

By the Committees on Governmental Oversight and Productivity;  
Commerce and Consumer Services; and Senator Atwater

585-2351-06

1   A bill to be entitled

2           An act relating to public records; creating s.

3           288.9623, F.S.; providing definitions; defining

4           the term "proprietary confidential business

5           information" and specifying information that

6           does not constitute proprietary confidential

7           business information; creating an exemption

8           from public-records requirements for

9           proprietary confidential business information

10          held by the Florida Opportunity Fund regarding

11          alternative investments; providing for limited

12          duration of the exemption; authorizing the

13          inspection and copying of confidential and

14          exempt records if the proprietor of the

15          information fails to verify that a record

16          contains certain information within a specified

17          period; authorizing a court to order the

18          release of confidential and exempt records upon

19          making certain findings; providing for future

20          review and repeal; providing a statement of

21          public necessity; providing a contingent

22          effective date.

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

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26           Section 1. Section 288.9623, Florida Statutes, is

27 created to read:

28           288.9623 Florida Opportunity Fund; public-records

29 exemption.--

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

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

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

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

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

19           (e) "Proprietor" means an alternative investment  
20 vehicle, a portfolio company in which the alternative  
21 investment vehicle is invested, or an outside consultant,  
22 including the respective authorized officers, employees,  
23 agents, or successors in interest, which controls or owns  
24 information provided to the Florida Opportunity Fund.

25           (f)1. "Proprietary confidential business information"  
26 means information that has been designated by the proprietor  
27 when provided to the Florida Opportunity Fund as information  
28 that is owned or controlled by a proprietor; that is intended  
29 to be and is treated by the proprietor as private, the  
30 disclosure of which would harm the business operations of the  
31 proprietor and has not been intentionally disclosed by the

1 proprietor unless pursuant to a private agreement that  
2 provides that the information will not be released to the  
3 public except as required by law or legal process, or pursuant  
4 to law or an order of a court or administrative body; and that  
5 concerns:  
6       a. Trade secrets as defined in s. 688.002.  
7       b. Information provided to the Florida Opportunity  
8 Fund regarding a prospective investment in a private equity  
9 fund, venture fund, angel fund, or portfolio company which is  
10 proprietary to the provider of the information.  
11       c. Financial statements and auditor reports of an  
12 alternative investment vehicle.  
13       d. Meeting materials of an alternative investment  
14 vehicle relating to financial, operating, or marketing  
15 information of the alternative investment vehicle.  
16       e. Information regarding the portfolio positions in  
17 which the alternative investment vehicles invest.  
18       f. Capital call and distribution notices to investors  
19 of an alternative investment vehicle.  
20       g. Alternative investment agreements and related  
21 records.  
22       h. Information concerning investors, other than the  
23 Florida Opportunity Fund, in an alternative investment  
24 vehicle.  
25       2. The term "proprietary confidential business  
26 information" does not include:  
27       a. The name, address, and vintage year of an  
28 alternative investment vehicle and the identity of the  
29 principals involved in the management of the alternative  
30 investment vehicle.  
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1           b. The dollar amount of the commitment made by the  
2 Florida Opportunity Fund to each alternative investment  
3 vehicle since inception.

4           c. The dollar amount and date of cash contributions  
5 made by the Florida Opportunity Fund to each alternative  
6 investment vehicle since inception.

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

10           e. The dollar amount, on a fiscal-year-end basis, of  
11 cash or other fungible distributions received by the Florida  
12 Opportunity Fund plus the remaining value of  
13 alternative-vehicle assets that are attributable to the  
14 Florida Opportunity Fund's investment in each alternative  
15 investment vehicle.

16           f. The net internal rate of return of each alternative  
17 investment vehicle since inception.

18           g. The investment multiple of each alternative  
19 investment vehicle since inception.

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

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

26           (g) "Florida Opportunity Fund" means the Florida  
27 Opportunity Fund authorized in s. 288.9621.

