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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/05/2011	.	
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	.	
	.	

The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

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

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

288.9622 Findings and intent.—

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



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13 need to increase the availability of seed capital and early
14 stage venture equity capital for emerging companies in the
15 state, including, without limitation, enterprises in life
16 sciences, information technology, advanced manufacturing
17 processes, aviation and aerospace, and homeland security and
18 defense, as well as other strategic technologies and
19 infrastructure funding.

20 (2) It is the intent of the Legislature that this part ~~ss.~~
21 ~~288.9621-288.9625~~ serve to mobilize private investment in a
22 broad variety of venture capital partnerships in diversified
23 industries and geographies; retain private sector investment
24 criteria focused on rate of return; use the services of highly
25 qualified managers in the venture capital industry regardless of
26 location; facilitate the organization of the Florida Opportunity
27 Fund as an investor in seed and early stage businesses,
28 infrastructure projects, venture capital funds, infrastructure
29 funds, and angel funds; and precipitate capital investment and
30 extensions of credit to and in the Florida Opportunity Fund.

31 Section 3. Section 288.9623, Florida Statutes, is amended
32 to read:

33 288.9623 Definitions.—As used in this part, the term ~~ss.~~
34 ~~288.9621-288.9625~~:

35 (1) "Board" means the board of directors of the Florida
36 Opportunity Fund.

37 (2) "Certificate" means a contract between the trust and
38 an investment partner that guarantees the availability of tax
39 credits for use by the partner, or for transfer or sale under s.
40 288.9628, in order to guarantee the partner's investment capital
41 in the partnership.



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42 (3) "Commitment agreement" means a contract between the
43 partnership and an investment partner under which the partner
44 commits to providing a specified amount of investment capital in
45 exchange for an ownership interest in the partnership.

46 ~~(4)(2)~~ "Fund" means the Florida Opportunity Fund.

47 (5) "Infrastructure project" means a capital project in the
48 state for a facility or other infrastructure need in the state
49 with respect to any of the following: water or wastewater
50 system, communication system, power system, transportation
51 system, renewable energy system, ancillary or support system for
52 any of these types of projects, or other strategic
53 infrastructure located within the state.

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

57 (7) "Investment partner" or "partner" means a person, other
58 than the partnership, the fund, or the trust, who purchases an
59 ownership interest in the partnership or a transferee of such
60 interest.

61 (8) "Net capital loss" means an amount equal to the
62 difference between the total investment capital actually
63 advanced by the investment partner to the partnership and the
64 amount of the aggregate actual distributions received by the
65 investment partner.

66 (9) "Partnership" means the Florida Infrastructure Fund
67 Partnership.

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

70 (11) "Trust" means the Florida Infrastructure Investment



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71 Trust.

72 Section 4. Section 288.9627, Florida Statutes, is created
73 to read:

74 288.9627 Florida Infrastructure Fund Partnership; creation;
75 duties.-

76 (1) The Florida Opportunity Fund shall facilitate the
77 creation of the Florida Infrastructure Fund Partnership, which
78 shall be organized and operated under chapter 620 as a private,
79 for-profit limited partnership or limited liability partnership
80 with the fund as a general partner. The partnership shall manage
81 its business affairs and conduct business consistent with its
82 organizing documents and the purposes described in this section.
83 However, the partnership is not an instrumentality of the state.

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

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

90 1. Hiring one or more investment managers to assist with
91 management of the partnership through a solicitation for
92 qualified investment managers for the raising and investing of
93 capital by the partnership. Any such investment manager must
94 have maintained an office in the state for at least 2 years
95 before such solicitation with a full-time investment
96 professional. The evaluation of an investment manager candidate
97 must address the investment manager's level of experience,
98 quality of management, investment philosophy and process,
99 demonstrable success in fundraising, and prior investment



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100 results.
101 2. Soliciting and negotiating the terms of, contracting
102 for, and receiving investment capital with the assistance of the
103 investment managers or other service providers.
104 3. Receiving investment returns.
105 4. Disbursing returns to investment partners.
106 5. Approving investments.
107 6. Engaging in other activities necessary to operate the
108 partnership.
109 (b) The fund may lend up to \$750,000 to the partnership to
110 pay the initial expenses of organizing the partnership and
111 soliciting investment partners.
112 (4) (a) The partnership shall raise funds from investment
113 partners for investment in infrastructure projects in the state
114 by entering into commitment agreements with such partners on
115 terms approved by the fund's board.
116 (b) The Florida Infrastructure Investment Trust shall,
117 pursuant to s. 288.9628, concurrently with the execution of a
118 commitment agreement with an investment partner, issue a
119 certificate.
120 (c) The partnership shall provide a copy of each commitment
121 agreement to the trust upon execution of the agreement by all
122 parties.
123 (d) The partnership may enter into commitment agreements
124 with investment partners beginning July 1, 2011. The total
125 principal investment capital payable to the partnership under
126 all commitment agreements may not exceed the total aggregate
127 amount of \$700 million. However, if the partnership does not
128 obtain commitment agreements totaling at least \$100 million by



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129 December 1, 2012, the partnership must cancel any executed
130 agreement and return the investment capital of each investment
131 partner who executed an agreement.

