

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

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 288.9623, Florida Statutes, is created
 23 to read:

24 288.9623 Florida Opportunity Fund; public records
 25 exemption.--

26 (1) As used in this section, the term:

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

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

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

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

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

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

52 (g)1. "Proprietary confidential business information"
53 means information that has been designated by the proprietor

54 when provided to the Florida Opportunity Fund as information
55 that is owned or controlled by a proprietor; that is intended to
56 be and is treated by the proprietor as private, the disclosure
57 of which would harm the business operations of the proprietor
58 and has not been intentionally disclosed by the proprietor
59 unless pursuant to a private agreement that provides that the
60 information will not be released to the public except as
61 required by law or legal process, or pursuant to law or an order
62 of a court or administrative body; and that concerns:

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

64 b. Information provided to the Florida Opportunity Fund
65 regarding a prospective investment in a private equity fund,
66 venture fund, angel fund, or portfolio company which is
67 proprietary to the provider of the information.

68 c. Financial statements and auditor reports of an
69 alternative investment vehicle.

70 d. Meeting materials of an alternative investment vehicle
71 relating to financial, operating, or marketing information of
72 the alternative investment vehicle.

73 e. Information regarding the portfolio positions in which
74 the alternative investment vehicles invest.

75 f. Capital call and distribution notices to investors of
76 an alternative investment vehicle.

77 g. Alternative investment agreements and related records.

78 h. Information concerning investors, other than the
79 Florida Opportunity Fund, in an alternative investment vehicle.

80 2. "Proprietary confidential business information" does
81 not include:

82 a. The name, address, and vintage year of an alternative
83 investment vehicle and the identity of the principals involved
84 in the management of the alternative investment vehicle.

85 b. The dollar amount of the commitment made by the Florida
86 Opportunity Fund to each alternative investment vehicle since
87 inception.

88 c. The dollar amount and date of cash contributions made
89 by the Florida Opportunity Fund to each alternative investment
90 vehicle since inception.

91 d. The dollar amount, on a fiscal-year-end basis, of cash
92 or other fungible distributions received by the Florida
93 Opportunity Fund from each alternative investment vehicle.

94 e. The dollar amount, on a fiscal-year-end basis, of cash
95 or other fungible distributions received by the Florida
96 Opportunity Fund plus the remaining value of alternative-vehicle
97 assets that are attributable to the Florida Opportunity Fund's
98 investment in each alternative investment vehicle.

99 f. The net internal rate of return of each alternative
100 investment vehicle since inception.

101 g. The investment multiple of each alternative investment
102 vehicle since inception.

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

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

109 (2) Proprietary confidential business information held by
110 the Florida Opportunity Fund regarding alternative investments
111 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
112 I of the State Constitution for 10 years after the termination
113 of the alternative investment.

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

122 (a) That the requested record contains proprietary
123 confidential business information and the specific location of
124 such information within the record;

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

128 (c) That the proprietary confidential business information
129 is intended to be and is treated by the proprietor as private,
130 is the subject of efforts of the proprietor to maintain its
131 privacy, and is not readily ascertainable or publicly available
132 from any other source; and

133 (d) That the disclosure of the proprietary confidential
134 business information to the public would harm the business
135 operations of the proprietor.

136 (4) (a) Any person may petition a court of competent
137 jurisdiction for an order for the public release of those
138 portions of any record made confidential and exempt by
139 subsection (2).

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

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

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

149 2. A compelling public interest is served by the release
150 of the record or portions thereof which exceed the public
151 necessity for maintaining the confidentiality of such record;
152 and

153 3. The release of the record will not cause damage to or
154 adversely affect the interests of the proprietor of the released
155 information, other private persons or business entities, the
156 Florida Opportunity Fund, or any trust fund, the assets of which
157 are invested by the Florida Opportunity Fund.

158 (5) This section is subject to the Open Government Sunset
159 Review Act in accordance with s. 119.15 and shall stand repealed

160 on October 2, 2011, unless reviewed and saved from repeal
161 through reenactment by the Legislature.

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

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

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