

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

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

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Section 288.9621, Florida Statutes, is amended
 50 to read:

51 288.9621 Short title.—This part ~~Sections 288.9621-288.9625~~
 52 may be cited as the "Florida Capital Formation Act."

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

55 288.9622 Findings and intent.—

56 (1) The Legislature finds and declares that there is a

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57 | need to increase the availability of seed capital and early
 58 | stage venture equity capital for emerging companies in the
 59 | state, including, without limitation, enterprises in life
 60 | sciences, information technology, advanced manufacturing
 61 | processes, aviation and aerospace, and homeland security and
 62 | defense, as well as other strategic technologies and
 63 | infrastructure funding.

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

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

77 | 288.9623 Definitions.— As used in this part, the term ~~ss.~~
 78 | ~~288.9621-288.9625~~:

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

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

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

89 ~~(4)(2)~~ "Fund" means the Florida Opportunity Fund.

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

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

101 (7) "Partnership" means the Florida Infrastructure Fund
 102 Partnership.

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

105 (9) "Trust" means the Florida Infrastructure Investment
 106 Trust.

107 Section 4. Section 288.9627, Florida Statutes, is created
 108 to read:

109 288.9627 Florida Infrastructure Fund Partnership;
 110 creation; duties.-

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

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

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

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

126 1. Hiring one or more investment managers to assist with
127 management of the partnership.

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

131 3. Receiving investment returns.

132 4. Disbursing returns to investment partners.

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

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

140 (b) The fund may lend up to \$350,000 to the partnership to

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141 pay the initial expenses of organizing the partnership and
142 soliciting investment partners.

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

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

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

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

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

167 1. That fulfills a critical infrastructure need in the
168 state.

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

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

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

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

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

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

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

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

187 (e) The financial resources of the entity proposing the
188 project.

189 (f) The existence of reasonable safeguards to ensure that
190 the project provides a continuing benefit for residents of the
191 state.

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

195 (7) By December 1 of each year beginning in 2010, the
196 partnership shall submit an annual report of its activities to

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197 the Governor, the President of the Senate, and the Speaker of
198 the House of Representatives. The annual report must include, at
199 a minimum:

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

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

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

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

223 (9) The partnership may not invest in an infrastructure
224 project with, or accept investment capital from, a company

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225 described in s. 215.472 or a scrutinized company as defined in
 226 s. 215.473. The entity owning an infrastructure project in which
 227 the partnership has invested must provide reasonable assurances
 228 to the partnership that the entity will not provide such company
 229 or scrutinized company with an ownership interest in the
 230 infrastructure project.

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

233 288.9628 Florida Infrastructure Investment Trust;
 234 creation; duties; issuance of certificates; applications for tax
 235 credits.—

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

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

248 (c) Members of the board of trustees and its
 249 administrative officer shall serve without compensation. Neither
 250 a member nor the administrative officer may have a financial
 251 interest in any investment partner.

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

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

261 (b) The trust may seek reimbursement of its reasonable
262 costs and expenses from the partnership by charging a fee for
263 the issuance of certificates to investment partners of up to
264 0.25 percent of the aggregate investment capital committed to
265 the partnership by the investment partners who are issued
266 certificates.

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

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

277 (e) Once the total amount of the investment capital
278 committed by an investment partner in his or her commitment
279 agreement is provided to the partnership by the partner, the

280 certificate is binding, and the partnership, the trust, and the
 281 Department of Revenue may not modify, terminate, or rescind the
 282 certificate.

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

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

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

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

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

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

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

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

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

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306 2. Have the trust sell the partner's certificate on his or
307 her behalf with the proceeds of the sale to be paid to the
308 partner by the trust; or

309 3. Maintain the investment partner's investment in the
310 partnership.

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

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

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

327 (b) If an investment partner elects to have the trust sell
328 his or her certificate, the trust shall exercise its best
329 efforts to sell the certificate. In order to receive the
330 proceeds from the trust's sale of the certificate, the
331 investment partner must agree in writing to transfer his or her
332 ownership interest in the partnership to the fund. A purchaser's
333 payment for the certificate, or any portion thereof, shall be

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334 made to the trust on behalf of the investment partner or, upon
335 the partner's request, directly to the investment partner. The
336 trust may sell a certificate in an amount that does not exceed
337 the lesser of:

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

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

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

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

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

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

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

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

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

378 (7) (a) The Department of Revenue may not issue more than
 379 \$350 million in tax credits. The trust may not approve tax
 380 credits in excess of the total capital invested through
 381 commitment agreements.

382 (b) The amount of tax credits that may be claimed by the
 383 owner of the credits, or applied against state taxes, in any one
 384 state fiscal year may not exceed an amount equal to \$87.5
 385 million multiplied by a fraction the numerator of which is the
 386 amount of credits that the Department of Revenue issued to such
 387 owner and the denominator of which is the amount of all credits
 388 that the Department of Revenue issued to all tax credit owners.

389 (c) A tax credit issued by the Department of Revenue under
390 this section may be used by the owner of the credit as an offset
391 against any taxes owed to the state under chapter 212, chapter
392 220, or chapter 624. The offset may be applied by the owner on
393 any return for an eligible tax due on or after the date that the
394 credit is issued by the Department of Revenue but within 7 years
395 after the credit is issued. The owner of the tax credit may
396 elect to have the amount authorized in the credit, or any
397 portion thereof, claimed as a refund of taxes paid rather than
398 applied as an offset against eligible taxes, if such election is
399 made within 7 years after the credit is issued.

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

413 (8) The Department of Revenue, upon the request of the
414 trust, shall provide the trust with a written assurance that the
415 certificates issued by the trust will be honored by the
416 Department of Revenue as provided in this section.

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

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

421 213.053 Confidentiality and information sharing.—

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

424 (z) Information relative to tax credits under ss. 288.9627
 425 and 288.9628 to the Florida Infrastructure Fund Partnership and
 426 the Florida Infrastructure Investment Trust.

427
 428 Disclosure of information under this subsection shall be
 429 pursuant to a written agreement between the executive director
 430 and the agency. Such agencies, governmental or nongovernmental,
 431 shall be bound by the same requirements of confidentiality as
 432 the Department of Revenue. Breach of confidentiality is a
 433 misdemeanor of the first degree, punishable as provided by s.
 434 775.082 or s. 775.083.

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