

By Senator Ring

32-00092-11

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1 A bill to be entitled
2 An act relating to the Florida Infrastructure Fund
3 Partnership; amending s. 288.9622, F.S.; providing
4 legislative intent to increase the availability of
5 later stage venture equity capital and infrastructure
6 funding; amending s. 288.9623, F.S.; providing
7 definitions; creating s. 288.9627, F.S.; creating the
8 Florida Infrastructure Fund Partnership; specifying
9 the purpose and duties of the partnership, which is to
10 facilitate investment in the state's infrastructure;
11 authorizing the partnership to enter into agreements
12 with investors by a certain date; providing investment
13 criteria; requiring an annual report to the Governor
14 and Legislature; providing limitations; creating s.
15 288.9628, F.S.; creating the Florida Infrastructure
16 Investment Trust; providing membership; providing
17 duties; authorizing the trust to issue certificates to
18 investors, which are redeemable as tax credits;
19 providing procedures and requirements for submitting
20 an application to the Department of Revenue for a tax
21 credit; providing that a certificate and any related
22 tax credit may be sold and transferred; providing how
23 the credits may be used; requiring the department to
24 adopt rules; requiring the trust to develop systems
25 for registering and verifying tax credits; providing
26 an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 288.9622, Florida Statutes, is amended
31 to read:

32 288.9622 Findings and intent.—

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

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

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

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

62 Section 2. Section 288.9623, Florida Statutes, is amended
63 to read:

64 288.9623 Definitions.—As used in this part, the term ~~ss.~~
65 ~~288.9621-288.9625~~:

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

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

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

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

80 (5) ~~(2)~~ "Fund" means the Florida Opportunity Fund.

81 (6) "Partnership" means the Florida Infrastructure Fund
82 Partnership.

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

85 (8) "Trust" means the Florida Infrastructure Investment
86 Trust.

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

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88 to read:

89 288.9627 Florida Infrastructure Fund Partnership.-

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

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

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

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

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

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

139 (6) The partnership may enter into commitment agreements
140 with designated investors beginning July 1, 2011. The total
141 principal investment payable to the partnership under all
142 commitment agreements with designated investors and the total
143 amount of contingent tax certificates that may be issued
144 pursuant to this section may not exceed \$350 million.

145 (7) The partnership may invest only in infrastructure

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146 projects that have raised equity or debt capital from other
147 sources so that the total amount invested in an infrastructure
148 project is at least twice the amount invested by the
149 partnership. However, the partnership may not invest more than
150 20 percent of its total funds available for investment in any
151 single infrastructure project.

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

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

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

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

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

161 (e) The financial resources of the company proposing the
162 project.

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

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

168 (9) Beginning December 1, 2011, and annually thereafter,
169 the partnership shall issue an annual report concerning its
170 activities to the Governor, the President of the Senate, and the
171 Speaker of the House of Representatives. At a minimum, the
172 annual report must include:

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

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175 the progress of infrastructure projects that have been directly
176 invested in by the partnership.

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

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

186 (10) The partnership and the fund may not pledge the credit
187 or taxing power of the state or any political subdivision of the
188 state, and may not make its debts payable out of any moneys or
189 resources except those of the partnership or the fund.

190 Obligations of the partnership and the fund are not obligations
191 of the state or any political subdivision of the state but are
192 obligations of the partnership or the fund which are payable
193 solely from the partnership's or fund's resources.

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

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204 Section 4. Section 288.9628, Florida Statutes, is created
205 to read:

206 288.9628 Florida Infrastructure Investment Trust; issuance
207 of certificates and contingent tax credits.-

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

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

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

219 (b) Members of the board of trustees shall serve without
220 compensation but members, the administrative officer of the
221 board of trustees, and other board employees are entitled to
222 reimbursement pursuant to s. 112.061 for all reasonable,
223 necessary, and actual expenses as determined and approved by the
224 board.

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

227 (3) The trust may seek reimbursement of its reasonable
228 costs and expenses from the partnership by charging a fee for
229 the issuance of certificates to designated investors of up to
230 0.25 percent of the aggregate investment capital committed to
231 the partnership by designated investors that received a
232 certificate.

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233 (4) The trust may engage consultants, retain professional
234 services, issue certificates and contingent tax credits, sell
235 tax credits in accordance with paragraph (8)(d), expend funds,
236 invest funds, contract, bond or insure against loss, or perform
237 any other act necessary to carry out its purpose.

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

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

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262 designated investor. At the request of the trust, the department
263 shall provide additional reasonable assurances to a designated
264 investor that it is entitled to a tax credit in accordance with
265 the terms of this section and the certificate.

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

287 (8) If on the maturity date of the certificate, the total
288 net capital investment provided to the partnership from the
289 designated investor holding the certificate is greater than
290 zero, the partnership shall provide written notification of this

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291 circumstance to each designated investor in the partnership.

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

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

307 1. Have a tax credit certificate issued to it in an amount
308 equal to the amount of the tax credit available to the
309 designated investor in accordance with the terms of this section
310 and the certificate;

311 2. Have tax credits sold by the trust on behalf of the
312 designated investor, with the proceeds of the sale to be paid by
313 the trust to the designated investor; or

314 3. Maintain its investment in the partnership.

315
316 The designated investor must provide written notification to the
317 partnership and the trust of its election within 30 days after
318 the designated investor's receipt of notification from the
319 partnership. If the designated investor fails to provide notice

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320 within 30 days, the designated investor is deemed to have
321 elected the option set forth in subparagraph 3.

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

348 (d) If the designated investor elects to sell the tax

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

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

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

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407 made within 7 years after the tax credit certificate was issued,
408 and if the amount elected to be paid in any calendar year is no
409 greater than 25 percent of the initial maximum amount of the
410 related certificate and any balance is available the following
411 year for payment or offset. If the designated investor does not
412 file a return in this state and elects to claim the tax credit
413 as a refundable credit, the investor may request the trust to
414 seek the refundable credit on its behalf.

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

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

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436 person to whom the credit was transferred.

437 (9) The Department of Revenue shall work with the
438 partnership and the trust to establish the procedures, which
439 shall be adopted by rule, to be followed in using the tax
440 credits in accordance this section.

441 (10) The trust, in conjunction with the Department of
442 Revenue, shall develop a system for registering any certificate
443 and related tax credit issued or transferred pursuant to this
444 section and a system that allows verification that any tax
445 credit claimed on a tax return is valid and that any transfers
446 of the certificate and related tax credit are made in accordance
447 with this section.

448 Section 5. This act shall take effect July 1, 2011.