

Bill No. CS for SB 2422

Barcode 401068

CHAMBER ACTION

Senate

House

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The Committee on Governmental Operations (Lawson) recommended
the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 288.9630, Florida Statutes, is
created to read:

288.9630 Exemptions from public-records and
public-meetings requirements; SURE Venture Capital Fund and
the Institute for the Commercialization of Public Research.--

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

(a) "Alternative investment" means an investment by
the SURE Venture Capital Fund in a private equity fund,
venture capital fund, or angel fund or a direct investment in
a portfolio company through a distribution of securities to
its partners or shareholders by an alternative investment
vehicle.

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

Bill No. CS for SB 2422

Barcode 401068

1 structure through which the SURE Venture Capital Fund invests
2 in a portfolio company.

3 (c) "Institute for the Commercialization of Public
4 Research" or "institute" means the institute established by s.
5 288.9682.

6 (d) "Portfolio company" means a corporation or other
7 issuer, any of whose securities are owned by an alternative
8 investment vehicle or the SURE Venture Capital Fund and any
9 subsidiary of such corporation or other issuer.

10 (e) "Portfolio positions" means individual investments
11 in portfolio companies which are made by the SURE Venture
12 Capital Fund, including information or specific investment
13 terms associated with any portfolio company investment.

14 (f) "Proprietor" means an alternative investment
15 vehicle, a portfolio company in which the alternative
16 investment vehicle or SURE Venture Capital Fund is invested,
17 or an outside consultant, including its respective authorized
18 officer, employee, agent, or successor in interest, which
19 controls or owns information provided to the SURE Venture
20 Capital Fund.

21 (g)1. "Proprietary confidential business information"
22 means information that has been designated by the proprietor
23 when provided to the SURE Venture Capital Fund or the
24 Institute for the Commercialization of Public Research as
25 information that is owned or controlled by a proprietor; that
26 is intended to be and is treated by the proprietor as private,
27 the disclosure of which would harm the business operations of
28 the proprietor and has not been intentionally disclosed by the
29 proprietor unless pursuant to a private agreement that
30 provides that the information will not be released to the
31 public except as required by law or legal process, or pursuant

Bill No. CS for SB 2422

Barcode 401068

1 to law or an order of a court or administrative body; and that
2 concerns:

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

4 b. Information provided to the SURE Venture Capital
5 Fund or the Institute for the Commercialization of Public
6 Research regarding a prospective investment in a private
7 equity fund, venture capital fund, angel fund, or portfolio
8 company which is proprietary to the provider of the
9 information.

10 c. Financial statements and auditor reports of an
11 alternative investment vehicle or portfolio company, unless
12 such records have been released by the alternative investment
13 vehicle or portfolio company and are publicly available.

14 d. Meeting materials of an alternative investment
15 vehicle relating to financial, operating, or marketing
16 information of the alternative investment vehicle or portfolio
17 company.

18 e. Information regarding the portfolio positions in
19 which an alternative investment vehicle or the SURE Venture
20 Capital Fund invests.

21 f. Capital call and distribution notices to investors
22 of an alternative investment vehicle or the SURE Venture
23 Capital Fund.

24 g. Alternative investment agreements and related
25 records.

26 h. Information concerning investors, other than the
27 SURE Venture Capital Fund, in an alternative investment
28 vehicle or portfolio company.

29 2. "Proprietary confidential business information"
30 does not include:

31 a. The name, address, and vintage year of an

Bill No. CS for SB 2422

Barcode 401068

1 alternative investment vehicle or the SURE Venture Capital
2 Fund and the identity of the principals involved in the
3 management of the alternative investment vehicle or the SURE
4 Venture Capital Fund.

5 b. The dollar amount of the commitment made by the
6 SURE Venture Capital Fund to each alternative investment
7 vehicle since inception.

8 c. The dollar amount and date of cash contributions
9 made by the SURE Venture Capital Fund to each alternative
10 investment vehicle since inception.

