

HB 7213

2010

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 and the fund from pledging the  
19          credit or taxing power of the state or its political  
20          subdivisions; prohibiting the partnership from investing  
21          in projects with or accepting investments from certain  
22          companies; creating s. 288.9628, F.S.; creating the  
23          Florida Infrastructure Investment Trust; providing for  
24          powers and duties, a board of trustees, and an  
25          administrative officer of the trust; providing for the  
26          trust's issuance of certificates to investment partners  
27          who invest in the partnership; specifying that the  
28          certificates are redeemable for tax credits under certain

HB 7213

2010

29 | conditions; authorizing the trust to charge fees; limiting  
 30 | the amount of tax credits issued; providing for the  
 31 | redemption or sale of certificates; providing for the  
 32 | issuance of the tax credits by the Department of Revenue;  
 33 | specifying the taxes against which the credits may be  
 34 | applied; limiting the period within which tax credits may  
 35 | be used; providing for the state's obligation for use of  
 36 | the tax credits; limiting the liability of the fund;  
 37 | requiring the department to provide a certain written  
 38 | assurance to the trust under certain circumstances;  
 39 | amending s. 213.053, F.S.; authorizing the department to  
 40 | provide tax credit information to the partnership and the  
 41 | trust; providing an effective date.

42 |

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

44 |

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

47 | 288.9621 Short title.—This part ~~Sections 288.9621–288.9625~~  
 48 | may be cited as the "Florida Capital Formation Act."

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

51 | 288.9622 Findings and intent.—

52 | (1) The Legislature finds and declares that there is a  
 53 | need to increase the availability of seed capital and early  
 54 | stage venture equity capital for emerging companies in the  
 55 | state, including, without limitation, enterprises in life  
 56 | sciences, information technology, advanced manufacturing

57 | processes, aviation and aerospace, and homeland security and  
 58 | defense, as well as other strategic technologies and  
 59 | infrastructure funding.

60 | (2) It is the intent of the Legislature that this part ~~ss.~~  
 61 | ~~288.9621-288.9625~~ serve to mobilize private investment in a  
 62 | broad variety of venture capital partnerships in diversified  
 63 | industries and geographies; retain private sector investment  
 64 | criteria focused on rate of return; use the services of highly  
 65 | qualified managers in the venture capital industry regardless of  
 66 | location; facilitate the organization of the Florida Opportunity  
 67 | Fund as an investor in seed and early stage businesses,  
 68 | infrastructure projects, venture capital funds, infrastructure  
 69 | funds, and angel funds; and precipitate capital investment and  
 70 | extensions of credit to and in the Florida Opportunity Fund.

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

73 | 288.9623 Definitions.— As used in this part, the term ~~ss.~~  
 74 | ~~288.9621-288.9625~~:

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

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

81 | (3) "Commitment agreement" means a contract between the  
 82 | partnership and an investment partner under which the partner  
 83 | commits to providing a specified amount of investment capital in  
 84 | exchange for an ownership interest in the partnership.

85 (4) ~~(2)~~ "Fund" means the Florida Opportunity Fund.

86 (5) "Infrastructure project" means a capital project in  
 87 the state for a facility or other infrastructure need of the  
 88 state, a county, or a municipality with respect to any of the  
 89 following: water or wastewater system, communication system,  
 90 power system, transportation system, renewable energy system,  
 91 ancillary or support system for any of these types of projects,  
 92 or other strategic infrastructure of the state, the county, or  
 93 the municipality.

94 (6) "Investment partner" or "partner" means a person,  
 95 other than the partnership, the fund, or the trust, who  
 96 purchases an ownership interest in the partnership.

97 (7) "Partnership" means the Florida Infrastructure Fund  
 98 Partnership.

99 (8) "Tax credit" means a credit issued against the taxes  
 100 specified in s. 288.9628(7) (b) .

101 (9) "Trust" means the Florida Infrastructure Investment  
 102 Trust.

103 Section 4. Section 288.9627, Florida Statutes, is created  
 104 to read:

105 288.9627 Florida Infrastructure Fund Partnership;  
 106 creation; duties.—

107 (1) The Florida Opportunity Fund shall facilitate the  
 108 creation of the Florida Infrastructure Fund Partnership, which  
 109 shall be organized and operated under chapter 620 as a private,  
 110 for-profit limited partnership or limited liability partnership  
 111 with the fund as a general partner. The partnership shall manage  
 112 its business affairs and conduct business consistent with its

HB 7213

2010

113 organizing documents and the purposes described in this section.

114 However, the partnership is not an instrumentality of the state.

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

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

122 1. Hiring one or more investment managers to assist with  
 123 management of the partnership.

