

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

3 215.44 Board of Administration; powers and duties in
4 relation to investment of trust funds.--

5 (8)

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

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

12 b. "Alternative investment vehicle" means the limited
13 partnership, limited liability company, or similar legal
14 structure or investment manager through which the State Board
15 of Administration invests in a portfolio company.

16 c. "Portfolio company" means a corporation or other
17 issuer, any of whose securities are owned by an alternative
18 investment vehicle or the State Board of Administration, and
19 any subsidiary of such corporation or other issuer.

20 d. "Portfolio positions" means individual investments
21 in portfolio companies which are made by the alternative
22 investment vehicles, including information or specific
23 investment terms associated with any portfolio company
24 investment.

25 e. "Proprietor" means an alternative investment
26 vehicle, a portfolio company in which the alternative
27 investment vehicle is invested, or an outside consultant,
28 including their respective authorized officers, employees,
29 agents, or successors in interest, which controls or owns
30 information provided to the State Board of Administration.

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1 f. "Proprietary confidential business information"
2 means information that has been designated by the proprietor
3 when provided to the State Board of Administration as
4 information that is owned or controlled by a proprietor; that
5 is intended to be and is treated by the proprietor as private,
6 the disclosure of which would harm the business operations of
7 the proprietor and has not been intentionally disclosed by the
8 proprietor unless pursuant to a private agreement that
9 provides that the information will not be released to the
10 public except as required by law or legal process or pursuant
11 to law or an order of a court or administrative body; and that
12 concerns:

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

14 (II) Information provided to the State Board of
15 Administration regarding a prospective investment in a private
16 equity fund, venture fund, hedge fund, distress fund, or
17 portfolio company which is proprietary to the provider of the
18 information.

19 (III) Financial statements and auditor reports of an
20 alternative investment vehicle.

21 (IV) Meeting materials of an alternative investment
22 vehicle relating to financial, operating, or marketing
23 information of the alternative investment vehicle.

24 (V) Information regarding the portfolio positions in
25 which the alternative investment vehicles invest.

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

28 (VII) Alternative investment agreements and related
29 records.

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1 (VIII) Information concerning investors, other than
2 the State Board of Administration, in an alternative
3 investment vehicle.

4 g. "Proprietary confidential business information"
5 does not include:

6 (I) The name, address, and vintage year of an
7 alternative investment vehicle and the identity of the
8 principals involved in the management of the alternative
9 investment vehicle.

10 (II) The dollar amount of the commitment made by the
11 State Board of Administration to each alternative investment
12 vehicle since inception.

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

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

19 (V) The dollar amount, on a fiscal-year-end basis, of
20 cash distributions received by the State Board of
21 Administration plus the remaining value of alternative-vehicle
22 assets that are attributable to the State Board of
23 Administration's investment in each alternative investment
24 vehicle.

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

27 (VII) The investment multiple of each alternative
28 investment vehicle since inception.

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

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

6 2. Proprietary confidential business information held
7 by the State Board of Administration regarding alternative
8 investments is confidential and exempt from s. 119.07(1) and
9 s. 24(a), Art. I of the State Constitution for 10 years after
10 the termination of the alternative investment. This exemption
11 applies to proprietary confidential business information held
12 by the State Board of Administration before, on, or after
13 October 1, 2006.

14 3. Notwithstanding the provisions of subparagraph 2.,
15 a request to inspect or copy a record under s. 119.07(1) which
16 contains proprietary confidential business information shall
17 be granted if the proprietor of the information fails, within
18 a reasonable period of time after the request is received by
19 the State Board of Administration, to verify the following to
20 the State Board of Administration through a written
21 declaration in the manner provided by s. 92.525:

22 a. The identity of the proprietary confidential
23 business information and its specific location in the
24 requested record;

25 b. If the proprietary confidential business
26 information is a trade secret, a verification that it is a
27 trade secret as defined in s. 688.002;

28 c. That the proprietary confidential business
29 information is intended to be and is treated by the proprietor
30 as private, is the subject of efforts of the proprietor to
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1 maintain its privacy, and is not readily ascertainable or
2 publicly available from any other source; and

3 d. That the disclosure of the proprietary confidential
4 business information to the public would harm the business
5 operations of the proprietor.

