

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

6 b. "Alternative investment vehicle" means the limited
7 partnership, limited liability company, or similar legal
8 structure or investment manager through which the State Board
9 of Administration invests in a portfolio company.

10 c. "Portfolio company" means a corporation or other
11 issuer, any of whose securities are owned by an alternative
12 investment vehicle or the State Board of Administration and
13 any subsidiary of such corporation or other issuer.

14 d. "Portfolio positions" means individual investments
15 in portfolio companies which are made by the alternative
16 investment vehicles, including information or specific
17 investment terms associated with any portfolio company
18 investment.

19 e. "Proprietor" means an alternative investment
20 vehicle, a portfolio company in which the alternative
21 investment vehicle is invested, or an outside consultant,
22 including their respective authorized officers, employees,
23 agents, or successors in interest, which controls or owns
24 information provided to the State Board of Administration.

25 f. "Proprietary confidential business information"
26 means information that is owned or controlled by a proprietor;
27 that is intended to be and is treated by the proprietor as
28 private, the disclosure of which would harm the business
29 operations of the proprietor and has not been intentionally
30 disclosed by the proprietor unless pursuant to a private
31 agreement that provides that the information will not be

1 released to the public except as required by law or legal
2 process, or pursuant to law or an order of a court or
3 administrative body; that has been certified by the proprietor
4 as provided under subparagraph 3.; and that concerns:

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

6 (II) Information provided to the State Board of
7 Administration regarding a prospective investment in a private
8 equity fund, venture fund, hedge fund, distress fund, or
9 portfolio company which is proprietary to the provider of the
10 information.

11 (III) Financial statements and auditor reports of an
12 alternative investment vehicle.

13 (IV) Meeting materials of an alternative investment
14 vehicle relating to financial, operating, or marketing
15 information of the alternative investment vehicle.

16 (V) Information regarding the portfolio positions in
17 which the alternative investment vehicles invest.

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

20 (VII) Alternative investment agreements and related
21 records.

22 (VIII) Information concerning investors, other than
23 the State Board of Administration, in an alternative
24 investment vehicle.

25 g. "Proprietary confidential business information"
26 does not include:

27 (I) The name, address, and vintage year of an
28 alternative investment vehicle and the identity of the
29 principals involved in the management of the alternative
30 investment vehicle.

31

1 (II) The dollar amount of the commitment made by the
2 State Board of Administration to each alternative investment
3 vehicle since inception.

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

7 (IV) The dollar amount, on a fiscal-year-end basis, of
8 cash distributions received by the State Board of
9 Administration from each alternative investment vehicle.

10 (V) The dollar amount, on a fiscal-year-end basis, of
11 cash distributions received by the State Board of
12 Administration plus the remaining value of alternative-vehicle
13 assets that are attributable to the State Board of
14 Administration's investment in each alternative investment
15 vehicle.

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

18 (VII) The investment multiple of each alternative
19 investment vehicle since inception.

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

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

27 2. Proprietary confidential business information held
28 by the State Board of Administration regarding alternative
29 investments is confidential and exempt from s. 119.07(1) and
30 s. 24(a), Art. I of the State Constitution for 10 years after
31 the termination of the alternative investment unless the

1 proprietor of the information objects to the release of the
2 information and recertifies the information, in the manner
3 provided in subparagraph 3., no earlier than the ninth year
4 after termination of the alternative investment. Such
5 proprietary confidential business information may be used by
6 the State Board of Administration in any judicial or
7 administrative proceeding if the court or other presiding
8 officer takes such protective measures as the furtherance of
9 justice requires. This exemption applies to proprietary
10 confidential business information held by the State Board of
11 Administration before, on, or after October 1, 2006, and trade
12 secrets held by the State Board of Administration on October
13 1, 2006, shall remain protected to no less extent as before
14 October 1, 2006, without further action.

15 3. Within a reasonable period of time after a request
16 is made to inspect or copy a record under s. 119.07, the
17 proprietor may certify the record as proprietary confidential
18 business information by submitting to the State Board of
19 Administration a written declaration that is verified as
20 provided in s. 92.525 and that:

21 a. Identifies the proprietary confidential business
22 information and the specific location of that proprietary
23 confidential business information within the record submitted
24 to the State Board of Administration;

25 b. If a trade secret, certifies that the identified
26 information is a trade secret as defined in s. 688.002;

27 c. Certifies that the identified information is
28 intended to be and is treated by the proprietor as private, is
29 the subject of efforts of the proprietor to maintain its
30 privacy, and is not readily ascertainable or publicly
31 available from any other source; and

1 d. Certifies that the disclosure of the identified
2 information to the public would harm the business operations
3 of the proprietor.

