

By Senator Ring

32-1955-07

See HB 131

1 A bill to be entitled

2 An act relating to public records; creating s.

3 288.96275, F.S.; providing definitions;

4 defining "proprietary confidential business

5 information" and specifying information that

6 does not constitute proprietary confidential

7 business information; creating an exemption

8 from public-records requirements for

9 proprietary confidential business information

10 held by the Florida Opportunity Fund or the

11 Florida Opportunity Fund Management Corporation

12 regarding alternative investments; providing

13 for limited duration of the exemption;

14 authorizing the inspection and copying of

15 confidential and exempt records if the

16 proprietor of the information fails to verify

17 that a record contains certain information

18 within a specified period of time; authorizing

19 a court to order the release of confidential

20 and exempt records upon making certain

21 findings; providing for future review and

22 repeal; providing a statement of public

23 necessity; providing a contingent effective

24 date.

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

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28 Section 1. Section 288.96275, Florida Statutes, is

29 created to read:

30 288.96275 Trade secret information; identification and

31 performance information; public-records exemption.--

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

2 (a) "Alternative investment" means an investment by
3 the Florida Opportunity Fund in a private equity fund, venture
4 capital fund, or angel fund or a direct investment in a
5 portfolio company through a distribution of securities to its
6 partners or shareholders by an alternative investment vehicle.

7 (b) "Alternative investment vehicle" means the limited
8 partnership, limited liability company, or similar legal
9 structure through which the Florida Opportunity Fund invests
10 in a portfolio company.

11 (c) "Florida Opportunity Fund" means the Florida
12 Opportunity Fund authorized in s. 288.9627.

13 (d) "Florida Opportunity Fund Management Corporation"
14 means the Florida Opportunity Fund Management Corporation
15 authorized in s. 288.9626.

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

20 (f) "Portfolio positions" means individual investments
21 in portfolio companies that are made by the alternative
22 investment vehicles, including information or specific
23 investment terms associated with any portfolio company
24 investment.

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

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1 (h)1. "Proprietary confidential business information"
2 means information that has been designated by the proprietor
3 when provided to the Florida Opportunity Fund or the Florida
4 Opportunity Fund Management Corporation as information that is
5 owned or controlled by a proprietor; that is intended to be
6 and is treated by the proprietor as private, the disclosure of
7 which would harm the business operations of the proprietor and
8 has not been intentionally disclosed by the proprietor unless
9 pursuant to a private agreement that provides that the
10 information will not be released to the public except as
11 required by law or legal process, or pursuant to law or an
12 order of a court or administrative body; and that concerns:
13 a. Trade secrets as defined in s. 688.002.
14 b. Information provided to the Florida Opportunity
15 Fund or the Florida Opportunity Fund Management Corporation
16 regarding a prospective investment in a private equity fund,
17 venture capital fund, angel fund, or portfolio company that is
18 proprietary to the provider of the information.
19 c. Financial statements and auditor reports of an
20 alternative investment vehicle.
21 d. Meeting materials of an alternative investment
22 vehicle relating to financial, operating, or marketing
23 information of the alternative investment vehicle.
24 e. Information regarding the portfolio positions in
25 which the alternative investment vehicles invest.
26 f. Capital call and distribution notices to investors
27 of an alternative investment vehicle.
28 g. Alternative investment agreements and related
29 records.
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1 h. Information concerning investors, other than the
2 Florida Opportunity Fund, in an alternative investment
3 vehicle.

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

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

10 b. The dollar amount of the commitment made by the
11 Florida Opportunity Fund to each alternative investment
12 vehicle since inception.

13 c. The dollar amount and date of cash contributions
14 made by the Florida Opportunity Fund to each alternative
15 investment vehicle since inception.

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

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

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

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

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

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

4 (2) Proprietary confidential business information held
5 by the Florida Opportunity Fund or the Florida Opportunity
6 Fund Management Corporation regarding alternative investments
7 is confidential and exempt from s. 119.07(1) and s. 24(a),
8 Art. I of the State Constitution for 10 years after the
9 termination of the alternative investment.

