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Proposed Committee Substitute by the Committee on Governmental  
Oversight and Accountability

A bill to be entitled

An act relating to the Florida Infrastructure Fund Partnership; amending s. 288.9622, F.S.; providing for later stage venture funding and infrastructure funding; amending s. 288.9623, F.S.; providing definitions; creating s. 288.9627, F.S.; creating the Florida Infrastructure Fund Partnership; specifying the purpose and duties of the partnership, which is to facilitate investment in the state's infrastructure; authorizing the partnership to enter into agreements with investors by a certain date; providing investment criteria; requiring an annual report to the Governor and Legislature; providing limitations; creating s. 288.9628, F.S.; creating the Florida Infrastructure Investment Trust; providing membership; providing duties; authorizing the trust to issue certificates to investors which are redeemable as tax credits; providing procedures and requirements for submitting an application to the Department of Revenue for the tax credit; providing that the credit may be sold and transferred; providing how the credits may be used; authorizing the department to adopt rules; requiring the trust to develop systems for registering and verifying tax credits; providing an effective date.

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



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28 Section 1. Section 288.9622, Florida Statutes, is amended  
29 to read:

30 288.9622 Findings and intent.—

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

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

51 (3) It is the intent of the Legislature to mobilize venture  
52 equity capital for investment in ~~such~~ a manner that creates ~~as~~  
53 ~~to result in a significant potential to create~~ new businesses  
54 and jobs in this state which ~~that~~ are based on high growth  
55 potential technologies, products, or services and ~~that~~ will  
56 further diversify the economy of this state.



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57 (4) It is the intent of the Legislature that an institute  
58 be created to mentor, market, and attract capital to such  
59 commercialization ventures throughout the state.

60 Section 2. Section 288.9623, Florida Statutes, is amended  
61 to read:

62 288.9623 Definitions.—As used in this part ~~ss. 288.9621-~~  
63 ~~288.9625~~:

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

66 (2) "Certificate" means a contract between the trust and a  
67 designated investor pursuant to which a tax credit is available  
68 and issued to the designated investor.

69 (3) "Commitment agreement" means a contract between the  
70 partnership and a designated investor pursuant to which the  
71 designated investor commits to providing a specified amount of  
72 investment capital in exchange for an ownership interest in the  
73 partnership.

74 (4) "Designated investor" means a person, other than the  
75 partnership, fund, or trust, who purchases an ownership interest  
76 in the partnership or is a transferee of a certificate or tax  
77 credit.

78 ~~(5)(2)~~ "Fund" means the Florida Opportunity Fund.

79 (6) "Partnership" means the Florida Infrastructure Fund  
80 Partnership.

81 (7) "Tax credit" means a contingent tax credit issued  
82 pursuant to s. 288.9628.

83 (8) "Trust" means the Florida Infrastructure Investment  
84 Trust.

85 Section 3. Section 288.9627, Florida Statutes, is created



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86 to read:

87 288.9627 Florida Infrastructure Fund Partnership.—

88 (1) The fund shall facilitate the creation of the Florida  
89 Infrastructure Fund Partnership, which is a private, for-profit,  
90 limited or limited liability partnership, organized and operated  
91 under chapter 620. The partnership is not an instrumentality of  
92 the state. The partnership shall manage its business affairs and  
93 conduct business in accordance with its organizational documents  
94 and the purposes set forth in this section.

95 (2) The primary purpose of the partnership is to make  
96 investments in infrastructure projects located in this state  
97 which foster economic development in this state. For purposes of  
98 this section, the term "infrastructure" means the assets that a  
99 society uses to facilitate the operation of its economy or  
100 provide an economic or social benefit to a community,  
101 municipality, state, or other political subdivision, including,  
102 without limitation, roads, water, and wastewater systems,  
103 communications facilities, power systems, transportation  
104 systems, communication systems, bridges, railways, ports,  
105 airports, tunnels, renewable energy facilities, ancillary or  
106 support systems of the foregoing, and other strategic  
107 infrastructure needs of the state.

