

Bill No. SB 1308

Barcode 210480

CHAMBER ACTION

Senate

House

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The Committee on Governmental Oversight and Productivity  
(Garcia) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Paragraph (c) is added to subsection (8) of  
section 215.44, Florida Statutes, to read:

215.44 Board of Administration; powers and duties in  
relation to investment of trust funds.--

(8)

(c)1. As used in this paragraph, the term:

a. "Alternative investment" means an investment by the  
State Board of Administration in a private equity fund,  
venture fund, hedge fund, or distress fund or a direct  
investment in a portfolio company through an investment  
manager.

b. "Alternative investment vehicle" means the limited  
partnership, limited liability company, or similar legal  
structure or investment manager through which the State Board

Bill No. SB 1308

Barcode 210480

1 of Administration invests in a portfolio company.

2 c. "Portfolio company" means a corporation or other  
3 issuer, any of whose securities are owned by an alternative  
4 investment vehicle or the State Board of Administration and  
5 any subsidiary of such corporation or other issuer.

6 d. "Portfolio positions" means individual investments  
7 in portfolio companies which are made by the alternative  
8 investment vehicles, including information or specific  
9 investment terms associated with any portfolio company  
10 investment.

11 e. "Proprietor" means an alternative investment  
12 vehicle, a portfolio company in which the alternative  
13 investment vehicle is invested, or an outside consultant,  
14 including their respective authorized officers, employees,  
15 agents, or successors in interest, which controls or owns  
16 information provided to the State Board of Administration.

17 f. "Proprietary confidential business information"  
18 means information that has been designated by the proprietor  
19 when provided to the State Board of Administration as  
20 information that is owned or controlled by a proprietor; that  
21 is intended to be and is treated by the proprietor as private,  
22 the disclosure of which would harm the business operations of  
23 the proprietor and has not been intentionally disclosed by the  
24 proprietor unless pursuant to a private agreement that  
25 provides that the information will not be released to the  
26 public except as required by law or legal process, or pursuant  
27 to law or an order of a court or administrative body; and that  
28 concerns:

29 (I) Trade secrets as defined in s. 688.002.

30 (II) Information provided to the State Board of  
31 Administration regarding a prospective investment in a private

Bill No. SB 1308

Barcode 210480

1 equity fund, venture fund, hedge fund, distress fund, or  
2 portfolio company which is proprietary to the provider of the  
3 information.

4 (III) Financial statements and auditor reports of an  
5 alternative investment vehicle.

6 (IV) Meeting materials of an alternative investment  
7 vehicle relating to financial, operating, or marketing  
8 information of the alternative investment vehicle.

9 (V) Information regarding the portfolio positions in  
10 which the alternative investment vehicles invest.

11 (VI) Capital call and distribution notices to  
12 investors of an alternative investment vehicle.

13 (VII) Alternative investment agreements and related  
14 records.

15 (VIII) Information concerning investors, other than  
16 the State Board of Administration, in an alternative  
17 investment vehicle.

18 g. "Proprietary confidential business information"  
19 does not include:

20 (I) The name, address, and vintage year of an  
21 alternative investment vehicle and the identity of the  
22 principals involved in the management of the alternative  
23 investment vehicle.

24 (II) The dollar amount of the commitment made by the  
25 State Board of Administration to each alternative investment  
26 vehicle since inception.

27 (III) The dollar amount and date of cash contributions  
28 made by the State Board of Administration to each alternative  
29 investment vehicle since inception.

30 (IV) The dollar amount, on a fiscal-year-end basis, of  
31 cash distributions received by the State Board of

Bill No. SB 1308

Barcode 210480

1 Administration from each alternative investment vehicle.

2 (V) The dollar amount, on a fiscal-year-end basis, of  
3 cash distributions received by the State Board of  
4 Administration plus the remaining value of alternative-vehicle  
5 assets that are attributable to the State Board of  
6 Administration's investment in each alternative investment  
7 vehicle.

8 (VI) The net internal rate of return of each  
9 alternative investment vehicle since inception.