10 (3) Notwithstanding the provisions of subsection (2),
11 a request to inspect or copy a public record that contains
12 proprietary confidential business information shall be granted
13 if the proprietor of the information fails, within a
14 reasonable period of time after the request is received by the
15 Florida Opportunity Fund or the Florida Opportunity Fund
16 Management Corporation, to verify the following to the Florida
17 Opportunity Fund or the Florida Opportunity Fund Management
18 Corporation through a written declaration in the manner
19 provided by s. 92.525:

20 (a) That the requested record contains proprietary
21 confidential business information and the specific location of
22 such information within the record;

23 (b) If the proprietary confidential business
24 information is a trade secret, a verification that it is a
25 trade secret as defined in s. 688.002;

26 (c) That the proprietary confidential business
27 information is intended to be and is treated by the proprietor
28 as private, is the subject of efforts of the proprietor to
29 maintain its privacy, and is not readily ascertainable or
30 publicly available from any other source; and

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1 (d) That the disclosure of the proprietary
2 confidential business information to the public would harm the
3 business operations of the proprietor.

4 (4)(a) Any person may petition a court of competent
5 jurisdiction for an order for the public release of those
6 portions of any record made confidential and exempt by
7 subsection (2).

8 (b) Any action under this subsection must be brought
9 in Orange County, Florida, and the petition or other initial
10 pleading shall be served on the Florida Opportunity Fund or
11 the Florida Opportunity Fund Management Corporation, whichever
12 is applicable, and, if determinable upon diligent inquiry, on
13 the proprietor of the information sought to be released.

14 (c) In any order for the public release of a record
15 under this subsection, the court shall make a finding that:

16 1. The record or portion thereof is not a trade secret
17 as defined in s. 688.002;

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

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

28 (5) This section is subject to the Open Government
29 Sunset Review Act in accordance with s. 119.15 and shall stand
30 repealed on October 2, 2012, unless reviewed and saved from
31 repeal through reenactment by the Legislature.

1 Section 2. The Legislature finds that it is a public
2 necessity that proprietary confidential business information
3 held by the Florida Opportunity Fund and the Florida
4 Opportunity Fund Management Corporation regarding alternative
5 investments be held confidential and exempt from s. 119.07(1),
6 Florida Statutes, and s. 24(a), Art. I of the State
7 Constitution for 10 years after the termination of the
8 alternative investment. Disclosing proprietary confidential
9 business information, including trade secrets as defined in s.
10 688.002, Florida Statutes, used in determining how private
11 equity investments are made or managed by private partnerships
12 investing assets on behalf of the Florida Opportunity Fund
13 would negatively affect the business interests of private
14 partnerships that rely heavily on their information advantage
15 to generate investment returns, and competitor partnerships
16 could gain an unfair competitive advantage if provided access
17 to such information. The release of proprietary confidential
18 business information, including trade secrets, revealing how
19 alternative investments are made could result in inadequate
20 returns and ultimately frustrate attainment of the investment
21 objective of the Florida Opportunity Fund and the Florida
22 Opportunity Fund Management Corporation. It is the
23 Legislature's intent to allow the public access to sufficient
24 information in order to be informed regarding the alternative
25 investments of the Florida Opportunity Fund and to balance the
26 public's right to information against the right of private
27 business entities to be protected from harmful disclosure of
28 confidential and exempt proprietary confidential business
29 information, the disclosure of which would injure them in the
30 marketplace. It is also the Legislature's intent to establish
31 consistency with regard to the classification of information

1 relating to alternative investments by the Florida Opportunity
2 Fund as either confidential or suitable for public disclosure.
3 In finding that the public-records exemption created by this
4 act is a public necessity, the Legislature finds that the
5 public and private harm in disclosing proprietary confidential
6 business information relating to alternative investments by
7 the Florida Opportunity Fund significantly outweighs any
8 public benefit derived from disclosure; that the exemption
9 created by this act will enhance the ability of the Florida
10 Opportunity Fund to fulfill its duties as an investment
11 fiduciary by making it more effective and competitive in the
12 marketplace as an investor that is able to gain access to the
13 best alternative investment vehicles; and that the public's
14 ability to be informed regarding the alternative investments
15 made by the Florida Opportunity Fund is preserved by the
16 disclosure of information excepted from the created exemption.

17 Section 3. This act shall take effect July 1, 2007, if
18 Senate Bill ___ or similar legislation is adopted in the same
19 legislative session or an extension thereof and becomes law.
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