108 (3) The fund, as general partner, is authorized and  
109 responsible for managing the business affairs of the  
110 partnership, including, without limitation, the engagement of  
111 its investment manager or managers to assist with the management  
112 of the partnership; soliciting and negotiating the terms of,  
113 contracting for, and receiving investment capital with the  
114 assistance of its investment manager or other service providers;



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115 receiving investment returns; paying investors; approving  
116 investments in order to provide financial returns, together with  
117 strategic returns designed to result in a significant potential  
118 to create or retain jobs in this state and further diversify the  
119 economy of this state; and such other activities necessary to  
120 operate the partnership. The fund may loan the partnership up to  
121 \$350,000 to be used to pay initial expenses incurred in the  
122 organization of the partnership and the solicitation of  
123 investors.

124 (4) The partnership shall raise funds from designated  
125 investors for making investments in state infrastructure  
126 projects by entering into a commitment agreement with such  
127 investors on terms approved by the fund's board. The partnership  
128 shall provide a copy of each commitment agreement to the trust  
129 upon the execution of the agreement by all parties to the  
130 agreement.

131 (5) Pursuant to s. 288.9628, contemporaneously with a  
132 commitment agreement from a designated investor to the  
133 partnership, the trust shall issue certificates that may be  
134 redeemable for contingent tax credits in order to provide  
135 incentives or guarantees to the designated investor for making a  
136 commitment to the partnership.

137 (6) The partnership may enter into commitment agreements  
138 with designated investors beginning July 1, 2010. The total  
139 principal investment payable to the partnership under all  
140 commitment agreements with designated investors and the total  
141 amount of contingent tax certificates that may be issued  
142 pursuant to this section may not exceed \$350 million.

143 (7) The partnership may invest only in infrastructure



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144 projects that have raised equity or debt capital from other  
145 sources so that the total amount invested in an infrastructure  
146 project is at least twice the amount invested by the  
147 partnership. However, the partnership may not invest more than  
148 20 percent of its total funds available for investment in any  
149 single infrastructure project.

150 (8) The partnership shall make investments in  
151 infrastructure projects that are based on an evaluation of the  
152 following factors:

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

155 (b) The likelihood of the project attracting operating  
156 capital from investors, grants, or other lenders.

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

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

159 (e) The financial resources of the company proposing the  
160 project.

161 (f) The presence of reasonable safeguards for the project  
162 to provide continued benefit to state residents.

163 (g) Any other factors deemed by the partnership to be  
164 relevant to the likelihood of the project's success and not  
165 inconsistent with this section.

166 (9) Beginning December 1, 2010, and annually thereafter,  
167 the partnership shall issue an annual report concerning its  
168 activities to the Governor, the President of the Senate, and the  
169 Speaker of the House of Representatives. At a minimum, the  
170 annual report must include:

171 (a) An accounting of the amount of investments disbursed by  
172 the partnership and the progress of the partnership, including



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173 the progress of infrastructure projects that have been directly  
174 invested in by the partnership.

175 (b) A description of the benefits to the state resulting  
176 from the partnership, including the number of businesses and  
177 associated industries positively affected, the number of jobs  
178 maintained or created, and the positive impact on the state's  
179 economy.

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

184 (10) The partnership and the fund may not pledge the credit  
185 or taxing power of the state or any political subdivision of the  
186 state, and may not make its debts payable out of any moneys or  
187 resources except those of the partnership or the fund.  
188 Obligations of the partnership and the fund are not obligations  
189 of the state or any political subdivision of the state but are  
190 obligations of the partnership or the fund which are payable  
191 solely from the partnership's or fund's resources.

192 (11) The partnership may not accept investment from a  
193 financial institution or company identified in s. 215.472 or a  
194 scrutinized company as that term is defined in s. 215.473, and  
195 may not make any investment in an infrastructure project in  
196 which such institution or company has an ownership interest. The  
197 entity that owns the infrastructure project invested in by the  
198 partnership shall provide reasonable assurances to the  
199 partnership that it will not provide an ownership interest in  
200 the infrastructure project to a financial institution or company  
201 identified in s. 215.472 or a scrutinized company.



