

1 A bill to be entitled
 2 An act relating to a public records exemption for
 3 alternative investments; amending s. 215.44, F.S.;
 4 providing definitions; defining "proprietary confidential
 5 business information" and specifying information which
 6 does not constitute proprietary confidential business
 7 information; creating an exemption from public records
 8 requirements for proprietary confidential business
 9 information held by the State Board of Administration
 10 regarding alternative investments; providing for limited
 11 duration of the exemption; providing for retroactive
 12 application of the exemption; authorizing the inspection
 13 and copying of confidential and exempt records if the
 14 proprietor of the information fails to verify that a
 15 record contains certain information within a specified
 16 period of time; authorizing a court to order the release
 17 of confidential and exempt records upon making certain
 18 findings; providing for future review and repeal;
 19 providing a statement of public necessity; providing an
 20 effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Paragraph (c) is added to subsection (8) of
 25 section 215.44, Florida Statutes, to read:

26 215.44 Board of Administration; powers and duties in
 27 relation to investment of trust funds.--

28 (8)

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

30 a. "Alternative investment" means an investment by the
31 State Board of Administration in a private equity fund, venture
32 fund, hedge fund, or distress fund or a direct investment in a
33 portfolio company through an investment manager.

34 b. "Alternative investment vehicle" means the limited
35 partnership, limited liability company, or similar legal
36 structure or investment manager through which the State Board of
37 Administration invests in a portfolio company.

38 c. "Portfolio company" means a corporation or other
39 issuer, any of whose securities are owned by an alternative
40 investment vehicle or the State Board of Administration and any
41 subsidiary of such corporation or other issuer.

42 d. "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 e. "Proprietor" means an alternative investment vehicle, a
47 portfolio company in which the alternative investment vehicle is
48 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 State Board of Administration.

52 f. "Proprietary confidential business information" means
53 information that has been designated by the proprietor when
54 provided to the State Board of Administration 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

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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 (I) Trade secrets as defined in s. 688.002.

64 (II) Information provided to the State Board of
65 Administration regarding a prospective investment in a private
66 equity fund, venture fund, hedge fund, distress fund, or
67 portfolio company which is proprietary to the provider of the
68 information.

69 (III) Financial statements and auditor reports of an
70 alternative investment vehicle.

71 (IV) Meeting materials of an alternative investment
72 vehicle relating to financial, operating, or marketing
73 information of the alternative investment vehicle.

74 (V) Information regarding the portfolio positions in which
75 the alternative investment vehicles invest.

76 (VI) Capital call and distribution notices to investors of
77 an alternative investment vehicle.

78 (VII) Alternative investment agreements and related
79 records.

80 (VIII) Information concerning investors, other than the
81 State Board of Administration, in an alternative investment
82 vehicle.

83 g. "Proprietary confidential business information" does
84 not include:

85 (I) The name, address, and vintage year of an alternative
 86 investment vehicle and the identity of the principals involved
 87 in the management of the alternative investment vehicle.

88 (II) The dollar amount of the commitment made by the State
 89 Board of Administration to each alternative investment vehicle
 90 since inception.

91 (III) The dollar amount and date of cash contributions
 92 made by the State Board of Administration to each alternative
 93 investment vehicle since inception.

94 (IV) The dollar amount, on a fiscal-year-end basis, of
 95 cash distributions received by the State Board of Administration
 96 from each alternative investment vehicle.

97 (V) The dollar amount, on a fiscal-year-end basis, of cash
 98 distributions received by the State Board of Administration plus
 99 the remaining value of alternative-vehicle assets that are
 100 attributable to the State Board of Administration's investment
 101 in each alternative investment vehicle.

102 (VI) The net internal rate of return of each alternative
 103 investment vehicle since inception.

104 (VII) The investment multiple of each alternative
 105 investment vehicle since inception.

106 (VIII) The dollar amount of the total management fees and
 107 costs paid on an annual fiscal-year-end basis by the State Board
 108 of Administration to each alternative investment vehicle.

109 (IX) The dollar amount of cash profit received by the
 110 State Board of Administration from each alternative investment
 111 vehicle on a fiscal-year-end basis.

112 2. Proprietary confidential business information held by

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113 the State Board of Administration regarding alternative
114 investments is confidential and exempt from s. 119.07(1) and s.
115 24(a), Art. I of the State Constitution for 10 years after the
116 termination of the alternative investment. This exemption
117 applies to proprietary confidential business information held by
118 the State Board of Administration before, on, or after October
119 1, 2006.

120 3. Notwithstanding the provisions of subparagraph 2., a
121 request to inspect or copy a record under s. 119.07(1) which
122 contains proprietary confidential business information shall be
123 granted if the proprietor of the information fails, within a
124 reasonable period of time after the request is received by the
125 State Board of Administration, to verify the following to the
126 State Board of Administration through a written declaration in
127 the manner provided by s. 92.525:

128 a. The identity of the proprietary confidential business
129 information and its specific location in the requested record;

130 b. If the proprietary confidential business information is
131 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.

