

By Senator Bogdanoff

25-00383B-11

2011976__

1 A bill to be entitled
2 An act relating to capital formation for
3 infrastructure projects; amending ss. 288.9621,
4 288.9622, and 288.9623, F.S.; conforming a short
5 title, revising legislative findings and intent, and
6 providing definitions for the Florida Capital
7 Formation Act; conforming cross-references; creating
8 s. 288.9627, F.S.; providing for creation of the
9 Florida Infrastructure Fund Partnership; providing the
10 partnership's purpose and duties; providing for
11 management of the partnership by the Florida
12 Opportunity Fund; authorizing the fund to lend moneys
13 to the partnership; requiring the partnership to raise
14 funds from investment partners; providing for
15 commitment agreements with and issuance of
16 certificates to investment partners; authorizing the
17 partnership to invest in certain infrastructure
18 projects; requiring the partnership to submit an
19 annual report to the Governor and Legislature;
20 prohibiting the partnership and the fund from pledging
21 the credit or taxing power of the state or its
22 political subdivisions; prohibiting the partnership
23 from investing in projects with or accepting
24 investments from certain companies; creating s.
25 288.9628, F.S.; creating the Florida Infrastructure
26 Investment Trust; providing for powers and duties, a
27 board of trustees, and an administrative officer of
28 the trust; providing for the trust's issuance of
29 certificates to investment partners who invest in the

25-00383B-11

2011976

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

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Section 288.9621, Florida Statutes, is amended
54 to read:

55 288.9621 Short title.—This part ~~Sections 288.9621-288.9625~~
56 may be cited as the "Florida Capital Formation Act."

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

25-00383B-11

2011976__

59 288.9622 Findings and intent.—

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

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

78 Section 3. Section 288.9623, Florida Statutes, is amended
79 to read:

80 288.9623 Definitions.—As used in this part, the term ~~ss.~~
81 ~~288.9621-288.9625~~:

82 (1) "Board" means the board of directors of the Florida
83 Opportunity Fund.

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

25-00383B-11

2011976

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

92 ~~(4)~~ ~~(2)~~ "Fund" means the Florida Opportunity Fund.

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

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

105 (7) "Partnership" means the Florida Infrastructure Fund
106 Partnership.

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

109 (9) "Trust" means the Florida Infrastructure Investment
110 Trust.

111 Section 4. Section 288.9627, Florida Statutes, is created
112 to read:

113 288.9627 Florida Infrastructure Fund Partnership; creation;
114 duties.—

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

25-00383B-11

2011976

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

123 (2) The primary purpose of the partnership is to raise
124 investment capital and invest the capital in infrastructure
125 projects in the state that promote the economic development of
126 the state, a county, or a municipality.

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

130 1. Hiring one or more investment managers to assist with
131 management of the partnership through a solicitation for
132 qualified investment managers for raising and investing of
133 capital by the partnership. Any such investment manager must
134 have maintained an office in the state for at least 2 years
135 before such solicitation with a full-time investment
136 professional. Any proposed investment plan must address the
137 investment manager's level of experience, quality of management,
138 investment philosophy and process, demonstrable success in
139 fundraising, and prior investment results.

140 2. Soliciting and negotiating the terms of, contracting
141 for, and receiving investment capital with the assistance of the
142 investment managers or other service providers.

143 3. Receiving investment returns.

144 4. Disbursing returns to investment partners.

145 5. Approving investments in order to provide financial

25-00383B-11

2011976

146 returns together with strategic returns designed to satisfy the
147 state's, the county's, or the municipality's infrastructure
148 needs; result in a significant potential to create or retain
149 jobs in this state; and further diversify the state's economy.

150 6. Engaging in other activities necessary to operate the
151 partnership.

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

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

159 (b) The Florida Infrastructure Investment Trust shall,
160 pursuant to s. 288.9628, concurrently with the execution of a
161 commitment agreement with an investment partner, issue a
162 certificate redeemable for a contingent tax credit to guarantee
163 the partner's investment in the partnership.

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

167 (d) The partnership may enter into commitment agreements
168 with investment partners beginning July 1, 2011. The total
169 principal investment payable to the partnership under all
170 commitment agreements, and the corresponding amount of the
171 certificates issued by the trust under s. 288.9628, may not
172 exceed the total aggregate amount of \$700 million. However, if
173 the partnership does not obtain commitment agreements totaling
174 at least \$100 million by December 1, 2012, the partnership must

25-00383B-11

2011976

175 cancel any executed agreement and return the investment capital
176 of each investment partner who executed an agreement.

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

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

181 2. That raises funding from other sources so that the total
182 amount invested in the project is at least twice the amount
183 invested by the partnership, inclusive of the partnership's
184 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 directly or indirectly involves any phase of a
194 project authorized in 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

25-00383B-11

2011976

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 benefits to the state that result
221 from the partnership's investments, including a list of
222 infrastructure projects; the benefits of those projects to the
223 state, the county, or the municipality; the number of businesses
224 and associated industries positively affected; the number,
225 types, and average annual wages of the jobs created or retained;
226 and the positive 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 and the fund may not pledge the credit
232 or taxing power of the state or any political subdivision

25-00383B-11

2011976

233 thereof and may not make their debts payable from any moneys or
234 resources except those of the partnership or the fund. An
235 obligation of the partnership or the fund is not an obligation
236 of the state or any political subdivision thereof but is an
237 obligation of the partnership or the fund, payable exclusively
238 from the partnership's or the fund's resources.

