include, at a minimum:

313 1. A good faith estimate of the fair market value of the
314 partnership's assets as of the date of the notice.

315 2. The total investment capital of all investment partners
316 as of the date of the notice.

317 3. The total amount of distributions received by the
318 investment partners.

319 4. The amount of the tax credits the investment partner is
320 entitled to be issued by the Department of Revenue.

321 (b) The partnership shall concurrently provide a copy of
322 each investment partner's notice to the trust.

323 (c) Upon receipt of the notice from the partnership, each
324 affected investment partner may make a one-time election to:

325 1. Have tax credits issued to the investment partner;

326 2. Have the trust sell, on the partner's behalf, the tax
327 credits guaranteed to be available under the terms of the
328 partner's certificate with the proceeds of the sale to be paid
329 to the partner by the trust; or

330 3. Maintain the investment partner's investment in the
331 partnership.

332 (d) Except as provided in paragraph (6) (c), the election
333 made by an investment partner under paragraph (c) is final and
334 may not be revoked or modified.

335 (e) An investment partner must provide written notice to
336 the partnership and the trust of his or her election within 30

337 days after his or her receipt of the notice from the
338 partnership. If an investment partner fails to provide notice
339 within 30 days, the investment partner is deemed to have elected
340 to maintain his or her investment in the partnership under
341 subparagraph (c)3.

342 (5) (a) If an investment partner makes the election under
343 subparagraph (4) (c)1. to have tax credits issued to him or her,
344 the trust shall apply to the Department of Revenue on the
345 partner's behalf for issuance of the tax credits in his or her
346 name in an amount equal to such partner's net capital loss. In
347 order to receive the tax credits, the investment partner must
348 agree in writing to transfer his or her ownership interest in
349 the partnership to the fund.

350 (b) If an investment partner makes the election under
351 subparagraph (4) (c)2., the trust shall exercise its best efforts
352 to sell the tax credits. In order to receive the proceeds from
353 the trust's sale of the tax credits, the investment partner must
354 agree in writing to transfer his or her ownership interest in
355 the partnership to the fund. A purchaser's payment for tax
356 credits must be made to the trust on behalf of the investment
357 partner or, upon the partner's request, directly to the
358 investment partner. The trust may sell tax credits in an amount
359 not to exceed the lesser of:

360 1. The maximum amount of the tax credits available under
361 the terms of certificate issued to the investment partner; or

362 2. The amount of tax credits necessary to yield net
363 proceeds to the investment partner equal to his or her net
364 capital loss as of the date of the partnership's notice.

365 (6) (a) Within 30 days after receipt of an investment
366 partner's election to be issued tax credits under paragraph
367 (5) (a), or within 30 days after the sale of tax credits under
368 paragraph (5) (b), the trust shall apply to the Department of
369 Revenue for issuance of the tax credits on behalf of the partner
370 or on behalf of the purchaser of the tax credits, as applicable.
371 However, the trust's failure to timely submit an application to
372 the Department of Revenue does not affect the investment
373 partner's or purchaser's eligibility for the tax credits.

374 (b) The trust's application for tax credits must include
375 the partnership's certification of the amount of tax credits to
376 be issued, the identity of the taxpayer to whom the tax credits
377 are to be issued, and the tax against which the credits shall be
378 applied. The Department of Revenue shall issue the tax credits
379 within 30 days after receipt of a timely and complete
380 application.

381 (c) The trust shall provide the investment partner with
382 written notice if, within 90 days after the partner's election,
383 the trust is unable to sell enough tax credits to yield net
384 proceeds to the investment partner equal to his or her net
385 capital loss as of the date of the partnership's notice and tax
386 credits available under the terms of the partner's certificate
387 remain unsold. Within 30 days after receipt of such notice, the
388 investment partner may:

389 1. Revoke his or her prior election and make a new
390 election under paragraph (4) (c); or

391 2. Modify the election and:

392 a. Have unsold tax credits issued to him or her, to the
393 extent that unsold tax credits are available, in an amount equal
394 to the partner's net capital loss, less the proceeds of any sold
395 credits; or

396 b. Have the trust continue to sell tax credits until the
397 partner's net capital loss is satisfied or the maximum amount of
398 tax credits available under the partner's certificate is
399 reached, whichever occurs first.

400
401 Within 30 days after such modified election, the trust shall
402 apply to the Department of Revenue in accordance with paragraph
403 (a) for issuance of tax credits on behalf of the investment
404 partner and on behalf of the purchasers in the amount of their
405 purchased credits.

406 (7) (a) The Department of Revenue may not issue more than
407 \$700 million in tax credits. The trust may not approve tax
408 credits in excess of the total capital committed through
409 commitment agreements.

410 (b) The amount of tax credits that may be claimed by the
411 owner of the credits, or applied against state taxes, in any one
412 state fiscal year may not exceed an amount equal to \$150 million
413 multiplied by a fraction the numerator of which is the amount of
414 credits that the Department of Revenue issued to such owner and
415 the denominator of which is the amount of all credits that the
416 Department of Revenue issued to all tax credit owners.

417 (c) Tax credits issued by the Department of Revenue under
418 this section may be used by the owner of the credits as an
419 offset against any state taxes owed to the state under chapter

420 212, chapter 220, or ss. 624.509 and 624.5091. The offset may be
421 applied by the owner on any return for an eligible tax due on or
422 after the date that the credits are issued by the Department of
423 Revenue but within 7 years after the credits are issued. The
424 owner of the tax credits may elect to have the amount authorized
425 in the credits, or any portion thereof, claimed as a refund of
426 taxes paid rather than applied as an offset against eligible
427 taxes if such election is made within 7 years after the credits
428 are issued.

429 (d) To the extent that tax credits issued under this
430 section are used by their owner either as credits against taxes
431 due or to obtain payment from the state, the amount of such
432 credits becomes an obligation to the state by the partnership,
433 secured exclusively by the ownership interest transferred to the
434 fund by the investment partner whose investment generated the
435 tax credits. In such case, the state's recovery is limited to
436 such forfeited ownership interest. The Department of Revenue
437 shall account for tax credits used under this section and make
438 such information available to the partnership. The fund, as
439 general partner, is not liable to the state for repayment of the
440 used tax credits.

441 (e) Any certificate and related tax credits issued under
442 this section are transferable in whole or in part by their
443 owner. An owner of a certificate or tax credits must notify the
444 trust and the Department of Revenue of any such transfer.

445 (8) The Department of Revenue, upon the request of the
446 trust, shall provide the trust with a written assurance that the

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447 certificates issued by the trust will be honored by the
448 Department of Revenue as provided in this section.

449 (9) Chapter 517 does not apply to the certificates and tax
450 credits transferred or sold under this section.

451 Section 6. Paragraph (dd) is added to subsection (8) of
452 section 213.053, Florida Statutes, as amended by chapter 2010-
453 280, Laws of Florida, to read:

454 213.053 Confidentiality and information sharing.—

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

457 (dd) Information relative to tax credits under ss.
458 288.9627 and 288.9628 to the Florida Infrastructure Fund
459 Partnership and the Florida Infrastructure Investment Trust.

460
461 Disclosure of information under this subsection shall be
462 pursuant to a written agreement between the executive director
463 and the agency. Such agencies, governmental or nongovernmental,
464 shall be bound by the same requirements of confidentiality as
465 the Department of Revenue. Breach of confidentiality is a
466 misdemeanor of the first degree, punishable as provided by s.
467 775.082 or s. 775.083.

468 Section 7. This act shall take effect July 1, 2011.