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141 4. 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 subparagraph 2. Any action under this subparagraph must be
145 brought in Leon County, Florida, and the petition or other
146 initial pleading shall be served on the State Board of
147 Administration and, if determinable upon diligent inquiry, on
148 the proprietor of the information sought to be released. In any
149 order for the public release of a record under this
150 subparagraph, the court shall make a finding that the record or
151 portion thereof is not a trade secret as defined in s. 688.002,
152 that a compelling public interest is served by the release of
153 the record or portions thereof which exceed the public necessity
154 for maintaining the confidentiality of such record, and that the
155 release of the record will not cause damage to or adversely
156 affect the interests of the proprietor of the released
157 information, other private persons or business entities, the
158 State Board of Administration, or any trust fund, the assets of
159 which are invested by the State Board of Administration.

160 5. This paragraph is subject to the Open Government Sunset
161 Review Act in accordance with s. 119.15 and shall stand repealed
162 on October 2, 2011, unless reviewed and saved from repeal
163 through reenactment by the Legislature.

164 Section 2. The Legislature finds that it is a public
165 necessity that proprietary confidential business information
166 held by the State Board of Administration regarding alternative
167 investments be held confidential and exempt from s. 119.07(1),
168 Florida Statutes, and s. 24(a), Art. I of the State Constitution

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169 for 10 years after the termination of the alternative
170 investment. Disclosing proprietary confidential business
171 information, including trade secrets as defined in s. 688.002,
172 Florida Statutes, used in determining how private equity
173 investments are made or managed by private partnerships
174 investing assets on behalf of the State Board of Administration
175 would negatively affect the business interests of private
176 partnerships that rely heavily on their information advantage to
177 generate investment returns, and competitor partnerships could
178 gain an unfair competitive advantage if provided access to such
179 information. Maintaining the information advantage of highly
180 skilled private equity investment managers is necessary in order
181 for the State Board of Administration to generate an adequate
182 return from its assets committed to this high-risk segment of
183 the market, since only those managers having a strong
184 information advantage have generated adequate risk-adjusted
185 returns. Research shows that 60 percent of all private equity
186 partnerships have delivered a return less than that of the
187 lower-risk public markets. Only 30 percent of all private equity
188 partnerships have been able to produce the State Board of
189 Administration's required premium over public-market returns to
190 justify incurring the risks associated with these investments.
191 The ninth and tenth deciles of private equity managers are those
192 having a substantial information advantage and they have
193 generated sizable premiums over the public markets, with net
194 returns of 19.4 percent and 29.7 percent, respectively. The
195 Legislature finds that the exemption of proprietary confidential
196 business information used in or implying how private equity

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197 investments are made or managed is necessary for the effective
198 and efficient administration of the State Board of
199 Administration's asset-management program. Assets of the Florida
200 Retirement System must grow rapidly in order to keep pace with
201 growth in the system's liabilities and to manage the costs of
202 employer contributions. In order to meet its investment
203 objectives, the State Board of Administration must invest in
204 diversified asset types, including high-return, high-risk
205 private equity partnerships. Those partnerships that have and
206 are able to maintain a substantial information advantage over
207 their competitors are likely to provide an adequate return. The
208 release of proprietary confidential business information,
209 including trade secrets, revealing how private equity
210 investments are made or managed could result in inadequate
211 returns and ultimately frustrate attainment of the investment
212 objective of the State Board of Administration, subsequently
213 increasing contribution costs for employers in the Florida
214 Retirement System and lowering the system's funded ratio. It is
215 the Legislature's intent to allow the public access to
216 sufficient information in order to be informed regarding the
217 alternative investments of the State Board of Administration and
218 to balance the public's right to information against the right
219 of private business entities to be protected from harmful
220 disclosure of confidential and exempt proprietary confidential
221 business information, the disclosure of which would injure them
222 in the marketplace, impair the ability of the State Board of
223 Administration to invest in the best performing alternative
224 investment vehicles, and diminish investment earnings in the

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225 Florida Retirement System Trust Fund. It is also the
226 Legislature's intent to establish consistency with regard to the
227 classification of information relating to alternative
228 investments by the State Board of Administration as either
229 confidential or suitable for public disclosure. In finding that
230 the public records exemption created by this act is a public
231 necessity, the Legislature finds that the public and private
232 harm in disclosing proprietary confidential business information
233 relating to alternative investments by the State Board of
234 Administration significantly outweighs any public benefit
235 derived from disclosure; that the exemption created by this act
236 will enhance the ability of the State Board of Administration to
237 fulfill its duties as an investment fiduciary by making it more
238 effective and competitive in the marketplace as an investor that
239 is able to gain access to the best alternative investment
240 vehicles; and that the public's ability to be informed regarding
241 the alternative investments made by the State Board of
242 Administration is preserved by the disclosure of information
243 excepted from the created exemption.

244 Section 3. This act shall take effect October 1, 2006.