

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government - The bill will reduce access to public records.

B. EFFECT OF PROPOSED CHANGES:

Background:

HB 1467 creates the Florida Capital Formation Act, which is intended to enhance venture capital investment in Florida businesses. The bill creates the following entities:

- The Florida Opportunity Fund, which will invest on a “fund of funds” basis in venture capital firms that invest in Florida startup businesses. The Fund will not make direct investments in Florida businesses;
- The Florida Opportunity Fund Management Corporation, a subsidiary non-profit corporation of Enterprise Florida, Inc., which will manage the Florida Opportunity Fund; and
- The Florida Capital Investment Trust, which will hold \$75 million in sales, corporate income and insurance premium tax credits to secure private investments in the Florida Opportunity Fund.

The Management Corporation is charged with:

- Selecting an early stage venture capital investment fund allocation manager;
- Negotiating the terms of a contract with the venture capital investment fund allocation manager;
- Executing the contract with the selected venture capital investment fund allocation manager on behalf of the Florida Opportunity Fund;
- Managing the business affairs of the Florida Opportunity Fund such as accounting, audit, insurance, and related requirements;
- Receiving investment returns from the Florida Opportunity Fund; and
- Reinvesting the investment returns in the Florida Opportunity Fund in order to provide additional venture capital investments in Florida.

Effect of Proposes Changes:

The bill creates a new public records exemption in chapter 288 for certain information and trade secrets relating to the Florida Capital Formation Act created by HB 1467.

Specifically, the bill will make the following information confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- Trade secrets, as defined by s. 688.002, F.S., held by the Florida Opportunity Fund and the Florida Opportunity Fund Management Corporation; and

- Tax identification numbers, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, the amount of employee wages paid, and the detailed documentation to substantiate such performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving capital investment from the Florida Opportunity Fund.

The bill provides for future review and repeal of the expanded exemption on October 2, 2011, provides a public necessity statement, and provides an effective date contingent on the passage of HB 1467 or similar legislation.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.96275, F.S., providing that certain information relating to capital formation is confidential and exempt.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date contingent on the passage of HB 1467 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Vagueness Issue

Lines 31 through 37 of the CS are not clearly defined and may not give appropriate guidance as to the specific kinds of information intended to be excluded from public records. In particular, the information included in “the amount of capital investment” and “the detailed documentation to substantiate such performance information included in portfolio data pertaining to specific companies within portfolios of venture capital funds receiving investment...” is unclear and should be further defined.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill on March 30, 2006. The amendment removed references to the exemption of social security numbers, which are already exempted from public records under ch. 119, F.S., revised the references to the definition of “trade secret” as it is defined in s. 688.002, F.S., and made related technical clarifying and conforming changes.