**The Florida Senate**

# COMMITTEE MEETING EXPANDED AGENDA

**COMMERCE AND TOURISM**
**Senator Detert, Chair**
**Senator Thompson, Vice Chair**

**MEETING DATE:** Tuesday, January 19, 2016
**TIME:** 1:30—3:30 p.m.
**PLACE:** *Toni Jennings Committee Room,* 110 Senate Office Building

**MEMBERS:** Senator Detert, Chair; Senator Thompson, Vice Chair; Senators Bean, Hutson, Latvala, Richter, and Ring

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 1 | **CS/SB 642**<br>Judiciary / Diaz de la Portilla<br>(Similar H 459) | Drones; Providing for liability for injury to a person or property damage in this state for the negligent operation of a drone; defining a term, etc.<br><br>JU 11/17/2015 Fav/CS<br>CM 01/19/2016<br>RC | |
| 2 | **SB 864**<br>Smith<br>(Identical H 955) | State Contracts; Requiring all state contracts in excess of a certain amount to require that call-center services be staffed by persons located within the United States, etc.<br><br>CM 01/19/2016<br>GO<br>AGG<br>AP | |
| 3 | **SB 948**<br>Richter<br>(Identical H 739) | Secondhand Dealers; Requiring that the record of a secondhand dealer transaction include digital photos of the items; specifying that a secondhand dealer has a duty to return stolen goods to their lawful owner or to a lienor who has a right of possession, etc.<br><br>CM 01/19/2016<br>CJ<br>FP | |
| 4 | **SB 226**<br>Ring<br>(Identical H 441) | Capital Formation for Infrastructure Projects; Modifying legislative findings and intent relating to the need for seed capital and venture equity capital to include infrastructure funding; creating the Florida Infrastructure Fund Partnership as a private, for-profit limited partnership or limited liability partnership; requiring the Florida Development Finance Corporation to issue contingent state bonds to investment partners in the partnership; providing that contingent state bonds become an obligation to the state by the partnership under certain circumstances, etc.<br><br>CM 12/01/2015 Workshop-Discussed<br>CM 01/19/2016<br>FT<br>AP | |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| | Other Related Meeting Documents | | |

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

| | |
|---|---|
| BILL: | CS/SB 642 |
| INTRODUCER: | Judiciary Committee and Senator Diaz de la Portilla |
| SUBJECT: | Drones |
| DATE: | January 15, 2016 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Davis | Cibula | JU | **Fav/CS** |
| 2. | Little | McKay | CM | **Pre-meeting** |
| 3. | | | RC | |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SB 642 expands the circumstances under which a person may be held vicariously liable for the negligence of another person. Specifically, the bill imposes joint and several liability on the owner of a drone for damages caused by the negligence of the operator of a drone. The application of joint and several liability was generally abolished by the Legislature in 2006. Under the current comparative fault statute, a person's liability for negligence is generally limited to his or her percentage of fault for an injury or damage.

## II. Present Situation:

### Drones

A drone is defined in the Freedom from Unwarranted Surveillance Act[1] as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

[1] Section 934.50, F.S.

Drones come in a variety of sizes, from as small as insects to as large as commercial planes.[2] They can be equipped with a variety of options which include high-power cameras, license plate readers, moving target indicators, thermal scanners, and facial recognition software. Some drones are used for crop dusting, mapping, environmental protection, tracking wildlife, search and rescue missions, delivering packages, and many other purposes.[3]

***History***

Since 1990 the Federal Aviation Administration, (FAA), has authorized limited use of drones for public missions that include firefighting, law enforcement, search and rescue, disaster relief, border patrol, scientific research, and testing.[4] As technology has advanced and drones have become more affordable, members of the public have begun purchasing them for commercial and recreational uses. According to the FAA, flying model aircraft and unmanned aircraft systems as a hobby or for a recreational purpose does not require approval by the FAA. However, the FAA does place certain restrictions as to use of drones within so many miles of an airport without permission from air traffic control. Non-recreational drone operations are prohibited unless authorized by the FAA on a case-by-case basis.[5]

***Close Encounters***

As an increasing number of drones fly about in American airspace, several rogue drone incidents have been reported. Between 2012 and 2014, the FAA notes that pilots have reported 15 incidents of close calls involving small drones near airports. In May 2014, a commercial airline pilot descending to LaGuardia Airport reported seeing a black drone with a 10 to 15 foot wing span flying above Manhattan. On the same day, two planes approaching Los Angeles International Airport reported seeing a drone or remotely controlled aircraft as large as a trash can flying in the vicinity. In May 2014, a pilot descending into Atlanta reported a small drone in close proximity to his plane. On March 22, 2014, a U.S. Airways pilot reported a near-collision with a drone or remotely controlled aircraft over Tallahassee.[6]

Incidents of wayward drones and injuries have also been reported at the U.S. Open, a parade in Seattle, and a restaurant in New York City. A quadcopter drone crashed on the White House lawn in January of 2015, but no injuries were reported. As drone-related accidents occur, the field of drone liability is emerging as a new practice area for personal injury lawyers who are already setting up websites for potential clients.[7]

Civilian drones operated with permission of the FAA and under its watch have reported crashes. Registered users, including law enforcement agencies, universities, and other organizations have reported 23 accidents and 236 unsafe incidents between November 2009 and 2014. The FAA

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[2] Drones are also referred to as unmanned aircrafts by the federal government.
[3] Taly Matiteyahu, *Drone Regulations and Fourth Amendment Rights: The Interaction of State Drone Statutes and the Reasonable Expectation of Privacy*, 48 COLUM. J. L. & SOC. PROBS., 265, 1 (2015).
[4] Federal Aviation Administration, *Fact Sheet – Unmanned Aircraft Systems (UAS)* (Feb. 15, 2015), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsid=18297.
[5] *Id*. For additional information see Federal Aviation Administration, *Civil Operations (Non-Governmental)*, http://www.faa.gov/uas/civil_operations/ (Page last modified Mar. 4, 2015).
[6] Craig Whitlock, *Close Encounters on Rise as Small Drones Gain in Popularity*, The Washington Post, June 23, 2014,
[7] See *Drone Injury Lawyer Blog*, http://www.droneinjurieslawyer.com/drone-injury-lawyer (last visited Nov. 11, 2015).

accident investigation reports reveal that 47 military drones have crashed in the United States during the period between 2001 and 2013.[8]

***Registry Process***

In October of 2015, the U.S. Department of Transportation announced the creation of a task force to develop recommendations for an online registry process for unmanned aircraft systems.[9] Based on the task force's recommendations, the FAA promulgated regulations that require owners of drones to complete an online registration form for all drones weighing more than 0.55 pounds and less than 55 pounds.[10] Implementing the registration process is meant to provide safety and accountability to the use of unmanned aircrafts. Upon registration, each registrant receives a certificate of registration and a unique registration number that must then be identified on the drone itself. [11] The FAA online registration was made available on December 21, 2015 and, as of January 13, 2016, over 225 certificates have been issued to individuals or businesses providing a Florida address.[12]

**Causes of Action for a Drone Injury**

It appears that, under current law, a person might be liable for damages caused by a drone under the theories of:

- General negligence;
- Vicarious liability, including an employer being liable for the negligence of an employee, agency as it relates to respondeat superior, and dangerous instrumentality; and
- Products liability.

**Negligence**

***Definition***

Negligence, in tort law, is the failure to use reasonable care, or the care that a reasonably careful person would use under like circumstances. Negligence means doing something, under like circumstances, that a reasonably careful person would not do, or failing to do something that a reasonably careful person would do.[13]

***Elements***

For a claimant to successfully recover damages for an injury, he or she must prove four essential elements in the cause of action:

- Duty - The defendant owed the claimant a duty of care;

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[8] *Supra* at 5.
[9] United States Department of Transportation, *U.S. Transportation Secretary Anthony Foxx Announces Unmanned Aircraft Registration Requirement: New Task Force to Develop Recommendations by November 20*, https://www.transportation.gov/briefing-room/us-transportation-secretary-anthony-foxx-announces-unmanned-aircraft-registration.
[10] *See* 14 C.F.R. Parts 1, 45, 47, 48, 91, and 375.
[11] *Id.*
[12] The FAA has made available a query to allow users to view all aircraft registered within the last 30 days. *See* http://registry.faa.gov/CurrentReg/CurrentRegReport_Results.aspx (last visited Jan. 13, 2016).
[13] Florida Standard Jury Instructions, s. 401.4 Negligence.

- Breach of that duty - The duty of care was breached by the defendant's failure to conform to the required standard;
- Causation - A proximate cause or a reasonably close causal connection exists between the defendant's alleged wrong and the claimant's resulting injury; and
- Damages - The claimant suffered actual damages or loss.[14]

**Comparative Negligence**

Before 1973, a plaintiff who was partially at fault for an accident was barred from recovering damages under the doctrine of contributory negligence. In 1973, however, the Florida Supreme Court determined that the doctrine of contributory negligence was too harsh on partially-at-fault plaintiffs and replaced it with the comparative negligence doctrine.[15] Under the doctrine of comparative negligence, when a plaintiff and defendant are both at fault, a plaintiff may recover damages proportionate to the negligence of the defendant. This doctrine is now codified in s. 768.81(2), F.S.

