

By Senator Ring

29-00101B-16

2016226__

1 A bill to be entitled
2 An act relating to capital formation for
3 infrastructure projects; amending s. 288.9621, F.S.;
4 designating the "Florida Capital Formation Act" as
5 part XI of ch. 288, F.S.; amending s. 288.9622, F.S.;
6 modifying legislative findings and intent relating to
7 the need for seed capital and venture equity capital
8 to include infrastructure funding; conforming a
9 provision to changes made by the act; amending s.
10 288.9623, F.S.; defining terms; conforming a provision
11 to changes made by the act; creating s. 288.9628,
12 F.S.; creating the Florida Infrastructure Fund
13 Partnership as a private, for-profit limited
14 partnership or limited liability partnership;
15 providing that the partnership is not an
16 instrumentality of the state; prescribing the purposes
17 and duties of the partnership; providing for
18 management of the partnership by the Florida
19 Opportunity Fund; authorizing the fund to lend moneys
20 to the partnership for specified purposes; requiring
21 the partnership to raise funds from investment
22 partners; providing for commitment agreements with
23 investment partners; specifying types of
24 infrastructure projects that the partnership is
25 authorized to invest in or prohibited from investing
26 in; providing evaluation requirements for
27 infrastructure projects; requiring the partnership to
28 submit an annual report to the Governor and the
29 Legislature; prohibiting the partnership from making

29-00101B-16

2016226__

30 its debts payable from any money or resources other
31 than those of the partnership; prohibiting the
32 partnership from investing in projects with or
33 accepting investments from certain companies; creating
34 s. 288.9629, F.S.; requiring the Florida Development
35 Finance Corporation to issue contingent state bonds to
36 investment partners in the partnership; authorizing
37 the corporation and the fund to charge fees; limiting
38 the amount of such fees; prohibiting the total
39 aggregate amount of all contingent state bonds from
40 exceeding a specified amount; requiring that a
41 specified commitment agreement be entered into
42 concurrently with an investment commitment to the
43 fund; requiring the partnership to provide a specified
44 written notice to each investment partner if, on the
45 maturity date in its commitment agreement, the partner
46 has a net capital loss; specifying the minimum content
47 for such notice; requiring the partner to concurrently
48 provide a copy of the notice to the corporation;
49 authorizing each affected investment partner to make
50 specified one-time elections upon the receipt of the
51 notice; requiring an investment partner to provide
52 written notice to the partnership and the corporation
53 of its election within a specified period; requiring
54 the partnership to apply to the corporation on behalf
55 of the purchaser of contingent state bonds for the
56 issuance of contingent state bonds under certain
57 circumstances; requiring that the partnership's
58 application for contingent state bonds include the

29-00101B-16

2016226__

59 partnership's certification of the amount to be issued
60 and the identity of the person to whom the bonds are
61 to be issued; requiring the corporation to issue the
62 contingent state bonds within a specified period after
63 receipt of a timely and complete application;
64 requiring the partnership to provide the investment
65 partner with written notice in certain circumstances;
66 authorizing the investment partner to take specified
67 actions within a specified period after the receipt of
68 such notice; prohibiting the corporation from issuing
69 or approving contingent state bonds in excess of a
70 specified amount; prohibiting the owner of contingent
71 state bonds from claiming bonds in excess of a
72 specified amount; providing that contingent state
73 bonds become an obligation to the state by the
74 partnership under certain circumstances; providing
75 that the fund, as general partner, is not liable to
76 the state for the repayment of used contingent state
77 bonds; providing that contingent state bonds issued
78 under the act are transferable in whole or in part by
79 their owner; requiring the corporation to provide a
80 certain written assurance to the partnership under
81 certain circumstances; exempting contingent state
82 bonds transferred or sold under the act from the
83 provisions of ch. 517, F.S.; amending s. 213.053,
84 F.S.; authorizing the Department of Revenue to
85 disclose certain information to the partnership and
86 the corporation relative to certain contingent state
87 bonds; providing an effective date.

29-00101B-16

2016226__

88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116

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

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

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

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

288.9622 Findings and intent.—

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

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

Section 3. Section 288.9623, Florida Statutes, is amended

29-00101B-16

2016226__

117 to read:

118 288.9623 Definitions.—As used in this part, the term ~~ss.~~
119 ~~288.9621–288.9625~~:

120 (1) "Board" means the board of directors of the Florida
121 Opportunity Fund.

122 (2) "Commitment agreement" means a contract between the
123 partnership and an investment partner in which the partner
124 commits to providing a specified amount of investment capital in
125 exchange for an ownership interest in the partnership.

