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LEGISLATIVE ACTION

|                     |   |       |
|---------------------|---|-------|
| Senate              | . | House |
|                     | . |       |
|                     | . |       |
| Floor: WD           | . |       |
| 03/09/2012 11:01 AM | . |       |
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Senator Richter moved the following:

1           **Senate Amendment to Amendment (401580) (with title**  
2 **amendment)**

3  
4           Between lines 993 and 994  
5 insert:

6           Section 14. Section 288.9621, Florida Statutes, is amended  
7 to read:

8           288.9621 Short title.—This part ~~Sections 288.9621-288.9625~~  
9 may be cited as the "Florida Capital Formation Act."

10           Section 15. Subsections (1) and (2) of section 288.9622,  
11 Florida Statutes, are amended to read:

12           288.9622 Findings and intent.—

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



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

42 (3) "Commitment agreement" means a contract between the



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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  
71 Trust.



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72 Section 17. 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  
100 results.



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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, 2012. 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  
129 December 1, 2013, the partnership must cancel any executed



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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.

158 (e) The financial resources of the entity proposing the



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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 2012, 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  
187 power of the state or any political subdivision thereof and may



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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 18. 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 executive  
212 director of the Department of Revenue, the executive director of  
213 the Department of Economic Opportunity, and the vice chair of  
214 Enterprise Florida, Inc., or their designees. The board of  
215 trustees shall appoint an administrative officer who may act on  
216 behalf of the trust under the direction of the board of





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217 trustees.

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

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

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

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

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



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246 capital committed to the partnership by the investment partner.

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

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

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

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

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

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

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

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



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275 each investment partner's notice to the trust.

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

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

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

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

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

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

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

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



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

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

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

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

328 (b) The trust's application for tax credits must include  
329 the partnership's certification of the amount of tax credits to  
330 be issued, the identity of the taxpayer to whom the tax credits  
331 are to be issued, and the tax against which the credits shall be  
332 applied. The Department of Revenue shall issue the tax credits



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333 within 30 days after receipt of a timely and complete  
334 application.

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

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

345 2. Modify the election and:

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

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

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

360 (7) (a) The Department of Revenue may not issue more than  
361 \$700 million in tax credits. The trust may not approve tax



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362 credits in excess of the total capital committed through  
363 commitment agreements.

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

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

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



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391 shall account for tax credits used under this section and make  
392 such information available to the partnership. The fund, as  
393 general partner, is not liable to the state for repayment of the  
394 used tax credits.

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

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

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

405 Section 19. Paragraph (cc) is added to subsection (8) of  
406 section 213.053, Florida Statutes, to read:

407 213.053 Confidentiality and information sharing.-

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

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

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



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420 775.082 or s. 775.083.

421

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

423 And the title is amended as follows:

424 Delete line 1269

425 and insert:

426 program; amending ss. 288.9621, 288.9622, and  
427 288.9623, F.S.; conforming a short title, revising  
428 legislative findings and intent, and providing  
429 definitions for the Florida Capital Formation Act;  
430 conforming cross-references; creating s. 288.9627,  
431 F.S.; providing for creation of the Florida  
432 Infrastructure Fund Partnership; providing the  
433 partnership's purpose and duties; providing for  
434 management of the partnership by the Florida  
435 Opportunity Fund; authorizing the fund to lend moneys  
436 to the partnership; requiring the partnership to raise  
437 funds from investment partners; providing for  
438 commitment agreements with and issuance of  
439 certificates to investment partners; authorizing the  
440 partnership to invest in certain infrastructure  
441 projects; requiring the partnership to submit an  
442 annual report to the Governor and Legislature;  
443 prohibiting the partnership from pledging the credit  
444 or taxing power of the state or its political  
445 subdivisions; prohibiting the partnership from  
446 investing in projects with or accepting investments  
447 from certain companies; creating s. 288.9628, F.S.;

448 creating the Florida Infrastructure Investment Trust;





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449 providing for powers and duties, a board of trustees,  
450 and an administrative officer of the trust; providing  
451 for the trust's issuance of certificates to investment  
452 partners; specifying that the certificates guarantee  
453 the availability of tax credits under certain  
454 conditions; authorizing the trust and the fund to  
455 charge fees; limiting the amount of tax credits that  
456 may be claimed or applied against state taxes in any  
457 year; providing for the redemption of certificates or  
458 sale of tax credits; providing for the issuance of the  
459 tax credits by the Department of Revenue; specifying  
460 the taxes against which the credits may be applied;  
461 limiting the period within which tax credits may be  
462 used; providing for the state's obligation for use of  
463 the tax credits; limiting the liability of the fund;  
464 providing for the transferability of certificates and  
465 tax credits; requiring the department to provide a  
466 certain written assurance to the trust under certain  
467 circumstances; specifying that certain provisions  
468 regulating securities transactions do not apply to  
469 certificates and tax credits transferred or sold under  
470 the act; amending s. 213.053, F.S.; authorizing the  
471 department to disclose certain information to the  
472 partnership and the trust relative to certain tax  
473 credits; amending s. 288.9915, F.S.; revising