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

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

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

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

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

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

56 288.9622 Findings and intent.—

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

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

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

78 288.9623 Definitions.—As used in this part, the term ~~ss.~~
 79 ~~288.9621-288.9625~~:

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

82 (2) "Certificate" means a contract between the trust and
 83 an investment partner that guarantees the availability of tax
 84 credits for use by the partner, or for transfer or sale under s.

85 288.9628, in order to guarantee the partner's investment capital
 86 in the partnership.

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

91 (4)~~(2)~~ "Fund" means the Florida Opportunity Fund.

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

99 (6) "Investment capital" means the total capital committed
 100 by the investment partner for an equity interest in the
 101 partnership pursuant to a commitment agreement.

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

106 (8) "Net capital loss" means an amount equal to the
 107 difference between the total investment capital actually
 108 advanced by the investment partner to the partnership and the
 109 amount of the aggregate actual distributions received by the
 110 investment partner.

111 (9) "Partnership" means the Florida Infrastructure Fund
 112 Partnership.

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113 (10) "Tax credits" means credits issued against the taxes
114 specified in s. 288.9628(7)(c).

115 (11) "Trust" means the Florida Infrastructure Investment
116 Trust.

117 Section 4. Section 288.9627, Florida Statutes, is created
118 to read:

119 288.9627 Florida Infrastructure Fund Partnership;
120 creation; duties.—

121 (1) The Florida Opportunity Fund shall facilitate the
122 creation of the Florida Infrastructure Fund Partnership, which
123 shall be organized and operated under chapter 620 as a private,
124 for-profit limited partnership or limited liability partnership
125 with the fund as a general partner. The partnership shall manage
126 its business affairs and conduct business consistent with its
127 organizing documents and the purposes described in this section.
128 However, the partnership is not an instrumentality of the state.

129 (2) The primary purpose of the partnership is to raise
130 investment capital and invest the capital in infrastructure
131 projects in the state that promote economic development.

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

135 1. Hiring one or more investment managers to assist with
136 management of the partnership through a solicitation for
137 qualified investment managers for the raising and investing of
138 capital by the partnership. Any such investment manager must
139 have maintained an office in the state for at least 2 years
140 before such solicitation with a full-time investment

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141 professional. The evaluation of an investment manager candidate
142 must address the investment manager's level of experience,
143 quality of management, investment philosophy and process,
144 demonstrable success in fundraising, and prior investment
145 results.

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

149 3. Receiving investment returns.

150 4. Disbursing returns to investment partners.

151 5. Approving investments.

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

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

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

161 (b) The Florida Infrastructure Investment Trust shall,
162 pursuant to s. 288.9628, concurrently with the execution of a
163 commitment agreement with an investment partner, issue a
164 certificate.

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

168 (d) The partnership may enter into commitment agreements

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169 with investment partners beginning July 1, 2011. The total
170 principal investment capital payable to the partnership under
171 all commitment agreements may not exceed the total aggregate
172 amount of \$700 million. However, if the partnership does not
173 obtain commitment agreements totaling at least \$100 million by
174 December 1, 2012, the partnership must cancel any executed
175 agreement and return the investment capital of each investment
176 partner who executed an agreement.

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

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

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

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

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

192 (c) The partnership may not invest in any infrastructure
193 project that involves any phase of a project authorized under
194 the Florida Rail Enterprise Act, ss. 341.8201-341.842.

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

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

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

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

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

203 (e) The financial resources of the entity proposing the
204 project.

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

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

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

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

220 (b) A description of the costs and benefits to the state
221 that result from the partnership's investments, including a list
222 of infrastructure projects; the costs and benefits of those
223 projects to the state and, if applicable, the county or
224 municipality; the number of businesses and associated industries

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225 affected; the number, types, and average annual wages of the
226 jobs created or retained; and the impact on the state's economy.

227 (c) Independently audited financial statements, including
228 statements that show receipts and expenditures during the
229 preceding fiscal year for the operational costs of the
230 partnership.

231 (8) The partnership may not pledge the credit or taxing
232 power of the state or any political subdivision thereof and may
233 not make its debts payable from any moneys or resources except
234 those of the partnership. An obligation of the partnership is
235 not an obligation of the state or any political subdivision
236 thereof but is an obligation of the partnership, payable
237 exclusively from the partnership's resources.

