

By Senator Altman

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

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

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

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

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30 Research.—

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

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

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

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

45 (d) "Institute for the Commercialization of Public
46 Research" or "institute" means the institute established by s.
47 288.9625.

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

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

58 (g)1. "Proprietary confidential business information" means

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

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

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

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

84 d. Meeting materials of an alternative investment vehicle
85 or portfolio company relating to financial, operating, or
86 marketing information ~~of the alternative investment vehicle or~~
87 ~~portfolio company~~.

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

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

94 g. Alternative investment agreements, technology investment
95 agreements, and related records.

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

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

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

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

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

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.

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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 costs
129 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 Florida
133 Opportunity Fund or the Technology Seed Capital Fund from each
134 alternative investment vehicle on a fiscal-year-end basis.

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

141 (2) PUBLIC RECORDS EXEMPTION.—

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

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146 24(a), Art. I of the State Constitution:

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

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

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

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

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

169 (3) PUBLIC MEETINGS EXEMPTION.—

170 (a) That portion of a meeting of the board of directors of
171 the Florida Opportunity Fund, the board of directors of the
172 Technology Seed Capital Fund, or the board of directors of the
173 Institute for the Commercialization of Public Research or its
174 fund management committee at which information is discussed

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175 which is confidential and exempt under subsection (2) is exempt
176 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

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

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

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

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

191 (b) Notwithstanding the provisions of paragraph (2)(a), a
192 request to inspect or copy a public record that contains
193 proprietary confidential business information shall be granted
194 if the proprietor of the information fails, within a reasonable
195 period of time after the request is received by the Florida
196 Opportunity Fund, the Technology Seed Capital Fund, or the
197 Institute for the Commercialization of Public Research, to
198 verify the following to the Florida Opportunity Fund or the
199 Technology Seed Capital Fund through a written declaration in
200 the manner provided by s. 92.525:

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

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

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

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

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

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

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

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

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

231 c. The release of the record will not cause damage to or
232 adversely affect the interests of the proprietor of the released

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233 information, other private persons or business entities, the
234 fund, or any trust fund the assets of which are invested by the
235 Florida Opportunity Fund or the Technology Seed Capital Fund.

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

239 (6) OPEN GOVERNMENT SUNSET REVIEW.—

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

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

251 Section 2. The Legislature finds that it is a public
252 necessity that certain records held by the Institute for the
253 Commercialization of Public Research be made confidential and
254 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
255 Article I of the State Constitution. Materials that relate to
256 methods of manufacture or production, actual or potential trade
257 secrets, patentable materials, or proprietary information
258 received, generated, ascertained, or discovered by companies,
259 public or private, applying for funding under the Technology
260 Seed Capital Fund must be confidential and exempt because the
261 disclosure of such information would create an unfair

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262 competitive advantage for persons receiving such information.
263 Disclosing proprietary confidential business information derived
264 from Technology Seed Capital Fund applicants, including trade
265 secrets as defined in s. 688.002, Florida Statutes, would
266 negatively affect the ability of those applicants to generate
267 investment returns and competitor partnerships could gain an
268 unfair competitive advantage if provided access to such
269 information. If such confidential and exempt information
270 regarding research in progress were released pursuant to a
271 public-records request, others would be allowed to take the
272 benefit of the research without compensation or reimbursement.
273 The Legislature further finds that information received by the
274 institute through the Technology Seed Capital Fund application
275 process necessitates that it be protected. Without the
276 exemptions provided by this act, the disclosure of confidential
277 and exempt information would jeopardize the effective and
278 efficient administration of the Technology Seed Capital Fund. In
279 addition, the Legislature further finds that the identity of an
280 investor or prospective investor who wishes to remain anonymous
281 should be confidential and exempt from public disclosure. This
282 exemption is necessary because the disclosure of investor
283 identities may adversely impact the ability of Technology Seed
284 Capital Fund applicants to attract investors who desire
285 anonymity. The Legislature further finds that it is a public
286 necessity that those portions of meetings of the board of
287 directors of the fund or fund management committee of the
288 Institute for the Commercialization of Public Research at which
289 information made confidential and exempt by the act is discussed
290 be made exempt from public-meetings requirements in order to

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291 allow the board of directors and the fund management committee
292 to maintain the confidential and exempt status of this
293 information.

294 Section 3. This act shall take effect July 1, 2011, if SB
295 1730 or similar legislation is adopted in the same legislative
296 session or an extension thereof and becomes law.