10 (VII) The investment multiple of each alternative  
11 investment vehicle since inception.

12 (VIII) The dollar amount of the total management fees  
13 and costs paid on an annual fiscal-year-end basis by the State  
14 Board of Administration to each alternative investment  
15 vehicle.

16 (IX) The dollar amount of cash profit received by the  
17 State Board of Administration from each alternative investment  
18 vehicle on a fiscal-year-end basis.

19 2. Proprietary confidential business information held  
20 by the State Board of Administration regarding alternative  
21 investments is confidential and exempt from s. 119.07(1) and  
22 s. 24(a), Art. I of the State Constitution for 10 years after  
23 the termination of the alternative investment.

24 3. Notwithstanding the provisions of subparagraph 2.,  
25 a request to inspect or copy a record under s. 119.07(1) which  
26 contains proprietary confidential business information shall  
27 be granted if the proprietor of the information fails, within  
28 a reasonable period of time after the request is received by  
29 the State Board of Administration, to verify the following to  
30 the State Board of Administration through a written  
31 declaration in the manner provided by s. 92.525:

Bill No. SB 1308

Barcode 210480

1           a. The identity of the proprietary confidential  
2 business information and its specific location in the  
3 requested record;

4           b. If the proprietary confidential business  
5 information is a trade secret, a verification that it is a  
6 trade secret as defined in s. 688.002;

7           c. That the proprietary confidential business  
8 information is intended to be and is treated by the proprietor  
9 as private, is the subject of efforts of the proprietor to  
10 maintain its privacy, and is not readily ascertainable or  
11 publicly available from any other source; and

12           d. That the disclosure of the proprietary confidential  
13 business information to the public would harm the business  
14 operations of the proprietor.

15           4. Any person may petition a court of competent  
16 jurisdiction for an order for the public release of those  
17 portions of any record made confidential and exempt by  
18 subparagraph 2. Any action under this subparagraph must be  
19 brought in Leon County, Florida, and the petition or other  
20 initial pleading shall be served on the State Board of  
21 Administration and, if determinable upon diligent inquiry, on  
22 the proprietor of the information sought to be released. In  
23 any order for the public release of a record under this  
24 subparagraph, the court shall make a finding that the record  
25 or portion thereof is not a trade secret as defined in s.  
26 688.002, that a compelling public interest is served by the  
27 release of the record or portions thereof which exceed the  
28 public necessity for maintaining the confidentiality of such  
29 record, and that the release of the record will not cause  
30 damage to or adversely affect the interests of the proprietor  
31 of the released information, other private persons or business

Bill No. SB 1308

Barcode 210480

1 entities, the State Board of Administration, or any trust fund  
 2 the assets of which are invested by the State Board of  
 3 Administration. /ob 5. This paragraph is subject to the Open  
 4 Government Sunset Review Act in accordance with s. 119.15, and  
 5 shall stand repealed on October 2, 2011, unless reviewed and  
 6 saved from repeal through reenactment by the Legislature.

7       Section 2. The Legislature finds that it is a public  
 8 necessity that proprietary confidential business information  
 9 held by the State Board of Administration regarding  
 10 alternative investments be held confidential and exempt from  
 11 s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the  
 12 State Constitution for 10 years after the termination of the  
 13 alternative investment. Disclosing proprietary confidential  
 14 business information, including trade secrets as defined in s.  
 15 688.002, Florida Statutes, used in determining how private  
 16 equity investments are made or managed by private partnerships  
 17 investing assets on behalf of the state Board of  
 18 Administration would negatively affect the business interests  
 19 of private partnerships that rely heavily on their information  
 20 advantage to generate investment returns, and competitor  
 21 partnerships could gain an unfair competitive advantage if  
 22 provided access to such information. Maintaining the  
 23 information advantage of highly skilled private equity  
 24 investment managers is necessary in order for the State Board  
 25 of Administration to generate an adequate return from its  
 26 assets committed to this high-risk segment of the market,  
 27 since only those managers having a strong information  
 28 advantage have generated adequate risk-adjusted returns.  
 29 Research shows that 60 percent of all private equity  
 30 partnerships have delivered a return less than that of the  
 31 lower-risk public markets. Only 30 percent of all private

