

By the Committees on Governmental Operations; Commerce; and
Senator Ring

585-2553-07

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

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

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

24 288.9630 Exemptions from public-records and
25 public-meetings requirements; SURE Venture Capital Fund and
26 the Institute for the Commercialization of Public Research.--

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

28 (a) "Alternative investment" means an investment by
29 the SURE Venture Capital Fund in a private equity fund,
30 venture capital fund, or angel fund or a direct investment in
31 a portfolio company through a distribution of securities to

1 its partners or shareholders by an alternative investment
2 vehicle.

3 (b) "Alternative investment vehicle" means the limited
4 partnership, limited liability company, or similar legal
5 structure through which the SURE Venture Capital Fund invests
6 in a portfolio company.

7 (c) "Institute for the Commercialization of Public
8 Research" or "institute" means the institute established by s.
9 288.9682.

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

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

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

25 (g)1. "Proprietary confidential business information"
26 means information that has been designated by the proprietor
27 when provided to the SURE Venture Capital Fund or the
28 Institute for the Commercialization of Public Research as
29 information that is owned or controlled by a proprietor; that
30 is intended to be and is treated by the proprietor as private,
31 the disclosure of which would harm the business operations of

1 the proprietor and has not been intentionally disclosed by the
2 proprietor unless pursuant to a private agreement that
3 provides that the information will not be released to the
4 public except as required by law or legal process, or pursuant
5 to law or an order of a court or administrative body; and that
6 concerns:

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

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

14 c. Financial statements and auditor reports of an
15 alternative investment vehicle or portfolio company, unless
16 such records have been released by the alternative investment
17 vehicle or portfolio company and are publicly available.

18 d. Meeting materials of an alternative investment
19 vehicle relating to financial, operating, or marketing
20 information of the alternative investment vehicle or portfolio
21 company.

22 e. Information regarding the portfolio positions in
23 which an alternative investment vehicle or the SURE Venture
24 Capital Fund invests.

25 f. Capital call and distribution notices to investors
26 of an alternative investment vehicle or the SURE Venture
27 Capital Fund.

28 g. Alternative investment agreements and related
29 records.

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1 h. Information concerning investors, other than the
2 SURE Venture Capital Fund, in an alternative investment
3 vehicle or portfolio company.

4 2. "Proprietary confidential business information"
5 does not include:

6 a. The name, address, and vintage year of an
7 alternative investment vehicle or the SURE Venture Capital
8 Fund and the identity of the principals involved in the
9 management of the alternative investment vehicle or the SURE
10 Venture Capital Fund.

11 b. The dollar amount of the commitment made by the
12 SURE Venture Capital Fund to each alternative investment
13 vehicle since inception.

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

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

20 e. The dollar amount, on a fiscal-year-end basis, of
21 cash or other fungible distributions received by the SURE
22 Venture Capital Fund plus the remaining value of
23 alternative-vehicle assets that are attributable to the SURE
24 Venture Capital Fund's investment in each alternative
25 investment vehicle.

26 f. The net internal rate of return of each alternative
27 investment vehicle since inception.

28 g. The investment multiple of each alternative
29 investment vehicle since inception.

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

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

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

9 (2) PUBLIC-RECORDS EXEMPTION.--

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

14 1. Materials that relate to methods of manufacture or
15 production, potential trade secrets, or patentable material
16 received, generated, ascertained, or discovered during the
17 course of research or through research projects conducted by
18 universities and other publicly supported organizations in
19 this state.

20 2. Information that would identify an investor or
21 potential investor, who desires to remain anonymous, in
22 projects reviewed by the fund or institute.

23 3. Any information received from a person or another
24 state or nation or the Federal Government which is otherwise
25 confidential or exempt pursuant to the laws of that state or
26 nation or pursuant to federal law.

27 4. Proprietary confidential business information
28 regarding alternative investments for 10 years after the
29 termination of the alternative investment.

30 (b) At the time any record made confidential and
31 exempt by this subsection, or portion thereof, is legally

1 available or subject to public disclosure for any other
2 reason, that record, or portion thereof, shall no longer be
3 confidential and exempt and shall be made available for
4 inspection and copying.

5 (3) PUBLIC-MEETINGS EXEMPTION.--

6 (a) That portion of a meeting of the board of
7 directors of the SURE Venture Capital Fund or the Institute
8 for the Commercialization of Public Research at which
9 information is discussed which is confidential and exempt
10 under subsection (2) is exempt from s. 286.011 and s. 24(b),
11 Art. I of the State Constitution.

12 (b) Any exempt portion of a meeting shall be recorded
13 and transcribed. The board shall record the times of
14 commencement and termination of the meeting, all discussion
15 and proceedings, the names of all persons present at any time,
16 and the names of all persons speaking. An exempt portion of
17 any meeting may not be off the record.

18 (c) A transcript and minutes of exempt portions of
19 meetings are confidential and exempt from s. 119.07(1) and s.
20 24(a), Art. I of the State Constitution.

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

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

26 (b) Notwithstanding the provisions of paragraph
27 (2)(a), a request to inspect or copy a public record that
28 contains proprietary confidential business information shall
29 be granted if the proprietor of the information fails, within
30 a reasonable period of time after the request is received by
31 the SURE Venture Capital Fund or the Institute for the

1 Commercialization of Public Research, to verify the following
2 to the fund or the institute through a written declaration in
3 the manner provided by s. 92.525:

4 1. That the requested record contains proprietary
5 confidential business information and the specific location of
6 such information within the record;

7 2. If the proprietary confidential business
8 information is a trade secret, a verification that it is a
9 trade secret as defined in s. 688.002;

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

15 4. That the disclosure of the proprietary confidential
16 business information to the public would harm the business
17 operations of the proprietor.

