

1 A bill to be entitled
 2 An act relating to public records and meetings; creating
 3 s. 288.9626, F.S.; providing definitions; providing an
 4 exemption from public records requirements for certain
 5 information held by the Florida Opportunity Fund;
 6 providing exceptions to the exemption; providing an
 7 exemption from public meetings requirements for portions
 8 of meetings of the board of directors of the Florida
 9 Opportunity Fund at which confidential and exempt records
 10 are discussed; providing penalties; providing for future
 11 legislative review and repeal; providing a statement of
 12 public necessity; providing a contingent effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 288.9626, Florida Statutes, is created
 17 to read:

18 288.9626 Exemptions from public records and public
 19 meetings requirements; Florida Opportunity Fund.--

20 (1) DEFINITIONS.--As used in this section, the term:

21 (a) "Alternative investment" means an investment by the
 22 Florida Opportunity Fund in a private equity fund, venture
 23 capital fund, or angel fund or a direct investment in a
 24 portfolio company or investment through a distribution of
 25 securities to its partners or shareholders by an alternative
 26 investment vehicle.

27 (b) "Alternative investment vehicle" means the limited
 28 partnership, limited liability company, or similar legal

29 structure through which the Florida Opportunity Fund may elect
 30 to invest in a portfolio company.

31 (c) "Florida Opportunity Fund" or "fund" means the Florida
 32 Opportunity Fund as defined in s. 288.9623.

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

37 (e) "Portfolio positions" means individual investments in
 38 portfolio companies that are made by the Florida Opportunity
 39 Fund, including information or specific investment terms
 40 associated with any portfolio company investment.

41 (f)1. "Proprietary confidential business information"
 42 means information that has been designated by the proprietor
 43 when provided to the Florida Opportunity Fund as information
 44 that is owned or controlled by a proprietor; that is intended to
 45 be and is treated by the proprietor as private, the disclosure
 46 of which would harm the business operations of the proprietor
 47 and has not been intentionally disclosed by the proprietor
 48 unless pursuant to a private agreement that provides that the
 49 information will not be released to the public except as
 50 required by law or legal process, or pursuant to law or an order
 51 of a court or administrative body; and that concerns:

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

53 b. Information provided to the Florida Opportunity Fund
 54 regarding a prospective investment in a private equity fund,
 55 venture capital fund, angel fund, or portfolio company that is
 56 proprietary to the provider of the information.

57 c. Financial statements and auditor reports of an
58 alternative investment vehicle or portfolio company, unless
59 publicly released by the alternative investment vehicle or
60 portfolio company.

61 d. Meeting materials of an alternative investment vehicle
62 or portfolio company relating to financial, operating, or
63 marketing information of the alternative investment vehicle or
64 portfolio company.

65 e. Information regarding the portfolio positions in which
66 the alternative investment vehicles or Florida Opportunity Fund
67 invest.

68 f. Capital call and distribution notices to investors or
69 the Florida Opportunity Fund of an alternative investment
70 vehicle.

71 g. Alternative investment agreements and related records.

72 h. Information concerning investors, other than the
73 Florida Opportunity Fund, in an alternative investment vehicle
74 or portfolio company.

75 2. "Proprietary confidential business information" does
76 not include:

77 a. The name, address, and vintage year of an alternative
78 investment vehicle or Florida Opportunity Fund and the identity
79 of the principals involved in the management of the alternative
80 investment vehicle or Florida Opportunity Fund.

81 b. The dollar amount of the commitment made by the Florida
82 Opportunity Fund to each alternative investment vehicle since
83 inception, if any.

84 c. The dollar amount and date of cash contributions made

85 by the Florida Opportunity Fund to each alternative investment
86 vehicle since inception, if any.

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

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

95 f. The net internal rate of return of each alternative
96 investment vehicle since inception.

97 g. The investment multiple of each alternative investment
98 vehicle since inception.

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

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

105 (g) "Proprietor" means an alternative investment vehicle,
106 a portfolio company in which the alternative investment vehicle
107 or Florida Opportunity Fund is invested, or an outside
108 consultant, including the respective authorized officers,
109 employees, agents, or successors in interest, that controls or
110 owns information provided to the Florida Opportunity Fund.

111 (2) PUBLIC RECORDS EXEMPTION.--

112 (a) The following records held by the Florida Opportunity

113 Fund are confidential and exempt from s. 119.07(1) and s. 24(a),
114 Art. I of the State Constitution:

115 1. Materials that relate to methods of manufacture or
116 production, potential trade secrets, or patentable material
117 received, generated, ascertained, or discovered during the
118 course of research or through research projects conducted by
119 universities and other publicly supported organizations in this
120 state.

121 2. Information that would identify an investor or
122 potential investor, who desires to remain anonymous, in projects
123 reviewed by the fund.

124 3. Any information received from a person, another state
125 or nation, or the Federal Government which is otherwise
126 confidential or exempt pursuant to the laws of that state or
127 nation or pursuant to federal law.

128 4. Proprietary confidential business information regarding
129 alternative investments for 10 years after the termination of
130 the alternative investment.

131 (b) At the time any record made confidential and exempt by
132 this subsection, or portion thereof, is legally available or
133 subject to public disclosure for any other reason, that record,
134 or portion thereof, shall no longer be confidential and exempt
135 and shall be made available for inspection and copying.

136 (3) PUBLIC MEETINGS EXEMPTION.--

137 (a) That portion of a meeting of the board of directors of
138 the Florida Opportunity Fund at which information is discussed
139 which is confidential and exempt under subsection (2) is exempt
140 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

141 (b) Any exempt portion of a meeting shall be recorded and
 142 transcribed. The board shall record the times of commencement
 143 and termination of the meeting, all discussion and proceedings,
 144 the names of all persons present at any time, and the names of
 145 all persons speaking. An exempt portion of any meeting may not
 146 be off the record.

