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CS/CS/HB 131

2007 Legislature

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 and for
6 certain information held by the Institute for the
7 Commercialization of Public Research; providing exceptions
8 to the exemption; creating an exemption from public
9 meetings requirements for portions of meetings of the
10 boards of directors of the Florida Opportunity Fund and
11 the Institute for the Commercialization of Public Research
12 at which confidential and exempt records are discussed;
13 providing penalties; providing for future legislative
14 review and repeal; providing a statement of public
15 necessity; amending s. 1004.226, F.S.; creating an
16 exemption from public records requirements for certain
17 information held by the Florida Technology, Research, and
18 Scholarship Board; creating an exemption from public
19 meetings requirements for portions of meetings of the
20 Florida Technology, Research, and Scholarship Board at
21 which confidential and exempt records are discussed;
22 providing exceptions to the exemption; providing
23 penalties; providing for future legislative review and
24 repeal; providing a statement of public necessity;
25 providing a contingent effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Section 288.9626, Florida Statutes, is created
30 to read:

31 288.9626 Exemptions from public records and public
32 meetings requirements; Florida Opportunity Fund and the
33 Institute for the Commercialization of Public Research.--

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

35 (a) "Alternative investment" means an investment by the
36 Florida Opportunity Fund in a private equity fund, venture
37 capital fund, or angel fund or a direct investment in a
38 portfolio company or investment through a distribution of
39 securities to its partners or shareholders by an alternative
40 investment vehicle.

41 (b) "Alternative investment vehicle" means the limited
42 partnership, limited liability company, or similar legal
43 structure through which the Florida Opportunity Fund may elect
44 to invest in a portfolio company.

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

47 (d) "Institute for the Commercialization of Public
48 Research" or "institute" means the institute established by s.
49 288.9625.

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

54 (f) "Portfolio positions" means individual investments in
55 portfolio companies that are made by the Florida Opportunity
56 Fund, including information or specific investment terms

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57 associated with any portfolio company investment.
58 (g)1. "Proprietary confidential business information"
59 means information that has been designated by the proprietor
60 when provided to the Florida Opportunity Fund or the Institute
61 for the Commercialization of Public Research as information that
62 is owned or controlled by a proprietor; that is intended to be
63 and is treated by the proprietor as private, the disclosure of
64 which would harm the business operations of the proprietor and
65 has not been intentionally disclosed by the proprietor unless
66 pursuant to a private agreement that provides that the
67 information will not be released to the public except as
68 required by law or legal process, or pursuant to law or an order
69 of a court or administrative body; and that concerns:
70 a. Trade secrets as defined in s. 688.002.
71 b. Information provided to the Florida Opportunity Fund or
72 the Institute for the Commercialization of Public Research
73 regarding a prospective investment in a private equity fund,
74 venture capital fund, angel fund, or portfolio company that is
75 proprietary to the provider of the information.
76 c. Financial statements and auditor reports of an
77 alternative investment vehicle or portfolio company, unless
78 publicly released by the alternative investment vehicle or
79 portfolio company.
80 d. Meeting materials of an alternative investment vehicle
81 or portfolio company relating to financial, operating, or
82 marketing information of the alternative investment vehicle or
83 portfolio company.
84 e. Information regarding the portfolio positions in which

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85 the alternative investment vehicles or Florida Opportunity Fund
86 invest.

87 f. Capital call and distribution notices to investors or
88 the Florida Opportunity Fund of an alternative investment
89 vehicle.

90 g. Alternative investment agreements and related records.

91 h. Information concerning investors, other than the
92 Florida Opportunity Fund, in an alternative investment vehicle
93 or portfolio company.

94 2. "Proprietary confidential business information" does
95 not include:

96 a. The name, address, and vintage year of an alternative
97 investment vehicle or Florida Opportunity Fund and the identity
98 of the principals involved in the management of the alternative
99 investment vehicle or Florida Opportunity Fund.

100 b. The dollar amount of the commitment made by the Florida
101 Opportunity Fund to each alternative investment vehicle since
102 inception, if any.

103 c. The dollar amount and date of cash contributions made
104 by the Florida Opportunity Fund to each alternative investment
105 vehicle since inception, if any.