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

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

30 Section 2. The Legislature finds that it is a public
31 necessity that proprietary confidential business information

1 held by the State Board of Administration regarding
2 alternative investments be held confidential and exempt from
3 s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the
4 State Constitution for 10 years after the termination of the
5 alternative investment. Disclosing proprietary confidential
6 business information, including trade secrets as defined in s.
7 688.002, Florida Statutes, used in determining how private
8 equity investments are made or managed by private partnerships
9 investing assets on behalf of the state Board of
10 Administration would negatively affect the business interests
11 of private partnerships that rely heavily on their information
12 advantage to generate investment returns, and competitor
13 partnerships could gain an unfair competitive advantage if
14 provided access to such information. Maintaining the
15 information advantage of highly skilled private equity
16 investment managers is necessary in order for the State Board
17 of Administration to generate an adequate return from its
18 assets committed to this high-risk segment of the market,
19 since only those managers having a strong information
20 advantage have generated adequate risk-adjusted returns.
21 Research shows that 60 percent of all private equity
22 partnerships have delivered a return less than that of the
23 lower-risk public markets. Only 30 percent of all private
24 equity partnerships have been able to produce the State Board
25 of Administration's required premium over public-market
26 returns to justify incurring the risks associated with these
27 investments. The ninth and tenth deciles of private equity
28 managers are those having a substantial information advantage
29 and they have generated sizable premiums over the public
30 markets, with net returns of 19.4 percent and 29.7 percent,
31 respectively. The Legislature finds that the exemption or

1 proprietary confidential business information used in or
2 implying how private equity investments are made or managed is
3 necessary for the effective and efficient administration of
4 the State Board of Administration's asset-management program.
5 Assets of the Florida Retirement System must grow rapidly in
6 order to keep pace with growth in the system's liabilities and
7 to manage the costs of employer contributions. In order to
8 meet its investment objectives, the State Board of
9 Administration must invest in diversified asset types,
10 including high-return, high-risk private equity partnerships.
11 Those partnerships that have and are able to maintain a
12 substantial information advantage over their competitors are
13 likely to provide an adequate return. The release of
14 proprietary confidential business information, including trade
15 secrets, revealing how private equity investments are made or
16 managed could result in inadequate returns and ultimately
17 frustrate attainment of the investment objective of the State
18 Board of Administration, subsequently increasing contribution
19 costs for employers in the Florida Retirement System and
20 lowering the system's funded ratio. It is the Legislature's
21 intent to allow the public access to sufficient information in
22 order to be informed regarding the alternative investments of
23 the State Board of Administration and to balance the public's
24 right to information against the right of private business
25 entities to be protected from harmful disclosure of
26 confidential and exempt proprietary confidential business
27 information, the disclosure of which would injure them in the
28 marketplace, impair the ability of the State Board of
29 Administration to invest in the best performing alternative
30 investment vehicles, and diminish investment earnings in the
31 Florida Retirement System Trust Fund. It is also the

1 Legislature's intent to establish consistency with regard to
2 the classification of information relating to alternative
3 investments by the State Board of Administration as either
4 confidential or suitable for public disclosure. In finding
5 that the public-records exemption created by this act is a
6 public necessity, the Legislature finds that the public and
7 private harm in disclosing proprietary confidential business
8 information relating to alternative investments by the State
9 Board of Administration significantly outweighs any public
10 benefit derived from disclosure; that the exemption created by
11 this act will enhance the ability of the State Board of
12 Administration to fulfill its duties as an investment
13 fiduciary by making it more effective and competitive in the
14 marketplace as an investor that is able to gain access to the
15 best alternative investment vehicles; and that the public's
16 ability to be informed regarding the alternative investments
17 made by the State Board of Administration is preserved by the
18 disclosure of information excepted from the created exemption.

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

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21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
22 COMMITTEE SUBSTITUTE FOR
23 SB 1308

24 Eliminates the option to extend the exemption for an
25 additional 10-year period.

26 Clarifies that the confidential and exempt information is
27 protected upon receipt by the agency while still requiring
28 verification that the information still meets the definition
29 of "proprietary confidential business information" upon
30 receipt of a public records request for the information.
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