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

127 3. Receiving investment returns.

128 4. Disbursing returns to investment partners.

129 5. Approving investments in order to provide financial  
 130 returns together with strategic returns designed to satisfy the  
 131 state's, the county's, or the municipality's infrastructure  
 132 needs; result in a significant potential to create or retain  
 133 jobs in this state; and further diversify the state's economy.

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

136 (b) The fund may lend up to \$350,000 to the partnership to  
 137 pay the initial expenses of organizing the partnership and  
 138 soliciting investment partners.

139 (4) (a) The partnership shall raise funds from investment  
 140 partners for investment in infrastructure projects in the state

HB 7213

2010

141 by entering into commitment agreements with such partners on  
142 terms approved by the fund's board.

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

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

151 (d) The partnership may enter into commitment agreements  
152 with investment partners beginning July 1, 2010. The total  
153 principal investment payable to the partnership under all  
154 commitment agreements, and the corresponding amount of the  
155 certificates issued by the trust under s. 288.9628, may not  
156 exceed the total aggregate amount of \$350 million. However, if  
157 the partnership does not obtain commitment agreements totaling  
158 at least \$75 million by December 1, 2011, the partnership must  
159 cancel any executed agreement and return the investment capital  
160 of each investment partner who executed an agreement.

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

163 1. That fulfills a critical infrastructure need of the  
164 state.

165 2. That raises enough equity or debt capital from other  
166 sources so that the total amount invested in the project is at  
167 least twice the amount invested by the partnership.

168 3. For which legal measures exist, appropriate to the

HB 7213

2010

169 individual project, to ensure that the project is not  
170 fraudulently closed to the detriment of the residents of the  
171 state.

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

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

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

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

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

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

183 (e) The financial resources of the entity proposing the  
184 project.

185 (f) The existence of reasonable safeguards to ensure that  
186 the project provides a continuing benefit for residents of the  
187 state.

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

191 (7) By December 1 of each year beginning in 2010, the  
192 partnership shall submit an annual report of its activities to  
193 the Governor, the President of the Senate, and the Speaker of  
194 the House of Representatives. The annual report must include, at  
195 a minimum:

196 (a) An accounting of the amounts of investment capital

HB 7213

2010

197 raised and disbursed by the partnership and the progress of the  
198 partnership, including the progress of each infrastructure  
199 project in which the partnership has invested.

200 (b) A description of the benefits to the state that result  
201 from the partnership's investments, including a list of  
202 infrastructure projects; the benefits of those projects to the  
203 state, the county, or the municipality; the number of businesses  
204 and associated industries positively affected; the number,  
205 types, and average annual wages of the jobs created or retained;  
206 and the positive impact on the state's economy.

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

211 (8) The partnership and the fund may not pledge the credit  
212 or taxing power of the state or any political subdivision  
213 thereof and may not make their debts payable from any moneys or  
214 resources except those of the partnership or the fund. An  
215 obligation of the partnership or the fund is not an obligation  
216 of the state or any political subdivision thereof but is an  
217 obligation of the partnership or the fund, payable exclusively  
218 from the partnership's or the fund's resources.

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

225 or scrutinized company with an ownership interest in the  
 226 infrastructure project.

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

229 288.9628 Florida Infrastructure Investment Trust;  
 230 creation; duties; issuance of certificates; applications for tax  
 231 credits.—

232 (1) (a) There is created the Florida Infrastructure  
 233 Investment Trust, which shall be organized as a state  
 234 beneficiary public trust to be administered by a board of  
 235 trustees. The powers and duties of the board of trustees under  
 236 this section are deemed to be performed for essential public  
 237 purposes.

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

244 (c) Members of the board of trustees and its  
 245 administrative officer shall serve without compensation. Neither  
 246 a member nor the administrative officer may have a financial  
 247 interest in any investment partner.

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

HB 7213

2010

253 (3) (a) The trust shall, pursuant to s. 288.9627 and this  
254 section, issue certificates redeemable for contingent tax  
255 credits to investment partners who make equity investments in  
256 the Florida Infrastructure Fund Partnership.

257 (b) The trust may seek reimbursement of its reasonable  
258 costs and expenses from the partnership by charging a fee for  
259 the issuance of certificates to investment partners of up to  
260 0.25 percent of the aggregate investment capital committed to  
261 the partnership by the investment partners who are issued  
262 certificates.

263 (c) All certificates issued by the trust may not exceed  
264 the total aggregate amount specified in s. 288.9627(4) (d).