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

109 e. The dollar amount, on a fiscal-year-end basis, of cash
110 or other fungible distributions received by the Florida
111 Opportunity Fund plus the remaining value of alternative-vehicle
112 assets that are attributable to the Florida Opportunity Fund's

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113 investment in each alternative investment vehicle.

114 f. The net internal rate of return of each alternative
115 investment vehicle since inception.

116 g. The investment multiple of each alternative investment
117 vehicle since inception.

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

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

124 (h) "Proprietor" means an alternative investment vehicle,
125 a portfolio company in which the alternative investment vehicle
126 or Florida Opportunity Fund is invested, or an outside
127 consultant, including the respective authorized officers,
128 employees, agents, or successors in interest, that controls or
129 owns information.

130 (2) PUBLIC RECORDS EXEMPTION.--

131 (a) The following records held by the Florida Opportunity
132 Fund or the Institute for the Commercialization of Public
133 Research are confidential and exempt from s. 119.07(1) and s.
134 24(a), Art. I of the State Constitution:

135 1. Materials that relate to methods of manufacture or
136 production, potential trade secrets, or patentable material
137 received, generated, ascertained, or discovered during the
138 course of research or through research projects conducted by
139 universities and other publicly supported organizations in this
140 state.

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141 2. Information that would identify an investor or
142 potential investor who desires to remain anonymous in projects
143 reviewed by the fund or institute.

144 3. Any information received from a person from another
145 state or nation or the Federal Government which is otherwise
146 confidential or exempt pursuant to the laws of that state or
147 nation or pursuant to federal law.

148 4. Proprietary confidential business information regarding
149 alternative investments for 10 years after the termination of
150 the alternative investment.

151 (b) At the time any record made confidential and exempt by
152 this subsection, or portion thereof, is legally available or
153 subject to public disclosure for any other reason, that record,
154 or portion thereof, shall no longer be confidential and exempt
155 and shall be made available for inspection and copying.

156 (3) PUBLIC MEETINGS EXEMPTION.--

157 (a) That portion of a meeting of the board of directors of
158 the Florida Opportunity Fund or the board of directors of the
159 Institute for the Commercialization of Public Research at which
160 information is discussed which is confidential and exempt under
161 subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of
162 the State Constitution.

163 (b) Any exempt portion of a meeting shall be recorded and
164 transcribed. The boards of directors shall record the times of
165 commencement and termination of the meeting, all discussion and
166 proceedings, the names of all persons present at any time, and
167 the names of all persons speaking. An exempt portion of any
168 meeting may not be off the record.

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169 (c) A transcript and minutes of exempt portions of
170 meetings are confidential and exempt from s. 119.07(1) and s.
171 24(a), Art. I of the State Constitution.

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

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

176 (b) Notwithstanding the provisions of paragraph (2)(a), a
177 request to inspect or copy a public record that contains
178 proprietary confidential business information shall be granted
179 if the proprietor of the information fails, within a reasonable
180 period of time after the request is received by the Florida
181 Opportunity Fund or the Institute for the Commercialization of
182 Public Research, to verify the following to the fund through a
183 written declaration in the manner provided by s. 92.525:

184 1. That the requested record contains proprietary
185 confidential business information and the specific location of
186 such information within the record;

187 2. If the proprietary confidential business information is
188 a trade secret, a verification that it is a trade secret as
189 defined in s. 688.002;

190 3. That the proprietary confidential business information
191 is intended to be and is treated by the proprietor as private,
192 is the subject of efforts of the proprietor to maintain its
193 privacy, and is not readily ascertainable or publicly available
194 from any other source; and

195 4. That the disclosure of the proprietary confidential
196 business information to the public would harm the business

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197 operations of the proprietor.

198 (c)1. Any person may petition a court of competent
199 jurisdiction for an order for the public release of those
200 portions of any record made confidential and exempt by
201 subsection (2).

202 2. Any action under this subsection must be brought in
203 Orange County and the petition or other initial pleading shall
204 be served on the fund or the institute, whichever is applicable,
205 and, if determinable upon diligent inquiry, on the proprietor of
206 the information sought to be released.

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

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

211 b. A compelling public interest is served by the release
212 of the record or portions thereof which exceed the public
213 necessity for maintaining the confidentiality of such record;
214 and

215 c. The release of the record will not cause damage to or
216 adversely affect the interests of the proprietor of the released
217 information, other private persons or business entities, the
218 fund, or any trust fund the assets of which are invested by the
219 Florida Opportunity Fund.

