

Bill No. CS for CS for SB 2422

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1 to invest in a portfolio company.

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

4 (d) "Institute for the Commercialization of Public
5 Research" or "institute" means the institute established by s.
6 288.9625.

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

11 (f) "Portfolio positions" means individual investments
12 in portfolio companies that are made by the Florida
13 Opportunity Fund, including information or specific investment
14 terms associated with any portfolio company investment.

15 (g)1. "Proprietary confidential business information"
16 means information that has been designated by the proprietor
17 when provided to the Florida Opportunity Fund or the Institute
18 for the Commercialization of Public Research as information
19 that is owned or controlled by a proprietor; that is intended
20 to be and is treated by the proprietor as private, the
21 disclosure of which would harm the business operations of the
22 proprietor and has not been intentionally disclosed by the
23 proprietor unless pursuant to a private agreement that
24 provides that the information will not be released to the
25 public except as required by law or legal process, or pursuant
26 to law or an order of a court or administrative body; and that
27 concerns:

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

29 b. Information provided to the Florida Opportunity
30 Fund or the Institute for the Commercialization of Public
31 Research regarding a prospective investment in a private

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1 equity fund, venture capital fund, angel fund, or portfolio
2 company that is proprietary to the provider of the
3 information.

4 c. Financial statements and auditor reports of an
5 alternative investment vehicle or portfolio company, unless
6 publicly released by the alternative investment vehicle or
7 portfolio company.

8 d. Meeting materials of an alternative investment
9 vehicle or portfolio company relating to financial, operating,
10 or marketing information of the alternative investment vehicle
11 or portfolio company.

12 e. Information regarding the portfolio positions in
13 which the alternative investment vehicles or Florida
14 Opportunity Fund invest.

15 f. Capital call and distribution notices to investors
16 or the Florida Opportunity Fund of an alternative investment
17 vehicle.

18 g. Alternative investment agreements and related
19 records.

20 h. Information concerning investors, other than the
21 Florida Opportunity Fund, in an alternative investment vehicle
22 or portfolio company.

23 2. "Proprietary confidential business information"
24 does not include:

25 a. The name, address, and vintage year of an
26 alternative investment vehicle or Florida Opportunity Fund and
27 the identity of the principals involved in the management of
28 the alternative investment vehicle or Florida Opportunity
29 Fund.

30 b. The dollar amount of the commitment made by the
31 Florida Opportunity Fund to each alternative investment

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1 vehicle since inception, if any.

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

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

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

14 f. The net internal rate of return of each alternative
15 investment vehicle since inception.

16 g. The investment multiple of each alternative
17 investment vehicle since inception.

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

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

24 (h) "Proprietor" means an alternative investment
25 vehicle, a portfolio company in which the alternative
26 investment vehicle or Florida Opportunity Fund is invested, or
27 an outside consultant, including the respective authorized
28 officers, employees, agents, or successors in interest, which
29 controls or owns information.

30 (2) PUBLIC-RECORDS EXEMPTION.--

31 (a) The following records held by the Florida

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1 Opportunity Fund or the Institute for the Commercialization of
2 Public Research are confidential and exempt from s. 119.07(1)
3 and s. 24(a), Art. I of the State Constitution:

4 1. Materials that relate to methods of manufacture or
5 production, potential trade secrets, or patentable material
6 that was received, generated, ascertained, or discovered
7 during the course of research or through research projects
8 conducted by universities and other publicly supported
9 organizations in this state.

10 2. Information that would identify an investor or
11 potential investor who desires to remain anonymous in projects
12 reviewed by the fund or institute.

13 3. Any information received from a person from another
14 state or nation or the Federal Government which is otherwise
15 confidential or exempt pursuant to the laws of that state or
16 nation or federal law.

17 4. Proprietary confidential business information
18 regarding alternative investments for 10 years after the
19 termination of the alternative investment.

20 (b) At the time any record made confidential and
21 exempt by this subsection, or portion thereof, is legally
22 available or subject to public disclosure for any other
23 reason, that record, or portion thereof, shall no longer be
24 confidential and exempt and shall be made available for
25 inspection and copying.

26 (3) PUBLIC-MEETINGS EXEMPTION.--

27 (a) That portion of a meeting of the board of
28 directors of the Florida Opportunity Fund or the board of
29 directors of the Institute for the Commercialization of Public
30 Research at which information is discussed which is
31 confidential and exempt under subsection (2) is exempt from s.

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1 286.011 and s. 24(b), Art. I of the State Constitution.

2 (b) Any exempt portion of a meeting shall be recorded
3 and transcribed. The boards of directors shall record the
4 times of commencement and termination of the meeting, all
5 discussion and proceedings, the names of all persons present
6 at any time, and the names of all persons speaking. An exempt
7 portion of any meeting may not be off the record.

