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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

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29 | partners; specifying that the certificates guarantee
 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~~

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57 | may be cited as the "Florida Capital Formation Act."

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

60 | 288.9622 Findings and intent.—

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

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

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

82 | 288.9623 Definitions.—As used in this part, the term ~~ss.~~
83 | ~~288.9621–288.9625~~:

84 | (1) "Board" means the board of directors of the Florida

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85 Opportunity Fund.

86 (2) "Certificate" means a contract between the trust and
87 an investment partner that guarantees the availability of tax
88 credits for use by the partner, or for transfer or sale under s.
89 288.9628, in order to guarantee the partner's investment capital
90 in the partnership.

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

95 (4) ~~(2)~~ "Fund" means the Florida Opportunity Fund.

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

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

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

110 (8) "Net capital loss" means an amount equal to the
111 difference between the total investment capital actually
112 advanced by the investment partner to the partnership and the

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113 amount of the aggregate actual distributions received by the
 114 investment partner.

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

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

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

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

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

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

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

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

139 1. Hiring one or more investment managers to assist with
 140 management of the partnership through a solicitation for

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141 qualified investment managers for the raising and investing of
142 capital by the partnership. Any such investment manager must
143 have maintained an office in the state for at least 2 years
144 before such solicitation with a full-time investment
145 professional. The evaluation of an investment manager candidate
146 must address the investment manager's level of experience,
147 quality of management, investment philosophy and process,
148 demonstrable success in fundraising, and prior investment
149 results.

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

153 3. Receiving investment returns.

154 4. Disbursing returns to investment partners.

155 5. Approving investments.

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

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

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

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

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

172 (d) The partnership may enter into commitment agreements
173 with investment partners beginning July 1, 2012. The total
174 principal investment capital payable to the partnership under
175 all commitment agreements may not exceed the total aggregate
176 amount of \$700 million. However, if the partnership does not
177 obtain commitment agreements totaling at least \$100 million by
178 December 1, 2013, the partnership must cancel any executed
179 agreement and return the investment capital of each investment
180 partner who executed an agreement.

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

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

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

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

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

196 (c) The partnership may not invest in any infrastructure

197 project that involves any phase of a project authorized under
 198 the Florida Rail Enterprise Act, ss. 341.8201-341.842.

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

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

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

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

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

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

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

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

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

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

224 (b) A description of the costs and benefits to the state

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

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

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

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

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

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

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

261 (b) The board of trustees shall consist of the executive
262 director of the Department of Revenue, the executive director of
263 the Department of Economic Opportunity, and the vice chair of
264 Enterprise Florida, Inc., or their designees. The board of
265 trustees shall appoint an administrative officer who may act on
266 behalf of the trust under the direction of the board of
267 trustees.

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

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

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

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

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

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

305 (e) Once investment capital is committed to the
 306 partnership by an investment partner pursuant to his or her

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307 commitment agreement, the certificate is binding, and the
308 partnership, the trust, and the Department of Revenue may not
309 modify, terminate, or rescind the certificate, except for
310 administrative items, including the assignment or sale of tax
311 credits guaranteed to be available under the terms of a
312 certificate.

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

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

319 2. The total investment capital of all investment partners
320 as of the date of the notice.

321 3. The total amount of distributions received by the
322 investment partners.

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

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

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

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

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

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334 3. Maintain the investment partner's investment in the
335 partnership.

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

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

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

354 (b) If an investment partner makes the election under
355 subparagraph (4) (c)2., the trust shall exercise its best efforts
356 to sell the tax credits. In order to receive the proceeds from
357 the trust's sale of the tax credits, the investment partner must
358 agree in writing to transfer his or her ownership interest in
359 the partnership to the fund. A purchaser's payment for tax
360 credits must be made to the trust on behalf of the investment
361 partner or, upon the partner's request, directly to the

362 investment partner. The trust may sell tax credits in an amount
 363 not to exceed the lesser of:

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

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

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

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

385 (c) The trust shall provide the investment partner with
 386 written notice if, within 90 days after the partner's election,
 387 the trust is unable to sell enough tax credits to yield net
 388 proceeds to the investment partner equal to his or her net
 389 capital loss as of the date of the partnership's notice and tax

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390 credits available under the terms of the partner's certificate
391 remain unsold. Within 30 days after receipt of such notice, the
392 investment partner may:

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

395 2. Modify the election and:

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

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

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

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

414 (b) The amount of tax credits that may be claimed by the
415 owner of the credits, or applied against state taxes, in any one
416 state fiscal year may not exceed an amount equal to \$150 million
417 multiplied by a fraction the numerator of which is the amount of

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418 credits that the Department of Revenue issued to such owner and
419 the denominator of which is the amount of all credits that the
420 Department of Revenue issued to all tax credit owners.

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

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

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

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

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

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

457 213.053 Confidentiality and information sharing.—

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

460 (cc) Information relative to tax credits under ss.
 461 288.9627 and 288.9628 to the Florida Infrastructure Fund
 462 Partnership and the Florida Infrastructure Investment Trust.

463
 464 Disclosure of information under this subsection shall be
 465 pursuant to a written agreement between the executive director
 466 and the agency. Such agencies, governmental or nongovernmental,
 467 shall be bound by the same requirements of confidentiality as
 468 the Department of Revenue. Breach of confidentiality is a
 469 misdemeanor of the first degree, punishable as provided by s.
 470 775.082 or s. 775.083.

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