

1 A bill to be entitled
 2 An act relating to public records and public meetings;
 3 amending s. 288.9626, F.S.; creating an exemption from
 4 public records requirements for information relating to
 5 investments by the Institute for the Commercialization of
 6 Public Research through the Technology Seed Capital Fund;
 7 providing an exemption from public records requirements
 8 for information held by the institute's fund management
 9 committee; creating an exemption from public meetings
 10 requirements for those portions of meetings of the board
 11 of directors of the Technology Seed Capital Fund, the
 12 board of directors of the Institute for the
 13 Commercialization of Public Research, and the institute's
 14 fund management committee at which information is
 15 discussed which is confidential and exempt from
 16 disclosure; providing penalties; providing for future
 17 legislative review and repeal of the exemptions under the
 18 Open Government Sunset Review Act; providing a statement
 19 of public necessity; providing a contingent effective
 20 date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 288.9626, Florida Statutes, is amended
 25 to read:

26 288.9626 Exemptions from public records and public
 27 meetings requirements; Florida Opportunity Fund, Technology Seed
 28 Capital Fund, and the Institute for the Commercialization of

29 Public Research.—

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

31 (a) "Alternative investment" means an investment by the
 32 Florida Opportunity Fund or the Technology Seed Capital Fund in
 33 a private equity fund, venture capital fund, or angel fund or a
 34 direct investment in a portfolio company or investment through a
 35 distribution of securities to its partners or shareholders by an
 36 alternative investment vehicle.

37 (b) "Alternative investment vehicle" means the limited
 38 partnership, limited liability company, or similar legal
 39 structure through which the Florida Opportunity Fund or the
 40 Technology Seed Capital Fund may elect to invest in a portfolio
 41 company.

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

44 (d) "Institute for the Commercialization of Public
 45 Research" or "institute" means the institute established by s.
 46 288.9625.

47 (e) "Portfolio company" means a corporation or other
 48 issuer, any of whose securities are owned by an alternative
 49 investment vehicle, ~~or~~ the Florida Opportunity Fund, or the
 50 Technology Seed Capital Fund and any subsidiary of such
 51 corporation or other issuer.

52 (f) "Portfolio positions" means individual investments in
 53 portfolio companies which ~~that~~ are made by the Florida
 54 Opportunity Fund or the Technology Seed Capital Fund, including
 55 information or specific investment terms associated with any
 56 portfolio company investment.

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57 (g)1. "Proprietary confidential business information"
58 means information that has been designated by the proprietor
59 when provided to the Florida Opportunity Fund, the Technology
60 Seed Capital Fund, or the Institute for the Commercialization of
61 Public Research or the fund management committee of the
62 institute as information that is owned or controlled by a
63 proprietor; that is intended to be and is treated by the
64 proprietor as private, the disclosure of which would harm the
65 business operations of the proprietor and has not been
66 intentionally disclosed by the proprietor unless pursuant to a
67 private agreement that provides that the information will not be
68 released to the public except as required by law or legal
69 process, or pursuant to law or an order of a court or
70 administrative body; and that concerns:

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

72 b. Information provided to the Florida Opportunity Fund,
73 the Technology Seed Capital Fund, or the Institute for the
74 Commercialization of Public Research or the fund management
75 committee of the institute regarding a prospective investment in
76 a private equity fund, venture capital fund, angel fund, or
77 portfolio company that is proprietary to the provider of the
78 information.

79 c. Financial statements and auditor reports of an
80 alternative investment vehicle or portfolio company, unless
81 publicly released by the alternative investment vehicle or
82 portfolio company.

83 d. Meeting materials of an alternative investment vehicle
84 or portfolio company relating to financial, operating, or

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85 | marketing information ~~of the alternative investment vehicle or~~
86 | ~~portfolio company.~~

87 | e. Information regarding the portfolio positions in which
88 | the alternative investment vehicles or Florida Opportunity Fund
89 | invest.

90 | f. Capital call and distribution notices to investors, the
91 | institute, or the Florida Opportunity Fund, or the Technology
92 | Seed Capital Fund of an alternative investment vehicle.

93 | g. Alternative investment agreements, technology
94 | investment agreements, and related records.

95 | h. Information concerning investors, other than the
96 | Florida Opportunity Fund or the Technology Seed Capital Fund, in
97 | an alternative investment vehicle or portfolio company.

98 | 2. "Proprietary confidential business information" does
99 | not include:

100 | a. The name, address, and vintage year of an alternative
101 | investment vehicle, the or Florida Opportunity Fund, or the
102 | Technology Seed Capital Fund, and the identity of the principals
103 | involved in the management of the alternative investment
104 | vehicle, the or Florida Opportunity Fund, or the Technology Seed
105 | Capital Fund.