8 (c) A transcript and minutes of exempt portions of
9 meetings are confidential and exempt from s. 119.07(1) and s.
10 24(a), Art. I of the State Constitution.

11 (4) REQUEST TO INSPECT OR COPY A RECORD.

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

16 (b) Notwithstanding paragraph (2)(a), a request to
17 inspect or copy a public record that contains proprietary
18 confidential business information shall be granted if the
19 proprietor of the information fails, within a reasonable
20 period of time after the request is received by the Florida
21 Opportunity Fund or the Institute for the Commercialization of
22 Public Research, to verify the following to the fund through a
23 written declaration in the manner provided in s. 92.525:

24 1. That the requested record contains proprietary
25 confidential business information along with the specific
26 location of such information within the record;

27 2. If the proprietary confidential business
28 information is a trade secret, a verification that it is a
29 trade secret as defined in s. 688.002;

30 3. That the proprietary confidential business
31 information is intended to be and is treated by the proprietor

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1 as private, is the subject of efforts of the proprietor to
2 maintain its privacy, and is not readily ascertainable or
3 publicly available from any other source; and

4 4. That the disclosure of the proprietary confidential
5 business information to the public would harm the business
6 operations of the proprietor.

7 (c)1. Any person may petition a court of competent
8 jurisdiction for an order for the public release of those
9 portions of any record made confidential and exempt by
10 subsection (2).

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

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

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

20 b. A compelling public interest is served by the
21 release of the record or portions thereof which exceed the
22 public necessity for maintaining the confidentiality of such
23 record; and

24 c. The release of the record will not cause damage to
25 or adversely affect the interests of the proprietor of the
26 released information, other private persons or business
27 entities, the fund, or any trust fund the assets of which are
28 invested by the Florida Opportunity Fund.

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

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

6 Section 2. The Legislature finds that it is a public
 7 necessity that certain information held by the Florida
 8 Opportunity Fund or the Institute for the Commercialization of
 9 Public Research be made confidential and exempt from s.
 10 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State
 11 Constitution. Materials that relate to methods of manufacture
 12 or production, potential trade secrets, or patentable
 13 materials received, generated, ascertained, or discovered
 14 during the course of research or through research projects by
 15 universities, colleges, community colleges, and publicly
 16 supported organizations in this state must be confidential and
 17 exempt because the disclosure of such information would create
 18 an unfair competitive advantage for persons receiving such
 19 information. Disclosure of proprietary confidential business
 20 information to the public would harm the business operations
 21 of the proprietor. The Legislature further finds that
 22 information received by the fund or the institute from a
 23 person from another state or nation or the Federal Government
 24 which is otherwise exempt or confidential pursuant to the laws
 25 of that state or nation or pursuant to federal law should
 26 remain exempt or confidential because the highly confidential
 27 nature of research necessitates that it be protected. Without
 28 the exemptions provided by this act, the disclosure of
 29 confidential and exempt information would jeopardize the
 30 effective and efficient administration of this program. In
 31 addition, the Legislature further finds that the identity of

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1 an investor or prospective investor who wishes to remain
2 anonymous should be confidential and exempt from public
3 disclosure. This exemption is necessary because the disclosure
4 of investor identities may adversely impact the ability of the
5 fund or the institute to attract investors who desire
6 anonymity. The Legislature also finds that it is a public
7 necessity that proprietary confidential business information
8 held by the fund or the institute regarding alternative
9 investments be held confidential and exempt for 10 years after
10 the termination of the alternative investment. Disclosing
11 proprietary confidential business information used in
12 determining how private equity investments are made or managed
13 by private partnerships investing assets on behalf of the fund
14 would negatively affect the business interests of private
15 partnerships that rely heavily on their information advantage
16 to generate investment returns, and competitor partnerships
17 could gain an unfair competitive advantage if provided access
18 to such information. The release of proprietary confidential
19 business information revealing how alternative investments are
20 made could result in inadequate returns and ultimately
21 frustrate attainment of the investment objective of the fund.
22 It is the Legislature's intent to allow the public access to
23 sufficient information in order to be informed regarding the
24 alternative investments of the fund and to balance the
25 public's right to information against the right of business
26 entities to be protected from harmful disclosure of
27 proprietary confidential business information, the disclosure
28 of which would injure them in the marketplace. The Legislature
29 further finds that it is a public necessity that portions of
30 meetings of the board of directors of the fund or of the board
31 of directors of the institute at which records made

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1 confidential and exempt by this act are discussed be made
 2 exempt from public-meetings requirements in order to maintain
 3 the confidential and exempt status of this information. Public
 4 oversight is preserved by requiring a transcript of any
 5 portion of a closed meeting of these boards.