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202 Section 4. Section 288.9628, Florida Statutes, is created  
203 to read:

204 288.9628 Florida Infrastructure Investment Trust; issuance  
205 of certificates and contingent tax credits.-

206 (1) The Florida Infrastructure Investment Trust, a state  
207 beneficiary public trust administered by a board of trustees, is  
208 created. The exercise of the powers conferred by this section by  
209 the trust's board of trustees is deemed to be a public purpose.

210 (2) The board of trustees consists of the executive  
211 director of the Office of Trade, Tourism, and Economic  
212 Development, the vice chair of Enterprise Florida, Inc., and the  
213 chief executive officer of Enterprise Florida, Inc., or their  
214 respective designees.

215 (a) An administrative officer under the direction of the  
216 board of trustees may act on behalf of the trust.

217 (b) Members of the board of trustees shall serve without  
218 compensation but members, the administrative officer of the  
219 board of trustees, and other board employees may be reimbursed  
220 pursuant to s. 112.061 for all reasonable, necessary, and actual  
221 expenses as determined and approved by the board.

222 (c) Members may not have an interest in any person to whom  
223 a tax credit is allocated and issued by the trust.

224 (3) The trust may seek reimbursement of its reasonable  
225 costs and expenses from the partnership by charging a fee for  
226 the issuance of certificates to designated investors of up to  
227 0.25 percent of the aggregate investment capital committed to  
228 the partnership by designated investors that received a  
229 certificate.

230 (4) The trust may engage consultants, retain professional





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231 services, issue certificates and contingent tax credits, sell  
232 tax credits in accordance with paragraph (8)(d), expend funds,  
233 invest funds, contract, bond or insure against loss, or perform  
234 any other act necessary to carry out its purpose.

235 (5) Pursuant to this section, the trust shall issue  
236 certificates that may be redeemable for tax credits in order to  
237 provide an incentive to designated investors to make equity  
238 investments in the partnership. All certificates issued by the  
239 trust, and tax credits issued in accordance with such  
240 certificates, may not exceed a total of \$350 million in tax  
241 credits. The certificates shall be issued contemporaneously with  
242 an investment commitment by a designated investor. A certificate  
243 shall have a specific calendar year maturity date that is at  
244 least 12 years after the date of issuance as designated by the  
245 trust. A certificate and the related tax credit is transferable,  
246 in whole or in part, by the designated investor. A tax credit  
247 may not be claimed or redeemed except by a designated investor  
248 or transferee in accordance with the terms of the certificate.

249 (6) Within 30 days after entering into a commitment  
250 agreement with a designated investor, the trust shall submit to  
251 the Department of Revenue an application for the issuance of a  
252 contingent tax credit to the designated investor in the name of  
253 the trust for the benefit of the designated investor. Within 60  
254 days after receipt of such application, the department shall  
255 issue the contingent tax credit to the trust for the benefit of  
256 the designated investor. The contingent tax credit shall be  
257 issued by the department on terms consistent with the terms of  
258 the respective certificate issued by the partnership to the  
259 designated investor. At the request of the trust, the department



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260 shall provide additional reasonable assurances to a designated  
261 investor that it is entitled to a tax credit in accordance with  
262 the terms of this section and the certificate.

263 (7) The trust shall include in each certificate the maximum  
264 amount of a tax credit which may be issued to a designated  
265 investor and identify the specific calendar year the certificate  
266 may be redeemed. The initial maximum amount is the total amount  
267 of investment capital committed to the partnership by the  
268 designated investor. However, subject only to paragraph (8)(e),  
269 the amount of the tax credit issued to a designated investor  
270 under a certificate is limited to the designated investor's net  
271 capital investment, which is equivalent to the difference  
272 between the total investment capital actually advanced by the  
273 designated investor to the partnership and an amount that equals  
274 at least the aggregate actual distributions received by the  
275 designated investor and any predecessor in interest of the  
276 certificate. The trust shall clearly indicate on the certificate  
277 the amount of committed investment, the amount of the  
278 partnership's equity interest issued to the designated investor,  
279 and the calculation formula for determining the amount of the  
280 tax credit which may be claimed. Once funds are invested by a  
281 designated investor, the certificate is binding on the trust and  
282 the Department of Revenue and may not be modified, terminated,  
283 or rescinded.