132 (5) (a) The partnership may only invest in an infrastructure
133 project:

134 1. That fulfills an important infrastructure need in the
135 state.

136 2. That raises funding from other sources so that the total
137 amount invested in the project is at least twice the amount
138 invested by the partnership, inclusive of the partnership's
139 investment.

140 3. For which legal measures exist, appropriate to the
141 individual project, to ensure that the project is not
142 fraudulently closed to the detriment of the residents of the
143 state.

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

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

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

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

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

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

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



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158 (e) The financial resources of the entity proposing the
159 project.

160 (f) The partnership's assessment that the project
161 reasonably provides a continuing benefit for residents of the
162 state.

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

166 (7) By December 1 of each year beginning in 2011, the
167 partnership shall submit an annual report of its activities to
168 the Governor, the President of the Senate, and the Speaker of
169 the House of Representatives. The annual report must include, at
170 a minimum:

171 (a) An accounting of the amounts of investment capital
172 raised and disbursed by the partnership and the progress of the
173 partnership, including the progress of each infrastructure
174 project in which the partnership has invested.

175 (b) A description of the costs and benefits to the state
176 that result from the partnership's investments, including a list
177 of infrastructure projects; the costs and benefits of those
178 projects to the state and, if applicable, the county or
179 municipality; the number of businesses and associated industries
180 affected; the number, types, and average annual wages of the
181 jobs created or retained; and the impact on the state's 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 (8) The partnership may not pledge the credit or taxing



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187 power of the state or any political subdivision thereof and may
188 not make its debts payable from any moneys or resources except
189 those of the partnership. An obligation of the partnership is
190 not an obligation of the state or any political subdivision
191 thereof but is an obligation of the partnership, payable
192 exclusively from the partnership's resources.

193 (9) The partnership may not invest in an infrastructure
194 project with, or accept investment capital from, a company
195 described in s. 215.472 or a scrutinized company as defined in
196 s. 215.473, and the entity owning an infrastructure project in
197 which the partnership has invested must provide reasonable
198 assurances to the partnership that the entity will not provide
199 such a company or scrutinized company with an ownership interest
200 in the infrastructure project.

201 Section 5. Section 288.9628, Florida Statutes, is created
202 to read:

203 288.9628 Florida Infrastructure Investment Trust; creation;
204 duties; issuance of certificates; applications for tax credits.-

205 (1) (a) There is created the Florida Infrastructure
206 Investment Trust, which shall be organized as a state
207 beneficiary public trust to be administered by a board of
208 trustees. The powers and duties of the board of trustees under
209 this section are deemed to be performed for essential public
210 purposes.

211 (b) The board of trustees shall consist of the Chief
212 Financial Officer, the director of the Office of Tourism, Trade,
213 and Economic Development, and the vice chair of Enterprise
214 Florida, Inc., or their designees. The board of trustees shall
215 appoint an administrative officer who may act on behalf of the



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216 trust under the direction of the board of trustees.

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

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

228 (3)(a) The trust shall, pursuant to s. 288.9627 and this
229 section, issue certificates to investment partners in the
230 Florida Infrastructure Fund Partnership, or their assignees,
231 guaranteeing the availability of tax credits of a maximum amount
232 equal to the investment capital committed by such investment
233 partners to the partnership.

234 (b) The trust and the fund may each seek reimbursement of
235 their respective reasonable costs and expenses from the
236 partnership by charging a fee for the issuance of certificates
237 to investment partners of up to 0.25 percent of the aggregate
238 investment capital committed to the partnership by the
239 investment partners who are issued certificates.

240 (c) The total aggregate amount of all tax credits made
241 available under the terms of certificates issued by the trust
242 may not exceed \$700 million, and each certificate must include
243 the maximum amount of the tax credits that may be issued under
244 such certificate, which shall be the total amount of investment



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245 capital committed to the partnership by the investment partner.