147 (c) A transcript and minutes of exempt portions of
 148 meetings are confidential and exempt from s. 119.07(1) and s.
 149 24(a), Art. I of the State Constitution.

150 (4) REQUEST TO INSPECT OR COPY A RECORD.--

151 (a) Records made confidential and exempt by this section
 152 may be released, upon written request, to a governmental entity
 153 in the performance of its official duties and responsibilities.

154 (b) Notwithstanding the provisions of paragraph (2)(a), a
 155 request to inspect or copy a public record that contains
 156 proprietary confidential business information shall be granted
 157 if the proprietor of the information fails, within a reasonable
 158 period of time after the request is received by the Florida
 159 Opportunity Fund, to verify the following to the fund through a
 160 written declaration in the manner provided by s. 92.525:

161 1. That the requested record contains proprietary
 162 confidential business information and the specific location of
 163 such information within the record;

164 2. If the proprietary confidential business information is
 165 a trade secret, a verification that it is a trade secret as
 166 defined in s. 688.002;

167 3. That the proprietary confidential business information
 168 is intended to be and is treated by the proprietor as private,

169 is the subject of efforts of the proprietor to maintain its
 170 privacy, and is not readily ascertainable or publicly available
 171 from any other source; and

172 4. That the disclosure of the proprietary confidential
 173 business information to the public would harm the business
 174 operations of the proprietor.

175 (c)1. Any person may petition a court of competent
 176 jurisdiction for an order for the public release of those
 177 portions of any record made confidential and exempt by
 178 subsection (2).

179 2. Any action under this subsection must be brought in
 180 Orange County, Florida, and the petition or other initial
 181 pleading shall be served on the fund, whichever is applicable,
 182 and, if determinable upon diligent inquiry, on the proprietor of
 183 the information sought to be released.

184 3. In any order for the public release of a record under
 185 this subsection, the court shall make a finding that:

186 a. The record or portion thereof is not a trade secret as
 187 defined in s. 688.002;

188 b. A compelling public interest is served by the release
 189 of the record or portions thereof which exceed the public
 190 necessity for maintaining the confidentiality of such record;
 191 and

192 c. The release of the record will not cause damage to or
 193 adversely affect the interests of the proprietor of the released
 194 information, other private persons or business entities, the
 195 fund, or any trust fund, the assets of which are invested by the
 196 Florida Opportunity Fund.

197 (5) PENALTIES.--Any person who willfully and knowingly
 198 violates this section commits a misdemeanor of the first degree,
 199 punishable as provided in s. 775.082 or s. 775.083.

200 (6) OPEN GOVERNMENT SUNSET REVIEW.--This section is
 201 subject to the Open Government Sunset Review Act in accordance
 202 with s. 119.15 and shall stand repealed on October 2, 2012,
 203 unless reviewed and saved from repeal through reenactment by the
 204 Legislature.

205 Section 2. The Legislature finds that it is a public
 206 necessity that certain information held by the Florida
 207 Opportunity Fund be made confidential and exempt from s.
 208 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State
 209 Constitution. Materials that relate to methods of manufacture or
 210 production, potential trade secrets, or patentable materials
 211 received, generated, ascertained, or discovered during the
 212 course of research must be confidential and exempt because the
 213 disclosure of such information would create an unfair
 214 competitive advantage for persons receiving such information.
 215 Disclosure of proprietary confidential business information to
 216 the public would harm the business operations of the proprietor.
 217 The Legislature further finds that information received by the
 218 fund from a person, from another state or nation, or the Federal
 219 Government which is otherwise exempt or confidential pursuant to
 220 the laws of that state or nation or pursuant to federal law
 221 should remain exempt or confidential because the highly
 222 confidential nature of research necessitates that it be
 223 protected. Without the exemptions provided by this act, the
 224 disclosure of confidential and exempt information would

225 jeopardize the effective and efficient administration of this
226 program. In addition, the Legislature further finds that the
227 identity of an investor or prospective investor who wishes to
228 remain anonymous should be confidential and exempt from public
229 disclosure. This exemption is necessary because the disclosure
230 of investor identities may adversely impact the ability of the
231 fund to attract investors who desire anonymity. The Legislature
232 also finds that it is a public necessity that proprietary
233 confidential business information held by the fund regarding
234 alternative investments be held confidential and exempt for 10
235 years after the termination of the alternative investment.
236 Disclosing proprietary confidential business information used in
237 determining how private equity investments are made or managed
238 by private partnerships investing assets on behalf of the fund
239 would negatively affect the business interests of private
240 partnerships that rely heavily on their information advantage to
241 generate investment returns, and competitor partnerships could
242 gain an unfair competitive advantage if provided access to such
243 information. The release of proprietary confidential business
244 information revealing how alternative investments are made could
245 result in inadequate returns and ultimately frustrate attainment
246 of the investment objective of the fund. It is the Legislature's
247 intent to allow the public access to sufficient information in
248 order to be informed regarding the alternative investments of
249 the fund and to balance the public's right to information
250 against the right of business entities to be protected from
251 harmful disclosure of proprietary confidential business
252 information, the disclosure of which would injure them in the

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253 marketplace. The Legislature further finds that it is a public
254 necessity that portions of meetings of the board of directors of
255 the fund at which records made confidential and exempt by this
256 act are discussed be made exempt from public meetings
257 requirements in order to allow the corporation to maintain the
258 confidential and exempt status of this information. Public
259 oversight is preserved by requiring a transcript of any portion
260 of a closed meeting of these boards.

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