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

3 (3) Notwithstanding subsection (2), a request to  
4 inspect or copy a public record that contains proprietary  
5 confidential business information shall be granted if the  
6 proprietor of the information fails, within a reasonable  
7 period after the request is received by the Florida  
8 Opportunity Fund, to verify the following to the Florida  
9 Opportunity Fund through a written declaration in the manner  
10 provided by s. 92.525:

11 (a) That the requested record contains proprietary  
12 confidential business information and the specific location of  
13 such information within the record;

14 (b) If the proprietary confidential business  
15 information is a trade secret, that it is a trade secret as  
16 defined in s. 688.002;

17 (c) That the proprietary confidential business  
18 information is intended to be and is treated by the proprietor  
19 as private, is the subject of efforts of the proprietor to  
20 maintain its privacy, and is not readily ascertainable or  
21 publicly available from any other source; and

22 (d) That the disclosure of the proprietary  
23 confidential business information to the public would harm the  
24 business operations of the proprietor.

25 (4)(a) Any person may petition a court of competent  
26 jurisdiction for an order for the public release of those  
27 portions of any record made confidential and exempt by  
28 subsection (2).

29 (b) Any action under this subsection must be brought  
30 in Orange County, Florida, and the petition or other initial  
31 pleading shall be served on the Florida Opportunity Fund and,

1 if determinable upon diligent inquiry, on the proprietor of  
2 the information sought to be released.

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

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

7 2. A compelling public interest is served by the  
8 release of the record or portions thereof which exceeds the  
9 public necessity for maintaining the confidentiality of such a  
10 record; and

11 3. The release of the record will not cause damage to  
12 or adversely affect the interests of the proprietor of the  
13 released information, other private persons or business  
14 entities, the Florida Opportunity Fund, or any trust fund, the  
15 assets of which are invested by the Florida Opportunity Fund.

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

20 Section 2. The Legislature finds that it is a public  
21 necessity that proprietary confidential business information  
22 held by the Florida Opportunity Fund regarding alternative  
23 investments be held confidential and exempt from s. 119.07(1),  
24 Florida Statutes, and s. 24(a), Art. I of the State  
25 Constitution for 10 years after the termination of the  
26 alternative investment. Disclosing proprietary confidential  
27 business information, including trade secrets as defined in s.  
28 688.002, Florida Statutes, used in determining how private  
29 equity investments are made or managed by private partnerships  
30 investing assets on behalf of the Florida Opportunity Fund  
31 would negatively affect the business interests of private

1 partnerships that rely heavily on their information advantage  
2 to generate investment returns, and competitor partnerships  
3 could gain an unfair competitive advantage if provided access  
4 to such information. The release of proprietary confidential  
5 business information, including trade secrets, revealing how  
6 alternative investments are made could result in inadequate  
7 returns and ultimately frustrate attainment of the investment  
8 objective of the Florida Opportunity Fund. It is the  
9 Legislature's intent to allow the public access to sufficient  
10 information in order to be informed regarding the alternative  
11 investments of the Florida Opportunity Fund and to balance the  
12 public's right to information against the right of private  
13 business entities to be protected from harmful disclosure of  
14 confidential and exempt proprietary confidential business  
15 information, the disclosure of which would injure them in the  
16 marketplace. It is also the Legislature's intent to establish  
17 consistency with regard to the classification of information  
18 relating to alternative investments by the Florida Opportunity  
19 Fund as either confidential or suitable for public disclosure.  
20 In finding that the public-records exemption created by this  
21 act is a public necessity, the Legislature finds that the  
22 public and private harm in disclosing proprietary confidential  
23 business information relating to alternative investments by  
24 the Florida Opportunity Fund significantly outweighs any  
25 public benefit derived from disclosure; that the exemption  
26 created by this act will enhance the ability of the Florida  
27 Opportunity Fund to fulfill its duties as an investment  
28 fiduciary by making it more effective and competitive in the  
29 marketplace as an investor that is able to gain access to the  
30 best alternative investment vehicles; and that the public's  
31 ability to be informed regarding the alternative investments

1 made by the Florida Opportunity Fund is preserved by the  
2 disclosure of information excepted from the created exemption.

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

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7                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
8                   COMMITTEE SUBSTITUTE FOR  
9                   CS/SB 2656

10 Establishes definitions that are applicable for the exemption.

11 Exempts proprietary confidential business information held by  
12 the Florida Opportunity Fund regarding alternative investments  
13 for 10 years after the termination of the alternative  
14 investment.

15 Requires proprietor to file a verified, written declaration  
16 that identifies proprietary confidential business information  
17 in record within reasonable time of receipt by the Florida  
18 Opportunity Fund of a public records request. Requires release  
19 of information if proprietor fails to comply.

20 Permits any person to petition a court for release of  
21 confidential and exempt information. Establishes standards for  
22 court release.

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