

By the Committee on Governmental Oversight and Accountability

585-03931-11

20112174\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; transferring, renumbering, and amending s. 215.44(8), F.S., which provides exemptions from public-records requirements for the State Board of Administration; creating s. 215.440, F.S.; specifying information that does not constitute proprietary confidential business information held by the State Board of Administration; requiring the State Board of Administration to maintain a written list of records covered under a verified, written declaration; conforming cross-references; making editorial changes; removing the scheduled repeal of the exemptions; amending s. 215.47, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (8) of section 215.44, Florida Statutes, is transferred, renumbered as section 215.440, Florida Statutes, and amended to read:

215.440 Board of Administration; public-record exemptions.-

(1) ~~(8)~~ ~~(a)~~ In order to effectively and efficiently administer the real estate investment program of the State Board of Administration, the Legislature finds a public necessity in protecting specified records of the board. Accordingly, records and information relating to acquiring, hypothecating, or disposing of real property or related personal property or mortgage interests in same, as well as interest in collective

585-03931-11

20112174

30 real estate investment funds, publicly traded securities, or  
31 private placement investments, are confidential and exempt from  
32 s. 119.07(1) in order to protect proprietary information  
33 requisite to the board's ability to transact arms length  
34 negotiations necessary to successfully compete in the real  
35 estate investment market. All reports and documents relating to  
36 value, offers, counteroffers, or negotiations are confidential  
37 and exempt from s. 119.07(1) until closing is complete and all  
38 funds have been disbursed. Reports and documents relating to  
39 tenants, leases, contracts, rent rolls, and negotiations in  
40 progress are confidential and exempt from the provisions of s.  
41 119.07(1) until the executive director determines that releasing  
42 such information would not be detrimental to the interests of  
43 the board and would not cause a conflict with the fiduciary  
44 responsibilities of the State Board of Administration.

45 (2) ~~(b)~~ In order to effectively and efficiently administer  
46 the investment programs of the board, the Legislature finds a  
47 public necessity in protecting records other than those  
48 described in subsection (1) paragraph (a). Accordingly, records  
49 and other information relating to investments made by the board  
50 pursuant to its constitutional and statutory investment duties  
51 and responsibilities are confidential and exempt from s.  
52 119.07(1) until 30 days after completion of an investment  
53 transaction. However, if in the opinion of the executive  
54 director of the board it would be detrimental to the financial  
55 interests of the board or would cause a conflict with the  
56 fiduciary responsibilities of the board, information concerning  
57 service provider fees may be maintained as confidential and  
58 exempt from s. 119.07(1) until 6 months after negotiations

585-03931-11

20112174

59 relating to such fees have been terminated. This exemption  
60 prevents the use of confidential internal investment decisions  
61 of the State Board of Administration for improper personal gain.

62 (3) (a) (e) 1. As used in this paragraph, the term:

63 1.a. "Alternative investment" means an investment by the  
64 State Board of Administration in a private equity fund, venture  
65 fund, hedge fund, or distress fund or a direct investment in a  
66 portfolio company through an investment manager.

67 2.b. "Alternative investment vehicle" means the limited  
68 partnership, limited liability company, or similar legal  
69 structure or investment manager through which the State Board of  
70 Administration invests in a portfolio company.

71 3.e. "Portfolio company" means a corporation or other  
72 issuer, any of whose securities are owned by an alternative  
73 investment vehicle or the State Board of Administration and any  
74 subsidiary of such corporation or other issuer.

75 4.d. "Portfolio positions" means individual investments in  
76 portfolio companies which are made by the alternative investment  
77 vehicles, including information or specific investment terms  
78 associated with any portfolio company investment.

79 5.e. "Proprietor" means an alternative investment vehicle,  
80 a portfolio company in which the alternative investment vehicle  
81 is invested, or an outside consultant, including the respective  
82 authorized officers, employees, agents, or successors in  
83 interest, which controls or owns information provided to the  
84 State Board of Administration.

85 6.f. "Proprietary confidential business information" means  
86 information that has been designated by the proprietor when  
87 provided to the State Board of Administration as information

585-03931-11

20112174\_\_

88 that is owned or controlled by a proprietor; that is intended to  
89 be and is treated by the proprietor as private, the disclosure  
90 of which would harm the business operations of the proprietor  
91 and has not been intentionally disclosed by the proprietor  
92 unless pursuant to a private agreement that provides that the  
93 information will not be released to the public except as  
94 required by law or legal process, or pursuant to law or an order  
95 of a court or administrative body; and that concerns:

96 a.~~(I)~~ Trade secrets as defined in s. 688.002.

97 b.~~(II)~~ Information provided to the State Board of  
98 Administration regarding a prospective investment in a private  
99 equity fund, venture fund, hedge fund, distress fund, or  
100 portfolio company which is proprietary to the provider of the  
101 information.

102 c.~~(III)~~ Financial statements and auditor reports of an  
103 alternative investment vehicle.

104 d.~~(IV)~~ Meeting materials of an alternative investment  
105 vehicle relating to financial, operating, or marketing  
106 information of the alternative investment vehicle.

107 e.~~(V)~~ Information regarding the portfolio positions in  
108 which the alternative investment vehicles invest.

109 f.~~(VI)~~ Capital call and distribution notices to investors  
110 of an alternative investment vehicle.

111 g.~~(VII)~~ Alternative investment agreements and related  
112 records.

113 h.~~(VIII)~~ Information concerning investors, other than the  
114 State Board of Administration, in an alternative investment  
115 vehicle.