238 (9) The partnership may not invest in an infrastructure
239 project with, or accept investment capital from, a company
240 described in s. 215.472 or a scrutinized company as defined in
241 s. 215.473, and the entity owning an infrastructure project in
242 which the partnership has invested must provide reasonable
243 assurances to the partnership that the entity will not provide
244 such a company or scrutinized company with an ownership interest
245 in the infrastructure project.

246 Section 5. Section 288.9628, Florida Statutes, is created
247 to read:

248 288.9628 Florida Infrastructure Investment Trust;
249 creation; duties; issuance of certificates; applications for tax
250 credits.-

251 (1) (a) There is created the Florida Infrastructure
252 Investment Trust, which shall be organized as a state

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253 beneficiary public trust to be administered by a board of
254 trustees. The powers and duties of the board of trustees under
255 this section are deemed to be performed for essential public
256 purposes.

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

263 (c) Members of the board of trustees and the board's
264 administrative officer shall serve without compensation but are
265 entitled to reimbursement of their expenses. Each member of the
266 board of trustees has a duty of care to the trust in his or her
267 capacity as a trustee. Neither a member nor the administrative
268 officer may have a financial interest in any investment partner.

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

274 (3) (a) The trust shall, pursuant to s. 288.9627 and this
275 section, issue certificates to investment partners in the
276 Florida Infrastructure Fund Partnership, or their assignees,
277 guaranteeing the availability of tax credits of a maximum amount
278 equal to the investment capital committed by such investment
279 partners to the partnership.

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

286 (c) The total aggregate amount of all tax credits made
287 available under the terms of certificates issued by the trust
288 may not exceed \$700 million, and each certificate must include
289 the maximum amount of the tax credits that may be issued under
290 such certificate, which shall be the total amount of investment
291 capital committed to the partnership by the investment partner.

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

300 (e) Once investment capital is committed to the
301 partnership by an investment partner pursuant to his or her
302 commitment agreement, the certificate is binding, and the
303 partnership, the trust, and the Department of Revenue may not
304 modify, terminate, or rescind the certificate, except for
305 administrative items, including the assignment or sale of tax
306 credits guaranteed to be available under the terms of a
307 certificate.

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308 (4) (a) The partnership shall provide written notice to
309 each investment partner if, on the maturity date of his or her
310 certificate, the partner has a net capital loss. The notice must
311 include, at a minimum:

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

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

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

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

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

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

324 1. Have tax credits issued to the investment partner;

325 2. Have the trust sell, on the partner's behalf, the tax
326 credits guaranteed to be available under the terms of the
327 partner's certificate with the proceeds of the sale to be paid
328 to the partner by the trust; or

329 3. Maintain the investment partner's investment in the
330 partnership.

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

334 (e) An investment partner must provide written notice to
335 the partnership and the trust of his or her election within 30

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336 days after his or her receipt of the notice from the
337 partnership. If an investment partner fails to provide notice
338 within 30 days, the investment partner is deemed to have elected
339 to maintain his or her investment in the partnership under
340 subparagraph (c)3.

341 (5) (a) If an investment partner makes the election under
342 subparagraph (4) (c)1. to have tax credits issued to him or her,
343 the trust shall apply to the Department of Revenue on the
344 partner's behalf for issuance of the tax credits in his or her
345 name in an amount equal to such partner's net capital loss. In
346 order to receive the tax credits, the investment partner must
347 agree in writing to transfer his or her ownership interest in
348 the partnership to the fund.

349 (b) If an investment partner makes the election under
350 subparagraph (4) (c)2., the trust shall exercise its best efforts
351 to sell the tax credits. In order to receive the proceeds from
352 the trust's sale of the tax credits, the investment partner must
353 agree in writing to transfer his or her ownership interest in
354 the partnership to the fund. A purchaser's payment for tax
355 credits must be made to the trust on behalf of the investment
356 partner or, upon the partner's request, directly to the
357 investment partner. The trust may sell tax credits in an amount
358 not to exceed the lesser of:

359 1. The maximum amount of the tax credits available under
360 the terms of certificate issued to the investment partner; or

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

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

373 (b) The trust's application for tax credits must include
374 the partnership's certification of the amount of tax credits to
375 be issued, the identity of the taxpayer to whom the tax credits
376 are to be issued, and the tax against which the credits shall be
377 applied. The Department of Revenue shall issue the tax credits
378 within 30 days after receipt of a timely and complete
379 application.