284 (8) If on the maturity date of the certificate, the total  
285 net capital investment provided to the partnership from the  
286 designated investor holding the certificate is greater than  
287 zero, the partnership shall provide written notification of this  
288 circumstance to each designated investor in the partnership.



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289       (a) In the notification to each designated investor, the  
290 partnership must provide a good faith estimate of the fair  
291 market value of the partnership's assets as of the date of the  
292 notice; the total capital investment of all designated investors  
293 as of the date of the notice; the total amount of distributions  
294 received by the designated investors; the amount of the tax  
295 credit available to the designated investor, if any, if elected  
296 by that designated investor; and any schedule for the amount of  
297 tax credit which may be claimed by the designated investor in a  
298 given year pursuant to paragraph (e). A copy of each investor  
299 notice shall be provided at the same time to the trust holding  
300 the designated investor's contingent tax certificate and to the  
301 Department of Revenue.

302       (b) Upon receipt of notice from the partnership, each  
303 affected designated investor may elect one of the following:

304       1. Having a tax credit certificate issued to it in an  
305 amount equal to the amount of the tax credit available to the  
306 designated investor in accordance with the terms of this section  
307 and the certificate;

308       2. Having tax credits sold by the trust on behalf of the  
309 designated investor, with the proceeds of the sale to be paid by  
310 the trust to the designated investor; or

311       3. Maintaining its investment in the partnership.

312  
313 The designated investor must provide written notification to the  
314 partnership and the trust of its election within 30 days after  
315 the designated investor's receipt of notification from the  
316 partnership. If the designated investor fails to provide notice  
317 within 30 days, the designated investor is deemed to have



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318 elected the option set forth in subparagraph 3.

319 (c) If the designated investor elects to have a tax credit  
320 issued to itself, the trust shall advise the Department of  
321 Revenue and apply on behalf of the designated investor to the  
322 department for the issuance of a tax credit certificate in the  
323 name of the investor. In order to receive the tax credit  
324 certificate, the designated investor must agree in writing to  
325 transfer its limited partnership interest in the partnership to  
326 the fund. The application for the tax credit must include the  
327 original contingent tax credit certificate held by the trust for  
328 the designated investor, a copy of the notice provided to the  
329 designated investor by the partnership, a copy of the designated  
330 investor's written notice to the trust and the partnership of  
331 its election to have the tax credit issued to it, and a copy of  
332 the designated investor's written agreement to transfer its  
333 limited partnership interest in the partnership to the fund. The  
334 application must be submitted by the trust within 30 days after  
335 the trust's receipt of the designated investor's election;  
336 however, the trust's failure to timely submit the application  
337 does not prevent the designated investor from being eligible to  
338 receive the tax credit certificate if the designated investor  
339 submits an application for the tax credit certificate within 90  
340 days after the submission of its election notice to the trust.  
341 The department shall issue the tax credit certificate within 30  
342 days after its receipt of a timely and complete application. Any  
343 tax credit issued may be transferred, in whole or in part, by  
344 its holder pursuant to paragraph (g).

345 (d) If the designated investor elects to sell the tax  
346 credits held by the trust, the trust shall exercise its best



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347 efforts to sell the tax credits. The trust may sell tax credits  
348 in amounts no more than the initial maximum amount of the  
349 contingent tax credit issued to the designated investor, or such  
350 amount as is necessary to yield proceeds to the designated  
351 investor equal to its net capital investment as of the date of  
352 the partnership's notice, whichever is less; however, the  
353 aggregate amount of tax credits sold may not exceed an amount  
354 that is 7 percent above the designated investor's net capital  
355 investment. In order to receive the proceeds of the trust's sale  
356 of tax credits, the designated investor must agree in writing to  
357 transfer its limited partnership interest in the partnership to  
358 the fund. Within 30 days after the trust's sale of the tax  
359 credits, the trust shall notify the designated investor and the  
360 partnership and apply to the Department of Revenue for the  
361 issuance of a tax credit certificate or certificates in the name  
362 of the person or persons who purchased the credits. The  
363 application must include the original contingent tax credit  
364 certificate held by the trust for the designated investor, a  
365 copy of the notice provided to the investor by the partnership,  
366 a copy of the investor's written notice to the trust and the  
367 partnership of its election to have the credit issued to it, a  
368 copy of the purchase agreement or agreements executed by the  
369 purchaser or purchasers, and a copy of the investor's written  
370 agreement to transfer its limited partnership interest in the  
371 partnership to the fund. The department shall issue the tax  
372 credit certificate or certificates applied for within 30 days  
373 after its receipt of a timely and complete application. If the  
374 designated investor's tax credits have been sold by the trust to  
375 more than one person, the department shall issue tax credit