106 | b. The dollar amount of the commitment made by the Florida
107 | Opportunity Fund or the Technology Seed Capital Fund to each
108 | alternative investment vehicle since inception, if any.

109 | c. The dollar amount and date of cash contributions made
110 | by the Florida Opportunity Fund or the Technology Seed Capital
111 | Fund to each alternative investment vehicle since inception, if
112 | any.

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113 d. The dollar amount, on a fiscal-year-end basis, of cash
114 or other fungible distributions received by the Florida
115 Opportunity Fund or the Technology Seed Capital Fund from each
116 alternative investment vehicle.

117 e. The dollar amount, on a fiscal-year-end basis, of cash
118 or other fungible distributions received by the Florida
119 Opportunity Fund or the Technology Seed Capital Fund plus the
120 remaining value of alternative-vehicle assets that are
121 attributable to the Florida Opportunity Fund's or the Technology
122 Seed Capital Fund's investment in each alternative investment
123 vehicle.

124 f. The net internal rate of return of each alternative
125 investment vehicle since inception.

126 g. The investment multiple of each alternative investment
127 vehicle since inception.

128 h. The dollar amount of the total management fees and
129 costs paid on an annual fiscal-year-end basis by the Florida
130 Opportunity Fund or the Technology Seed Capital Fund to each
131 alternative investment vehicle.

132 i. The dollar amount of cash profit received by the
133 Florida Opportunity Fund or the Technology Seed Capital Fund
134 from each alternative investment vehicle on a fiscal-year-end
135 basis.

136 (h) "Proprietor" means an alternative investment vehicle,
137 a portfolio company in which the alternative investment vehicle,
138 the ~~or~~ Florida Opportunity Fund, or the Technology Seed Capital
139 Fund is invested, or an outside consultant, including the
140 respective authorized officers, employees, agents, or successors

141 in interest, which ~~that~~ controls or owns information.

142 (2) PUBLIC RECORDS EXEMPTION.—

143 (a) The following records held by the Florida Opportunity
 144 Fund, the Technology Seed Capital Fund, or the Institute for the
 145 Commercialization of Public Research or its fund management
 146 committee are confidential and exempt from s. 119.07(1) and s.
 147 24(a), Art. I of the State Constitution:

148 1. Materials that relate to methods of manufacture or
 149 production, potential trade secrets, or patentable material
 150 received, generated, ascertained, or discovered during the
 151 course of research or through research projects conducted by
 152 universities and other publicly supported organizations in this
 153 state.

154 2. Information that would identify an investor or
 155 potential investor who desires to remain anonymous in projects
 156 reviewed by the Florida Opportunity Fund or the Technology Seed
 157 Capital Fund or the institute or its fund management committee.

158 3. Any information received from a person from another
 159 state or nation or the Federal Government which is otherwise
 160 confidential or exempt pursuant to the laws of that state or
 161 nation or pursuant to federal law.

162 4. Proprietary confidential business information regarding
 163 alternative investments for 10 years after the termination of
 164 the alternative investment.

165 (b) At the time any record made confidential and exempt by
 166 this subsection, or portion thereof, is legally available or
 167 subject to public disclosure for any other reason, that record,
 168 or portion thereof, shall no longer be confidential and exempt

169 and shall be made available for inspection and copying.

170 (3) PUBLIC MEETINGS EXEMPTION.—

171 (a) That portion of a meeting of the board of directors of
 172 the Florida Opportunity Fund, the board of directors of the
 173 Technology Seed Capital Fund, or the board of directors of the
 174 Institute for the Commercialization of Public Research or its
 175 fund management committee at which information is discussed
 176 which is confidential and exempt under subsection (2) is exempt
 177 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

178 (b) Any exempt portion of a meeting shall be recorded and
 179 transcribed. The boards of directors or the fund management
 180 committee shall record the times of commencement and termination
 181 of the meeting, all discussion and proceedings, the names of all
 182 persons present at any time, and the names of all persons
 183 speaking. An exempt portion of any meeting may not be off the
 184 record.

185 (c) A transcript and minutes of exempt portions of
 186 meetings are confidential and exempt from s. 119.07(1) and s.
 187 24(a), Art. I of the State Constitution.