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

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

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

25-00383B-11

2011976

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. Neither a member
266 nor the administrative officer may have a financial interest in
267 any investment partner.

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

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

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

285 (c) The total aggregate amount of all certificates issued
286 by the trust may not exceed the limit for such certificates
287 specified in s. 288.9627(4) (d), and each certificate must
288 include the maximum amount of the tax credit that may be issued
289 under such certificate, which shall be the total amount of
290 investment capital committed to the partnership by the

25-00383B-11

2011976

291 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. A contingent tax credit may
297 not 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 partnership
301 by an investment partner pursuant to his or her commitment
302 agreement, the certificate is binding, and the partnership, the
303 trust, and the Department of Revenue may not modify, terminate,
304 or rescind the certificate, except for administrative items,
305 including the assignment or sale of a certificate.

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

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

312 2. The total capital investment of all investment partners
313 as of the date of the notice.

314 3. The total amount of distributions received by the
315 investment partners.

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

318

319 For purposes of this section, an investment partner's net

25-00383B-11

2011976__

320 capital investment is an amount equal to the difference between
321 the total investment capital actually advanced by the investment
322 partner to the partnership and the amount of the aggregate
323 actual distributions received by the investment partner.

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

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

328 1. Have a tax credit issued to the investment partner;
329 2. Have the trust sell the partner's certificate on his or
330 her behalf with the proceeds of the sale to be paid to the
331 partner by the trust; or

332 3. Maintain the investment partner's investment in the
333 partnership.

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

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

344 (5) (a) If an investment partner elects to have a tax credit
345 issued to him or her, the trust shall apply to the Department of
346 Revenue on the partner's behalf for issuance of the tax credit
347 in his or her name in an amount equal to such partner's net
348 capital investment. In order to receive the tax credit, the

25-00383B-11

2011976

349 investment partner must agree in writing to transfer his or her
350 ownership interest in the partnership to the fund.

351 (b) If an investment partner elects to have the trust sell
352 his or her certificate, the trust shall exercise its best
353 efforts to sell the certificate. In order to receive the
354 proceeds from the trust's sale of the certificate, the
355 investment partner must agree in writing to transfer his or her
356 ownership interest in the partnership to the fund. A purchaser's
357 payment for the certificate, or any portion thereof, shall be
358 made to the trust on behalf of the investment partner or, upon
359 the partner's request, directly to the investment partner. The
360 trust may sell a certificate in an amount that does not exceed
361 the lesser of:

362 1. The maximum amount of the certificate issued to the
363 investment partner; or

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

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

377 (b) The trust's application for a tax credit must include

25-00383B-11

2011976

378 the partnership's certification of the amount of tax credit to
379 be issued, the identity of the taxpayer to whom the tax credit
380 is to be issued, and the tax against which the credit shall be
381 applied. The Department of Revenue shall issue the tax credit
382 within 30 days after receipt of a timely and complete
383 application.

384 (c) If an investment partner's certificate is sold by the
385 trust under paragraph (5) (b) to more than one purchaser, the
386 Department of Revenue shall issue tax credits to such purchasers
387 in such amounts as designated by the trust in the application.

388 (d) The trust shall provide the investment partner with
389 written notice if the trust is unable to sell the partner's
390 certificate within 90 days after the partner's election. Within
391 30 days after receipt of such notice, the investment partner
392 may:

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

395 2. Modify the election and have a tax credit issued to him
396 or her for the amount of any unsold credit. Within 30 days after
397 such modified election, the trust shall apply to the Department
398 of Revenue in accordance with paragraph (a) for issuance of tax
399 credits on behalf of the investment partner in the amount of any
400 unsold credit and on behalf of the purchasers in the amount of
401 their purchased credit.

402 (7) (a) The Department of Revenue may not issue more than
403 \$700 million in tax credits. The trust may not approve tax
404 credits in excess of the total capital committed through
405 commitment agreements.

406 (b) The amount of tax credits that may be claimed by the

25-00383B-11

2011976__

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

413 (c) A tax credit issued by the Department of Revenue under
414 this section may be used by the owner of the credit as an offset
415 against any taxes owed to the state under chapter 212, chapter
416 220, or chapter 624. The offset may be applied by the owner on
417 any return for an eligible tax due on or after the date that the
418 credit is issued by the Department of Revenue but within 7 years
419 after the credit is issued. The owner of the tax credit may
420 elect to have the amount authorized in the credit, or any
421 portion thereof, claimed as a refund of taxes paid rather than
422 applied as an offset against eligible taxes, if such election is
423 made within 7 years after the credit is issued.

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

25-00383B-11

2011976__

436 its interest in the partnership.

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

441 (8) The Department of Revenue, upon the request of the
442 trust, shall provide the trust with a written assurance that the
443 certificates issued by the trust will be honored by the
444 Department of Revenue as provided in this section.

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

447 Section 6. This act shall take effect July 1, 2011.