

By the Committee on Commerce and Tourism; and Senator Ring

577-02274-16

2016226c1

1                   A bill to be entitled  
2           An act relating to capital formation for  
3           infrastructure projects; amending s. 288.9621, F.S.;  
4           conforming a provision to changes made by the act;  
5           amending s. 288.9622, F.S.; modifying legislative  
6           findings and intent relating to the need for seed  
7           capital and venture equity capital to include  
8           infrastructure funding; conforming a provision to  
9           changes made by the act; amending s. 288.9623, F.S.;  
10          defining terms; conforming a provision to changes made  
11          by the act; creating s. 288.9628, F.S.; creating the  
12          Florida Infrastructure Fund Partnership as a private,  
13          for-profit limited partnership or limited liability  
14          partnership; providing for management of the  
15          partnership by the Florida Opportunity Fund; providing  
16          that the partnership is not an instrumentality of the  
17          state; providing the partnership's purposes and  
18          duties; authorizing the fund to lend moneys to the  
19          partnership; requiring the partnership to enter into  
20          commitment agreements with investment partners;  
21          providing requirements for commitment agreements;  
22          limiting the infrastructure projects that a  
23          partnership may invest in; prohibiting the partnership  
24          from investing more than a specified percentage of its  
25          total available investment capital in any single  
26          infrastructure project; prohibiting the partnership  
27          from investing in any infrastructure project that  
28          involves a project authorized under the Florida Rail  
29          Enterprise Act; providing evaluation requirements for  
30          infrastructure projects; requiring the partnership to  
31          submit an annual report to the Governor and the  
32          Legislature; prohibiting the partnership from making

577-02274-16

2016226c1

33 its debts payable from any money or resources other  
34 than those of the partnership; prohibiting the  
35 partnership from investing in projects with or  
36 accepting investments from certain companies; creating  
37 s. 288.9629, F.S.; requiring the Florida Development  
38 Finance Corporation to issue contingent state revenue  
39 bonds to investment partners in the Florida  
40 Infrastructure Fund Partnership; authorizing the  
41 corporation and the fund to charge fees; limiting the  
42 amount of such fees; prohibiting the total aggregate  
43 amount of all contingent state revenue bonds from  
44 exceeding a specified amount; requiring a contingent  
45 state revenue bond to be issued concurrently with a  
46 certain commitment agreement; providing requirements  
47 for such bonds; requiring the partnership to provide a  
48 specified written notice to each investment partner  
49 under certain circumstances; specifying the minimum  
50 content for such notice; requiring the partnership to  
51 concurrently provide a copy of the notice to the  
52 corporation; authorizing each affected investment  
53 partner to make specified one-time elections upon the  
54 receipt of the notice; providing that such elections  
55 are final and may not be revoked or modified;  
56 requiring an investment partner to provide written  
57 notice to the partnership and the corporation of its  
58 election within a specified period after its receipt  
59 of notice from the partnership; requiring an  
60 investment partner to agree in writing to a certain  
61 transfer under certain circumstances; prohibiting the

577-02274-16

2016226c1

62 corporation from issuing contingent state revenue  
63 bonds in excess of a specified amount; prohibiting the  
64 corporation from approving contingent state revenue  
65 bonds in excess of a specified amount; authorizing the  
66 owner of contingent state revenue bonds to claim such  
67 bonds; prohibiting the owner of contingent state  
68 revenue bonds from claiming bonds in excess of a  
69 specified amount; providing that contingent state  
70 revenue bonds become an obligation to the state by the  
71 partnership in certain circumstances; requiring the  
72 corporation to account for such bonds and make such  
73 information available to the partnership; providing  
74 that the fund, as general partner, is not liable to  
75 the state for the repayment of used contingent state  
76 revenue bonds; providing that contingent state revenue  
77 bonds issued under this section are transferable in  
78 whole or in part by their owner; requiring the  
79 Department of Revenue to provide a certain written  
80 assurance to the partnership under certain  
81 circumstances; providing applicability; amending s.  
82 213.053, F.S.; authorizing the department to disclose  
83 certain information to the partnership and the  
84 corporation relative to certain contingent state  
85 revenue bonds; providing an effective date.

86  
87 Be It Enacted by the Legislature of the State of Florida:

88  
89 Section 1. Section 288.9621, Florida Statutes, is amended  
90 to read:

577-02274-16

2016226c1

91           288.9621 Short title.—This part ~~Sections 288.9621-288.9625~~  
92 may be cited as the "Florida Capital Formation Act."

93           Section 2. Subsections (1) and (2) of section 288.9622,  
94 Florida Statutes, are amended, and subsection (5) is added to  
95 that section, to read:

96           288.9622 Findings and intent.—

97           (1) The Legislature finds and declares that there is a need  
98 to increase the availability of seed capital and early stage  
99 venture equity capital for emerging companies in the state,  
100 including, without limitation, enterprises in life sciences,  
101 information technology, advanced manufacturing processes,  
102 aviation and aerospace, and homeland security and defense, as  
103 well as other strategic technologies and for the purpose of  
104 supporting the public interest by leveraging public investment  
105 in infrastructure funding.

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

118           (5) It is the intent of the Legislature that the Florida  
119 Opportunity Fund create, manage, operate, and invest in and from

577-02274-16

2016226c1

120 infrastructure funds, including the creation and operation of  
121 the Florida Infrastructure Fund Partnership; and that Florida  
122 Infrastructure Fund Partnership investments are focused on  
123 infrastructure development that could assist in mitigating, in  
124 whole or in part, the financial burden of the state for projects  
125 that could be funded directly by public funds.

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

128 288.9623 Definitions.—As used in this part, the term ss.  
129 288.9621–288.9625:

130 (1) “Board” means the board of directors of the Florida  
131 Opportunity Fund.