126 (3) "Contingent state bonds" means any state bonds, revenue
127 bonds, certificates, or other obligations that are contingent
128 upon a loss of the investment capital contributed by an
129 investment partner under s. 288.9629 and that are payable from
130 tax revenues received by the state under chapter 212, chapter
131 220, or ss. 624.509 and 624.5091.

132 (4) "Corporation" means the Florida Development Finance
133 Corporation.

134 (5)~~(2)~~ "Fund" means the Florida Opportunity Fund.

135 (6) "Infrastructure project" means a capital project in
136 this state which addresses the need for a facility or other
137 strategic infrastructure, including a water or a wastewater
138 system, a communication system, a power system, a transportation
139 system, a renewable energy system, or an ancillary or support
140 system for any such project.

141 (7) "Investment capital" means the total capital committed
142 by the investment partner, pursuant to a commitment agreement,
143 for an equity interest in the partnership.

144 (8) "Investment partner" or "partner" means a person other
145 than the partnership, the fund, or the trust that purchases or

29-00101B-16

2016226__

146 is the transferee of an ownership interest in the partnership.

147 (9) "Net capital loss" means an amount equal to the
148 difference between the actual total investment capital advanced
149 by the investment partner to the partnership and the actual
150 amount of the aggregate distributions received by the investment
151 partner.

152 (10) "Partnership" means the Florida Infrastructure Fund
153 Partnership.

154 Section 4. Section 288.9628, Florida Statutes, is created
155 to read:

156 288.9628 Florida Infrastructure Fund Partnership; creation;
157 duties.—

158 (1) The Florida Opportunity Fund shall facilitate the
159 creation of the Florida Infrastructure Fund Partnership, which
160 shall be organized and operated under chapter 620 as a private,
161 for-profit limited partnership or limited liability partnership
162 with the fund as a general partner. The partnership shall manage
163 its business affairs and conduct business consistent with its
164 organizing documents and the purposes described in this section.
165 However, the partnership is not an instrumentality of the state.

166 (2) The primary purposes of the partnership are to raise
167 investment capital and to invest the capital in infrastructure
168 projects in the state which promote economic development.

169 (3) (a) As the general partner of the partnership, the fund
170 shall manage the partnership's business affairs. At a minimum,
171 the fund shall:

172 1. Solicit and hire one or more investment managers to
173 assist with management of the partnership and to oversee the
174 raising and investing of capital by the partnership. The

29-00101B-16

2016226__

175 evaluation of candidates must address their level of experience,
176 investment philosophy and process, demonstrable success in
177 fundraising, and prior investment results. Only candidates who
178 have maintained an office with a full-time investment
179 professional in this state for at least 2 years before the
180 solicitation may be considered.

181 2. With the assistance of the investment manager or other
182 service providers, solicit, negotiate the terms of, contract
183 for, and receive investment capital.

184 3. Receive investment returns.

185 4. Disburse returns to investment partners.

186 5. Approve investments.

187 (b) The fund may lend up to \$750,000 to the partnership to
188 pay the initial expenses associated with the organization of the
189 partnership and solicitation of investment partners.

190 (4) (a) The partnership shall enter into commitment
191 agreements with investment partners for investment in
192 infrastructure projects under terms approved by the fund's
193 board.

194 (b) The partnership may enter into commitment agreements
195 with investment partners beginning July 1, 2016. The total
196 aggregate amount of principal investment capital payable to the
197 partnership under all commitment agreements may not exceed \$350
198 million. If the partnership does not obtain commitment
199 agreements totaling at least \$100 million by December 1, 2017,
200 the partnership must cancel any executed agreement and return
201 the investment capital of each investment partner who executed
202 an agreement.

203 (5) (a) The partnership may invest only in an infrastructure

29-00101B-16

2016226__

204 project:

205 1. That fulfills an important infrastructure need in the
206 state.

207 2. That raises funding from other sources so that the total
208 amount invested in the project is at least twice the amount
209 invested by the partnership, inclusive of the partnership's
210 investment.

211 3. For which legal measures exist, appropriate to the
212 individual project, to ensure that the project is not closed due
213 to fraud, to the detriment of the residents of the state.

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

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

220 (6) Before investing in an infrastructure project, the
221 partnership must assess whether the project will provide a
222 continuing benefit for the residents of the state and evaluate
223 the following:

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

226 (b) The likelihood that the project will attract operating
227 capital from investment partners, other lenders, or grants.