4 4. Any person may petition a court of competent
5 jurisdiction for an order for the public release of those
6 portions of any record made confidential and exempt by
7 subparagraph 2. Any action pursuant to this subparagraph must
8 be brought in Leon County, Florida, and the petition or other
9 initial pleading shall be served on the State Board of
10 Administration and, if determinable upon diligent inquiry, on
11 the proprietor of the information sought to be released. In
12 any order for the public release of a record pursuant to this
13 subparagraph, the court shall make a finding that the record
14 or portion thereof is not a trade secret as defined in s.
15 688.002, that a compelling public interest is served by the
16 release of the record or portions thereof which exceed the
17 public necessity for maintaining the confidentiality of such
18 record, and that the release of the record will not cause
19 damage to or adversely affect the interests of the proprietor
20 of the released information, other private persons or business
21 entities, the State Board of Administration, or any trust fund
22 the assets of which are invested by the State Board of
23 Administration.

24 5. This paragraph is subject to the Open Government
25 Sunset Review Act in accordance with s. 119.15, and shall
26 stand repealed on October 2, 2011, unless reviewed and saved
27 from repeal through reenactment by the Legislature.

28 Section 2. The Legislature finds that the
29 public-records exemption created by this act is a public
30 necessity. Proprietary confidential business information,
31 including trade secrets as defined in s. 688.002, Florida

1 Statutes, used in determining how private equity investments
2 are made or managed by private partnerships investing assets
3 on behalf of the State Board of Administration should be made
4 confidential and exempt from public-records requirements.
5 Disclosing such information would negatively affect the
6 business interests of private partnerships that rely heavily
7 on their information advantage to generate investment returns,
8 and competitor partnerships could gain an unfair competitive
9 advantage if provided access to such information. Maintaining
10 the information advantage of highly skilled private equity
11 investment managers is necessary in order for the State Board
12 of Administration to generate an adequate return from its
13 assets committed to this high-risk segment of the market,
14 since only those managers having a strong information
15 advantage have generated adequate risk-adjusted returns.
16 Research shows that 60 percent of all private equity
17 partnerships have delivered a return less than that of the
18 lower-risk public markets. Only 30 percent of all private
19 equity partnerships have been able to produce the State Board
20 of Administration's required premium over public-market
21 returns to justify incurring the risks associated with these
22 investments. The ninth and tenth deciles of private equity
23 managers are those having a substantial information advantage
24 and they have generated sizable premiums over the public
25 markets, with net returns of 19.4 percent and 29.7 percent,
26 respectively. The Legislature finds that the exemption of
27 proprietary confidential information used in or implying how
28 private equity investments are made or managed is necessary
29 for the effective and efficient administration of the State
30 Board of Administration's asset-management program. Assets of
31 the Florida Retirement System must grow rapidly in order to

1 keep pace with growth in the system's liabilities and to
2 manage the costs of employer contributions. In order to meet
3 its investment objectives, the State Board of Administration
4 must invest in diversified asset types, including high-return,
5 high-risk private equity partnerships. Those partnerships that
6 have and are able to maintain a substantial information
7 advantage over their competitors are likely to provide an
8 adequate return. The release of proprietary confidential
9 information, including trade secrets, revealing how private
10 equity investments are made or managed could result in
11 inadequate returns and ultimately frustrate attainment of the
12 investment objective of the State Board of Administration,
13 subsequently increasing contribution costs for employers in
14 the Florida Retirement System and lowering the system's funded
15 ratio. It is the Legislature's intent to allow the public
16 access to sufficient information in order to be informed
17 regarding the alternative investments of the State Board of
18 Administration, and to balance the public's right to
19 information against the right of private business entities to
20 be protected from harmful disclosure of confidential and
21 proprietary business information the disclosure of which
22 information would injure them in the marketplace, impair the
23 ability of the State Board of Administration to invest in the
24 best performing alternative investment vehicles, and diminish
25 investment earnings in the Florida Retirement System Trust
26 Fund. It is also the Legislature's intent to establish
27 predictability about what should and should not be disclosed
28 regarding alternative investments by the State Board of
29 Administration. In finding that the public-records exemption
30 created by this act is a public necessity, the Legislature
31 finds that the public and private harm in disclosing