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

136 (3) “Contingent state revenue bonds” means state revenue  
137 bonds that are contingent upon a net capital loss incurred by an  
138 investment partner under s. 288.9629 and that are payable by the  
139 Department of Revenue from certain revenues received by the  
140 state under chapter 212, chapter 220, or ss. 624.509 and  
141 624.5091.

142 (4) “Corporation” means the Florida Development Finance  
143 Corporation.

144 (5)~~(2)~~ “Fund” means the Florida Opportunity Fund.

145 (6) “Infrastructure project” means a capital project in  
146 this state which addresses the need for a facility or other  
147 strategic infrastructure that serves a public purpose, including  
148 a water or a wastewater system, a communication system, a power

577-02274-16

2016226c1

149 system, a transportation system, a renewable energy system,  
150 other strategic infrastructure located in the state, or an  
151 ancillary or support system for any such project.

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

155 (8) "Investment partner" or "partner" means a person other  
156 than the partnership, the fund, or the trust that purchases or  
157 is the transferee of an ownership interest in the partnership.

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

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

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

167 288.9628 Florida Infrastructure Fund Partnership; creation;  
168 duties.-

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

177 (2) The primary purposes of the partnership are to raise

577-02274-16

2016226c1

178 investment capital and to invest the capital in infrastructure  
179 projects in the state which promote economic development by  
180 leveraging private investment into public infrastructure  
181 projects.

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

185 1. Hire one or more investment managers to assist with  
186 management of the partnership and to oversee the raising and  
187 investing of capital by the partnership. The evaluation of  
188 candidates must address their level of experience, investment  
189 philosophy and process, demonstrable success in fundraising, and  
190 prior investment results. Only candidates who have maintained an  
191 office with a full-time investment professional in this state  
192 for at least 2 years before the solicitation may be considered.

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

196 3. Receive investment returns.

197 4. Disburse returns to investment partners.

198 5. Approve investments.

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

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

206 (b) The total aggregate amount of principal investment

577-02274-16

2016226c1

207 capital payable to the partnership under all commitment  
208 agreements may not exceed \$350 million. If the partnership does  
209 not obtain commitment agreements totaling at least \$100 million  
210 by December 1, 2017, the partnership shall cancel any executed  
211 agreement and return the investment capital of each investment  
212 partner who executed an agreement.

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

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

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

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

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

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

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

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



577-02274-16

2016226c1

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

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

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

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

242 (f) Other factors that are consistent with this section and  
243 that are deemed by the partnership to be relevant to the  
244 likelihood of the project's success and public benefit derived  
245 from the investment.

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

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

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

263 (c) Independently audited financial statements, including  
264 statements that show receipts and expenditures from the

577-02274-16

2016226c1

265 preceding fiscal year for the operational costs of the  
266 partnership.

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

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

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

282 288.9629 Issuance of contingent state revenue bonds for the  
283 Florida Infrastructure Fund Partnership.-

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

290 (b) The corporation and the fund may seek reimbursement for  
291 their respective reasonable costs and expenses related to the  
292 partnership by charging a fee for the issuance of contingent  
293 state revenue bonds to investment partners. The fee may be up to

577-02274-16

2016226c1

294 0.25 percent of the aggregate investment capital committed to  
295 the partnership by the investment partners who are issued bonds.

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

299 (d) A contingent state revenue bond must be issued  
300 concurrently with a commitment agreement between the investment  
301 partner and the partnership. A contingent state revenue bond  
302 issued by the corporation must include a specific calendar year  
303 maturity date designated by the corporation, which must be at  
304 least 12 years after the date of the agreement. Contingent state  
305 revenue bonds may be claimed or redeemed only by an investment  
306 partner or purchaser in accordance with this section and the  
307 terms of the contingent state revenue bond.

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

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

322 1. A good faith estimate of the fair market value of the

577-02274-16

2016226c1

323 partnership's assets as of the date of the notice.

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

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

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

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

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

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

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

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

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

350 (3) If an investment partner makes the election under  
351 subparagraph (2)(c)1., the investment partner must agree in

577-02274-16

2016226c1

352 writing to transfer its ownership interest in the partnership to  
353 the fund.

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

358 (b) At any time 90 days or more after the date of such  
359 owner's election under paragraph (2) (c), contingent state  
360 revenue bonds issued by the corporation under this section may  
361 be claimed for payment by the owner of such bonds by the  
362 Department of Revenue from revenues received by the state under  
363 chapter 212, chapter 220, or ss. 624.509 and 624.5091.

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

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

374 (e) To the extent that contingent state revenue bonds  
375 issued under this section are used by their owner to obtain  
376 payment from the state, the amount of such bonds becomes an  
377 obligation to the state by the partnership, secured exclusively  
378 by the ownership interest transferred to the fund by the  
379 investment partner whose investment generated the contingent  
380 state revenue bonds. In such case, the state's recovery is

577-02274-16

2016226c1

381 limited to such forfeited ownership interest. The corporation  
382 shall account for contingent state revenue bonds used under this  
383 section and make such information available to the partnership.  
384 The fund, as general partner, is not liable to the state for  
385 repayment of the used contingent state revenue bonds.

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

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

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

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

399 213.053 Confidentiality and information sharing.—

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

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

406  
407 Disclosure of information under this subsection shall be  
408 pursuant to a written agreement between the executive director  
409 and the agency. Such agencies, governmental or nongovernmental,

577-02274-16

2016226c1

410 shall be bound by the same requirements of confidentiality as  
411 the Department of Revenue. Breach of confidentiality is a  
412 misdemeanor of the first degree, punishable as provided by s.  
413 775.082 or s. 775.083.

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