**Joint and Several Liability**

The courts have often struggled with the complexities of having multiple defendants and determining the degree of liability of each and properly apportioning damages among them. In an effort to resolve these complex issues at common law, courts developed the doctrine of joint and several liability. Joint and several liability provides that when multiple tortfeasors act together to cause the plaintiff's damages, all tortfeasors are jointly and severally liable. The plaintiff may join all of the tortfeasors in one lawsuit and look to any of them to satisfy the full judgment award, regardless of the proportion each defendant contributed to the claimant's injuries or damages. Later, the courts limited this rule to lawsuits where the tortfeasors acted with a common purpose and mutual assistance in carrying out the tort.[16]

Florida courts adopted the doctrine of joint and several liability but expanded it to cover many additional situations. As the doctrine of comparative negligence developed, the courts found it increasingly difficult to decipher the two concepts. The Legislature intervened and through the passage of the Tort Reform Acts of 1986, 1988, and 1999, substantially modified joint and several liability, and abolished it in 2006.[17]

**Vicarious Liability**

Although general tort law is based upon the premise of "actual fault" such that someone who engages in wrongful conduct that results in injury to someone else is held legally accountable for his or her own acts, there are exceptions to this general premise.[18] Vicarious liability, or imputed negligence, is the liability that a supervisory party bears for the negligence of a subordinate

[14] Thomas D. Sawaya, FLORIDA PERSONAL INJURY LAW AND PRACTICE WITH WRONGFUL DEATH ACTIONS, s. 3:1 (2015-2016 edition).
[15] *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973).
[16] Sawaya, *supra* note 12 at s. 7:2.
[17] Section 768.81(3), F.S. (2006).
[18] Sawaya, *supra* note 12 at s. 15:15.

based on the relationship between the two.[19] Accordingly, under the theory of vicarious liability, a person may be liable for an injury to a third party, even though he or she did not cause the injury.

***Respondeat Superior***

The doctrine of respondeat superior, or "let the superior make answer" is also called the master-servant rule. Under this concept, an employer or principal may be liable for an employee's or agent's wrongful acts that are committed within the scope of employment or agency.[20]

***Agency Relationship***

"Agency" is the relationship that exists between one person, generally called the principal, who authorizes another person, generally referred to as the agent, to act on his or her behalf with discretionary power when dealing with a third person.[21] Although the principal does exercise some degree of control over the agent, it is often not to the same extent that an employer exercises control over an employee. For a principal to be held liable for the torts of an agent, a plaintiff must prove that an agency relationship exists between the two and that the agent acted within the scope of real or apparent authority.[22]

***Dangerous Instrumentality***

The dangerous instrumentality doctrine imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts the vehicle to another person who then operates the vehicle negligently and injures a third person.[23] This doctrine has been expanded by the courts to cover airplanes, buses, trucks, golf carts, tow-motors, farm tractors, and construction hoists and cranes.[24] Although drones have some similarities to recognized dangerous instrumentalities, staff is not aware of any court opinion that has considered whether a drone is a dangerous instrumentality.

**Products Liability Law**

Products liability is the area of negligence law in which manufacturers or sellers who provide products to the public are held legally responsible for damages or injuries caused by those products.[25] The legal theories under which an injured person may recover are negligence, strict liability, and breach of warranty.[26] To recover damages, the plaintiff must prove that the product contained a defect, that the defect caused the injuries, and that the defect existed when the manufacturer, supplier, or retailer gave up possession of the product.[27]

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[19] BLACK'S LAW DICTIONARY 927 (7th ed. 1999).
[20] BLACK'S LAW DICTIONARY 1313 (7th ed. 1999).
[21] Sawaya, *supra* note 12 at s. 4:4.
[22] *Id*.
[23] Sawaya, *supra* note 12 at s. 4:10.
[24] *Id.*
[25] BLACK'S LAW DICTIONARY 1225 (7th ed. 1999).
[26] Sawaya, *supra* note 12 at s. 13:1.
[27] Sawaya, *supra* note 12 at s. 13:3.

## III. Effect of Proposed Changes:

This bill expands the circumstances under which a person may be held liable for the negligence of another person. Specifically, the bill imposes joint and several liability on the owner of a drone for the negligence of the operator of a drone.

The Legislature generally abolished joint and several liability in 2006. Because joint and several liability was broadly abolished, a person's liability is generally limited to his or her percentage of fault for an injury or damage and no more. By specifying that the owner and operator may be held jointly liable, even though each was hypothetically equally at fault, either party may be held 100 percent liable for the damages caused by the other. Under the current comparative fault statute, s. 768.81, F.S., the liability of owner and operator is based on the percentage of fault attributed to them.

The bill takes effect on July 1, 2016.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Vicarious liability increases the pool of potential defendants to a lawsuit and increases the sources available to pay damages to a plaintiff. As a result, the bill may increase the potential for an injured plaintiff to be made whole.

C. Government Sector Impact:

The bill may reduce dependency on government aid to the extent that a person is able to recover damages for injuries caused by a drone from other sources.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill creates section 768.38 of the Florida Statutes.

## IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on November 17, 2015:**
The committee substitute narrows the scope of the bill by removing the portion of the bill which would have made the owner and operator of a drone liable for damages caused by a manufacturing or design defect. The committee substitute moves this provision from ch. 934, F.S., which deals with the security of communications and surveillance, and places it in ch. 768, F.S., which relates to negligence.

B. Amendments:

None.

140216

LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Commerce and Tourism (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsections (5) and (6) of section 934.50, Florida Statutes, are renumbered as subsections (6) and (7), respectively, and subsection (5) is added to that section, to read:

934.50 Searches and seizure using a drone.—

(5) LIABILITY ARISING OUT OF DRONE USE.—A drone is a

140216

dangerous instrumentality and the owner and operator of a drone shall exercise reasonable care to prevent injuries to others.

Section 2. This act shall take effect July 1, 2016.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to drones; amending s. 934.50, F.S.; declaring that a drone is a dangerous instrumentality; providing an effective date.

228228

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Commerce and Tourism (Ring) recommended the following:

**Senate Substitute for Amendment (140216) (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsections (5) and (6) of section 934.50, Florida Statutes, are renumbered as subsections (6) and (7), respectively, and subsection (5) is added to that section, to read:

934.50 Searches and seizure using a drone.—

228228

(5) LIABILITY ARISING OUT OF DRONE USE.—A drone is a dangerous instrumentality, and the owner and operator of a drone shall exercise reasonable care to prevent injuries to others. This subsection does not apply to a drone having a weight of 0.55 lbs. or less.

Section 2. This act shall take effect July 1, 2016.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to drones; amending s. 934.50, F.S.; declaring that a drone is a dangerous instrumentality; providing an exception; providing an effective date.

**By** the Committee on Judiciary; and Senator Diaz de la Portilla

590-01332-16 2016642c1

A bill to be entitled

An act relating to drones; creating s. 768.38, F.S.; providing for liability for injury to a person or property damage in this state for the negligent operation of a drone; defining a term; providing an effective date.

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

Section 1. Section 768.38, Florida Statutes, is created to read:

768.38 Liability arising out of drone use.—Notwithstanding s. 768.81, if a person suffers an injury or property damage caused by the negligent operation of a drone, the owner and operator of the drone are liable for damages on the basis of the doctrine of joint and several liability. As used in this section, the term "drone" has the same meaning as in s. 934.50.

Section 2. This act shall take effect July 1, 2016.



**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**
Judiciary, *Chair*
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

**SENATOR MIGUEL DIAZ de la PORTILLA**
40th District

November 18, 2015

The Honorable Nancy Detert
Chair
Commerce and Tourism

Via email

Dear Chair Detert:

My Senate Bill 642, Drones, has been referred to the Commerce and Tourism Committee. It passed out of the Judiciary committee yesterday.

Please agenda the bill at the next opportunity. Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Mr. Todd McKay, Staff Director; Ms. Patty Blackburn, Committee Administrative Assistant

REPLY TO:
❒ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
❒ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: *www.flsenate.gov*

**ANDY GARDINER**
**President of the Senate**

**GARRETT RICHTER**
**President Pro Tempore**

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

| | |
|---|---|
| BILL: | SB 864 |
| INTRODUCER: | Senator Smith |
| SUBJECT: | State Contracts |
| DATE: | January 15, 2016 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Little | McKay | CM | **Pre-meeting** |
| 2. | | | GO | |
| 3. | | | AGG | |
| 4. | | | AP | |

## I. Summary:

SB 864 requires that any state agency contract for services exceeding $35,000 must specify that all call-center services provided pursuant to the contract must be staffed by persons located within the United States.

The bill has an effective date of July 1, 2016.

## II. Present Situation:

Chapter 287, F.S., governs the public procurement of personal property and services. The Florida Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and commodity and contractual services needed to support agency activities.[1] The Division of State Purchasing, in the DMS, establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[2]

Contracts for commodities or contractual services in excess of $35,000 must be procured through a competitive solicitation process.[3] Section 287.058, F.S., outlines the provisions and conditions that must be present in contractual agreements for competitively procured services. The section also provides that a contract may be renewed for a period of time upon satisfactory performance evaluations by the agency and subject to the availability of funds.[4]

[1] *See* ss. 287.032 and 287.042, F.S.
[2] Division of Purchasing rules are published under Chapter 60A of the Florida Administrative Code.
[3] Section 287.057(1), F.S., requires a competitive solicitation process for contracts that exceed the Category Two threshold. Category thresholds are listed in s. 287.017, F.S., which identifies contracts exceeding $35,000 as Category Two.
[4] Section 287.058(h), F.S.

Federal law also regulates procurement activities. The most well-known international agreements are the World Trade Organization Government Procurement Agreement (GPA), the North American Free Trade Agreement (NAFTA), and numerous other bilateral free trade agreements (FTA).[5] The expansion of international trade between the United States and foreign governments has resulted in many agreements that contain mutually beneficial government procurement obligations. In the spirit of promoting trade relations, governments have agreed to require that each party's goods and services be given the same treatment as domestic goods and services. As such, a government is prohibited from arbitrarily giving preferential treatment to domestic goods at the expense of foreign goods originating from a country where there is an enforceable and standing trade agreement espousing mutually beneficial government obligations.