11 d. The dollar amount, on a fiscal-year-end basis, of
12 cash or other fungible distributions received by the SURE
13 Venture Capital Fund from each alternative investment vehicle.

14 e. The dollar amount, on a fiscal-year-end basis, of
15 cash or other fungible distributions received by the SURE
16 Venture Capital Fund plus the remaining value of
17 alternative-vehicle assets that are attributable to the SURE
18 Venture Capital Fund's investment in each alternative
19 investment vehicle.

20 f. The net internal rate of return of each alternative
21 investment vehicle since inception.

22 g. The investment multiple of each alternative
23 investment vehicle since inception.

24 h. The dollar amount of the total management fees and
25 costs paid on an annual fiscal-year-end basis by the SURE
26 Venture Capital Fund to each alternative investment vehicle.

27 i. The dollar amount of cash profit received by the
28 SURE Venture Capital Fund from each alternative investment
29 vehicle on a fiscal-year-end basis.

30 (h) "SURE Venture Capital Fund" or "fund" means the
31 SURE Venture Capital Fund as defined in s. 288.9623.

Bill No. CS for SB 2422

Barcode 401068

1 (2) PUBLIC-RECORDS EXEMPTION.--

2 (a) The following records held by the SURE Venture
3 Capital Fund or the Institute for the Commercialization of
4 Public Research are confidential and exempt from s. 119.07(1)
5 and s. 24(a), Art. I of the State Constitution:

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

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

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

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

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

28 (3) PUBLIC-MEETINGS EXEMPTION.--

29 (a) That portion of a meeting of the board of
30 directors of the SURE Venture Capital Fund or the Institute
31 for the Commercialization of Public Research at which

Bill No. CS for SB 2422

Barcode 401068

1 information is discussed which is confidential and exempt
2 under subsection (2) is exempt from s. 286.011 and s. 24(b),
3 Art. I of the State Constitution.

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

10 (c) A transcript and minutes of exempt portions of
11 meetings are confidential and exempt from s. 119.07(1) and s.
12 24(a), Art. I of the State Constitution.

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

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

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

27 1. That the requested record contains proprietary
28 confidential business information and the specific location of
29 such information within the record;

30 2. If the proprietary confidential business
31 information is a trade secret, a verification that it is a

Bill No. CS for SB 2422

Barcode 401068

1 trade secret as defined in s. 688.002;

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

7 4. That the disclosure of the proprietary confidential
8 business information to the public would harm the business
9 operations of the proprietor.

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

14 2. Any action under this subsection must be brought in
15 Orange County, Florida, and the petition or other initial
16 pleading shall be served on the the SURE Venture Capital Fund
17 or the institute, whichever is applicable, and, if
18 determinable upon diligent inquiry, on the proprietor of the
19 information sought to be released.

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

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

24 b. A compelling public interest is served by the
25 release of the record or portions thereof which exceed the
26 public necessity for maintaining the confidentiality of such
27 record; and

28 c. The release of the record will not cause damage to
29 or adversely affect the interests of the proprietor of the
30 released information, other private persons or business
31 entities, the SURE Venture Capital Fund, the institute, or any

Bill No. CS for SB 2422

Barcode 401068

1 trust fund, the assets of which are invested by the SURE
2 Venture Capital Fund.