246 (d) A certificate shall be issued concurrently with a
247 commitment agreement between the investment partner and the
248 partnership. A certificate issued by the trust must include a
249 specific calendar year maturity date designated by the trust of
250 at least 12 years after issuance. Contingent tax credits may not
251 be claimed or redeemed except by an investment partner or
252 purchaser in accordance with this section and the terms of a
253 certificate issued by the trust.

254 (e) Once investment capital is committed to the partnership
255 by an investment partner pursuant to his or her commitment
256 agreement, the certificate is binding, and the partnership, the
257 trust, and the Department of Revenue may not modify, terminate,
258 or rescind the certificate, except for administrative items,
259 including the assignment or sale of tax credits guaranteed to be
260 available under the terms of a certificate.

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

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

267 2. The total investment capital of all investment partners
268 as of the date of the notice.

269 3. The total amount of distributions received by the
270 investment partners.

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

273 (b) The partnership shall concurrently provide a copy of



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274 each investment partner's notice to the trust.

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

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

278 2. Have the trust sell, on the partner's behalf, the tax
279 credits guaranteed to be available under the terms of the
280 partner's certificate with the proceeds of the sale to be paid
281 to the partner by the trust; or

282 3. Maintain the investment partner's investment in the
283 partnership.

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

287 (e) An investment partner must provide written notice to
288 the partnership and the trust of his or her election within 30
289 days after his or her receipt of the notice from the
290 partnership. If an investment partner fails to provide notice
291 within 30 days, the investment partner is deemed to have elected
292 to maintain his or her investment in the partnership under
293 subparagraph (c)3.

294 (5)(a) If an investment partner makes the election under
295 subparagraph (4)(c)1. to have tax credits issued to him or her,
296 the trust shall apply to the Department of Revenue on the
297 partner's behalf for issuance of the tax credits in his or her
298 name in an amount equal to such partner's net capital loss. In
299 order to receive the tax credits, the investment partner must
300 agree in writing to transfer his or her ownership interest in
301 the partnership to the fund.

302 (b) If an investment partner makes the election under



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303 subparagraph (4)(c)2., the trust shall exercise its best efforts
304 to sell the tax credits. In order to receive the proceeds from
305 the trust's sale of the tax credits, the investment partner must
306 agree in writing to transfer his or her ownership interest in
307 the partnership to the fund. A purchaser's payment for tax
308 credits must be made to the trust on behalf of the investment
309 partner or, upon the partner's request, directly to the
310 investment partner. The trust may sell tax credits in an amount
311 not to exceed the lesser of:

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

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

317 (6)(a) Within 30 days after receipt of an investment
318 partner's election to be issued tax credits under paragraph
319 (5)(a), or within 30 days after the sale of tax credits under
320 paragraph (5)(b), the trust shall apply to the Department of
321 Revenue for issuance of the tax credits on behalf of the partner
322 or on behalf of the purchaser of the tax credits, as applicable.
323 However, the trust's failure to timely submit an application to
324 the Department of Revenue does not affect the investment
325 partner's or purchaser's eligibility for the tax credits.

326 (b) The trust's application for tax credits must include
327 the partnership's certification of the amount of tax credits to
328 be issued, the identity of the taxpayer to whom the tax credits
329 are to be issued, and the tax against which the credits shall be
330 applied. The Department of Revenue shall issue the tax credits
331 within 30 days after receipt of a timely and complete



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332 application.

333 (c) The trust shall provide the investment partner with
334 written notice if, within 90 days after the partner's election,
335 the trust is unable to sell enough tax credits to yield net
336 proceeds to the investment partner equal to his or her net
337 capital loss as of the date of the partnership's notice and tax
338 credits available under the terms of the partner's certificate
339 remain unsold. Within 30 days after receipt of such notice, the
340 investment partner may:

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

343 2. Modify the election and:

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

348 b. Have the trust continue to sell tax credits until the
349 partner's net capital loss is satisfied or the maximum amount of
350 tax credits available under the partner's certificate is
351 reached, whichever occurs first.

352
353 Within 30 days after such modified election, the trust shall
354 apply to the Department of Revenue in accordance with paragraph
355 (a) for issuance of tax credits on behalf of the investment
356 partner and on behalf of the purchasers in the amount of their
357 purchased credits.

358 (7) (a) The Department of Revenue may not issue more than
359 \$700 million in tax credits. The trust may not approve tax
360 credits in excess of the total capital committed through



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361 commitment agreements.

362 (b) The amount of tax credits that may be claimed by the
363 owner of the credits, or applied against state taxes, in any one
364 state fiscal year may not exceed an amount equal to \$150 million
365 multiplied by a fraction the numerator of which is the amount of
366 credits that the Department of Revenue issued to such owner and
367 the denominator of which is the amount of all credits that the
368 Department of Revenue issued to all tax credit owners.