**World Trade Organization Government Procurement Agreement (GPA)**

The agreement that established the World Trade Organization (WTO) came as a result of the Uruguay Rounds of Multilateral Trade Negotiations, which also produced a series of other international agreements, including the GPA.[6] As enumerated in the preamble, the GPA's objective is the expansion of world trade through three primary measures:

- Prohibition on discrimination based on national origin;
- Establishment of clear, transparent laws, regulations, procedures, and practices regarding governmental procurement; and
- Application of competitive procedural requirements related to notification, tendering (bidding), contract award, tender (bid) protest, etc.[7]

With respect to discrimination on the basis of national origin, Article III of the agreement expressly forbids the application of less favorable treatment to the products, services, and suppliers of other foreign parties than that which would be accorded to domestic products, services, and suppliers.[8] The agreement further provides that all parties will ensure that the laws, regulations, procedures, and practice regulating government procurement in their home state will be executed in a nondiscriminatory manner.[9]

[5] A list of the federal government's current procurement obligations under international agreements is available at https://ustr.gov/issue-areas/government-procurement (last visited Jan. 13, 2016).
[6] Signatory countries: Armenia, Canada, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia, Bulgaria, Romania, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, and Chinese Taipei.
[7] 1994 Uruguay Round Agreement on Government Procurement, April 15, 1994, WTO Agreement, Annex 4(b) (hereinafter "GPA"), *and see* GPA Appendix I (United States), Annex 2 (discusses sub-central government entities, such as Florida), both available at https://www.wto.org/english/docs_e/legal_e/legal_e.htm (last visited Jan. 13, 2016).
[8] *Id.*
[9] *Id.*

The State of Florida was one of 37 states to agree to procure in accordance with the GPA.[10] Presently, Florida's executive branch is covered under the GPA[11] for purchases that exceed $552,000 for commodities and services and $7,777,000 for construction services.[12]

**Free Trade Agreements**

In addition to the GPA, the United States has also entered into several bilateral free trade agreements[13] and two multilateral free trade agreements,[14] with the most highly recognized being NAFTA. Similar to the GPA, these agreements contain provisions that call for fair and non-discriminatory treatment of products, goods, and services by all state parties. When necessary, the United States has issued waivers to protect parties from discriminatory purchasing requirements found under existing law that would be contrary to the covenants embodied in such international agreements.[15]

## III. Effect of Proposed Changes:

**Section 1** amends s. 287.058, F.S., to require state agency contracts for services in excess of $35,000 to include a provision in the contractual document, stating that any call center services provided pursuant to the contract must be staffed by persons located within the United States.

**Section 2** provides that the bill takes effect July 1, 2016.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[10] In a letter dated November 7, 1991, Governor Lawton Chiles authorized coverage of Florida under the GATT/WTO Government Procurement Agreement.
[11] *See* Annex 2 (Sub-Central Government Entities), *supra*, note 7.
[12] 76 F.R. 76808-01, December 8, 2011.
[13] The United States has entered bilateral free trade agreements with the following countries: Australia, Bahrain, Canada, Chile, Israel, Morocco, Oman, Peru, and Singapore. This information is available at http://www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations (last visited Jan. 13, 2016).
[14] NAFTA (member countries: United States, Mexico, and Canada) and DR-CAFTA (El Salvador, Dominican Republic, Guatemala, Honduras, Nicaragua, and Costa Rica). This information is available at https://ustr.gov/trade-agreements/free-trade-agreements (last visited Jan. 13, 2016).
[15] *See* 19 U.S.C. ss. 2511(a), 2532, 2533; *see also* Exec. Order No. 12260, available at http://www.archives.gov/federal-register/codification/executive-order/12260.html (last visited Jan. 13, 2016).

D. Other Constitutional Issues:

Requiring call-center services provided pursuant to a contract for services to be staffed by persons within the United States may potentially implicate the Supremacy Clause and the Commerce Clause of the U.S. Constitution.

**The Federal Commerce Clause and Market Participant Exception**

The Commerce Clause states that Congress shall have the power "to regulate commerce with foreign Nations, and among the several States."[16] This clause speaks to Congress' power to regulate both interstate and foreign commerce and acts as a negative constraint upon the states.[17]

The standard for determining whether state action violates the Commerce Clause requires courts to consider whether the state law facially discriminates against foreign commerce, whether the law interferes with the ability of the federal government to speak with one voice, or whether the law attempts to regulate conduct beyond its borders. For this reason, state laws affecting interstate and foreign commerce are reviewed with heightened scrutiny.[18]

The market participant exception may allow state laws to withstand such judicial review under particular circumstances. The exception permits a state to permissibly discriminate against non-residents so long as the state is acting as a "market participant," rather than a "market regulator."[19] A state is considered to be a "market participant" when it is acting as an economic actor, such as a purchaser of goods and services.[20]

However, the law is unsettled regarding the applicability of the market participant exception to the Commerce Clause. Under the market participant exception, the United States Court of Appeals for the First Circuit upheld the validity of a Pennsylvania procurement statute that required suppliers contracting with a public agency for public works projects to provide products made of American steel. [21] Conversely, the United States Court of Appeals for the Third Circuit refused to extend the market participant exception and invalidated a Massachusetts law that placed restrictions on the ability of state agencies and authorities to purchase goods or services from individuals or companies that engaged in business with Burma.[22]

**The Supremacy Clause**

The Supremacy Clause grants Congress the power to preempt state law by deeming the United States Constitution and the laws of the United States as the "Law of the Land."[23] Preemption may occur under three primary circumstances: when Congress expressly preempts the state

[16] U.S. *Const.* Art. I, s. 8, c. 3.
[17] The constraint is often referred to as the dormant Commerce Clause. *See Gibbons v. Ogden*, 22 U.S. 1 (1824).
[18] *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 446 (1970) ("When construing Congress' power to 'regulate commerce with foreign Nations,' a more extensive constitutional inquiry is required.").
[19] *See White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204, 208 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).
[20] *Id.*
[21] *Trojan Techs., Inc. v. Pennsylvania*, 916 F. 2d 903, 912 (3d Cir. 1990), *cert denied*, 501 U.S. 1212 (1991).
[22] *National Foreign Trade Council v. Natsios*, 181 F.3d 38, 60 (1st Cir. 1999), *cert granted*, 528 U.S. 1018 (1999).
[23] U.S. Const. art. VI, s. 1, c.2.

legislation, when Congress intends to occupy the field, or when a state law is in conflict with federal law.[24]

In *Crosby v. National Foreign Trade Council*, the United States Supreme Court unanimously concluded that a Massachusetts' law prohibiting state agencies from buying goods or services from companies doing business with Burma was unconstitutional.[25] At the time, the federal government was reassessing its foreign relations status with Burma and Congress had enacted a statute that imposed a set of mandatory and conditional sanctions on Burma. The existence of both the federal and state law created a direct conflict since the Massachusetts law banned all contracts between the state and companies doing business with Burma.

In 2013, using the formula prescribed under *Crosby*, the United States Court of Appeals for the 11th Circuit upheld a challenge to the constitutionality of an amendment to a provision under ch. 287, F.S.[26] The challenged law in *Odebrecht* required a company entering into a procurement contract for goods or services exceeding $1 million to certify that it did not have business operations in Cuba.[27] The Court held that federal law preempted the state law under the circumstances because the state law swept more broadly than federal legislation.[28]

Similarly, SB 864 may implicate foreign relations by requiring that state agency contracts in excess of $35,000 include a provision that all call-center services must be staffed by persons located within the United States. Notably different from the courts' reasoning in *Crosby* and *Odebrecht*, is that the language of this bill does not appear to be in direct conflict with any federal law. However, federal treaties and executive agreements supporting free trade may still provide a basis for preemption.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

SB 864 could limit the number of private companies qualified to enter into procurement contracts with the state.

[24] *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000).
[25] *Id.* at 366.
[26] *Odebrecht Constr. v. Sec'y, Fla. DOT*, 715 F.3d 1268 (11th Cir. 2013).
[27] Section 287.135(5), F.S. (2012). *See also Odebrecht*, 715 F.3d at 1272.
[28] *Id.* at 1281.

C. Government Sector Impact:

SB 864 could have fiscal implications if the cost of domestic labor is higher than the cost of labor in foreign markets.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 287.058 of the Florida Statutes.

## IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

**By** Senator Smith

31-00934-16 2016864__

A bill to be entitled

An act relating to state contracts; amending s. 287.058, F.S.; requiring all state contracts in excess of a certain amount to require that call-center services be staffed by persons located within the United States; providing an effective date.

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

Section 1. Subsection (1) of section 287.058, Florida Statutes, is amended to read:

287.058 Contract document.—

(1) A ~~Every~~ procurement of contractual services in excess of the threshold amount provided under ~~in~~ s. 287.017 for CATEGORY TWO, except for ~~the providing of~~ health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or ~~the providing of~~ other benefits as required by chapter 440, must ~~shall~~ be evidenced by a written agreement embodying all provisions and conditions for ~~of~~ the procurement of such services. As applicable, the agreement must~~, which shall, where applicable,~~ include, but need not be limited to, a provision:

(a) Requiring that bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit ~~thereof~~.

(b) Requiring that bills for any travel expenses be submitted in accordance with s. 112.061. A state agency may establish rates lower than the maximum provided in s. 112.061.

(c) Requiring all call-center services provided pursuant to the contract to be staffed by persons located within the United States. This requirement also applies to all call-center services performed by a subcontractor pursuant to the contract.

(d) ~~(c)~~ Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and s. 119.07(1).

(e) ~~(d)~~ Specifying a scope of work which ~~that~~ clearly establishes all tasks the contractor is required to perform.

(f) ~~(e)~~ Dividing the contract into quantifiable, measurable, and verifiable units of deliverables which ~~that~~ must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify a performance measure. As used in this paragraph, the term "performance measure" means the required minimum acceptable level of service to be performed and criteria for evaluating the successful completion of each deliverable.

