

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

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6 A bill to be entitled
7 An act relating to public records; creating s. 288.9623,
8 F.S.; providing definitions; defining "proprietary
9 confidential business information" and specifying
10 information which does not constitute proprietary
11 confidential business information; creating an exemption
12 from public records requirements for proprietary
13 confidential business information held by the Florida
14 Opportunity Fund regarding alternative investments;
15 providing for limited duration of the exemption;
16 authorizing the inspection and copying of confidential and
17 exempt records if the proprietor of the information fails
18 to verify that a record contains certain information
19 within a specified period of time; authorizing a court to
20 order the release of confidential and exempt records upon
21 making certain findings; providing for future review and
22 repeal; providing a statement of public necessity;
23 providing a contingent effective date.

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

Section 1. Section 288.9623, Florida Statutes, is created to read:

288.9623 Florida Opportunity Fund; public records exemption.--

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

(a) "Alternative investment" means an investment by the Florida Opportunity Fund in a private equity fund, venture fund, or angel fund or a direct investment in a portfolio company through a distribution of securities to its partners or shareholders by an alternative investment vehicle.

(b) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the Florida Opportunity Fund invests in a portfolio company.

(c) "Florida Opportunity Fund" means the Florida Opportunity Fund authorized in s. 288.9621.

(d) "Portfolio company" means a corporation or other issuer, any of whose securities are owned by an alternative investment vehicle or the Florida Opportunity Fund and any subsidiary of such corporation or other issuer.

(e) "Portfolio positions" means individual investments in portfolio companies which are made by the alternative investment vehicles, including information or specific investment terms associated with any portfolio company investment.

51 (f) "Proprietor" means an alternative investment vehicle,
52 a portfolio company in which the alternative investment vehicle
53 is invested, or an outside consultant, including the respective
54 authorized officers, employees, agents, or successors in
55 interest, which controls or owns information provided to the
56 Florida Opportunity Fund.

57 (g)1. "Proprietary confidential business information"
58 means information that has been designated by the proprietor
59 when provided to the Florida Opportunity Fund as information
60 that is owned or controlled by a proprietor; that is intended to
61 be and is treated by the proprietor as private, the disclosure
62 of which would harm the business operations of the proprietor
63 and has not been intentionally disclosed by the proprietor
64 unless pursuant to a private agreement that provides that the
65 information will not be released to the public except as
66 required by law or legal process, or pursuant to law or an order
67 of a court or administrative body; and that concerns:

68 a. Trade secrets as defined in s. 688.002.

69 b. Information provided to the Florida Opportunity Fund
70 regarding a prospective investment in a private equity fund,
71 venture fund, angel fund, or portfolio company which is
72 proprietary to the provider of the information.

73 c. Financial statements and auditor reports of an
74 alternative investment vehicle.

75 d. Meeting materials of an alternative investment vehicle
76 relating to financial, operating, or marketing information of
77 the alternative investment vehicle.

- 78 | e. Information regarding the portfolio positions in which
- 79 | the alternative investment vehicles invest.
- 80 | f. Capital call and distribution notices to investors of
- 81 | an alternative investment vehicle.
- 82 | g. Alternative investment agreements and related records.
- 83 | h. Information concerning investors, other than the
- 84 | Florida Opportunity Fund, in an alternative investment vehicle.
- 85 | 2. "Proprietary confidential business information" does
- 86 | not include:
- 87 | a. The name, address, and vintage year of an alternative
- 88 | investment vehicle and the identity of the principals involved
- 89 | in the management of the alternative investment vehicle.
- 90 | b. The dollar amount of the commitment made by the Florida
- 91 | Opportunity Fund to each alternative investment vehicle since
- 92 | inception.
- 93 | c. The dollar amount and date of cash contributions made
- 94 | by the Florida Opportunity Fund to each alternative investment
- 95 | vehicle since inception.
- 96 | d. The dollar amount, on a fiscal-year-end basis, of cash
- 97 | or other fungible distributions received by the Florida
- 98 | Opportunity Fund from each alternative investment vehicle.
- 99 | e. The dollar amount, on a fiscal-year-end basis, of cash
- 100 | or other fungible distributions received by the Florida
- 101 | Opportunity Fund plus the remaining value of alternative-vehicle
- 102 | assets that are attributable to the Florida Opportunity Fund's
- 103 | investment in each alternative investment vehicle.
- 104 | f. The net internal rate of return of each alternative
- 105 | investment vehicle since inception.

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106 g. The investment multiple of each alternative investment
107 vehicle since inception.

108 h. The dollar amount of the total management fees and
109 costs paid on an annual fiscal-year-end basis by the Florida
110 Opportunity Fund to each alternative investment vehicle.

111 i. The dollar amount of cash profit received by the
112 Florida Opportunity Fund from each alternative investment
113 vehicle on a fiscal-year-end basis.