Bill No. SB 1308

Barcode 210480

1 equity partnerships have been able to produce the State Board  
2 of Administration's required premium over public-market  
3 returns to justify incurring the risks associated with these  
4 investments. The ninth and tenth deciles of private equity  
5 managers are those having a substantial information advantage  
6 and they have generated sizable premiums over the public  
7 markets, with net returns of 19.4 percent and 29.7 percent,  
8 respectively. The Legislature finds that the exemption or  
9 proprietary confidential business information used in or  
10 implying how private equity investments are made or managed is  
11 necessary for the effective and efficient administration of  
12 the State Board of Administration's asset-management program.  
13 Assets of the Florida Retirement System must grow rapidly in  
14 order to keep pace with growth in the system's liabilities and  
15 to manage the costs of employer contributions. In order to  
16 meet its investment objectives, the State Board of  
17 Administration must invest in diversified asset types,  
18 including high-return, high-risk private equity partnerships.  
19 Those partnerships that have and are able to maintain a  
20 substantial information advantage over their competitors are  
21 likely to provide an adequate return. The release of  
22 proprietary confidential business information, including trade  
23 secrets, revealing how private equity investments are made or  
24 managed could result in inadequate returns and ultimately  
25 frustrate attainment of the investment objective of the State  
26 Board of Administration, subsequently increasing contribution  
27 costs for employers in the Florida Retirement System and  
28 lowering the system's funded ratio. It is the Legislature's  
29 intent to allow the public access to sufficient information in  
30 order to be informed regarding the alternative investments of  
31 the State Board of Administration and to balance the public's

Bill No. SB 1308

Barcode 210480

1 right to information against the right of private business  
2 entities to be protected from harmful disclosure of  
3 confidential and exempt proprietary confidential business  
4 information, the disclosure of which would injure them in the  
5 marketplace, impair the ability of the State Board of  
6 Administration to invest in the best performing alternative  
7 investment vehicles, and diminish investment earnings in the  
8 Florida Retirement System Trust Fund. It is also the  
9 Legislature's intent to establish consistency with regard to  
10 the classification of information relating to alternative  
11 investments by the State Board of Administration as either  
12 confidential or suitable for public disclosure. In finding  
13 that the public records exemption created by this act is a  
14 public necessity, the Legislature finds that the public and  
15 private harm in disclosing proprietary confidential business  
16 information relating to alternative investments by the State  
17 Board of Administration significantly outweighs any public  
18 benefit derived from disclosure; that the exemption created by  
19 this act will enhance the ability of the State Board of  
20 Administration to fulfill its duties as an investment  
21 fiduciary by making it more effective and competitive in the  
22 marketplace as an investor that is able to gain access to the  
23 best alternative investment vehicles; and that the public's  
24 ability to be informed regarding the alternative investments  
25 made by the State Board of Administration is preserved by the  
26 disclosure of information excepted from the created exemption.

Section 3. This act shall take effect October 1, 2006.

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

And the title is amended as follows:



Bill No. SB 1308

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1 Delete everything before the enacting clause

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3 and insert:

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A bill to be entitled

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An act relating to public records exemption for

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alternative investments; amending s. 215.44,

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F.S.; providing definitions; defining

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"proprietary confidential business information"

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and specifying information which does not

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constitute proprietary confidential business

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information; creating an exemption from public

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records requirements for proprietary

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confidential business information held by the

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State Board of Administration regarding

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alternative investments; providing for limited

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duration of the exemption; authorizing the

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State Board of Administration to use such

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information in judicial or administrative

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proceedings under specified circumstances;

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providing for retroactive application of the

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exemption; authorizing a proprietor of a record

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to certify the record as proprietary

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confidential business information; providing

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procedures and requirements with respect

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thereto; authorizing a court to order the

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release of portions of confidential and exempt

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records upon making certain findings; providing

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for future review and repeal; providing a

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statement of public necessity; providing an

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effective date.

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