380 (c) The trust shall provide the investment partner with
381 written notice if, within 90 days after the partner's election,
382 the trust is unable to sell enough tax credits to yield net
383 proceeds to the investment partner equal to his or her net
384 capital loss as of the date of the partnership's notice and tax
385 credits available under the terms of the partner's certificate
386 remain unsold. Within 30 days after receipt of such notice, the
387 investment partner may:

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

390 2. Modify the election and:

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391 a. Have unsold tax credits issued to him or her, to the
392 extent that unsold tax credits are available, in an amount equal
393 to the partner's net capital loss, less the proceeds of any sold
394 credits; or

395 b. Have the trust continue to sell tax credits until the
396 partner's net capital loss is satisfied or the maximum amount of
397 tax credits available under the partner's certificate is
398 reached, whichever occurs first.

399
400 Within 30 days after such modified election, the trust shall
401 apply to the Department of Revenue in accordance with paragraph
402 (a) for issuance of tax credits on behalf of the investment
403 partner and on behalf of the purchasers in the amount of their
404 purchased credits.

405 (7) (a) The Department of Revenue may not issue more than
406 \$700 million in tax credits. The trust may not approve tax
407 credits in excess of the total capital committed through
408 commitment agreements.

409 (b) The amount of tax credits that may be claimed by the
410 owner of the credits, or applied against state taxes, in any one
411 state fiscal year may not exceed an amount equal to \$150 million
412 multiplied by a fraction the numerator of which is the amount of
413 credits that the Department of Revenue issued to such owner and
414 the denominator of which is the amount of all credits that the
415 Department of Revenue issued to all tax credit owners.

416 (c) Tax credits issued by the Department of Revenue under
417 this section may be used by the owner of the credits as an
418 offset against any state taxes owed to the state under chapter

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419 212, chapter 220, or ss. 624.509 and 624.5091. The offset may be
420 applied by the owner on any return for an eligible tax due on or
421 after the date that the credits are issued by the Department of
422 Revenue but within 7 years after the credits are issued. The
423 owner of the tax credits may elect to have the amount authorized
424 in the credits, or any portion thereof, claimed as a refund of
425 taxes paid rather than applied as an offset against eligible
426 taxes if such election is made within 7 years after the credits
427 are issued.

428 (d) To the extent that tax credits issued under this
429 section are used by their owner either as credits against taxes
430 due or to obtain payment from the state, the amount of such
431 credits becomes an obligation to the state by the partnership,
432 secured exclusively by the ownership interest transferred to the
433 fund by the investment partner whose investment generated the
434 tax credits. In such case, the state's recovery is limited to
435 such forfeited ownership interest. The Department of Revenue
436 shall account for tax credits used under this section and make
437 such information available to the partnership. The fund, as
438 general partner, is not liable to the state for repayment of the
439 used tax credits.

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

444 (8) The Department of Revenue, upon the request of the
445 trust, shall provide the trust with a written assurance that the

446 certificates issued by the trust will be honored by the
 447 Department of Revenue as provided in this section.

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

450 Section 6. Paragraph (dd) is added to subsection (8) of
 451 section 213.053, Florida Statutes, as amended by chapter 2010-
 452 280, Laws of Florida, to read:

453 213.053 Confidentiality and information sharing.—

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

456 (dd) Information relative to tax credits under ss.
 457 288.9627 and 288.9628 to the Florida Infrastructure Fund
 458 Partnership and the Florida Infrastructure Investment Trust.

459
 460 Disclosure of information under this subsection shall be
 461 pursuant to a written agreement between the executive director
 462 and the agency. Such agencies, governmental or nongovernmental,
 463 shall be bound by the same requirements of confidentiality as
 464 the Department of Revenue. Breach of confidentiality is a
 465 misdemeanor of the first degree, punishable as provided by s.
 466 775.082 or s. 775.083.

467 Section 7. This act shall take effect July 1, 2011.