(g) ~~(f)~~ Specifying the criteria and the final date by which such criteria must be met for completion of the contract.

(h) ~~(g)~~ Specifying that the contract may be renewed for up to ~~a period that may not exceed~~ 3 years or the term of the original contract, whichever is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply, specifying that costs for the renewal may not be charged, and specifying that renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts

pursuant to s. 287.057(3)(a) and (c) may not be renewed.

(i)~~(h)~~ Specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract.

(j)~~(i)~~ Addressing the property rights of any intellectual property related to the contract and the specific rights of the state regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.

In lieu of a written agreement, the agency may authorize the use of a purchase order for classes of contractual services if the provisions of paragraphs (a)-(j) ~~(a)-(i)~~ are included in the purchase order or solicitation. The purchase order must include, but need not be limited to, an adequate description of the services, the contract period, and the method of payment. In lieu of printing the provisions of paragraphs (a)-(d) ~~(a)-(c)~~ and (h) ~~(g)~~ in the contract document or purchase order, agencies may incorporate the requirements of those paragraphs ~~(a)-(c) and (g)~~ by reference.

Section 2. This act shall take effect July 1, 2016.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

| | |
|---|---|
| BILL: | SB 948 |
| INTRODUCER: | Senator Richter |
| SUBJECT: | Secondhand Dealers |
| DATE: | January 15, 2016 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Harmsen | McKay | CM | **Pre-meeting** |
| 2. | | | CJ | |
| 3. | | | FP | |

## I. Summary:

SB 948 modifies the transaction processes mandated for secondhand dealers in ss. 538.03-538.17, F.S. The bill requires secondhand dealers to maintain digital photos of the goods they acquire as part of their transaction records, and to hold goods for 30 days from their acquisition, rather than 15. Additionally, the bill allows persons with a right of possession of property, in addition to those who can prove ownership, to file an action for replevin of the goods against secondhand dealers, and provides additional rights during the replevin action.

## II. Present Situation:

A secondhand dealer engages in the business of buying, reselling, or consigning certain types of used personal property.[1] Part I of ch. 538, F.S., grants authority to regulate secondhand dealers to the Department of Revenue (department). The department requires secondhand dealers to register on an annual basis, and currently has 3,185 active secondhand dealer registrants.[2] Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

Upon each acquisition, a secondhand dealer is required to complete a transaction record that details the goods purchased and the seller's identity. The secondhand dealer must retain this document for at least 3 years and forward a copy to local law enforcement within 24 hours of the acquisition of the goods. The transaction record must include, in addition to other descriptive statements:

- A statement of the date, time, and place of the transaction;
- A summary of the goods acquired, including brand name, model number, serial number, and other unique identifiers; and

[1] Section 538.03, F.S.

[2] Section 538.09, F.S.; Conversation with staff of Florida Department of Revenue, Jan. 12, 2016.

- A description of the person from whom the goods were acquired, including their right thumbprint, their name and address, and a physical description.

Secondhand dealers are required to hold all property for at least 15 days after they acquire the property.[3] Should a law enforcement officer have probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written hold order on the goods, which prevents the secondhand dealer from selling them.[4] This allows the goods to be preserved for use as evidence in a criminal trial, and for the possible return to their rightful owner.

A victim of a theft whose property is subject to a hold order may recover his or her goods or the value thereof through one of three methods:

- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.[5] If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer;[6]
- A victim may file an action for replevin against the secondhand dealer;[7] or
- A victim may purchase her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.

Local law enforcement enforces secondhand dealer compliance with registration, record keeping, holding periods, and inspection requirements.[8]

Any person who traffics in property that he or she knows to be stolen is subject to felony charges of dealing in stolen property under s. 812.019, F.S.

Additionally, victims of theft of their personal property are entitled to loss of use damages, limited to no more than the value of the property before it was taken or injured.[9]

## III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 538.04, F.S., to require that secondhand dealers include digital photos of the goods acquired, including any unique identifiers, in the report that they are required to submit to the local law enforcement.

**Section 2** of the bill amends s. 538.06, F.S., to increase the time a secondhand dealer must hold an item after he or she acquires it from the seller from 15 to 30 days. This is calculated to prevent stolen goods from entering the marketplace, and allowing victims of theft to retrieve their stolen items.

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[3] Section 538.06, F.S.
[4] Section 538.06, F.S.
[5] Section 538.07, F.S.
[6] Section 538.06(4), F.S.
[7] Section 538.08, F.S.
[8] Section 538.05, F.S.; http://dor.myflorida.com/dor/taxes/secondhand_dealers_recyclers.html.
[9] *Badillo v. Hill*, 570 So. 2d 1067, 1068 (Fla. 5th DCA 1990).

**Section 3** of the bill amends s. 538.08, F.S., to modify the processes by which a claimant may file an action for replevin to re-take possession of his or her goods currently in the possession of a secondhand dealer. Specifically, the bill:

- Explicitly places a duty on the secondhand dealer to return stolen goods to their lawful owner or to a lienor who has a right of possession;
- Expands parties eligible to file a replevin action to include an individual who can evince a right of possession of the property. Current law allows only a party who alleges ownership of the property to do so;
- Entitles a claimant who files an action for replevin to summary procedure, provided for in s. 51.011, F.S. This will likely fast-track these specific replevin actions; and
- Directs any court that hears actions for replevin of goods in possession of a secondhand dealer to award damages to the owner of the property for loss of use if the owner makes a written demand to the secondhand dealer for return of the property 5 or more days before he or she files the replevin action. However, the secondhand dealer is not liable for loss-of-use damages if there are conflicting claims to the property, and if the secondhand dealer filed an action for interpleader.

Interpleader is an equitable remedy used to allow a stakeholder to avoid multiple litigations or liability as a result of competing claims to a single fund or good held by the stakeholder.[10]

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Victims of property theft will have more efficient and less costly judicial remedies to retake their stolen goods when the goods are found at a secondhand dealer.

[10] *Red Beryl, Inc. v. Sarasota Vault Depository, Inc.*, 176 So. 3d 375 (Fla. 2nd DCA 2015); Fla. R. Civ. P. 1.240.

Secondhand dealers may incur extra costs related to the 30-day hold of property, and related to the digital storage of photographs of the property.

C. Government Sector Impact:

Court caseloads and costs may increase as a result of this provision.

## VI. Technical Deficiencies:

The provision that provides for damages to be awarded to a property owner who makes a written demand to a secondhand dealer for the return of property 5 days prior to the filing of the property owner's replevin action may be subject to abuse. Because the true ownership of the property has not been settled by a court 5 days prior to the filing of the property owner's replevin action, the secondhand dealer has no independent verification of the claims of the individual who asserts him or herself as the property owner, however, this bill would penalize the secondhand dealer for his or her caution. The intent of this provision may need to be clarified.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends ss. 538.04, 538.06, and 538.08, F.S.

## IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Commerce and Tourism (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 40 - 94
and insert:
(1)(a) A secondhand dealer may ~~shall~~ not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any secondhand good that is:
1. A precious metal, a gemstone, jewelry, an antique furnishing, fixture, or decorative object, or an item of art as defined in s. 686.501 within 30 calendar days after the date on

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which the good was acquired.

2. Not described in subparagraph 1. ~~goods~~ within 15 calendar days after ~~of~~ the date on which the good was acquired ~~of acquisition of the goods~~.

Such holding periods are not applicable when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(b) As used in this subsection, the term "antique" means the item is at least 30 years old and has special value because of its age.

Section 3. Section 538.08, Florida Statutes, is amended to read:

538.08 Stolen goods; complaint ~~petition~~ for return.—

(1) If the secondhand dealer contests the identification, ~~or~~ ownership, or right of possession of the property, the person alleging ownership or right of possession of the property may, provided that a timely report of the theft of the goods was made to the proper authorities, bring an action for replevin in the county or circuit court. The complaint may be ~~by petition~~ in substantially the following form:

Plaintiff A. B. sues defendant C. D., and alleges:

1. This is an action to recover possession of personal property in ..... County, Florida.

2. The description of the property is: ...(list

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property).... To the best of plaintiff's knowledge, information, and belief, the value of the property is $.....

3. Plaintiff is the lawful owner of the property or is entitled to ~~the~~ possession of the property under a security agreement dated ....., ...(year)..., a copy of which is attached.

4. To plaintiff's best knowledge, information, and belief, the property is located at .....

5. The property is wrongfully detained by defendant. Defendant came into possession of the property by ...(describe method of possession).... To plaintiff's best knowledge, information, and belief, defendant detains the property because ...(give reasons)....

6. The property has not been taken under an execution or attachment against plaintiff's property.

(2) The filing fees shall be waived by the clerk of the court, and the service fees shall be waived by the sheriff. The court shall award the prevailing party attorney ~~attorney's~~ fees and costs. In addition, when the filing party prevails in the replevin action, the court shall order payment of filing fees to the clerk and service fees to the sheriff.

(3) Upon the filing of the complaint ~~petition~~, the court shall set a hearing to be held at the earliest possible time. The claimant is entitled to the summary procedure provided in s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a writ by a secondhand dealer~~, the secondhand dealer shall hold the property at issue until the court determines the respective interests of the parties.

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(4) In addition to the civil complaint ~~petition~~ for return remedy, the state may file a motion as part of a pending criminal case related to the property. The criminal court has jurisdiction to determine ownership, ~~to~~ order return or other disposition of the property, and ~~to~~ order ~~any~~ appropriate restitution to any person. Such order shall be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

(5) A secondhand dealer commits a noncriminal violation, punishable pursuant to s. 775.083 by a fine of up to $2,500, if:

(a) The owner or lienor who prevailed in the replevin action made a written demand for return of the property and provided proof of ownership or proof of the right of possession to the secondhand dealer at least 5 calendar days before filing the replevin action;

(b) The secondhand dealer knew or should have known based on the proof provided under paragraph (a) that the property belonged to the owner or lienor; and

(c) The secondhand dealer did not file an action for interpleader to determine conflicting claims to the property.