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

223 (6) OPEN GOVERNMENT SUNSET REVIEW.--This section is
224 subject to the Open Government Sunset Review Act in accordance

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225 with s. 119.15 and shall stand repealed on October 2, 2012,
 226 unless reviewed and saved from repeal through reenactment by the
 227 Legislature.

228 Section 2. The Legislature finds that it is a public
 229 necessity that certain information held by the Florida
 230 Opportunity Fund or the Institute for the Commercialization of
 231 Public Research be made confidential and exempt from s.
 232 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State
 233 Constitution. Materials that relate to methods of manufacture or
 234 production, potential trade secrets, or patentable materials
 235 received, generated, ascertained, or discovered during the
 236 course of research or through research projects by universities,
 237 colleges, community colleges, and publicly supported
 238 organizations in this state must be confidential and exempt
 239 because the disclosure of such information would create an
 240 unfair competitive advantage for persons receiving such
 241 information. Disclosure of proprietary confidential business
 242 information to the public would harm the business operations of
 243 the proprietor. The Legislature further finds that information
 244 received by the fund or the institute from a person from another
 245 state or nation or the Federal Government which is otherwise
 246 exempt or confidential pursuant to the laws of that state or
 247 nation or pursuant to federal law should remain exempt or
 248 confidential because the highly confidential nature of research
 249 necessitates that it be protected. Without the exemptions
 250 provided by this act, the disclosure of confidential and exempt
 251 information would jeopardize the effective and efficient
 252 administration of this program. In addition, the Legislature

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253 further finds that the identity of an investor or prospective
 254 investor who wishes to remain anonymous should be confidential
 255 and exempt from public disclosure. This exemption is necessary
 256 because the disclosure of investor identities may adversely
 257 impact the ability of the fund or the institute to attract
 258 investors who desire anonymity. The Legislature also finds that
 259 it is a public necessity that proprietary confidential business
 260 information held by the fund or the institute regarding
 261 alternative investments be held confidential and exempt for 10
 262 years after the termination of the alternative investment.
 263 Disclosing proprietary confidential business information used in
 264 determining how private equity investments are made or managed
 265 by private partnerships investing assets on behalf of the fund
 266 would negatively affect the business interests of private
 267 partnerships that rely heavily on their information advantage to
 268 generate investment returns, and competitor partnerships could
 269 gain an unfair competitive advantage if provided access to such
 270 information. The release of proprietary confidential business
 271 information revealing how alternative investments are made could
 272 result in inadequate returns and ultimately frustrate attainment
 273 of the investment objective of the fund. It is the Legislature's
 274 intent to allow the public access to sufficient information in
 275 order to be informed regarding the alternative investments of
 276 the fund and to balance the public's right to information
 277 against the right of business entities to be protected from
 278 harmful disclosure of proprietary confidential business
 279 information the disclosure of which would injure them in the
 280 marketplace. The Legislature further finds that it is a public

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281 necessity that portions of meetings of the board of directors of
 282 the fund or of the board of directors of the institute at which
 283 records made confidential and exempt by this act are discussed
 284 be made exempt from public meetings requirements in order to
 285 maintain the confidential and exempt status of this information.
 286 Public oversight is preserved by requiring a transcript of any
 287 portion of a closed meeting of these boards.

288 Section 3. Subsection (8) of section 1004.226, Florida
 289 Statutes, as created by CS/CS/HB 83, 2007 Regular Session, is
 290 renumbered as subsection (9) and a new subsection (8) is added
 291 to that section, to read:

292 1004.226 The 21st Century Technology, Research, and
 293 Scholarship Enhancement Act.--

294 (8) EXEMPTIONS FROM PUBLIC RECORDS AND PUBLIC MEETINGS
 295 REQUIREMENTS; STATE UNIVERSITY RESEARCH COMMERCIALIZATION
 296 ASSISTANCE GRANT PROGRAM.--

297 (a) The following information held by the Florida
 298 Technology, Research, and Scholarship Board is confidential and
 299 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 300 Constitution:

301 1. Materials that relate to methods of manufacture or
 302 production, potential trade secrets, patentable material, trade
 303 secrets as defined in s. 688.002, or proprietary information
 304 received, generated, ascertained, or discovered by or through
 305 state university research projects submitted for funding under
 306 the State University Research Commercialization Assistance Grant
 307 Program.

