

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

27 | infrastructure projects; requiring the partnership to
28 | submit an annual report to the Governor and the
29 | Legislature; prohibiting the partnership from making
30 | its debts payable from any money or resources other
31 | than those of the partnership; prohibiting the
32 | partnership from investing in projects with or
33 | accepting investments from certain companies; creating
34 | s. 288.9629, F.S.; requiring the Florida Development
35 | Finance Corporation to issue contingent state bonds to
36 | investment partners in the partnership; authorizing
37 | the corporation and the fund to charge fees; limiting
38 | the amount of such fees; prohibiting the total
39 | aggregate amount of all contingent state bonds from
40 | exceeding a specified amount; requiring that a
41 | specified commitment agreement be entered into
42 | concurrently with an investment commitment to the
43 | fund; requiring the partnership to provide a specified
44 | written notice to each investment partner if, on the
45 | maturity date in its commitment agreement, the partner
46 | has a net capital loss; specifying the minimum content
47 | for such notice; requiring the partner to concurrently
48 | provide a copy of the notice to the corporation;
49 | authorizing each affected investment partner to make
50 | specified one-time elections upon the receipt of the
51 | notice; requiring an investment partner to provide
52 | written notice to the partnership and the corporation

53 of its election within a specified period; requiring
54 the partnership to apply to the corporation on behalf
55 of the purchaser of contingent state bonds for the
56 issuance of contingent state bonds under certain
57 circumstances; requiring that the partnership's
58 application for contingent state bonds include the
59 partnership's certification of the amount to be issued
60 and the identity of the person to whom the bonds are
61 to be issued; requiring the corporation to issue the
62 contingent state bonds within a specified period after
63 receipt of a timely and complete application;
64 requiring the partnership to provide the investment
65 partner with written notice in certain circumstances;
66 authorizing the investment partner to take specified
67 actions within a specified period after the receipt of
68 such notice; prohibiting the corporation from issuing
69 or approving contingent state bonds in excess of a
70 specified amount; prohibiting the owner of contingent
71 state bonds from claiming bonds in excess of a
72 specified amount; providing that contingent state
73 bonds become an obligation to the state by the
74 partnership under certain circumstances; providing
75 that the fund, as general partner, is not liable to
76 the state for the repayment of used contingent state
77 bonds; providing that contingent state bonds issued
78 under the act are transferable in whole or in part by

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79 | their owner; requiring the corporation to provide a
 80 | certain written assurance to the partnership under
 81 | certain circumstances; exempting contingent state
 82 | bonds transferred or sold under the act from the
 83 | provisions of ch. 517, F.S.; amending s. 213.053,
 84 | F.S.; authorizing the Department of Revenue to
 85 | disclose certain information to the partnership and
 86 | the corporation relative to certain contingent state
 87 | bonds; providing an effective date.

88 |

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

90 |

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

93 | 288.9621 Short title.—This part ~~Sections 288.9621–288.9625~~
 94 | may be cited as the "Florida Capital Formation Act."

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

97 | 288.9622 Findings and intent.—

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

105 infrastructure funding.

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

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

119 288.9623 Definitions.—As used in this part, the term ~~ss.~~
120 ~~288.9621-288.9625~~:

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

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

127 (3) "Contingent state bonds" means any state bonds,
128 revenue bonds, certificates, or other obligations that are
129 contingent upon a loss of the investment capital contributed by
130 an investment partner under s. 288.9629 and that are payable

131 from tax revenues received by the state under chapter 212,
132 chapter 220, or ss. 624.509 and 624.5091.

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

135 (5)-(2) "Fund" means the Florida Opportunity Fund.

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

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

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

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

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

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

157 288.9628 Florida Infrastructure Fund Partnership;
158 creation; duties.-

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

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

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

173 1. Solicit and hire one or more investment managers to
174 assist with management of the partnership and to oversee the
175 raising and investing of capital by the partnership. The
176 evaluation of candidates must address their level of experience,
177 investment philosophy and process, demonstrable success in
178 fundraising, and prior investment results. Only candidates who
179 have maintained an office with a full-time investment
180 professional in this state for at least 2 years before the
181 solicitation may be considered.

182 2. With the assistance of the investment manager or other

183 service providers, solicit, negotiate the terms of, contract
 184 for, and receive investment capital.

185 3. Receive investment returns.

186 4. Disburse returns to investment partners.

187 5. Approve investments.

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

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

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

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

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

208 2. That raises funding from other sources so that the

209 total amount invested in the project is at least twice the
210 amount invested by the partnership, inclusive of the
211 partnership's investment.

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

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

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

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

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

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

229 (c) The management team for the project.

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

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

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

235 likelihood of the project's success.

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

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

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

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

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

261 the partnership, payable exclusively from the partnership's
262 resources.

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

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

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

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

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

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

289 (d) The investment partner and the partnership must enter
 290 into a commitment agreement at the time of the investment
 291 commitment to the fund by the investment partner. The commitment
 292 agreement must include a specific calendar-year maturity date
 293 designated by the corporation, which must be at least 12 years
 294 after the date of the agreement. Contingent state bonds may be
 295 claimed or redeemed only by an investment partner or purchaser
 296 in accordance with this section and the terms of the commitment
 297 agreement.

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

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

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

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

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

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

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

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

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

320 (d) Except as provided in paragraph (4)(c), the election
321 made by an investment partner under paragraph (c) is final and
322 may not be revoked or modified.

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

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

339 exceed the lesser of:

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

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

345 (4) (a) Within 30 days after the sale of contingent state
346 bonds under subsection (3), the partnership shall apply to the
347 corporation for issuance of the contingent state bonds on behalf
348 of the purchaser of the contingent state bonds. However, the
349 partnership's failure to timely submit an application to the
350 corporation does not affect the purchaser's eligibility for the
351 contingent state bonds.

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

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

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365 investment partner may:

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

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

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

377 (5) (a) The corporation may not issue more than \$350
378 million in contingent state bonds. The corporation may not
379 approve contingent state bonds in excess of the total capital
380 committed through commitment agreements.

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

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

390 (d) To the extent that contingent state bonds issued under

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

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

406 (6) The corporation, upon the request of the partnership,
407 shall provide the partnership with a written assurance that the
408 commitment agreements between investment partners and the
409 partnership will be honored by the corporation as provided in
410 this section.

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

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

415 213.053 Confidentiality and information sharing.—

416 (8) Notwithstanding any other provision of this section,

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417 the department may provide:

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

421
422 Disclosure of information under this subsection shall be
423 pursuant to a written agreement between the executive director
424 and the agency. Such agencies, governmental or nongovernmental,
425 shall be bound by the same requirements of confidentiality as
426 the Department of Revenue. Breach of confidentiality is a
427 misdemeanor of the first degree, punishable as provided by s.
428 775.082 or s. 775.083.

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