

By Senator Bogdanoff

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

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partnership; specifying that the certificates are redeemable for tax credits under certain conditions; authorizing the trust and the fund to charge fees; limiting the amount of tax credits issued and the amount of tax credits that may be claimed or applied against state taxes in any year; providing for the redemption or sale of certificates; providing for the issuance of the tax credits by the Department of Revenue; specifying the taxes against which the credits may be applied; limiting the period within which tax credits may be used; providing for the state's obligation for use of the tax credits; limiting the liability of the fund; providing for the transferability of certificates and tax credits; requiring the department to provide a certain written assurance to the trust under certain circumstances; specifying that certain provisions regulating securities transactions do not apply to certificates and tax credits transferred or sold under the act; providing an effective date.

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

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

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

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

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288.9622 Findings and intent.—

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

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

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

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

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

(2) "Certificate" means a contract between the trust and an investment partner to guarantee the partner's investment in the partnership under which the investment partner, under certain conditions, may redeem such certificate for a tax credit.

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

92 ~~(4)-(2)~~ "Fund" means the Florida Opportunity Fund.

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

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

105 (7) "Partnership" means the Florida Infrastructure Fund
106 Partnership.

107 (8) "Tax credit" means a credit issued against the taxes
108 specified in s. 288.9628(7)(c).

109 (9) "Trust" means the Florida Infrastructure Investment
110 Trust.

111 Section 4. Section 288.9627, Florida Statutes, is created
112 to read:

113 288.9627 Florida Infrastructure Fund Partnership; creation;
114 duties.—

115 (1) The Florida Opportunity Fund shall facilitate the
116 creation of the Florida Infrastructure Fund Partnership, which

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shall be organized and operated under chapter 620 as a private, for-profit limited partnership or limited liability partnership with the fund as a general partner. The partnership shall manage its business affairs and conduct business consistent with its organizing documents and the purposes described in this section. However, the partnership is not an instrumentality of the state.

(2) The primary purpose of the partnership is to raise investment capital and invest the capital in infrastructure projects in the state that promote the economic development of the state, a county, or a municipality.

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

1. Hiring one or more investment managers to assist with management of the partnership through a solicitation for qualified investment managers for raising and investing of capital by the partnership. Any such investment manager must have maintained an office in the state for at least 2 years before such solicitation with a full-time investment professional. Any proposed investment plan must address the investment manager's level of experience, quality of management, investment philosophy and process, demonstrable success in fundraising, and prior investment results.

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

3. Receiving investment returns.

4. Disbursing returns to investment partners.

5. Approving investments in order to provide financial

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returns together with strategic returns designed to satisfy the state's, the county's, or the municipality's infrastructure needs; result in a significant potential to create or retain jobs in this state; and further diversify the state's economy.

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

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

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

(b) The Florida Infrastructure Investment Trust shall, pursuant to s. 288.9628, concurrently with the execution of a commitment agreement with an investment partner, issue a certificate redeemable for a contingent tax credit to guarantee the partner's investment in the partnership.

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

(d) The partnership may enter into commitment agreements with investment partners beginning July 1, 2011. The total principal investment payable to the partnership under all commitment agreements, and the corresponding amount of the certificates issued by the trust under s. 288.9628, may not exceed the total aggregate amount of \$700 million. However, if the partnership does not obtain commitment agreements totaling at least \$100 million by December 1, 2012, the partnership must

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cancel any executed agreement and return the investment capital
of each investment partner who executed an agreement.

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

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

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

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

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

(c) The partnership may not invest in any infrastructure
project that directly or indirectly involves any phase of a
project authorized in ss. 341.8201-341.842.

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

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

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

(c) The management team for the proposed project.

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

(e) The financial resources of the entity proposing the

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project.

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

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

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

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

(b) A description of the benefits to the state that result from the partnership's investments, including a list of infrastructure projects; the benefits of those projects to the state, the county, or the municipality; the number of businesses and associated industries positively affected; the number, types, and average annual wages of the jobs created or retained; and the positive 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 and the fund may not pledge the credit or taxing power of the state or any political subdivision

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thereof and may not make their debts payable from any moneys or resources except those of the partnership or the fund. An obligation of the partnership or the fund is not an obligation of the state or any political subdivision thereof but is an obligation of the partnership or the fund, payable exclusively from the partnership's or the fund'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. 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 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 beneficiary public trust to be administered by a board of trustees. The powers and duties of the board of trustees under this section are deemed to be performed for essential public purposes.

(b) The board of trustees shall consist of the Chief Financial Officer, the director of the Office of Tourism, Trade, and Economic Development, and the vice chair of Enterprise Florida, Inc., or their designees. The board of trustees shall appoint an administrative officer who may act on behalf of the

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trust under the direction of the board of trustees.

(c) Members of the board of trustees and the board's administrative officer shall serve without compensation but are entitled to reimbursement of their expenses. Neither a member nor the administrative officer may have a financial interest in any investment partner.

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

(3)(a) The trust shall, pursuant to s. 288.9627 and this section, issue certificates redeemable for contingent tax credits to investment partners who make equity investments in the Florida Infrastructure Fund Partnership, or their assignees, of a maximum amount equal to the investment capital committed by such investment partners to the partnership.

