

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

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.—

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.

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

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

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:

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



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

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 executive  
258 director of the Department of Revenue, the director of the  
259 Office of Tourism, Trade, and Economic Development, and the vice  
260 chair of Enterprise Florida, Inc., or their designees. The board  
261 of trustees shall appoint an administrative officer who may act  
262 on behalf of the trust under the direction of the board of  
263 trustees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 389 1. Revoke his or her prior election and make a new
- 390 election under paragraph (4) (c); or
- 391 2. Modify the election and:

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

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

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

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

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

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

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

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

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

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



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

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

451 Section 6. Paragraph (dd) is added to subsection (8) of  
 452 section 213.053, Florida Statutes, as amended by chapter 2010-  
 453 280, Laws of Florida, to read:

454 213.053 Confidentiality and information sharing.—

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

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

460  
 461 Disclosure of information under this subsection shall be  
 462 pursuant to a written agreement between the executive director  
 463 and the agency. Such agencies, governmental or nongovernmental,  
 464 shall be bound by the same requirements of confidentiality as  
 465 the Department of Revenue. Breach of confidentiality is a  
 466 misdemeanor of the first degree, punishable as provided by s.  
 467 775.082 or s. 775.083.

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