

By Senator Richter

37-01326-12

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

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

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

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

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

58 Section 2. Subsections (1) and (2) of section 288.9622,

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59 Florida Statutes, are amended to read:

60 288.9622 Findings and intent.—

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

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

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

81 288.9623 Definitions.—As used in this part, the term ~~ss.~~  
82 ~~288.9621-288.9625~~:

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

85 (2) "Certificate" means a contract between the trust and an  
86 investment partner which guarantees the availability of tax  
87 credits for use by the partner, or for transfer or sale under s.

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88 288.9628, in order to guarantee the partner's investment capital  
89 in the partnership.

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

94 (4)~~(2)~~ "Fund" means the Florida Opportunity Fund.

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

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

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

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

114 (9) "Partnership" means the Florida Infrastructure Fund  
115 Partnership.

116 (10) "Tax credits" means credits issued against the taxes

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117 specified in s. 288.9628(7)(c).

118 (11) "Trust" means the Florida Infrastructure Investment  
119 Trust.

120 Section 4. Section 288.9627, Florida Statutes, is created  
121 to read:

122 288.9627 Florida Infrastructure Fund Partnership; creation;  
123 duties.-

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

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

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

138 1. Hiring one or more investment managers to assist with  
139 management of the partnership through a solicitation for  
140 qualified investment managers for the raising and investing of  
141 capital by the partnership. Any such investment manager must  
142 have maintained an office in the state for at least 2 years  
143 before such solicitation with a full-time investment  
144 professional. The evaluation of an investment manager candidate  
145 must address the investment manager's level of experience,

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146 quality of management, investment philosophy and process,  
147 demonstrable success in fundraising, and prior investment  
148 results.

149 2. Soliciting and negotiating the terms of, contracting  
150 for, and receiving investment capital with the assistance of the  
151 investment managers or other service providers.

152 3. Receiving investment returns.

153 4. Disbursing returns to investment partners.

154 5. Approving investments.

155 6. Engaging in other activities necessary to operate the  
156 partnership.

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

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

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

168 (c) The partnership shall provide a copy of each commitment  
169 agreement to the trust upon execution of the agreement by all  
170 parties.

171 (d) The partnership may enter into commitment agreements  
172 with investment partners beginning July 1, 2012. The total  
173 principal investment capital payable to the partnership under  
174 all commitment agreements may not exceed the total aggregate

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175 amount of \$700 million. However, if the partnership does not  
176 obtain commitment agreements totaling at least \$100 million by  
177 December 1, 2013, the partnership must cancel any executed  
178 agreement and return the investment capital of each investment  
179 partner who executed an agreement.

180 (5) (a) The partnership may only invest in an infrastructure  
181 project:

182 1. That fulfills an important infrastructure need in the  
183 state.

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

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

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

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

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

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

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

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

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

206 (e) The financial resources of the entity proposing the  
207 project.

208 (f) The partnership's assessment that the project  
209 reasonably provides a continuing benefit for residents of the  
210 state.

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

214 (7) By December 1 of each year beginning in 2012, the  
215 partnership shall submit an annual report of its activities to  
216 the Governor, the President of the Senate, and the Speaker of  
217 the House of Representatives. The annual report must include, at  
218 a minimum:

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

223 (b) A description of the costs and benefits to the state  
224 that result from the partnership's investments, including a list  
225 of infrastructure projects; the costs and benefits of those  
226 projects to the state and, if applicable, the county or  
227 municipality; the number of businesses and associated industries  
228 affected; the number, types, and average annual wages of the  
229 jobs created or retained; and the impact on the state's economy.

230 (c) Independently audited financial statements, including  
231 statements that show receipts and expenditures during the  
232 preceding fiscal year for the operational costs of the



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233 partnership.

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

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

249 Section 5. Section 288.9628, Florida Statutes, is created  
250 to read:

251 288.9628 Florida Infrastructure Investment Trust; creation;  
252 duties; issuance of certificates; applications for tax credits.-

253 (1) (a) There is created the Florida Infrastructure  
254 Investment Trust, which shall be organized as a state  
255 beneficiary public trust to be administered by a board of  
256 trustees. The powers and duties of the board of trustees under  
257 this section are deemed to be performed for essential public  
258 purposes.

259 (b) The board of trustees shall consist of the executive  
260 director of the Department of Revenue, the executive director of  
261 the Department of Economic Opportunity, and the vice chair of

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262 Enterprise Florida, Inc., or their designees. The board of  
263 trustees shall appoint an administrative officer who may act on  
264 behalf of the trust under the direction of the board of  
265 trustees.

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

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

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

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

289 (c) The total aggregate amount of all tax credits made  
290 available under the terms of certificates issued by the trust

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291 may not exceed \$700 million, and each certificate must include  
292 the maximum amount of the tax credits that may be issued under  
293 such certificate, which shall be the total amount of investment  
294 capital committed to the partnership by the investment partner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

376 (b) The trust's application for tax credits must include  
377 the partnership's certification of the amount of tax credits to

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378 be issued, the identity of the taxpayer to whom the tax credits  
379 are to be issued, and the tax against which the credits shall be  
380 applied. The Department of Revenue shall issue the tax credits  
381 within 30 days after receipt of a timely and complete  
382 application.

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

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

393 2. Modify the election and:

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

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

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

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407 purchased credits.

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

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

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

431 (d) To the extent that tax credits issued under this  
432 section are used by their owner either as credits against taxes  
433 due or to obtain payment from the state, the amount of such  
434 credits becomes an obligation to the state by the partnership,  
435 secured exclusively by the ownership interest transferred to the

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436 fund by the investment partner whose investment generated the  
437 tax credits. In such case, the state's recovery is limited to  
438 such forfeited ownership interest. The Department of Revenue  
439 shall account for tax credits used under this section and make  
440 such information available to the partnership. The fund, as  
441 general partner, is not liable to the state for repayment of the  
442 used tax credits.

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

447 (8) The Department of Revenue, upon the request of the  
448 trust, shall provide the trust with a written assurance that the  
449 certificates issued by the trust will be honored by the  
450 Department of Revenue as provided in this section.

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

453 Section 6. Paragraph (cc) is added to subsection (8) of  
454 section 213.053, Florida Statutes, to read:

455 213.053 Confidentiality and information sharing.—

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

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

461  
462 Disclosure of information under this subsection shall be  
463 pursuant to a written agreement between the executive director  
464 and the agency. Such agencies, governmental or nongovernmental,



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465 shall be bound by the same requirements of confidentiality as  
466 the Department of Revenue. Breach of confidentiality is a  
467 misdemeanor of the first degree, punishable as provided by s.  
468 775.082 or s. 775.083.

469 Section 7. This act shall take effect July 1, 2012.