228 (c) The management team for the project.

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

230 (e) The financial resources of the entity proposing the
231 project.

232 (f) Other factors that are consistent with this section and

29-00101B-16

2016226__

233 that are deemed by the partnership as relevant to the likelihood
234 of the project's success.

235 (7) Beginning December 1, 2016, and each December 1
236 thereafter, the partnership shall submit an annual report of its
237 activities to the Governor, the President of the Senate, and the
238 Speaker of the House of Representatives. The annual report must
239 include, at a minimum:

240 (a) An accounting of the amounts of investment capital
241 raised and disbursed by the partnership and the progress of the
242 partnership, including the progress of each infrastructure
243 project in which the partnership has invested.

244 (b) A description of the costs and benefits to the state of
245 the partnership's investment in infrastructure projects,
246 including a list of such projects; the costs and benefits of
247 such projects to the state and, if applicable, to the county or
248 municipality in which the project is located; the number of
249 businesses and associated industries affected; the number and
250 types of jobs created or retained, and the average annual wages
251 of such jobs; and the impact on the state's economy.

252 (c) Independently audited financial statements, including
253 statements that show receipts and expenditures from the
254 preceding fiscal year for the operational costs of the
255 partnership.

256 (8) The partnership may not make its debts payable from any
257 moneys or resources other than those of the partnership. An
258 obligation of the partnership is not an obligation of the state
259 or any political subdivision thereof, but is an obligation of
260 the partnership, payable exclusively from the partnership's
261 resources.

29-00101B-16

2016226__

262 (9) The partnership may not invest in an infrastructure
263 project with, or accept investment capital from, a prohibited
264 company described in s. 215.472 or a scrutinized company as
265 defined in s. 215.473, and the entity owning an infrastructure
266 project in which the partnership has invested must provide
267 reasonable assurances to the partnership that the entity will
268 not provide such a prohibited company or scrutinized company
269 with an ownership interest in the infrastructure project.

270 Section 5. Section 288.9629, Florida Statutes, is created
271 to read:

272 288.9629 Issuance of contingent state bonds for the Florida
273 Infrastructure Fund Partnership.—

274 (1) (a) Pursuant to s. 288.9628 and this section, the
275 corporation shall issue contingent state bonds to investment
276 partners in the partnership in a maximum amount equal to the
277 investment capital committed by such investment partners to the
278 partnership.

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

286 (c) The total aggregate amount of all contingent state
287 bonds issued by the corporation may not exceed \$350 million.

288 (d) The investment partner and the partnership must enter
289 into a commitment agreement at the time of the investment
290 commitment to the fund by the investment partner. The commitment

29-00101B-16

2016226__

291 agreement must include a specific calendar-year maturity date
292 designated by the corporation, which must be at least 12 years
293 after the date of the agreement. Contingent state bonds may be
294 claimed or redeemed only by an investment partner or purchaser
295 in accordance with this section and the terms of the commitment
296 agreement.

297 (2) (a) The partnership shall provide written notice to each
298 investment partner if, on the maturity date in its commitment
299 agreement, the partner has a net capital loss. At a minimum, the
300 notice must include:

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

303 2. The total investment capital provided by all investment
304 partners as of the date of the notice.

305 3. The total amount of distributions received by the
306 investment partners.

307 4. The amount of the contingent state bonds, issued by the
308 Department of Revenue, to which the investment partner is
309 entitled.

310 (b) The partnership shall concurrently provide a copy of
311 each such notice to the corporation.

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

314 1. Have the partnership sell, on the partner's behalf, the
315 contingent state bonds issued to the partner under the terms of
316 the partner's commitment agreement, with the proceeds of the
317 sale to be paid to the partner by the partnership; or

318 2. Maintain the partner's investment in the partnership.

319 (d) Except as provided in paragraph (4) (c), the election

29-00101B-16

2016226__

320 made by an investment partner under paragraph (c) is final and
321 may not be revoked or modified.

322 (e) An investment partner shall provide written notice to
323 the partnership and the corporation of its election within 30
324 days after its receipt of the notice from the partnership. If an
325 investment partner fails to timely provide such notice, the
326 investment partner is deemed to have elected to maintain its
327 investment in the partnership under subparagraph (c)2.