369 (c) Tax credits issued by the Department of Revenue under
370 this section may be used by the owner of the credits as an
371 offset against any state taxes owed to the state under chapter
372 212, chapter 220, or ss. 624.509 and 624.5091. The offset may be
373 applied by the owner on any return for an eligible tax due on or
374 after the date that the credits are issued by the Department of
375 Revenue but within 7 years after the credits are issued. The
376 owner of the tax credits may elect to have the amount authorized
377 in the credits, or any portion thereof, claimed as a refund of
378 taxes paid rather than applied as an offset against eligible
379 taxes if such election is made within 7 years after the credits
380 are issued.

381 (d) To the extent that tax credits issued under this
382 section are used by their owner either as credits against taxes
383 due or to obtain payment from the state, the amount of such
384 credits becomes an obligation to the state by the partnership,
385 secured exclusively by the ownership interest transferred to the
386 fund by the investment partner whose investment generated the
387 tax credits. In such case, the state's recovery is limited to
388 such forfeited ownership interest. The Department of Revenue
389 shall account for tax credits used under this section and make



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390 such information available to the partnership. The fund, as
391 general partner, is not liable to the state for repayment of the
392 used tax credits.

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

397 (8) The Department of Revenue, upon the request of the
398 trust, shall provide the trust with a written assurance that the
399 certificates issued by the trust will be honored by the
400 Department of Revenue as provided in this section.

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

403 Section 6. Paragraph (dd) is added to subsection (8) of
404 section 213.053, Florida Statutes, as amended by chapter 2010-
405 280, Laws of Florida, to read:

406 213.053 Confidentiality and information sharing.-

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

409 (dd) Information relative to tax credits under ss. 288.9627
410 and 288.9628 to the Florida Infrastructure Fund Partnership and
411 the Florida Infrastructure Investment Trust.

412
413 Disclosure of information under this subsection shall be
414 pursuant to a written agreement between the executive director
415 and the agency. Such agencies, governmental or nongovernmental,
416 shall be bound by the same requirements of confidentiality as
417 the Department of Revenue. Breach of confidentiality is a
418 misdemeanor of the first degree, punishable as provided by s.



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419 775.082 or s. 775.083.

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

421

422

423 ===== T I T L E A M E N D M E N T =====

424 And the title is amended as follows:

425 Delete everything before the enacting clause
426 and insert:

427 A bill to be entitled

428 An act relating to capital formation for infrastructure
429 projects; amending ss. 288.9621, 288.9622, and 288.9623, F.S.;
430 conforming a short title, revising legislative findings and
431 intent, and providing definitions for the Florida Capital
432 Formation Act; conforming cross-references; creating s.
433 288.9627, F.S.; providing for creation of the Florida
434 Infrastructure Fund Partnership; providing the partnership's
435 purpose and duties; providing for management of the partnership
436 by the Florida Opportunity Fund; authorizing the fund to lend
437 moneys to the partnership; requiring the partnership to raise
438 funds from investment partners; providing for commitment
439 agreements with and issuance of certificates to investment
440 partners; authorizing the partnership to invest in certain
441 infrastructure projects; requiring the partnership to submit an
442 annual report to the Governor and Legislature; prohibiting the
443 partnership from pledging the credit or taxing power of the
444 state or its political subdivisions; prohibiting the partnership
445 from investing in projects with or accepting investments from
446 certain companies; creating s. 288.9628, F.S.; creating the
447 Florida Infrastructure Investment Trust; providing for powers



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448 and duties, a board of trustees, and an administrative officer
449 of the trust; providing for the trust's issuance of certificates
450 to investment partners; specifying that the certificates
451 guarantee the availability of tax credits under certain
452 conditions; authorizing the trust and the fund to charge fees;
453 limiting the amount of tax credits that may be claimed or
454 applied against state taxes in any year; providing for the
455 redemption of certificates or sale of tax credits; providing for
456 the issuance of the tax credits by the Department of Revenue;
457 specifying the taxes against which the credits may be applied;
458 limiting the period within which tax credits may be used;
459 providing for the state's obligation for use of the tax credits;
460 limiting the liability of the fund; providing for the
461 transferability of certificates and tax credits; requiring the
462 department to provide a certain written assurance to the trust
463 under certain circumstances; specifying that certain provisions
464 regulating securities transactions do not apply to certificates
465 and tax credits transferred or sold under the act; amending s.
466 213.053, F.S.; authorizing the department to disclose certain
467 information to the partnership and the trust relative to certain
468 tax credits; providing an effective date.
469