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

273 (e) Once the total amount of the investment capital  
274 committed by an investment partner in his or her commitment  
275 agreement is provided to the partnership by the partner, the  
276 certificate is binding, and the partnership, the trust, and the  
277 Department of Revenue may not modify, terminate, or rescind the  
278 certificate.

279 (4) (a) The partnership shall provide written notice to  
280 each investment partner if, on the maturity date of his or her

HB 7213

2010

281 certificate, the partner's net capital investment is greater  
282 than zero. The notice must include, at a minimum:

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

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

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

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

291  
292 For purposes of this section, an investment partner's net  
293 capital investment is an amount equal to the difference between  
294 the total investment capital actually advanced by the investment  
295 partner to the partnership and the amount of the aggregate  
296 actual distributions received by the investment partner.

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

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

301 1. Have a tax credit issued to the investment partner;

302 2. If the investment partner does not have a tax liability

303 for any of the taxes specified in paragraph (7) (b), have the

304 trust sell the partner's certificate on his or her behalf with

305 the proceeds of the sale to be paid to the partner by the trust;

306 or

307 3. Maintain the investment partner's investment in the  
308 partnership.

HB 7213

2010

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

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

319 (5) (a) If an investment partner elects to have a tax  
320 credit issued to him or her, the trust shall apply to the  
321 Department of Revenue on the partner's behalf for issuance of  
322 the tax credit in his or her name. In order to receive the tax  
323 credit, the investment partner must agree in writing to transfer  
324 his or her ownership interest in the partnership to the fund.

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

HB 7213

2010

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

338 2. The amount necessary to yield proceeds to the  
339 investment partner equal to his or her net capital investment as  
340 of the date of the partnership's notice, except that the  
341 aggregate amount of a certificate sold under this subparagraph  
342 may not exceed 107 percent of the investment partner's net  
343 capital investment.

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

354 (b) The trust's application for a tax credit must include  
355 the partnership's certification of the amount of tax credit to  
356 be issued, the identity of the taxpayer to whom the tax credit  
357 is to be issued, and the tax against which the credit shall be  
358 applied. The Department of Revenue shall issue the tax credit  
359 within 30 days after receipt of a timely and complete  
360 application.

361 (c) If an investment partner's certificate is sold by the  
362 trust under paragraph (5) (b) to more than one purchaser, the

HB 7213

2010

363 Department of Revenue shall issue tax credits to such purchasers  
364 in such amounts as designated by the trust in the application.

365 (d) The trust shall provide the investment partner with  
366 written notice if the trust is unable to sell the partner's  
367 certificate within 90 days after the partner's election. Within  
368 30 days after receipt of such notice, the investment partner  
369 may:

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

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

379 (7) (a) The amount of the tax credits certified to the  
380 Department of Revenue may not exceed the investment partner's  
381 net capital investment. However, the amount of tax credits that  
382 may be claimed for a certificate in a calendar year may not  
383 exceed 25 percent of the amount for which the certificate is  
384 issued.

385 (b) A tax credit issued by the Department of Revenue under  
386 this section may be used by the owner of the credit as an offset  
387 against any taxes owed to the state under chapter 212, chapter  
388 220, or chapter 624. The offset may be applied by the owner on  
389 any return for an eligible tax due on or after the date that the  
390 credit is issued by the Department of Revenue but within 7 years

HB 7213

2010

391 after the credit is issued. The owner of the tax credit may  
392 elect to have the amount authorized in the credit, or any  
393 portion thereof, claimed as a refund of taxes paid rather than  
394 applied as an offset against eligible taxes, if such election is  
395 made within 7 years after the credit is issued.

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

409 (8) The Department of Revenue, upon the request of the  
410 trust, shall provide the trust with a written assurance that the  
411 certificates issued by the trust will be honored by the  
412 Department of Revenue as provided in this section.

413 Section 6. Paragraph (z) is added to subsection (8) of  
414 section 213.053, Florida Statutes, to read:

415 213.053 Confidentiality and information sharing.—

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

HB 7213

2010

418 |       (z) Information relative to tax credits under ss. 288.9627  
419 | and 288.9628 to the Florida Infrastructure Fund Partnership and  
420 | the Florida Infrastructure Investment Trust.

421 |  
422 | Disclosure of information under this subsection shall be  
423 | pursuant to a written agreement between the executive director  
424 | and the agency. Such agencies, governmental or nongovernmental,  
425 | shall be bound by the same requirements of confidentiality as  
426 | the Department of Revenue. Breach of confidentiality is a  
427 | misdemeanor of the first degree, punishable as provided by s.  
428 | 775.082 or s. 775.083.

429 |       Section 7. This act shall take effect July 1, 2010.