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

And the title is amended as follows:

Delete lines 7 - 12

and insert:

a dealer; defining the term "antique"; amending s. 538.08, F.S.; authorizing an action in replevin against a secondhand dealer based on a right of possession to stolen goods; revising the form for a


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complaint for return of stolen goods; providing that a claimant in a replevin action is entitled to a certain summary procedure; providing that a secondhand dealer commits a noncriminal violation when an owner or lienor prevails in a replevin action under certain circumstances; providing a penalty;

**By** Senator Richter

23-01112-16 2016948__

A bill to be entitled

An act relating to secondhand dealers; amending s. 538.04, F.S.; requiring that the record of a secondhand dealer transaction include digital photos of the items; amending s. 538.06, F.S.; increasing the required holding period for certain goods acquired by a dealer; amending s. 538.08, F.S.; specifying that a secondhand dealer has a duty to return stolen goods to their lawful owner or to a lienor who has a right of possession; revising the form for a complaint for return of possession; providing for the award of damages for loss of use in certain circumstances; providing an effective date.

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

Section 1. Paragraphs (c) and (d) of subsection (1) of section 538.04, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:

538.04 Recordkeeping requirements; penalties.—

(1) A secondhand dealer shall complete a secondhand dealers transaction form at the time of the actual transaction. A secondhand dealer shall maintain a copy of a completed transaction form on the registered premises for at least 1 year after the date of the transaction. However, the secondhand dealer shall maintain a copy of the transaction form for not less than 3 years. Unless other arrangements are agreed upon by the secondhand dealer and the appropriate law enforcement







23-01112-16 2016948__

official, the secondhand dealer shall, within 24 hours after acquiring any secondhand goods, deliver to such official a record of the transaction on a form approved by the Department of Law Enforcement. Such record shall contain:

(c) Digital photos of the goods, clearly showing the items required to be included on the record as provided in paragraph (b).

Section 2. Subsection (1) of section 538.06, Florida Statutes, is amended to read:

538.06 Holding period.—

(1) A secondhand dealer shall not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any secondhand goods within 30 ~~15~~ calendar days of the date of acquisition of the goods. Such holding periods are not applicable when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

Section 3. Subsections (1) and (3) of section 538.08, Florida Statutes, are amended to read:

538.08 Stolen goods; petition for return.—

(1) A secondhand dealer has a duty to return stolen goods to their lawful owner or to a lienor who has a right of possession. If the secondhand dealer contests the identification or ownership or right of possession of the property, the person alleging ownership or right of possession of the property may, provided that a timely report of the theft of the goods was made to the proper authorities, bring an action for replevin in the

county or circuit court. The complaint must be ~~by petition~~ in substantially the following form:

Plaintiff A. B. sues defendant C. D., and alleges:

1. This is an action to recover possession of personal property in ..... County, Florida.

2. The description of the property is: ...(list property).... To the best of plaintiff's knowledge, information, and belief, the value of the property is $.....

3. Plaintiff is the lawful owner of the property or is entitled to ~~the~~ possession of the property under a security agreement dated ....., ...(year)..., a copy of which is attached.

4. To plaintiff's best knowledge, information, and belief, the property is located at .....

5. The property is wrongfully detained by defendant. Defendant came into possession of the property by ...(describe method of possession).... To plaintiff's best knowledge, information, and belief, defendant detains the property because ...(give reasons)....

6. The property has not been taken under an execution or attachment against plaintiff's property.

(3) Upon the filing of the complaint ~~petition~~, the court shall set a hearing to be held at the earliest possible time. The claimant is entitled to the summary procedure provided in s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a writ by a secondhand dealer~~, the secondhand dealer shall hold the property at issue until the court determines the respective







interests of the parties. If the owner makes a written demand to the secondhand dealer for return of the property 5 or more days before the filing of the action, the court shall additionally award damages to the owner for loss of use of the property; however, the secondhand dealer is not liable for loss-of-use damages when there are conflicting claims to the property and the dealer files an action for interpleader.

Section 4. This act shall take effect July 1, 2016.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Regulated Industries
Rules

**SENATOR GARRETT RICHTER**
*President Pro Tempore*
23rd District

December 17, 2015

The Honorable Nancy Detert, Chair
Senate Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Detert:

Senate Bill 948, relating to Second Hand Dealers, has been referred to the Committee on Commerce and Tourism. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Todd McKay, Staff Director

REPLY TO:
❒ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
❒ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
❒ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

**ANDY GARDINER**
**President of the Senate**

**GARRETT RICHTER**
**President Pro Tempore**

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

| | |
|---|---|
| BILL: | SB 226 |
| INTRODUCER: | Senator Ring |
| SUBJECT: | Capital Formation for Infrastructure Projects |
| DATE: | January 15, 2016 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Askey | McKay | CM | **Pre-meeting** |
| 2. | | | FT | |
| 3. | | | AP | |

## I. Summary:

SB 226 directs the Florida Opportunity Fund to create the Florida Infrastructure Fund partnership. The partnership is a private, for-profit limited partnership or a limited liability partnership, with the fund as a general partner. The purpose of the partnership is to raise and invest capital in infrastructure projects that are in-state and promote economic development.

The bill authorizes the issuance of contingent state bonds by the Florida Development Finance Corporation of up to $350 million to investing partners who have provided investment capital to the partnership under a commitment agreement. The bonds are payable no sooner than 12 years after commitments by investment partners, out of state sales and use, income, and insurance taxes and are contingent upon the net capital loss of investment by the investment partners.

## II. Present Situation:

### The Florida Opportunity Fund & the Florida Development Finance Corporation

The Florida Opportunity Fund (fund)[1] was created by the Florida Legislature in 2007 to mobilize and increase venture capital available to Florida businesses. Sections 288.9621 - 288.9625, F.S., collectively referred to as the Florida Capital Formation Act, provided for the authorization of the entity. Initially, the fund was set up as a "fund-of-funds" program that emphasized investment in seed capital and early stage venture capital funds. However in 2009, the Florida Legislature expanded the fund's directive under the Florida Capital Formation Act to create direct investment programs that invest in individual businesses and infrastructure projects. The fund may not use its original appropriation of $29.5 million to make direct investments but may raise private capital or utilize other public funding sources. In 2010, the fund launched a direct investment program with the Office of Energy, a state entity within the Department of

[1] See *Florida Opportunity Fund* website available at: http://floridaopportunityfund.com/HomePage.asp (Last visited Jan. 14, 2016).

Agriculture and Consumer Services. The progress of direct investments by the fund must be included in its annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The fund is organized as a private, not-for-profit corporation under ch. 617, F.S., and administered by Enterprise Florida, Inc. (EFI). EFI selects a 5-person appointment committee which selects a board of directors for the fund. The board then selects a fund investment manager. Currently, the fund is managed by Florida First Partners, a joint venture between the Credit Suisse Customized Fund Investment Group (CFIG) and Florida-based MILCOM Venture Partners (MVP). CFIG serves various client types including the states of Indiana and Oregon, endowments, family offices, and high net worth individuals. MVP is a venture capital firm focused on the intersection of the commercial and defense markets. MVP manages two venture capital funds: MILCOM Technologies, a seed-stage investment fund, and OnPoint Technologies, an early-stage venture capital fund.

The Florida Development Finance Corporation (corporation)[2] is a statewide financing authority, housed within EFI, tasked to assist for-profit, and not-for-profit business. As a conduit issuer,[3] the corporation provides qualifying projects with access to capital.

**The Division of Bond Finance**

The Division of Bond Finance (division) was created in the State Bond Act[4] (act) in 1969 and is administratively housed within the State Board of Administration.[5] The Governor serves as chair of the governing board of the division, the Attorney General is the secretary, and the Chief Financial Officer acts as treasurer.[6]

The division is responsible for issuing any state bonds authorized by law or the Florida Constitution, as well as bonds on behalf of any state agency authorized by law.[7] As it is used in the act, a state agency is defined as "any board, commission, authority, or other state agency heretofore or hereafter created by the constitution or statutes of the state."[8] In carrying out its authority, the division is authorized to exercise all of the powers relating to bonds to the same extent as state agencies.[9]

As part of its duties, the division serves as a clearinghouse of information relating to both general obligation bonds and revenue bonds of the state and local governments.[10] The division is required to collect, maintain, and make available information concerning such bonds.[11]

[2] Section 288.9604, F.S.
[3] A conduit issuer is an organization that is granted authority to issue municipal bonds to investors.
[4] The State Bond Act encompasses ss. 215.57-215.83, F.S.
[5] Section 215.62(1), F.S.
[6] *Id.*
[7] Section 215.64(2), F.S.
[8] Section 215.58(6), F.S.
[9] Section 215.64(3), F.S.
[10] Section 218.37, F.S.
[11] Section 218.37(1)(a)-(c), F.S.

**Financing Authority of Local Government Entities for Public Works Projects**

Local governments are authorized under current law to issue bonds, revenue certificates, and other forms of indebtedness related to the provision of public works projects.