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

(c) The total aggregate amount of all certificates issued by the trust may not exceed the limit for such certificates specified in s. 288.9627(4)(d), and each certificate must include the maximum amount of the tax credit that may be issued under such certificate, which shall be the total amount of investment capital committed to the partnership by the

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investment partner.

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

(e) Once investment capital is committed to the partnership by an investment partner pursuant to his or her commitment agreement, the certificate is binding, and the partnership, the trust, and the Department of Revenue may not modify, terminate, or rescind the certificate, except for administrative items, including the assignment or sale of a certificate.

(4) (a) The partnership shall provide written notice to each investment partner if, on the maturity date of his or her certificate, the partner's net capital investment is greater than zero. The notice must include, at a minimum:

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

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

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

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

For purposes of this section, an investment partner's net

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capital investment is an amount equal to the difference between the total investment capital actually advanced by the investment partner to the partnership and the amount of the aggregate actual distributions received by the investment partner.

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

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

1. Have a tax credit issued to the investment partner;
2. Have the trust sell the partner's certificate on his or her behalf with the proceeds of the sale to be paid to the partner by the trust; or
3. Maintain the investment partner's investment in the partnership.

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

(e) An investment partner must provide written notice to the partnership and the trust of his or her election within 30 days after his or her receipt of the notice from the partnership. If an investment partner fails to provide notice within 30 days, the investment partner is deemed to have elected to maintain his or her investment in the partnership under subparagraph (c)3.

(5)(a) If an investment partner elects to have a tax credit issued to him or her, the trust shall apply to the Department of Revenue on the partner's behalf for issuance of the tax credit in his or her name in an amount equal to such partner's net capital investment. In order to receive the tax credit, the

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investment partner must agree in writing to transfer his or her ownership interest in the partnership to the fund.

(b) If an investment partner elects to have the trust sell his or her certificate, the trust shall exercise its best efforts to sell the certificate. In order to receive the proceeds from the trust's sale of the certificate, the investment partner must agree in writing to transfer his or her ownership interest in the partnership to the fund. A purchaser's payment for the certificate, or any portion thereof, shall be made to the trust on behalf of the investment partner or, upon the partner's request, directly to the investment partner. The trust may sell a certificate in an amount that does not exceed the lesser of:

1. The maximum amount of the certificate issued to the investment partner; or

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

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

(b) The trust's application for a tax credit must include

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the partnership's certification of the amount of tax credit to
be issued, the identity of the taxpayer to whom the tax credit
is to be issued, and the tax against which the credit shall be
applied. The Department of Revenue shall issue the tax credit
within 30 days after receipt of a timely and complete
application.

(c) If an investment partner's certificate is sold by the
trust under paragraph (5) (b) to more than one purchaser, the
Department of Revenue shall issue tax credits to such purchasers
in such amounts as designated by the trust in the application.

(d) The trust shall provide the investment partner with
written notice if the trust is unable to sell the partner's
certificate within 90 days after the partner's election. Within
30 days after receipt of such notice, the investment partner
may:

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

2. Modify the election and have a tax credit issued to him
or her for the amount of any unsold credit. Within 30 days after
such modified election, the trust shall apply to the Department
of Revenue in accordance with paragraph (a) for issuance of tax
credits on behalf of the investment partner in the amount of any
unsold credit and on behalf of the purchasers in the amount of
their purchased credit.

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

(b) The amount of tax credits that may be claimed by the

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owner of the credits, or applied against state taxes, in any one state fiscal year may not exceed an amount equal to \$150 million multiplied by a fraction the numerator of which is the amount of credits that the Department of Revenue issued to such owner and the denominator of which is the amount of all credits that the Department of Revenue issued to all tax credit owners.

(c) A tax credit issued by the Department of Revenue under this section may be used by the owner of the credit as an offset against any taxes owed to the state under chapter 212, chapter 220, or chapter 624. The offset may be applied by the owner on any return for an eligible tax due on or after the date that the credit is issued by the Department of Revenue but within 7 years after the credit is issued. The owner of the tax credit may elect to have the amount authorized in the credit, or any portion thereof, claimed as a refund of taxes paid rather than applied as an offset against eligible taxes, if such election is made within 7 years after the credit is issued.

(d) To the extent that a tax credit issued under this section is used by its owner either as a credit against taxes due or to obtain payment from the state, the amount of such credit becomes an obligation to the state by the partnership, secured exclusively by the ownership interest transferred to the fund by the investment partner whose investment generated the tax credit. In such case, the state's recovery is limited to such forfeited ownership interest. The Department of Revenue shall account for tax credits used under this section and make such information available to the partnership. The fund, as general partner, is not liable to the state for repayment of the used tax credits from the fund's separate assets unrelated to

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436 its interest in the partnership.

437 (e) Any certificate and related tax credit issued under
438 this section are transferable in whole or in part by their
439 owner. An owner of a certificate or tax credit must notify the
440 trust and the Department of Revenue of any such transfer.

441 (8) The Department of Revenue, upon the request of the
442 trust, shall provide the trust with a written assurance that the
443 certificates issued by the trust will be honored by the
444 Department of Revenue as provided in this section.

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

447 Section 6. This act shall take effect July 1, 2011.