

A bill to be entitled

An act relating to public records; creating s. 288.96275, F.S.; providing definitions; defining "proprietary confidential business information" and specifying information that does not constitute proprietary confidential business information; creating an exemption from public records requirements for proprietary confidential business information held by the Florida Opportunity Fund or the Florida Opportunity Fund Management Corporation regarding alternative investments; providing for limited duration of the exemption; authorizing the inspection and copying of confidential and exempt records if the proprietor of the information fails to verify that a record contains certain information within a specified period of time; authorizing a court to order the release of confidential and exempt records upon making certain findings; providing for future review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 288.96275, Florida Statutes, is created to read:

288.96275 Trade secret information; identification and performance information; public records exemption.--

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

(a) "Alternative investment" means an investment by the

29 Florida Opportunity Fund in a private equity fund, venture
 30 capital fund, or angel fund or a direct investment in a
 31 portfolio company through a distribution of securities to its
 32 partners or shareholders by an alternative investment vehicle.

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

37 (c) "Florida Opportunity Fund" means the Florida
 38 Opportunity Fund authorized in s. 288.9627.

39 (d) "Florida Opportunity Fund Management Corporation"
 40 means the Florida Opportunity Fund Management Corporation
 41 authorized in s. 288.9626.

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

46 (f) "Portfolio positions" means individual investments in
 47 portfolio companies that are made by the alternative investment
 48 vehicles, including information or specific investment terms
 49 associated with any portfolio company investment.

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

56 (h)1. "Proprietary confidential business information"

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

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

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

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

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

79 e. Information regarding the portfolio positions in which
80 the alternative investment vehicles invest.

81 f. Capital call and distribution notices to investors of
82 an alternative investment vehicle.

83 g. Alternative investment agreements and related records.

84 h. Information concerning investors, other than the

85 Florida Opportunity Fund, in an alternative investment vehicle.
 86 2. "Proprietary confidential business information" does
 87 not include:
 88 a. The name, address, and vintage year of an alternative
 89 investment vehicle and the identity of the principals involved
 90 in the management of the alternative investment vehicle.
 91 b. The dollar amount of the commitment made by the Florida
 92 Opportunity Fund to each alternative investment vehicle since
 93 inception.
 94 c. The dollar amount and date of cash contributions made
 95 by the Florida Opportunity Fund to each alternative investment
 96 vehicle since inception.
 97 d. The dollar amount, on a fiscal-year-end basis, of cash
 98 or other fungible distributions received by the Florida
 99 Opportunity Fund from each alternative investment vehicle.
 100 e. The dollar amount, on a fiscal-year-end basis, of cash
 101 or other fungible distributions received by the Florida
 102 Opportunity Fund plus the remaining value of alternative-vehicle
 103 assets that are attributable to the Florida Opportunity Fund's
 104 investment in each alternative investment vehicle.
 105 f. The net internal rate of return of each alternative
 106 investment vehicle since inception.
 107 g. The investment multiple of each alternative investment
 108 vehicle since inception.
 109 h. The dollar amount of the total management fees and
 110 costs paid on an annual fiscal-year-end basis by the Florida
 111 Opportunity Fund to each alternative investment vehicle.
 112 i. The dollar amount of cash profit received by the

113 Florida Opportunity Fund from each alternative investment
114 vehicle on a fiscal-year-end basis.

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

121 (3) Notwithstanding the provisions of subsection (2), a
122 request to inspect or copy a public record that contains
123 proprietary confidential business information shall be granted
124 if the proprietor of the information fails, within a reasonable
125 period of time after the request is received by the Florida
126 Opportunity Fund or the Florida Opportunity Fund Management
127 Corporation, to verify the following to the Florida Opportunity
128 Fund or the Florida Opportunity Fund Management Corporation
129 through a written declaration in the manner provided by s.
130 92.525:

131 (a) That the requested record contains proprietary
132 confidential business information and the specific location of
133 such information within the record;

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

137 (c) That the proprietary confidential business information
138 is intended to be and is treated by the proprietor as private,
139 is the subject of efforts of the proprietor to maintain its
140 privacy, and is not readily ascertainable or publicly available

141 from any other source; and

142 (d) That the disclosure of the proprietary confidential
 143 business information to the public would harm the business
 144 operations of the proprietor.

145 (4) (a) Any person may petition a court of competent
 146 jurisdiction for an order for the public release of those
 147 portions of any record made confidential and exempt by
 148 subsection (2).

149 (b) Any action under this subsection must be brought in
 150 Orange County, Florida, and the petition or other initial
 151 pleading shall be served on the Florida Opportunity Fund or the
 152 Florida Opportunity Fund Management Corporation, whichever is
 153 applicable, and, if determinable upon diligent inquiry, on the
 154 proprietor of the information sought to be released.

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

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

159 2. A compelling public interest is served by the release
 160 of the record or portions thereof which exceed the public
 161 necessity for maintaining the confidentiality of such record;
 162 and

163 3. The release of the record will not cause damage to or
 164 adversely affect the interests of the proprietor of the released
 165 information, other private persons or business entities, the
 166 Florida Opportunity Fund Management Corporation, the Florida
 167 Opportunity Fund, or any trust fund, the assets of which are
 168 invested by the Florida Opportunity Fund.

169 (5) This section is subject to the Open Government Sunset
170 Review Act in accordance with s. 119.15 and shall stand repealed
171 on October 2, 2012, unless reviewed and saved from repeal
172 through reenactment by the Legislature.

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

HB 131

2007

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

219 Section 3. This act shall take effect July 1, 2007, if
220 House Bill 83 or similar legislation is adopted in the same
221 legislative session or an extension thereof and becomes law.