6 Section 3. Subsection (8) of section 1004.226, Florida
 7 Statutes, as created by CS for CS for CS for SB 2414, 2007
 8 Regular Session, is renumbered as subsection (9) and a new
 9 subsection (8) is added to that section, to read:

10 1004.226 The 21st Century Technology, Research, and
 11 Scholarship Enhancement Act.--

12 (8) EXEMPTIONS FROM PUBLIC-RECORDS AND PUBLIC-MEETINGS
 13 REQUIREMENTS; STATE UNIVERSITY RESEARCH COMMERCIALIZATION
 14 ASSISTANCE GRANT PROGRAM.--

15 (a) The following information held by the Florida
 16 Technology, Research, and Scholarship Board is confidential
 17 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 18 Constitution:

19 1. Materials that relate to methods of manufacture or
 20 production, potential trade secrets, patentable material,
 21 trade secrets as defined in s. 688.002, or proprietary
 22 information received, generated, ascertained, or discovered by
 23 or through state university research projects submitted for
 24 funding under the State University Research Commercialization
 25 Assistance Grant Program.

26 2. Information that would identify an investor or
 27 potential investor who desires to remain anonymous in projects
 28 reviewed by the Florida Technology, Research, and Scholarship
 29 Board.

30 3. Any information received from a person or another
 31 state or nation or the Federal Government which is otherwise

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1 confidential or exempt under the laws of that state or nation
2 or under federal law.

3 (b)1. That portion of a meeting of the Florida
4 Technology, Research, and Scholarship Board at which
5 information is discussed which is confidential and exempt
6 under subsection (1) is exempt from s. 286.011 and s. 24(b),
7 Art. I of the State Constitution.

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

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

14 2. Any public officer or employee who willfully and
15 knowingly releases such confidential and exempt information,
16 in violation of this subsection, commits a misdemeanor of the
17 first degree, punishable as provided in s. 775.082 or s.
18 775.083.

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

23 Section 4. The Legislature finds that it is a public
24 necessity that certain records held by the Florida Technology,
25 Research, and Scholarship Board be made confidential and
26 exempt from s. 119.07(1), Florida Statutes, and Section 24(a)
27 of Article I of the State Constitution. Materials that relate
28 to methods of manufacture or production, actual or potential
29 trade secrets, patentable materials, or proprietary
30 information received, generated, ascertained, or discovered by
31 or through state university research projects submitted for

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1 funding under the State University Research Commercialization
2 Assistance Grant Program must be confidential and exempt
3 because the disclosure of such information would create an
4 unfair competitive advantage for persons receiving such
5 information. Disclosing proprietary confidential business
6 information derived from university research projects,
7 including trade secrets as defined in s. 688.002, Florida
8 Statutes, would negatively affect the ability of state
9 universities that rely heavily on the information gained from
10 publicly funded research products to generate investment
11 returns and competitor partnerships could gain an unfair
12 competitive advantage if provided access to such information.
13 The release of university-based proprietary confidential
14 business information could result in inadequate returns and
15 ultimately frustrate attainment of the investment objective of
16 the State University Research Commercialization Assistance
17 Grant Program. If such confidential and exempt information
18 regarding research in progress were released pursuant to a
19 public records request, others would be allowed to take the
20 benefit of the research without compensation or reimbursement.
21 The Legislature further finds that information received by the
22 Florida Technology, Research, and Scholarship Board from a
23 person from another state or nation or the Federal Government
24 which is otherwise exempt or confidential pursuant to the laws
25 of that state or nation, or federal law, should remain exempt
26 or confidential because the highly confidential nature of
27 research necessitates that it be protected. Without the
28 exemptions provided by this act, the disclosure of
29 confidential and exempt information would jeopardize the
30 effective and efficient administration of this program. In
31 addition, the Legislature further finds that the identity of

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1 an investor or prospective investor who wishes to remain
2 anonymous should be confidential and exempt from public
3 disclosure. This exemption is necessary because the disclosure
4 of investor identities may adversely affect the ability of
5 state universities to attract investors who desire anonymity.
6 The Legislature further finds that it is a public necessity
7 that portions of meetings of the Florida Technology, Research,
8 and Scholarship Board at which information made confidential
9 and exempt by this act is discussed be made exempt from
10 public-meetings requirements in order to allow the Florida
11 Technology, Research, and Scholarship Board to maintain the
12 confidential and exempt status of this information.

13 Section 5. This act shall take effect July 1, 2007, if
14 CS for CS for CS for Senate Bill 2414 or similar legislation
15 is adopted in the same legislative session or an extension
16 thereof and becomes law.

17
18

19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete everything before the enacting clause

22

23 and insert:

24 A bill to be entitled
25 An act relating to public records and meetings;
26 creating s. 288.9626, F.S.; providing
27 definitions; providing an exemption from
28 public-records requirements for certain
29 information held by the Florida Opportunity
30 Fund and for certain information held by the
31 Institute for the Commercialization of Public

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

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