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

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

11 Section 2. The Legislature finds that it is a public
12 necessity that certain information held by the SURE Venture
13 Capital Fund or the Institute for the Commercialization of
14 Public Research be made confidential and exempt from s.
15 119.07(1), Florida Statutes, and Section 24(a), Article I of
16 the State Constitution. Materials that relate to methods of
17 manufacture or production, potential trade secrets, or
18 patentable materials received, generated, ascertained, or
19 discovered during the course of research or through research
20 projects by universities and other publicly supported
21 organizations in this state must be confidential and exempt
22 because the disclosure of such information would create an
23 unfair competitive advantage for persons receiving such
24 information. Disclosing information derived from university
25 research projects would negatively affect the ability of
26 universities that rely heavily on the information gained from
27 publicly funded research products to generate investment
28 returns, and competitor partnerships could gain an unfair
29 competitive advantage if provided access to such information.
30 The release of university-based research information could
31 result in inadequate returns and ultimately frustrate

Bill No. CS for SB 2422

Barcode 401068

1 attainment of the investment objective of the fund. If such
2 confidential and exempt information regarding research in
3 progress were released pursuant to a public-records request,
4 others would be allowed to take the benefit of the research
5 without compensation or reimbursement. The Legislature further
6 finds that information received by the fund or the institute
7 from a person from another state or nation or the Federal
8 Government which is otherwise exempt or confidential pursuant
9 to the laws of that state or nation or pursuant to federal law
10 should remain exempt or confidential because the highly
11 confidential nature of research necessitates that it be
12 protected. Without the exemptions provided by this act, the
13 disclosure of confidential and exempt information would
14 jeopardize the effective and efficient administration of this
15 program. In addition, the Legislature further finds that the
16 identity of an investor or prospective investor who wishes to
17 remain anonymous should be confidential and exempt from public
18 disclosure. This exemption is necessary because the disclosure
19 of investor identities may adversely impact the ability of the
20 fund or institute to attract investors who desire anonymity.
21 The Legislature also finds that it is a public necessity that
22 proprietary confidential business information held by the fund
23 or the institute regarding alternative investments be held
24 confidential and exempt for 10 years after the termination of
25 the alternative investment. Disclosing proprietary
26 confidential business information used in determining how
27 private equity investments are made or managed by private
28 partnerships investing assets on behalf of the fund would
29 negatively affect the business interests of private
30 partnerships that rely heavily on their information advantage
31 to generate investment returns, and competitor partnerships

Bill No. CS for SB 2422

Barcode 401068

1 could gain an unfair competitive advantage if provided access
2 to such information. The release of proprietary confidential
3 business information revealing how alternative investments are
4 made could result in inadequate returns and ultimately
5 frustrate attainment of the investment objective of the fund.
6 It is the Legislature's intent to allow the public access to
7 sufficient information in order to be informed regarding the
8 alternative investments of the fund and to balance the
9 public's right to information against the right of business
10 entities to be protected from harmful disclosure of
11 proprietary confidential business information, the disclosure
12 of which would injure them in the marketplace. The Legislature
13 further finds that it is a public necessity that portions of
14 meetings of the board of directors of the fund or the
15 institute at which records made confidential and exempt by
16 this act are discussed be made exempt from public-meetings
17 requirements in order to allow the corporation to maintain the
18 confidential and exempt status of this information. Public
19 oversight is preserved by requiring a transcript of any
20 portion of a closed meeting of these boards.

21 Section 3. This act shall take effect July 1, 2007, if
22 Senate Bill 2420 or similar legislation is adopted in the same
23 legislative session or an extension thereof and becomes law.

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

27 And the title is amended as follows:

28 Delete everything before the enacting clause

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30 and insert:

31 A bill to be entitled

Bill No. CS for SB 2422

Barcode 401068

1 An act relating to public records and meetings;
2 creating s. 288.9630, F.S.; creating
3 definitions; creating an exemption from
4 public-records requirements for certain
5 information held by the SURE Venture Capital
6 Fund or the Institute for the Commercialization
7 of Public Research; providing exceptions to the
8 exemption; creating an exemption from
9 public-meetings requirements for portions of
10 meetings of the board of directors of the SURE
11 Venture Capital Fund or the Institute for the
12 Commercialization of Public Research at which
13 confidential and exempt records are discussed;
14 providing penalties; providing for future
15 legislative review and repeal; providing a
16 statement of public necessity; providing a
17 contingent effective date.

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