308 2. Information that would identify an investor or

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309 potential investor, who desires to remain anonymous, in projects
310 reviewed by the Florida Technology, Research, and Scholarship
311 Board.

312 3. Any information received from a person or another state
313 or nation or the Federal Government which is otherwise
314 confidential or exempt under the laws of that state or nation or
315 under federal law.

316 (b)1. That portion of a meeting of the Florida Technology,
317 Research, and Scholarship Board at which information is
318 discussed that is confidential and exempt under subsection (1)
319 is exempt from s. 286.011 and s. 24(b), Art. I of the State
320 Constitution.

321 2. Any records generated during that portion of an exempt
322 meeting are confidential and exempt from s. 119.07(1) and s.
323 24(a), Art. I of the State Constitution.

324 (c)1. Information made confidential and exempt pursuant to
325 this section may be released to a governmental entity in the
326 furtherance of its duties and responsibilities.

327 2. Any public officer or employee who willfully and
328 knowingly releases such confidential and exempt information, in
329 violation of this subsection, commits a misdemeanor of the first
330 degree, punishable as provided in s. 775.082 or s. 775.083.

331 (d) This section is subject to the Open Government Sunset
332 Review Act in accordance with s. 119.15 and shall stand repealed
333 on October 2, 2012, unless reviewed and saved from repeal
334 through reenactment by the Legislature.

335 Section 4. The Legislature finds that it is a public
336 necessity that certain records held by the Florida Technology,

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337 Research, and Scholarship Board be made confidential and exempt
 338 from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the
 339 State Constitution. Materials that relate to methods of
 340 manufacture or production, actual or potential trade secrets,
 341 patentable materials, or proprietary information received,
 342 generated, ascertained, or discovered by or through state
 343 university research projects submitted for funding under the
 344 State University Research Commercialization Assistance Grant
 345 Program must be confidential and exempt because the disclosure
 346 of such information would create an unfair competitive advantage
 347 for persons receiving such information. Disclosing proprietary
 348 confidential business information derived from university
 349 research projects, including trade secrets as defined in s.
 350 688.002, Florida Statutes, would negatively affect the ability
 351 of state universities that rely heavily on the information
 352 gained from publicly funded research products to generate
 353 investment returns and competitor partnerships could gain an
 354 unfair competitive advantage if provided access to such
 355 information. The release of university-based proprietary
 356 confidential business information could result in inadequate
 357 returns and ultimately frustrate attainment of the investment
 358 objective of the State University Research Commercialization
 359 Assistance Grant Program. If such confidential and exempt
 360 information regarding research in progress were released
 361 pursuant to a public records request, others would be allowed to
 362 take the benefit of the research without compensation or
 363 reimbursement. The Legislature further finds that information
 364 received by the Florida Technology, Research, and Scholarship

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365 Board from a person from another state or nation or the Federal
366 Government which is otherwise exempt or confidential pursuant to
367 the laws of that state or nation or pursuant to federal law
368 should remain exempt or confidential because the highly
369 confidential nature of research necessitates that it be
370 protected. Without the exemptions provided by this act, the
371 disclosure of confidential and exempt information would
372 jeopardize the effective and efficient administration of this
373 program. In addition, the Legislature further finds that the
374 identity of an investor or prospective investor who wishes to
375 remain anonymous should be confidential and exempt from public
376 disclosure. This exemption is necessary because the disclosure
377 of investor identities may adversely impact the ability of state
378 universities to attract investors who desire anonymity. The
379 Legislature further finds that it is a public necessity that
380 portions of meetings of the Florida Technology, Research, and
381 Scholarship Board at which information made confidential and
382 exempt by this act is discussed be made exempt from public
383 meetings requirements in order to allow the Florida Technology,
384 Research, and Scholarship Board to maintain the confidential and
385 exempt status of this information.

386 Section 5. This act shall take effect July 1, 2007, if
387 CS/CS/HB 83 or similar legislation is adopted in the same
388 legislative session or an extension thereof and becomes law.