***County Bonding***

A county may issue water revenue bonds, sewer revenue bonds, or general obligation bonds to pay all or part of the cost to purchase, construct, improve, extend, enlarge, or reconstruct water supply systems or sewage disposal systems.[12] Water revenue bonds are payable solely from water service charges.[13] Sewer revenue bonds are payable solely from sewer service charges.[14] Neither type of revenue bond pledges the property, credit, or general tax revenue of the county. General obligation bonds are payable from ad valorem taxes alone or from ad valorem taxes with an additional secured pledge of water service charges, sewer service charges, special assessments, or a combination of these sources.[15] Issuance of general obligation bonds requires approval by referendum, and a county is required to levy annually a special tax upon all taxable property within the county to pay the principle and interest as it becomes due.[16] Counties may also create special water and sewer districts to serve unincorporated areas, and the district's board may issue revenue bonds to finance all or part of the cost of a water system, sewer system, or both. Such bonds are payable from the revenues derived from operation of the utility system as provided by law and the authorizing resolution of the district's board.[17]

***Municipal Bonding***

A municipality may issue revenue bonds, general obligation bonds, ad valorem bonds, or improvement bonds to finance capital expenditures made for a public purpose. Revenue bonds are payable from sources other than ad valorem taxes and are not secured by a pledge of the property, credit, or general tax revenue of the municipality.[18] General obligation bonds are payable from any special taxes levied for the purpose of repayment and any other sources as provided by the authorizing ordinance or resolution.[19] Such bonds are secured by the full faith and credit and taxing power of the municipality and may require approval by referendum. Ad valorem bonds are payable from the proceeds of ad valorem taxes and require approval by referendum.[20] Improvement bonds are special obligations payable solely from the proceeds of special assessments levied for a project.[21]

Further, a municipality may issue mortgage revenue certificates or debentures to acquire, construct, or extend public works, including, among other things, water and alternative water supply facilities, sewage collection and disposal facilities, gas plants and distribution systems,

[12] Section 153.03(1) and (2), F.S.
[13] Section 153.02(9), F.S.
[14] Section 153.02(10), F.S.
[15] Section 153.02(11), F.S.
[16] FLA. CONST. art. VII, s. 12; s. 153.07, F.S.
[17] Section 153.63(1), F.S. Such bonds may also be secured by the pledge of special assessments or the full faith and credit of the district.
[18] Section 166.101(4), F.S.
[19] Section 166.101(2), F.S.
[20] FLA. CONST. art. VII, s. 12; s. 166.101(3), F.S.
[21] Section 166.101, F.S., et seq.

and stormwater projects.[22] These instruments constitute a lien only against the property and revenue of the utility. These instruments may not impose any tax liability upon any real or personal property in the municipality and may not constitute a debt against the issuing municipality.[23]

The Division of Bond Finance (DBF) of the State Board of Administration provides information to, and collects information from, units of local government[24] concerning the issuance of bonds by such entities.[25] Each unit of local government must provide the DBF a complete description of its new general obligation bonds and revenue bonds and must provide advanced notice of the impending sale of a new issue of bonds.[26] According to the DBF, a public utility generally finances projects with revenue bonds, securing the debt with a pledge of net revenues of the utility system. These net revenues consist of the income of the public utility remaining after paying expenses necessary to operate and maintain the utility. The DBF notes that this current practice requires the efficient operation of the utility system to assure that sufficient net revenues are available to pay debt service.

**Investment funds in Infrastructure**

Investment funds are a mechanism to benefit from investing as a group. Investment funds are also referred to as collective investment vehicles, investment pools, and managed funds (as well as other names). Investment funds benefit from many advantages including:

- The sharing or reducing of risk through asset diversification;
- Lower fixed costs through economies of scale; and
- Professional management of investments.

Investment funds can be sectoral or thematic. Sectoral funds focus on specific economic or industrial sectors such as metals, telecom, or manufacturing. Thematic funds have a broader spectrum and focus on mixed sector themes like infrastructure.

Infrastructure funds are typically global investments and are known for their potential for stable and predictable long-term yields. Infrastructure funds usually represent a portion of the total assets under management by an investment firm. According to a report by Preqin, an asset industry source for data and intelligence, the highest amount of asset allocation in infrastructure is by the Ontario Municipal Employees Retirement System (OMERS).[27] As of June 6, 2016, OMERS had an $11.6 billion allocation to infrastructure representing 19.4 percent of their assets

[22] Section 180.08, F.S.
[23] *Id*.
[24] "Unit of local government" is defined in s. 218.369, F.S., as "a county, municipality, special district, district school board, local agency, authority, or consolidated city-county government or any other local governmental body or public body corporate and politic authorized or created by general or special law and granted the power to issue general obligation or revenue bonds."
[25] Section 218.37, F.S.
[26] *Id*. The DBF is authorized only to collect information concerning these bonds; it does not exercise any substantive authority to review or approve these transactions.
[27] See Preqin Infrastructure Spotlight, June 2015, available at: https://www.preqin.com/docs/newsletters/inf/Preqin-Infrastructure-Spotlight-June-2015.pdf (last visited Jan. 14, 2016).

under management.[28] Prudential M&G (UK) has the twentieth highest amount, with $3.1 billion in asset allocation in infrastructure.[29]

## III. Effect of Proposed Changes:

**Florida Infrastructure Fund Partnership**

The bill creates s. 288.9628, F.S., directing the Florida Opportunity Fund (fund) to facilitate the creation of the Florida Infrastructure Fund Partnership (partnership) as a private, for-profit limited partnership or a limited liability partnership organized and operated under ch. 620, F.S. The partnership is not an instrumentality of the state. The purpose of the partnership is to raise and invest capital in infrastructure projects that are in-state and promote economic development. The bill defines an "infrastructure project" as a capital project in this state which addresses the need for a facility or other strategic infrastructure, including a water or a wastewater system, a communication system, a power system, a transportation system, a renewable energy system, or an ancillary or support system for any such project.

The fund is a general partner of the partnership. The bill directs the fund to:

- Solicit and hire one or more investment managers to assist with managing the partnership and to oversee the raising and investing of capital by the partnership. The evaluation of candidates must consider:
  - The candidate's level of experience;
  - Their investment philosophy and process;
  - A demonstrable success in fundraising;
  - Prior investment results; and
  - That have maintained an office with a full-time investment professional in this state for at least 2 years before their solicitation to be an investment manager with the partnership.
- Solicit, negotiate the terms of, contract for, and receive investment capital with the assistance of the investment manager(s) or other service providers;
- Receive investment returns;
- Disburse returns to investment partners; and
- Approve investments.

The fund is authorized to lend up to $750,000 to the partnership for initial expenses associated with the organization of the partnership and solicitation of investment partners. The bill defines an "investment partner" (or more generally "partner") as a person other than the partnership, the fund, or the trust that purchases or is the transferee of an ownership interest in the partnership.

The partnership is directed to enter into commitment agreements with investment partners to invest in infrastructure projects under terms approved by the board of the fund. The bill defines a "commitment agreement" as a contract between the partnership and an investment partner in which the partner commits to providing a specified amount of investment capital in exchange for an ownership interest in the partnership. "Investment capital," is defined as the total capital

[28] See Preqin Infrastructure Spotlight, June 2015, available at: https://www.preqin.com/docs/newsletters/inf/Preqin-Infrastructure-Spotlight-June-2015.pdf (last visited Jan. 14, 2016).
[29] *Id*.

committed by an investment partner, pursuant to a commitment agreement, for an equity interest in the partnership. The partnership may begin to enter into commitment agreements July 1, 2016. The bill limits the total aggregate amount of principal investment capital payable to the partnership under all commitment agreements may not exceed $350 million. The partnership is required to obtain commitment agreements totaling at least $100 million by December 1, 2017, or cancel any executed agreements and return the investment capital of each investment partner who executed an agreement.

The partnership may only invest in infrastructure projects that:
- Fulfill an important infrastructure need in the state;
- Raise funding from other sources that is at least twice the amount invested by the partnership; and
- For which legal measures exist to ensure the project is not closed due to fraud.

The partnership is prohibited from investing more than 20 percent of its total investment capital in any single project, or invest in any project that involves any phase of a project authorized under the Florida Rail Enterprise Act.[30]

Prior to investing in an infrastructure project, the partnership must evaluate a project's:
- Written business plan, including all expected revenue sources for the project;
- Likelihood that it will attract operating capital from investment partners, lenders, or grants;
- Management team;
- Potential for job creation in the state;
- Financial resources provided by the entity proposing the project; and
- Other factors that are relevant to the project's success.

The partnership is required to submit an annual report of its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives beginning December 1, 2016, and at a minimum include:
- The amounts of investment capital raised and disbursed by the partnership and the progress of the partnership and each infrastructure project in which it has invested;
- Independently audited financial statements, including for the previous fiscal year; and
- The costs and benefits to the state of the partnership and it's investment activity including:
  - A list of projects invested in;
  - Costs and benefits to the county or municipality in which the project is located;
  - The number of businesses and associated industries affected;
  - The number and types of jobs created or retained, and their average annual wages; and
  - The impact on the state's economy.

The partnership is prohibited from investing in a project with, or accepting capital from, a prohibited company identified in s. 215.472, F.S., or a scrutinized company as defined in s. 215.473, F.S. Additionally, the entity owning the infrastructure project in which the partnership has invested, must provide reasonable assurances that such companies do not have an ownership interest in the project.

[30] Sections 341.8201-341.842, F.S.

**Contingent State Bonds**

The bill creates s. 288.9629, F.S., which provides for the issuance of state contingent bonds for the partnership. The Florida Development Finance Corporation (corporation) is directed to issue state contingent bonds to investment partners in the partnership equal to the investment capital committed by each partner. "Contingent state bonds" are defined as any state bonds, revenue bonds, certificates, or other obligations that are contingent upon the loss of the investment capital contributed by an investment partner under s. 288.9629, F.S., and that are payable from tax revenues received by the state under ch. 212 (sales and use tax), ch. 220 (income tax), or ss. 624.509 and 624.5091, F.S., (insurance taxes). The corporation and the fund are permitted to seek reimbursement for reasonable costs and expenses related to the partnership by charging a fee for the issuance of contingent state bonds. The fee may be up to 0.25 percent of the aggregate investment capital committed to the partnership.

