

By the Committee on Governmental Operations; and Senator Ring

585-2527-07

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 regarding
11 alternative investments; providing for limited
12 duration of the exemption; authorizing the
13 inspection and copying of confidential and
14 exempt records if the proprietor of the
15 information fails to verify that a record
16 contains certain information within a specified
17 period of time; authorizing a court to order
18 the release of confidential and exempt records
19 upon making certain findings; providing for
20 future review and repeal; providing a statement
21 of public necessity; providing a contingent
22 effective date.

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

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26 Section 1. Section 288.96275, Florida Statutes, is
27 created to read:

28 288.96275 Trade secret information; identification and
29 performance information; public-records exemption.--

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

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

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

12 (d) "Portfolio company" means a corporation or other
13 issuer, any of whose securities are owned by an alternative
14 investment vehicle or the Florida Opportunity Fund and any
15 subsidiary of such corporation or other issuer.

16 (e) "Portfolio positions" means individual investments
17 in portfolio companies that are made by the alternative
18 investment vehicles, including information or specific
19 investment terms associated with any portfolio company
20 investment.

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

27 (g)1. "Proprietary confidential business information"
28 means information that has been designated by the proprietor
29 when provided to the Florida Opportunity Fund as information
30 that is owned or controlled by a proprietor; that is intended
31 to be and is treated by the proprietor as private, the

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

3 b. The dollar amount of the commitment made by the
4 Florida Opportunity Fund to each alternative investment
5 vehicle since inception.

6 c. The dollar amount and date of cash contributions
7 made by the Florida Opportunity Fund to each alternative
8 investment vehicle since inception.

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

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

18 f. The net internal rate of return of each alternative
19 investment vehicle since inception.

20 g. The investment multiple of each alternative
21 investment vehicle since inception.

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

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

28 (2) Proprietary confidential business information held
29 by the Florida Opportunity Fund regarding alternative
30 investments is confidential and exempt from s. 119.07(1) and
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1 s. 24(a), Art. I of the State Constitution for 10 years after
2 the termination of the alternative investment.

3 (3) Notwithstanding the provisions of subsection (2),
4 a request to inspect or copy a public record that contains
5 proprietary confidential business information shall be granted
6 if the proprietor of the information fails, within a
7 reasonable period of time after the request is received by the
8 Florida Opportunity Fund, to verify the following to the
9 Florida Opportunity Fund through a written declaration in the
10 manner provided by s. 92.525:

11 (a) That the requested record contains proprietary
12 confidential business information and the specific location of
13 such information within the record;

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

17 (c) That the proprietary confidential business
18 information is intended to be and is treated by the proprietor
19 as private, is the subject of efforts of the proprietor to
20 maintain its privacy, and is not readily ascertainable or
21 publicly available from any other source; and

22 (d) That the disclosure of the proprietary
23 confidential business information to the public would harm the
24 business operations of the proprietor.

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

29 (b) Any action under this subsection must be brought
30 in Orange County, Florida, and the petition or other initial
31 pleading shall be served on the Florida Opportunity Fund and,

1 if determinable upon diligent inquiry, on the proprietor of
2 the information sought to be released.

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

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

7 2. A compelling public interest is served by the
8 release of the record or portions thereof which exceed the
9 public necessity for maintaining the confidentiality of such
10 record; and

11 3. The release of the record will not cause damage to
12 or adversely affect the interests of the proprietor of the
13 released information, other private persons or business
14 entities, the Florida Opportunity Fund, or any trust fund, the
15 assets of which are invested by the Florida Opportunity Fund.

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

20 Section 2. The Legislature finds that it is a public
21 necessity that proprietary confidential business information
22 held by the Florida Opportunity Fund regarding alternative
23 investments be held confidential and exempt from s. 119.07(1),
24 Florida Statutes, and s. 24(a), Art. I of the State
25 Constitution for 10 years after the termination of the
26 alternative investment. Disclosing proprietary confidential
27 business information, including trade secrets as defined in s.
28 688.002, Florida Statutes, used in determining how private
29 equity investments are made or managed by private partnerships
30 investing assets on behalf of the Florida Opportunity Fund
31 would negatively affect the business interests of private

1 partnerships that rely heavily on their information advantage
2 to generate investment returns, and competitor partnerships
3 could gain an unfair competitive advantage if provided access
4 to such information. The release of proprietary confidential
5 business information, including trade secrets, revealing how
6 alternative investments are made could result in inadequate
7 returns and ultimately frustrate attainment of the investment
8 objective of the Florida Opportunity Fund. It is the
9 Legislature's intent to allow the public access to sufficient
10 information in order to be informed regarding the alternative
11 investments of the Florida Opportunity Fund and to balance the
12 public's right to information against the right of private
13 business entities to be protected from harmful disclosure of
14 confidential and exempt proprietary confidential business
15 information, the disclosure of which would injure them in the
16 marketplace. It is also the Legislature's intent to establish
17 consistency with regard to the classification of information
18 relating to alternative investments by the Florida Opportunity
19 Fund as either confidential or suitable for public disclosure.
20 In finding that the public-records exemption created by this
21 act is a public necessity, the Legislature finds that the
22 public and private harm in disclosing proprietary confidential
23 business information relating to alternative investments by
24 the Florida Opportunity Fund significantly outweighs any
25 public benefit derived from disclosure; that the exemption
26 created by this act will enhance the ability of the Florida
27 Opportunity Fund to fulfill its duties as an investment
28 fiduciary by making it more effective and competitive in the
29 marketplace as an investor that is able to gain access to the
30 best alternative investment vehicles; and that the public's
31 ability to be informed regarding the alternative investments

1 made by the Florida Opportunity Fund is preserved by the
2 disclosure of information excepted from the created exemption.

3 Section 3. This act shall take effect July 1, 2007, if
4 Senate Bill 1762 or similar legislation is adopted in the same
5 legislative session or an extension thereof and becomes law.

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 Senate Bill 2612

10 Removes the Florida Opportunity Fund Management Corporation
11 from the exemption.

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