114 (2) Proprietary confidential business information held by
115 the Florida Opportunity Fund regarding alternative investments
116 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
117 I of the State Constitution for 10 years after the termination
118 of the alternative investment.

119 (3) Notwithstanding the provisions of subsection (2), a
120 request to inspect or copy a public record which contains
121 proprietary confidential business information shall be granted
122 if the proprietor of the information fails, within a reasonable
123 period of time after the request is received by the Florida
124 Opportunity Fund, to verify the following to the Florida
125 Opportunity Fund through a written declaration in the manner
126 provided by s. 92.525:

127 (a) That the requested record contains proprietary
128 confidential business information and the specific location of
129 such information within the record;

130 (b) If the proprietary confidential business information
131 is a trade secret, a verification that it is a trade secret as
132 defined in s. 688.002;

133 (c) That the proprietary confidential business information
134 is intended to be and is treated by the proprietor as private,
135 is the subject of efforts of the proprietor to maintain its
136 privacy, and is not readily ascertainable or publicly available
137 from any other source; and

138 (d) That the disclosure of the proprietary confidential
139 business information to the public would harm the business
140 operations of the proprietor.

141 (4) (a) Any person may petition a court of competent
142 jurisdiction for an order for the public release of those
143 portions of any record made confidential and exempt by
144 subsection (2).

145 (b) Any action under this subsection must be brought in
146 Orange County, Florida, and the petition or other initial
147 pleading shall be served on the Florida Opportunity Fund and, if
148 determinable upon diligent inquiry, on the proprietor of the
149 information sought to be released.

150 (c) In any order for the public release of a record under
151 this subsection, the court shall make a finding that:

152 1. The record or portion thereof is not a trade secret as
153 defined in s. 688.002;

154 2. A compelling public interest is served by the release
155 of the record or portions thereof which exceed the public
156 necessity for maintaining the confidentiality of such record;
157 and

158 3. The release of the record will not cause damage to or
159 adversely affect the interests of the proprietor of the released
160 information, other private persons or business entities, the

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161 Florida Opportunity Fund, or any trust fund, the assets of which
162 are invested by the Florida Opportunity Fund.

163 (5) This section is subject to the Open Government Sunset
164 Review Act in accordance with s. 119.15 and shall stand repealed
165 on October 2, 2011, unless reviewed and saved from repeal
166 through reenactment by the Legislature.

167 Section 2. The Legislature finds that it is a public
168 necessity that proprietary confidential business information
169 held by the Florida Opportunity Fund regarding alternative
170 investments be held confidential and exempt from s. 119.07(1),
171 Florida Statutes, and s. 24(a), Art. I of the State Constitution
172 for 10 years after the termination of the alternative
173 investment. Disclosing proprietary confidential business
174 information, including trade secrets as defined in s. 688.002,
175 Florida Statutes, used in determining how private equity
176 investments are made or managed by private partnerships
177 investing assets on behalf of the Florida Opportunity Fund would
178 negatively affect the business interests of private partnerships
179 that rely heavily on their information advantage to generate
180 investment returns, and competitor partnerships could gain an
181 unfair competitive advantage if provided access to such
182 information. The release of proprietary confidential business
183 information, including trade secrets, revealing how alternative
184 investments are made could result in inadequate returns and
185 ultimately frustrate attainment of the investment objective of
186 the Florida Opportunity Fund. It is the Legislature's intent to
187 allow the public access to sufficient information in order to be
188 informed regarding the alternative investments of the Florida

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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189 Opportunity Fund and to balance the public's right to
190 information against the right of private business entities to be
191 protected from harmful disclosure of confidential and exempt
192 proprietary confidential business information, the disclosure of
193 which would injure them in the marketplace. It is also the
194 Legislature's intent to establish consistency with regard to the
195 classification of information relating to alternative
196 investments by the Florida Opportunity Fund as either
197 confidential or suitable for public disclosure. In finding that
198 the public records exemption created by this act is a public
199 necessity, the Legislature finds that the public and private
200 harm in disclosing proprietary confidential business information
201 relating to alternative investments by the Florida Opportunity
202 Fund significantly outweighs any public benefit derived from
203 disclosure; that the exemption created by this act will enhance
204 the ability of the Florida Opportunity Fund to fulfill its
205 duties as an investment fiduciary by making it more effective
206 and competitive in the marketplace as an investor that is able
207 to gain access to the best alternative investment vehicles; and
208 that the public's ability to be informed regarding the
209 alternative investments made by the Florida Opportunity Fund is
210 preserved by the disclosure of information excepted from the
211 created exemption.

212 Section 3. This act shall take effect July 1, 2006, if
213 House Bill 1467 or similar legislation is adopted in the same
214 legislative session or an extension thereof and becomes law.