The total amount of all contingent state bonds issued by the corporation may not exceed $350 million.

The commitment agreement between an investment partner and the partnership must include a calendar-year maturity date, designated by the corporation, of at least 12 years after the date of the agreement. Contingent state bonds may only be redeemed in accordance with each such agreement.

On the maturity date in a commitment agreement, if a partner has a net capital loss, the partnership will provide written notice to that partner and to the corporation. The bill defines "net capital loss" as an amount equal to the difference between actual total investment capital advanced by the investment partner to the partnership and the actual amount of the aggregate distributions received by the investment partner. The notice must include:

- A good faith estimate of the fair market value of the partnership assets;
- The total capital investment of all investment partners;
- The total amount of distributions received by the investment partners; and
- The amount of the contingent state bonds to which the investment partner is entitled.

Upon receipt of the notice, the investment partner may make a one-time election to have the partnership sell the partner's bonds on their behalf, or maintain the investment partner's investment in the partnership. The investment partner has 30 days to provide written notice to the partnership and the corporation as to their election. If no election is made, it is presumed that the partner will maintain investment in the partnership.

If the partner elects to have the partnership sell the contingent state bonds, the partnership will exercise its best efforts to sell the bonds. After the sale, the corporation will issue new bonds to the purchaser within 30 days of an application submitted by the partnership on behalf of the purchaser.

If the partnership is unable to sell the bonds within 90 days, the partner is given the option to change their election and retain interest in the partnership, or continue to sell bonds until the

partner's net capital loss is satisfied or the maximum amount of the partner's bonds is reached, whichever occurs first.

The bill provides that the maximum amount of bonds which may be claimed by a bond owner in any fiscal year is limited to a calculation of $75 million multiplied by, the number of bonds held by that owner divided by the total number of bonds held by all owners.

The bill exempts the bonds transferred or sold under this section from ch. 517, F.S.[31]

The bill amends s. 213.053, F.S., authorizing the Department of Revenue to disclose certain information to the partnership and the corporation relative to contingent state bonds.

***Miscellaneous Changes***

The bill names ch. 288 Part XI (Capital Formation) as the "Florida Capital Formation Act."

The bill amends subsections (1) (legislative findings) and (2) (legislative intent) of s. 288.9622, F.S., to include a need for infrastructure funding and to mobilize private investment in infrastructure funds, respectively.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill authorizes the issuance and sale of contingent state bonds payable from specified sales and use, income, and insurance taxes to repay lost investment capital contributed by investment partners. This seems to implicate the prohibitions in Article VII, Sections 10 (pledging state credit to aid a partnership), 11(a) (issuance of bonds for state fixed capital outlay projects), and (11e) (issuance of bonds pledging dedicated state tax revenue) of the Florida Constitution. The bill currently lacks specific constitutional authority specifying the purpose and revenues permitted to be pledged required for bonds issued by the state.

[31] Regulation of Securities Transactions.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

The bill provides that the corporation and the fund may charge a fee for reimbursement of costs and expenses related to issuing the contingent state bonds. It is unclear if the fee is assessed to the individual investment partner who is being issued the bonds, or the partnership.

The bill references contingent state bonds that are "issued by the Department of Revenue" (DOR). The DOR does not issue contingent state bonds and is not directed to by the bill.[32]

The bill provides that bonds are transferable in whole or in part by their owner. It is unclear how this relates to additional provisions regarding restrictions on sales when the bond matures.

The bill provides the DOR with the authority to share information regarding contingent state bonds to the partnership and the corporation. The DOR does not issue or administer bonds.[33]

The bill references "the trust" in the definition for "investment partner." There is no reference to a trust anywhere else in the bill.

## VII. Related Issues:

The bill provides for investment partners' contingent state bonds to be sold by the partnership under certain conditions, or for an investment partner to hold them, as well as references to "claim" or "use" the bonds. The bill does not provide a mechanism by which to redeem the bonds, but does provide a limitation on the amount "claimed" in a given fiscal year.

The bill provides that the contingent state bonds are payable from state sales and use, income, and insurance taxes which are distributed into many different funds and used for different programs. It is unclear how the corporation can distribute funds attributable only to those taxes, since there is not an "account" from which they can be distributed.

[32] Florida Dept. of Revenue, *Legislative Bill Analysis: SB226*, Oct. 27, 2015. Available at: http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=7549 (Last visited Jan. 15, 2016).
[33] Florida Dept. of Revenue, *Legislative Bill Analysis: SB226*, Oct. 27, 2015. Available at: http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=7549 (Last visited Jan. 15, 2016).

The bill does not provide for any limitations on the interest rate to be paid on the bonds or the length of the bond terms. Statutes authorizing bonds typically provide greater detail relating to the structure of the transaction; see e.g., s.125.013, F.S.

The bill provides that the bonds may be transferred (sold) without limitation by their owners and that the sale of these bonds are exempt from the provisions of ch. 517, F.S. (Regulation of Securities Transactions). It is not clear why a blanket exemption from such provisions should apply to the resale of the bonds authorized by the bill.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.9621, 288.9622, 288.9623, and 213.053.

This bill creates the following sections of the Florida Statutes: 288.9628 and 288.9629.

## IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Commerce and Tourism (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 95 - 417
and insert:
Section 2. Subsections (1) and (2) of section 288.9622, Florida Statutes, are amended, and subsection (5) is added to that section, 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

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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 for the purpose of supporting the public interest by leveraging public investment in infrastructure funding.

(2) It is the intent of the Legislature that this part serves ~~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.

(5) It is the intent of the Legislature that the Florida Opportunity Fund create, manage, operate, and invest in and from infrastructure funds, including the creation and operation of the Florida Infrastructure Fund Partnership; and that Florida Infrastructure Fund Partnership investments are focused on infrastructure development that could assist in mitigating, in whole or in part, the financial burden of the state for projects that could be funded directly by public funds.

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


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

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

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

(3) "Contingent state revenue bonds" means state revenue bonds that are contingent upon a net capital loss incurred by an investment partner under s. 288.9629 and that are payable by the Department of Revenue from certain revenues received by the state under chapter 212, chapter 220, or ss. 624.509 and 624.5091.

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

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

(6) "Infrastructure project" means a capital project in this state which addresses the need for a facility or other strategic infrastructure that serves a public purpose, including a water or a wastewater system, a communication system, a power system, a transportation system, a renewable energy system, other strategic infrastructure located in the state, or an ancillary or support system for any such project.

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

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

is the transferee of an ownership interest in the partnership.

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

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

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

288.9628 Florida Infrastructure Fund Partnership; creation; duties.—

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

(2) The primary purposes of the partnership are to raise investment capital and to invest the capital in infrastructure projects in the state which promote economic development by leveraging private investment into public infrastructure projects.

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

1. Hire one or more investment managers to assist with

management of the partnership and to oversee the raising and investing of capital by the partnership. The evaluation of candidates must address their level of experience, investment philosophy and process, demonstrable success in fundraising, and prior investment results. Only candidates who have maintained an office with a full-time investment professional in this state for at least 2 years before the solicitation may be considered.

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

3. Receive investment returns.

4. Disburse returns to investment partners.

5. Approve investments.

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

(4)(a) Beginning July 1, 2016, the partnership shall enter into commitment agreements with investment partners for investment in the partnership under terms approved by the fund's board.

(b) The total aggregate amount of principal investment capital payable to the partnership under all commitment agreements may not exceed $350 million. If the partnership does not obtain commitment agreements totaling at least $100 million by December 1, 2017, the partnership shall cancel any executed agreement and return the investment capital of each investment partner who executed an agreement.

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

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1. That fulfills an important infrastructure need in the state which could otherwise be funded by public investment.

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

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

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

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

(6) Before investing in an infrastructure project, the partnership shall assess whether the project will provide a continuing benefit to the residents of the state and evaluate the following:

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

(b) The likelihood that the project will attract operating capital from additional investors, other lenders, or grants.

(c) The management team for the proposed project.

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

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

(f) Other factors that are consistent with this section and that are deemed by the partnership to be relevant to the


likelihood of the project's success and public benefit derived from the investment.

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

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

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

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

(8) The partnership may not make its debts payable from any moneys or resources other than those of the partnership. An obligation of the partnership is not an obligation of the state or any political subdivision thereof and is payable exclusively from the partnership's resources.

(9) The partnership may not invest in an infrastructure



project with, or accept investment capital from, a prohibited company described in s. 215.472 or a scrutinized company as defined in s. 215.473, and the entity owning an infrastructure project in which the partnership has invested must provide reasonable assurances to the partnership that the entity will not provide such a prohibited company or scrutinized company with an ownership interest in the infrastructure project.

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

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

(1)(a) Pursuant to s. 288.9628 and this section, the Florida Development Finance Corporation shall issue contingent state revenue bonds to investment partners in the Florida Infrastructure Fund Partnership in a maximum amount equal to the investment capital committed by such investment partners to the partnership.

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

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

(d) A contingent state revenue bond must be issued concurrently with a commitment agreement between the investment partner and the partnership. A contingent state revenue bond



issued by the corporation must include a specific calendar year maturity date designated by the corporation, which must be at least 12 years after the date of the agreement. Contingent state revenue bonds may be claimed or redeemed only by an investment partner or purchaser in accordance with this section and the terms of the contingent state revenue bond.

(e) After the investment capital is committed to the partnership by an investment partner and a contingent state revenue bond is issued to the investment partner, the bond is binding, and the partnership, the trust, the state, the Department of Revenue, and the Florida Development Finance Corporation may not substantively modify, terminate, or rescind the related contingent state revenue bond. A contingent state revenue bond may be modified to reflect the assignment or sale of contingent state revenue bonds and for other administrative purposes.