188 (4) REQUEST TO INSPECT OR COPY A RECORD.—

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

192 (b) Notwithstanding the provisions of paragraph (2)(a), a
 193 request to inspect or copy a public record that contains
 194 proprietary confidential business information shall be granted
 195 if the proprietor of the information fails, within a reasonable
 196 period of time after the request is received by the Florida

197 | Opportunity Fund, the Technology Seed Capital Fund, or the
 198 | Institute for the Commercialization of Public Research, to
 199 | verify the following to the Florida Opportunity Fund or the
 200 | Technology Seed Capital Fund through a written declaration in
 201 | the manner provided by s. 92.525:

202 | 1. That the requested record contains proprietary
 203 | confidential business information and the specific location of
 204 | such information within the record;

205 | 2. If the proprietary confidential business information is
 206 | a trade secret, a verification that it is a trade secret as
 207 | defined in s. 688.002;

208 | 3. That the proprietary confidential business information
 209 | is intended to be and is treated by the proprietor as private,
 210 | is the subject of efforts of the proprietor to maintain its
 211 | privacy, and is not readily ascertainable or publicly available
 212 | from any other source; and

213 | 4. That the disclosure of the proprietary confidential
 214 | business information to the public would harm the business
 215 | operations of the proprietor.

216 | (c)1. Any person may petition a court of competent
 217 | jurisdiction for an order for the public release of those
 218 | portions of any record made confidential and exempt by
 219 | subsection (2).

220 | 2. Any action under this subsection must be brought in
 221 | Orange County, and the petition or other initial pleading shall
 222 | be served on the applicable fund or the institute, whichever is
 223 | applicable, and, if determinable upon diligent inquiry, on the
 224 | proprietor of the information sought to be released.

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

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

229 b. A compelling public interest is served by the release
 230 of the record or portions thereof which exceed the public
 231 necessity for maintaining the confidentiality of such record;
 232 and

233 c. The release of the record will not cause damage to or
 234 adversely affect the interests of the proprietor of the released
 235 information, other private persons or business entities, the
 236 fund, or any trust fund the assets of which are invested by the
 237 Florida Opportunity Fund or the Technology Seed Capital Fund.

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

241 (6) OPEN GOVERNMENT SUNSET REVIEW.—

242 (a) The provisions of this section pertaining to the
 243 Florida Opportunity Fund are ~~is~~ subject to the Open Government
 244 Sunset Review Act in accordance with s. 119.15 and shall stand
 245 repealed on October 2, 2012, unless reviewed and saved from
 246 repeal through reenactment by the Legislature.

247 (b) The provisions of this section pertaining to the
 248 Technology Seed Capital Fund and the fund management committee
 249 of the institute are subject to the Open Government Sunset
 250 Review Act in accordance with s. 119.15 and shall stand repealed
 251 on October 2, 2016, unless reviewed and saved from repeal
 252 through reenactment by the Legislature.

253 Section 2. The Legislature finds that it is a public
254 necessity that certain records held by the Institute for the
255 Commercialization of Public Research be made confidential and
256 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
257 Article I of the State Constitution. Materials that relate to
258 methods of manufacture or production, actual or potential trade
259 secrets, patentable materials, or proprietary information
260 received, generated, ascertained, or discovered by companies,
261 public or private, applying for funding under the Technology
262 Seed Capital Fund must be confidential and exempt because the
263 disclosure of such information would create an unfair
264 competitive advantage for persons receiving such information.
265 Disclosing proprietary confidential business information derived
266 from Technology Seed Capital Fund applicants, including trade
267 secrets as defined in s. 688.002, Florida Statutes, would
268 negatively affect the ability of those applicants to generate
269 investment returns and competitor partnerships could gain an
270 unfair competitive advantage if provided access to such
271 information. If such confidential and exempt information
272 regarding research in progress were released pursuant to a
273 public records request, others would be allowed to take the
274 benefit of the research without compensation or reimbursement.
275 The Legislature further finds that information received by the
276 institute through the Technology Seed Capital Fund application
277 process necessitates that it be protected. Without the
278 exemptions provided by this act, the disclosure of confidential
279 and exempt information would jeopardize the effective and
280 efficient administration of the Technology Seed Capital Fund. In

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281 addition, the Legislature further finds that the identity of an
282 investor or prospective investor who wishes to remain anonymous
283 should be confidential and exempt from public disclosure. This
284 exemption is necessary because the disclosure of investor
285 identities may adversely impact the ability of Technology Seed
286 Capital Fund applicants to attract investors who desire
287 anonymity. The Legislature further finds that it is a public
288 necessity that those portions of meetings of the board of
289 directors of the fund or fund management committee of the
290 Institute for the Commercialization of Public Research at which
291 information made confidential and exempt by the act is discussed
292 be made exempt from public meetings requirements in order to
293 allow the board of directors and the fund management committee
294 to maintain the confidential and exempt status of this
295 information.

296 Section 3. This act shall take effect July 1, 2011, if
297 House Bill 1381 or similar legislation is adopted in the same
298 legislative session or an extension thereof and becomes law.