18 (c)1. Any person may petition a court of competent
19 jurisdiction for an order for the public release of those
20 portions of any record made confidential and exempt by
21 subsection (2).

22 2. Any action under this subsection must be brought in
23 Orange County, Florida, and the petition or other initial
24 pleading shall be served on the the SURE Venture Capital Fund
25 or the institute, whichever is applicable, and, if
26 determinable upon diligent inquiry, on the proprietor of the
27 information sought to be released.

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

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

1 b. A compelling public interest is served by the
2 release of the record or portions thereof which exceed the
3 public necessity for maintaining the confidentiality of such
4 record; and

5 c. The release of the record will not cause damage to
6 or adversely affect the interests of the proprietor of the
7 released information, other private persons or business
8 entities, the SURE Venture Capital Fund, the institute, or any
9 trust fund, the assets of which are invested by the SURE
10 Venture Capital Fund.

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

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

19 Section 2. The Legislature finds that it is a public
20 necessity that certain information held by the SURE Venture
21 Capital Fund or the Institute for the Commercialization of
22 Public Research be made confidential and exempt from s.
23 119.07(1), Florida Statutes, and Section 24(a), Article I of
24 the State Constitution. Materials that relate to methods of
25 manufacture or production, potential trade secrets, or
26 patentable materials received, generated, ascertained, or
27 discovered during the course of research or through research
28 projects by universities and other publicly supported
29 organizations in this state must be confidential and exempt
30 because the disclosure of such information would create an
31 unfair competitive advantage for persons receiving such

1 information. Disclosing information derived from university
2 research projects would negatively affect the ability of
3 universities that rely heavily on the information gained from
4 publicly funded research products to generate investment
5 returns, and competitor partnerships could gain an unfair
6 competitive advantage if provided access to such information.
7 The release of university-based research information could
8 result in inadequate returns and ultimately frustrate
9 attainment of the investment objective of the fund. If such
10 confidential and exempt information regarding research in
11 progress were released pursuant to a public-records request,
12 others would be allowed to take the benefit of the research
13 without compensation or reimbursement. The Legislature further
14 finds that information received by the fund or the institute
15 from a person from another state or nation or the Federal
16 Government which is otherwise exempt or confidential pursuant
17 to the laws of that state or nation or pursuant to federal law
18 should remain exempt or confidential because the highly
19 confidential nature of research necessitates that it be
20 protected. Without the exemptions provided by this act, the
21 disclosure of confidential and exempt information would
22 jeopardize the effective and efficient administration of this
23 program. In addition, the Legislature further finds that the
24 identity of an investor or prospective investor who wishes to
25 remain anonymous should be confidential and exempt from public
26 disclosure. This exemption is necessary because the disclosure
27 of investor identities may adversely impact the ability of the
28 fund or institute to attract investors who desire anonymity.
29 The Legislature also finds that it is a public necessity that
30 proprietary confidential business information held by the fund
31 or the institute regarding alternative investments be held

1 confidential and exempt for 10 years after the termination of
2 the alternative investment. Disclosing proprietary
3 confidential business information used in determining how
4 private equity investments are made or managed by private
5 partnerships investing assets on behalf of the fund would
6 negatively affect the business interests of private
7 partnerships that rely heavily on their information advantage
8 to generate investment returns, and competitor partnerships
9 could gain an unfair competitive advantage if provided access
10 to such information. The release of proprietary confidential
11 business information revealing how alternative investments are
12 made could result in inadequate returns and ultimately
13 frustrate attainment of the investment objective of the fund.
14 It is the Legislature's intent to allow the public access to
15 sufficient information in order to be informed regarding the
16 alternative investments of the fund and to balance the
17 public's right to information against the right of business
18 entities to be protected from harmful disclosure of
19 proprietary confidential business information, the disclosure
20 of which would injure them in the marketplace. The Legislature
21 further finds that it is a public necessity that portions of
22 meetings of the board of directors of the fund or the
23 institute at which records made confidential and exempt by
24 this act are discussed be made exempt from public-meetings
25 requirements in order to allow the corporation to maintain the
26 confidential and exempt status of this information. Public
27 oversight is preserved by requiring a transcript of any
28 portion of a closed meeting of these boards.

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

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 2422
4 Provides definitions for "alternative investment,"
5 "alternative investment vehicle," "portfolio company,"
6 "portfolio positions," "proprietor," and "proprietary
7 confidential business information." Expressly excludes certain
8 information from definition of "proprietary confidential
9 business information."
10 Provides that information that would identify an investor or
11 potential investor who desires to remain anonymous is
12 protected.
13 Provides that proprietary confidential business information
14 regarding alternative investments is protected for ten years
15 after the termination of the alternative investment. Provides
16 that at the time any record made confidential and exempt by
17 the subsection is legally available or subject to public
18 disclosure for any other reason, that record or portion
19 thereof is no longer confidential and exempt and shall be made
20 available for inspection and copying.
21 Exempts that portion of a meeting at which such information is
22 discussed.
23 Authorizes release to another governmental entity in the
24 performance of its duties.
25 Requires release if proprietor fails to verify that the
26 information meets certain requirements.
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