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376 certificates to such persons in amounts as designated by the  
377 trust in the application. If the trust is unable to sell the  
378 designated investor's tax credits within 90 days after the date  
379 of the designated investor's election, the investor has the  
380 continuing option after that date to revoke or modify its prior  
381 election and elect to have a tax credit certificate issued  
382 directly to it for the amount of any unsold credit. Within 30  
383 days after such election by the designated investor, the trust  
384 shall notify the partnership and apply to the department for the  
385 issuance of a tax credit certificate or certificates in the name  
386 of the designated investor in the amount of any unsold credit  
387 and in the name of the persons who purchased any portion of the  
388 credit. Payment by the purchaser for the tax credit, or any  
389 increment thereof, shall be made to the trust on behalf of the  
390 designated investor or directly to the designated investor as  
391 elected by the investor.

392 (e) Any tax credit allowed under a tax credit issued by the  
393 Department of Revenue under this section may be used by the  
394 owner as an offset against any taxes owed to the state pursuant  
395 to any of the provisions listed in s. 72.011(1)(a). The offset  
396 may be applied by the owner on any return for an eligible tax  
397 due on or after the date on which the tax credit certificate was  
398 issued by the department but no more than 7 years after the tax  
399 credit certificate was issued. The owner of the tax credit may  
400 elect to have all or any portion of the amount authorized in the  
401 tax credit certificate paid to it by the state or be claimed as  
402 a refundable credit rather than applied as an offset against  
403 eligible taxes if such election is made within 7 years after the  
404 tax credit certificate was issued, and if the amount elected to



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405 be paid in any calendar year is no greater than 25 percent of  
406 the initial maximum amount of the related certificate and any  
407 balance is available the following year for payment or offset.  
408 If the designated investor does not file a return in this state  
409 and elects to claim the tax credit as a refundable credit, the  
410 investor may request the trust to seek the refundable credit on  
411 its behalf.

412 (f) To the extent that any tax credit provided for in this  
413 section is used by its owner as a credit against taxes due or to  
414 obtain payment from the state, such amount becomes an obligation  
415 of the partnership to the state secured solely by the limited  
416 partnership interest transferred to the fund by the designated  
417 investor whose investment generated the used credit. In such  
418 case, the state's recovery is limited to the forfeited limited  
419 partnership interest. The Department of Revenue shall account  
420 for tax credits used or paid under this section and make such  
421 information available to the partnership. The fund, as general  
422 partner, has no liability to the state for repayment of the used  
423 tax credits from the fund's separate assets unrelated to its  
424 interest in the partnership.

425 (g) Any certificate and related tax credit issued under  
426 this section is transferrable in whole or in part by its owner;  
427 however, such transfer may not extend the time within which the  
428 credit must be exercised by the owner or any transferee. Any  
429 owner of a tax credit certificate who transfers the tax credit  
430 or any portion thereof to any other person must notify the trust  
431 and Department of Revenue in writing of such transfer, including  
432 notification of the amount of tax credit transferred and the  
433 person to whom the credit was transferred.



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434       (10) The Department of Revenue shall by rule work with the  
435 partnership and the trust to establish the procedures to be  
436 followed in using the tax credits in accordance this section.

437       (11) The trust, in conjunction with the Department of  
438 Revenue, shall develop a system for registering any certificate  
439 and related tax credit issued or transferred pursuant to this  
440 section and a system that permits verifying that any tax credit  
441 claimed on a tax return is valid and that any transfers of the  
442 certificate and related tax credit are made in accordance with  
443 this section.

444       Section 5. This act shall take effect July 1, 2010.