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

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

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

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

4. The amount payable by the Department of Revenue pursuant to the contingent state revenue bonds to which the investment partner is entitled.


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

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

1. Transfer its ownership interest in the partnership and seek payment on the contingent state revenue bond in accordance with the bond's terms; or

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

(d) The one-time election authorized in paragraph (c) is final and may not be revoked or modified. However, if the investment partner elects to maintain its investment in the partnership, it may make a new election if it receives a subsequent notice pursuant to subsection (2).

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

(3) If an investment partner makes the election under subparagraph (2)(c)1., the investment partner must agree in writing to transfer its ownership interest in the partnership to the fund.

(4)(a) The corporation may not issue more than $350 million in contingent state revenue bonds and may not approve contingent state revenue bonds in excess of the total capital committed through commitment agreements.

(b) At any time 90 days or more after the date of such owner's election under paragraph (2)(c), contingent state

revenue bonds issued by the corporation under this section may be claimed for payment by the owner of such bonds by the Department of Revenue from revenues received by the state under chapter 212, chapter 220, or ss. 624.509 and 624.5091.

(c) The amount of contingent state revenue bonds which may be claimed by the owner of the bonds in any given state fiscal year may not exceed an amount equal to $75 million multiplied by a fraction, the numerator of which is the amount of bonds that the corporation issued to such owner and the denominator of which is the total amount of all bonds that the corporation issued to contingent state revenue bond owners.

(d) Contingent state revenue bonds issued by the corporation under this section may be used by the owner of the bonds.

(e) To the extent that contingent state revenue bonds issued under this section are used by their owner to obtain payment from the state, the amount of such bonds becomes an obligation to the state by the partnership, secured exclusively by the ownership interest transferred to the fund by the investment partner whose investment generated the contingent state revenue bonds. In such case, the state’s recovery is limited to such forfeited ownership interest. The corporation shall account for contingent state revenue bonds used under this section and make such information available to the partnership. The fund, as general partner, is not liable to the state for repayment of the used contingent state revenue bonds.

(f) Contingent state revenue bonds issued under this section are transferable in whole or in part by their owner. An owner of contingent state revenue bonds must notify the

corporation of any such transfer.

(5) The Department of Revenue, upon the request of the partnership, shall provide the partnership or an investment partner with a written assurance that the contingent state revenue bonds will be honored by the corporation and the Department of Revenue as provided in this section.

(6) Chapter 517 does not apply to contingent state revenue bonds transferred or sold under this section.

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

213.053 Confidentiality and information sharing.—

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

(cc) Information relating to contingent state revenue bonds under

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

And the title is amended as follows:

Delete lines 4 - 86

and insert:

conforming a provision to changes made by the act; amending s. 288.9622, F.S.; modifying legislative findings and intent relating to the need for seed capital and venture equity capital to include infrastructure funding; conforming a provision to changes made by the act; amending s. 288.9623, F.S.; defining terms; conforming a provision to changes made by the act; creating s. 288.9628, F.S.; creating the Florida Infrastructure Fund Partnership as a private,

for-profit limited partnership or limited liability partnership; providing for management of the partnership by the Florida Opportunity Fund; providing that the partnership is not an instrumentality of the state; providing the partnership's purposes and duties; authorizing the fund to lend moneys to the partnership; requiring the partnership to enter into commitment agreements with investment partners; providing requirements for commitment agreements; limiting the infrastructure projects that a partnership may invest in; prohibiting the partnership from investing more than a specified percentage of its total available investment capital in any single infrastructure project; prohibiting the partnership from investing in any infrastructure project that involves a project authorized under the Florida Rail Enterprise Act; providing evaluation requirements for infrastructure projects; requiring the partnership to submit an annual report to the Governor and the Legislature; prohibiting the partnership from making its debts payable from any money or resources other than those of the partnership; prohibiting the partnership from investing in projects with or accepting investments from certain companies; creating s. 288.9629, F.S.; requiring the Florida Development Finance Corporation to issue contingent state revenue bonds to investment partners in the Florida Infrastructure Fund Partnership; authorizing the corporation and the fund to charge fees; limiting the

amount of such fees; prohibiting the total aggregate amount of all contingent state revenue bonds from exceeding a specified amount; requiring a contingent state revenue bond to be issued concurrently with a certain commitment agreement; providing requirements for such bonds; requiring the partnership to provide a specified written notice to each investment partner under certain circumstances; specifying the minimum content for such notice; requiring the partnership to concurrently provide a copy of the notice to the corporation; authorizing each affected investment partner to make specified one-time elections upon the receipt of the notice; providing that such elections are final and may not be revoked or modified; requiring an investment partner to provide written notice to the partnership and the corporation of its election within a specified period after its receipt of notice from the partnership; requiring an investment partner to agree in writing to a certain transfer under certain circumstances; prohibiting the corporation from issuing contingent state revenue bonds in excess of a specified amount; prohibiting the corporation from approving contingent state revenue bonds in excess of a specified amount; authorizing the owner of contingent state revenue bonds to claim such bonds; prohibiting the owner of contingent state revenue bonds from claiming bonds in excess of a specified amount; providing that contingent state revenue bonds become an obligation to the state by the

partnership in certain circumstances; requiring the corporation to account for such bonds and make such information available to the partnership; providing that the fund, as general partner, is not liable to the state for the repayment of used contingent state revenue bonds; providing that contingent state revenue bonds issued under this section are transferable in whole or in part by their owner; requiring the Department of Revenue to provide a certain written assurance to the partnership under certain circumstances; providing applicability; amending s. 213.053, F.S.; authorizing the department to disclose certain information to the partnership and the corporation relative to certain contingent state revenue

**By** Senator Ring

29-00101B-16 2016226__

A bill to be entitled

An act relating to capital formation for infrastructure projects; amending s. 288.9621, F.S.; designating the "Florida Capital Formation Act" as part XI of ch. 288, F.S.; amending s. 288.9622, F.S.; modifying legislative findings and intent relating to the need for seed capital and venture equity capital to include infrastructure funding; conforming a provision to changes made by the act; amending s. 288.9623, F.S.; defining terms; conforming a provision to changes made by the act; creating s. 288.9628, F.S.; creating the Florida Infrastructure Fund Partnership as a private, for-profit limited partnership or limited liability partnership; providing that the partnership is not an instrumentality of the state; prescribing the purposes and duties of the partnership; providing for management of the partnership by the Florida Opportunity Fund; authorizing the fund to lend moneys to the partnership for specified purposes; requiring the partnership to raise funds from investment partners; providing for commitment agreements with investment partners; specifying types of infrastructure projects that the partnership is authorized to invest in or prohibited from investing in; providing evaluation requirements for infrastructure projects; requiring the partnership to submit an annual report to the Governor and the Legislature; prohibiting the partnership from making







29-00101B-16 2016226__

its debts payable from any money or resources other than those of the partnership; prohibiting the partnership from investing in projects with or accepting investments from certain companies; creating s. 288.9629, F.S.; requiring the Florida Development Finance Corporation to issue contingent state bonds to investment partners in the partnership; authorizing the corporation and the fund to charge fees; limiting the amount of such fees; prohibiting the total aggregate amount of all contingent state bonds from exceeding a specified amount; requiring that a specified commitment agreement be entered into concurrently with an investment commitment to the fund; requiring the partnership to provide a specified written notice to each investment partner if, on the maturity date in its commitment agreement, the partner has a net capital loss; specifying the minimum content for such notice; requiring the partner to concurrently provide a copy of the notice to the corporation; authorizing each affected investment partner to make specified one-time elections upon the receipt of the notice; requiring an investment partner to provide written notice to the partnership and the corporation of its election within a specified period; requiring the partnership to apply to the corporation on behalf of the purchaser of contingent state bonds for the issuance of contingent state bonds under certain circumstances; requiring that the partnership's application for contingent state bonds include the

partnership's certification of the amount to be issued and the identity of the person to whom the bonds are to be issued; requiring the corporation to issue the contingent state bonds within a specified period after receipt of a timely and complete application; requiring the partnership to provide the investment partner with written notice in certain circumstances; authorizing the investment partner to take specified actions within a specified period after the receipt of such notice; prohibiting the corporation from issuing or approving contingent state bonds in excess of a specified amount; prohibiting the owner of contingent state bonds from claiming bonds in excess of a specified amount; providing that contingent state bonds become an obligation to the state by the partnership under certain circumstances; providing that the fund, as general partner, is not liable to the state for the repayment of used contingent state bonds; providing that contingent state bonds issued under the act are transferable in whole or in part by their owner; requiring the corporation to provide a certain written assurance to the partnership under certain circumstances; exempting contingent state bonds transferred or sold under the act from the provisions of ch. 517, F.S.; amending s. 213.053, F.S.; authorizing the Department of Revenue to disclose certain information to the partnership and the corporation relative to certain contingent state bonds; providing an effective date.





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

to read:

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

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

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

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

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

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

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

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

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







is the transferee of an ownership interest in the partnership.

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

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

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

288.9628 Florida Infrastructure Fund Partnership; creation; duties.—

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

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

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

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

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

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

3. Receive investment returns.

4. Disburse returns to investment partners.

5. Approve investments.

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

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

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

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





project:

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

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

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

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

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

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

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

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

(c) The management team for the project.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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







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

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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

213.053 Confidentiality and information sharing.—

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

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

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

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

The Florida Senate

# Committee Agenda Request

**To:** Senator Nancy Detert
Committee on Commerce and Tourism

**Subject:** Committee Agenda Request

**Date:** September 17, 2015

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I respectfully request that **Senate Bill #226**, relating to Capital Formation for infrastructure projects , be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Jeremy Ring

Senator Jeremy Ring
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)