328 (3) If an investment partner makes the election under
329 subparagraph (4)(c)1., the partnership shall exercise its best
330 efforts to sell the contingent state bonds. In order to receive
331 the proceeds from the partnership's sale of the contingent state
332 bonds, the investment partner must agree in writing to transfer
333 its ownership interest in the partnership to the fund. A
334 purchaser's payment for contingent state bonds must be made to
335 the partnership on behalf of the investment partner or, upon the
336 partner's request, directly to the investment partner. The
337 partnership may sell contingent state bonds in an amount not to
338 exceed the lesser of:

339 (a) The maximum amount of the contingent state bonds issued
340 to the investment partner; or

341 (b) The amount of contingent state bonds necessary to yield
342 net proceeds to the investment partner equal to its net capital
343 loss as of the date of the partnership's notice.

344 (4) (a) Within 30 days after the sale of contingent state
345 bonds under subsection (3), the partnership shall apply to the
346 corporation for issuance of the contingent state bonds on behalf
347 of the purchaser of the contingent state bonds. However, the
348 partnership's failure to timely submit an application to the

29-00101B-16

2016226__

349 corporation does not affect the purchaser's eligibility for the
350 contingent state bonds.

351 (b) The partnership's application for contingent state
352 bonds must include the partnership's certification of the amount
353 of contingent state bonds to be issued and the identity of the
354 person to whom the contingent state bonds are to be issued. The
355 corporation shall issue the contingent state bonds within 30
356 days after receipt of a timely and complete application.

357 (c) The partnership shall provide the investment partner
358 with written notice if, within 90 days after the partner's
359 election, the partnership is unable to sell enough contingent
360 state bonds to yield net proceeds to the investment partner
361 equal to its net capital loss as of the date of the
362 partnership's notice and the partner's contingent state bonds
363 remain unsold. Within 30 days after receipt of such notice, the
364 investment partner may:

365 1. Revoke its prior election and make a new election under
366 paragraph (2) (c); or

367 2. Modify the election and have the partnership continue to
368 sell contingent state bonds until the partner's net capital loss
369 is satisfied or the maximum amount of the partner's contingent
370 state bonds is reached, whichever occurs first.

371
372 Within 30 days after such modified election, the partnership
373 shall apply to the corporation in accordance with paragraph (a)
374 for issuance of contingent state bonds on behalf of the
375 purchasers in the required amounts.

376 (5) (a) The corporation may not issue more than \$350 million
377 in contingent state bonds. The corporation may not approve

29-00101B-16

2016226__

378 contingent state bonds in excess of the total capital committed
379 through commitment agreements.

380 (b) The amount of contingent state bonds which may be
381 claimed by the owner of the bonds in any given state fiscal year
382 may not exceed an amount equal to \$75 million multiplied by a
383 fraction, the numerator of which is the amount of bonds that the
384 corporation issued to such owner and the denominator of which is
385 the total amount of all bonds that the corporation issued to
386 contingent state bonds owners.

387 (c) Contingent state bonds issued by the corporation under
388 this section may be used by the owner of the bonds.

389 (d) To the extent that contingent state bonds issued under
390 this section are used by their owner to obtain payment from the
391 state, the amount of such bonds becomes an obligation to the
392 state by the partnership, secured exclusively by the ownership
393 interest transferred to the fund by the investment partner whose
394 investment generated the contingent state bonds. In such case,
395 the state's recovery is limited to such forfeited ownership
396 interest. The corporation shall account for contingent state
397 bonds used under this section and make such information
398 available to the partnership. The fund, as general partner, is
399 not liable to the state for repayment of the used contingent
400 state bonds.

401 (e) Contingent state bonds issued under this section are
402 transferable in whole or in part by their owner. An owner of
403 contingent state bonds must notify the corporation of any such
404 transfer.

405 (6) The corporation, upon the request of the partnership,
406 shall provide the partnership with a written assurance that the

29-00101B-16

2016226__

407 commitment agreements between investment partners and the
408 partnership will be honored by the corporation as provided in
409 this section.

410 (7) Chapter 517 does not apply to the contingent state
411 bonds transferred or sold under this section.

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

414 213.053 Confidentiality and information sharing.—

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

417 (cc) Information relating to contingent state bonds under
418 ss. 288.9628 and 288.9629 to the Florida Infrastructure Fund
419 Partnership and the Florida Development Finance Corporation.

420
421 Disclosure of information under this subsection shall be
422 pursuant to a written agreement between the executive director
423 and the agency. Such agencies, governmental or nongovernmental,
424 shall be bound by the same requirements of confidentiality as
425 the Department of Revenue. Breach of confidentiality is a
426 misdemeanor of the first degree, punishable as provided by s.
427 775.082 or s. 775.083.

428 Section 7. This act shall take effect July 1, 2016.