

Bill No. CS for SB 2656

Barcode 214560

CHAMBER ACTION

Senate

House

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The Committee on Governmental Oversight and Productivity
(Margolis) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

(1) As used in this section, 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.

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

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

10 (e) "Proprietor" means an alternative investment
 11 vehicle, a portfolio company in which the alternative
 12 investment vehicle is invested, or an outside consultant,
 13 including the respective authorized officers, employees,
 14 agents, or successors in interest, which controls or owns
 15 information provided to the Florida Opportunity Fund.

16 (f)1. "Proprietary confidential business information"
 17 means information that has been designated by the proprietor
 18 when provided to the Florida Opportunity Fund as information
 19 that is owned or controlled by a proprietor; that is intended
 20 to be and is treated by the proprietor as private, the
 21 disclosure of which would harm the business operations of the
 22 proprietor and has not been intentionally disclosed by the
 23 proprietor unless pursuant to a private agreement that
 24 provides that the information will not be released to the
 25 public except as required by law or legal process, or pursuant
 26 to law or an order of a court or administrative body; and that
 27 concerns:

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

29 b. Information provided to the Florida Opportunity
 30 Fund regarding a prospective investment in a private equity
 31 fund, venture fund, angel fund, or portfolio company which is

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1 proprietary to the provider of the information.

2 c. Financial statements and auditor reports of an
3 alternative investment vehicle.

4 d. Meeting materials of an alternative investment
5 vehicle relating to financial, operating, or marketing
6 information of the alternative investment vehicle.

7 e. Information regarding the portfolio positions in
8 which the alternative investment vehicles invest.

9 f. Capital call and distribution notices to investors
10 of an alternative investment vehicle.

11 g. Alternative investment agreements and related
12 records.

13 h. Information concerning investors, other than the
14 Florida Opportunity Fund, in an alternative investment
15 vehicle.

16 2. The term "proprietary confidential business
17 information" does not include:

18 a. The name, address, and vintage year of an
19 alternative investment vehicle and the identity of the
20 principals involved in the management of the alternative
21 investment vehicle.

22 b. The dollar amount of the commitment made by the
23 Florida Opportunity Fund to each alternative investment
24 vehicle since inception.

25 c. The dollar amount and date of cash contributions
26 made by the Florida Opportunity Fund to each alternative
27 investment vehicle since inception.

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

31 e. The dollar amount, on a fiscal-year-end basis, of

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1 cash or other fungible distributions received by the Florida
 2 Opportunity Fund plus the remaining value of
 3 alternative-vehicle assets that are attributable to the
 4 Florida Opportunity Fund's investment in each alternative
 5 investment vehicle.

6 f. The net internal rate of return of each alternative
 7 investment vehicle since inception.

8 g. The investment multiple of each alternative
 9 investment vehicle since inception.

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

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

16 (g) "Florida Opportunity Fund" means the Florida
 17 Opportunity Fund authorized in s. 288.9621.

18 (2) Proprietary confidential business information held
 19 by the Florida Opportunity Fund regarding alternative
 20 investments is confidential and exempt from s. 119.07(1) and
 21 s. 24(a), Art. I of the State Constitution for 10 years after
 22 the termination of the alternative investment.

23 (3) Notwithstanding subsection (2), a request to
 24 inspect or copy a public record that contains proprietary
 25 confidential business information shall be granted if the
 26 proprietor of the information fails, within a reasonable
 27 period after the request is received by the Florida
 28 Opportunity Fund, to verify the following to the Florida
 29 Opportunity Fund through a written declaration in the manner
 30 provided by s. 92.525:

31 (a) That the requested record contains proprietary

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1 confidential business information and the specific location of
2 such information within the record;

3 (b) If the proprietary confidential business
4 information is a trade secret, that it is a trade secret as
5 defined in s. 688.002;

6 (c) That the proprietary confidential business
7 information is intended to be and is treated by the proprietor
8 as private, is the subject of efforts of the proprietor to
9 maintain its privacy, and is not readily ascertainable or
10 publicly available from any other source; and

11 (d) That the disclosure of the proprietary
12 confidential business information to the public would harm the
13 business operations of the proprietor.

14 (4)(a) Any person may petition a court of competent
15 jurisdiction for an order for the public release of those
16 portions of any record made confidential and exempt by
17 subsection (2).

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

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

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

27 2. A compelling public interest is served by the
28 release of the record or portions thereof which exceeds the
29 public necessity for maintaining the confidentiality of such a
30 record; and

31 3. The release of the record will not cause damage to

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1 or adversely affect the interests of the proprietor of the
 2 released information, other private persons or business
 3 entities, the Florida Opportunity Fund, or any trust fund, the
 4 assets of which are invested by the Florida Opportunity Fund.

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

9 Section 2. The Legislature finds that it is a public
 10 necessity that proprietary confidential business information
 11 held by the Florida Opportunity Fund regarding alternative
 12 investments be held confidential and exempt from s. 119.07(1),
 13 Florida Statutes, and s. 24(a), Art. I of the State
 14 Constitution for 10 years after the termination of the
 15 alternative investment. Disclosing proprietary confidential
 16 business information, including trade secrets as defined in s.
 17 688.002, Florida Statutes, used in determining how private
 18 equity investments are made or managed by private partnerships
 19 investing assets on behalf of the Florida Opportunity Fund
 20 would negatively affect the business interests of private
 21 partnerships that rely heavily on their information advantage
 22 to generate investment returns, and competitor partnerships
 23 could gain an unfair competitive advantage if provided access
 24 to such information. The release of proprietary confidential
 25 business information, including trade secrets, revealing how
 26 alternative investments are made could result in inadequate
 27 returns and ultimately frustrate attainment of the investment
 28 objective of the Florida Opportunity Fund. It is the
 29 Legislature's intent to allow the public access to sufficient
 30 information in order to be informed regarding the alternative
 31 investments of the Florida Opportunity Fund and to balance the

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

23 Section 3. This act shall take effect July 1, 2006, if
24 Senate Bill 2668 or similar legislation is adopted in the same
25 legislative session or an extension thereof and becomes law.

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28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete everything before the enacting clause

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1 and insert:

2 A bill to be entitled

3 An act relating to public records; creating s.

4 288.9623, F.S.; providing definitions; defining

5 the term "proprietary confidential business

6 information" and specifying information that

7 does not constitute proprietary confidential

8 business information; creating an exemption

9 from public-records requirements for

10 proprietary confidential business information

11 held by the Florida Opportunity Fund regarding

12 alternative investments; providing for limited

13 duration of the exemption; authorizing the

14 inspection and copying of confidential and

15 exempt records if the proprietor of the

16 information fails to verify that a record

17 contains certain information within a specified

18 period; authorizing a court to order the

19 release of confidential and exempt records upon

20 making certain findings; providing for future

21 review and repeal; providing a statement of

22 public necessity; providing a contingent

23 effective date.

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