116 7.g. "Proprietary confidential business information" does

585-03931-11

20112174\_\_

117 not include:

118 a.~~(I)~~ The name, address, and vintage year of an alternative  
119 investment vehicle and the identity of the principals involved  
120 in the management of the alternative investment vehicle.

121 b.~~(II)~~ The dollar amount of the commitment made by the  
122 State Board of Administration to each alternative investment  
123 vehicle since inception.

124 c.~~(III)~~ The dollar amount and date of cash contributions  
125 made by the State Board of Administration to each alternative  
126 investment vehicle since inception.

127 d.~~(IV)~~ The dollar amount, on a fiscal-year-end basis, of  
128 cash distributions received by the State Board of Administration  
129 from each alternative investment vehicle.

130 e.~~(V)~~ The dollar amount, on a fiscal-year-end basis, of  
131 cash distributions received by the State Board of Administration  
132 plus the remaining value of alternative-vehicle assets that are  
133 attributable to the State Board of Administration's investment  
134 in each alternative investment vehicle.

135 f.~~(VI)~~ The net internal rate of return of each alternative  
136 investment vehicle since inception.

137 g.~~(VII)~~ The investment multiple of each alternative  
138 investment vehicle since inception.

139 h.~~(VIII)~~ The dollar amount of the total management fees and  
140 costs paid on an annual fiscal-year-end basis by the State Board  
141 of Administration to each alternative investment vehicle.

142 i.~~(IX)~~ The dollar amount of cash profit received by the  
143 State Board of Administration from each alternative investment  
144 vehicle on a fiscal-year-end basis.

145 j. A description of any compensation, fees, or expenses,

585-03931-11

20112174

146 including the amount or value, paid or agreed to be paid by a  
147 proprietor to any person to solicit the board to make an  
148 alternative investment or investment through an alternative  
149 investment vehicle. This does not apply to an executive officer,  
150 general partner, managing member, or other employee of the  
151 proprietor, who is paid by the proprietor to solicit the board  
152 to make such investments.

153 (b)2- Proprietary confidential business information held by  
154 the State Board of Administration regarding alternative  
155 investments is confidential and exempt from s. 119.07(1) and s.  
156 24(a), Art. I of the State Constitution for 10 years after the  
157 termination of the alternative investment. This exemption  
158 applies to proprietary confidential business information held by  
159 the State Board of Administration before, on, or after October  
160 1, 2006.

161 (c)1.3- Notwithstanding the provisions of paragraph (b)  
162 subparagraph 2-, a request to inspect or copy a record under s.  
163 119.07(1) which contains proprietary confidential business  
164 information shall be granted if the proprietor of the  
165 information fails, within a reasonable period of time after the  
166 request is received by the State Board of Administration, to  
167 verify the following to the State Board of Administration  
168 through a written declaration in the manner provided by s.  
169 92.525:

170 a. That the requested record contains proprietary  
171 confidential business information and the specific location of  
172 such information within the record;

173 b. If the proprietary confidential business information is  
174 a trade secret, a verification that it is a trade secret as

585-03931-11

20112174

175 defined in s. 688.002;

176 c. That the proprietary confidential business information  
177 is intended to be and is treated by the proprietor as private,  
178 is the subject of efforts of the proprietor to maintain its  
179 privacy, and is not readily ascertainable or publicly available  
180 from any other source; and

181 d. That the disclosure of the proprietary confidential  
182 business information to the public would harm the business  
183 operations of the proprietor.

184 2. The State Board of Administration shall maintain a list  
185 and a description of the records covered by any verified,  
186 written declaration made under this paragraph.

187 (d)4- Any person may petition a court of competent  
188 jurisdiction for an order for the public release of those  
189 portions of any record made confidential and exempt by paragraph  
190 (b) subparagraph 2. Any action under this subparagraph must be  
191 brought in Leon County, Florida, and the petition or other  
192 initial pleading shall be served on the State Board of  
193 Administration and, if determinable upon diligent inquiry, on  
194 the proprietor of the information sought to be released. In any  
195 order for the public release of a record under this  
196 subparagraph, the court shall make a finding that the record or  
197 portion thereof is not a trade secret as defined in s. 688.002,  
198 that a compelling public interest is served by the release of  
199 the record or portions thereof which exceed the public necessity  
200 for maintaining the confidentiality of such record, and that the  
201 release of the record will not cause damage to or adversely  
202 affect the interests of the proprietor of the released  
203 information, other private persons or business entities, the

585-03931-11

20112174\_\_

204 State Board of Administration, or any trust fund, the assets of  
205 which are invested by the State Board of Administration.

206 ~~5. This paragraph is subject to the Open Government Sunset~~  
207 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
208 ~~on October 2, 2011, unless reviewed and saved from repeal~~  
209 ~~through reenactment by the Legislature.~~

210 Section 2. Subsection (15) of section 215.47, Florida  
211 Statutes, is amended to read:

212 215.47 Investments; authorized securities; loan of  
213 securities.—Subject to the limitations and conditions of the  
214 State Constitution or of the trust agreement relating to a trust  
215 fund, moneys available for investments under ss. 215.44-215.53  
216 may be invested as follows:

217 (15) With no more, in the aggregate, than 10 percent of any  
218 fund in alternative investments, as defined in s.

219 215.440(3)(a)1. ~~215.44(8)(c)1.a.~~, through participation in the  
220 vehicles defined in s. 215.440(3)(a)2. ~~215.44(8)(c)1.b.~~, or in  
221 securities or investments that are not publicly traded and are  
222 not otherwise authorized by this section.

223 Section 3. This act shall take effect October 1, 2011.