

1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; transferring, renumbering, and amending  
 4           s. 215.44(8), F.S., which provides exemptions from public  
 5           records requirements for the State Board of  
 6           Administration; creating s. 215.440, F.S.; specifying  
 7           information that does not constitute proprietary  
 8           confidential business information held by the State Board  
 9           of Administration; requiring the State Board of  
 10          Administration to maintain a written list of records  
 11          covered under a verified, written declaration; conforming  
 12          cross-references; making editorial changes; removing the  
 13          scheduled repeal of the exemption; amending s. 215.47,  
 14          F.S.; conforming cross-references; providing an effective  
 15          date.

16  
 17   Be It Enacted by the Legislature of the State of Florida:

18  
 19           Section 1. Subsection (8) of section 215.44, Florida  
 20           Statutes, is transferred and renumbered as section 215.440,  
 21           Florida Statutes, and amended to read:

22           215.440 Board of Administration; public record  
 23           exemptions.-

24           (1)(8)(a) In order to effectively and efficiently  
 25           administer the real estate investment program of the State Board  
 26           of Administration, the Legislature finds a public necessity in  
 27           protecting specified records of the board. Accordingly, records  
 28           and information relating to acquiring, hypothecating, or

HB 7225

2011

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

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

HB 7225

2011

57 fiduciary responsibilities of the board, information concerning  
58 service provider fees may be maintained as confidential and  
59 exempt from s. 119.07(1) until 6 months after negotiations  
60 relating to such fees have been terminated. This exemption  
61 prevents the use of confidential internal investment decisions  
62 of the State Board of Administration for improper personal gain.

63 (3) (a) 1. As used in this subsection ~~paragraph~~, the  
64 term:

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

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

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

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

81 5.e. "Proprietor" means an alternative investment vehicle,  
82 a portfolio company in which the alternative investment vehicle  
83 is invested, or an outside consultant, including the respective  
84 authorized officers, employees, agents, or successors in

HB 7225

2011

85 interest, which controls or owns information provided to the  
86 State Board of Administration.

87 ~~6.f.~~ "Proprietary confidential business information" means  
88 information that has been designated by the proprietor when  
89 provided to the State Board of Administration as information  
90 that is owned or controlled by a proprietor; that is intended to  
91 be and is treated by the proprietor as private, the disclosure  
92 of which would harm the business operations of the proprietor  
93 and has not been intentionally disclosed by the proprietor  
94 unless pursuant to a private agreement that provides that the  
95 information will not be released to the public except as  
96 required by law or legal process, or pursuant to law or an order  
97 of a court or administrative body; and that concerns:

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

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

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

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

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

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

HB 7225

2011

113        g.~~(VII)~~ Alternative investment agreements and related  
114 records.

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

118        7.g. "Proprietary confidential business information" does  
119 not include:

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

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

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

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

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

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

140        g.~~(VII)~~ The investment multiple of each alternative

141 investment vehicle since inception.

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

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

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

156 (b)2. Proprietary confidential business information held  
 157 by the State Board of Administration regarding alternative  
 158 investments is confidential and exempt from s. 119.07(1) and s.  
 159 24(a), Art. I of the State Constitution for 10 years after the  
 160 termination of the alternative investment. This exemption  
 161 applies to proprietary confidential business information held by  
 162 the State Board of Administration before, on, or after October  
 163 1, 2006.

164 (c)1.3. Notwithstanding the provisions of paragraph (b)  
 165 ~~subparagraph 2.~~, a request to inspect or copy a record under s.  
 166 119.07(1) that ~~which~~ contains proprietary confidential business  
 167 information shall be granted if the proprietor of the  
 168 information fails, within a reasonable period of time after the

HB 7225

2011

169 request is received by the State Board of Administration, to  
170 verify the following to the State Board of Administration  
171 through a written declaration in the manner provided by s.  
172 92.525:

173 a. That the requested record contains proprietary  
174 confidential business information and the specific location of  
175 such information within the record;

176 b. If the proprietary confidential business information is  
177 a trade secret, a verification that it is a trade secret as  
178 defined in s. 688.002;

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

184 d. That the disclosure of the proprietary confidential  
185 business information to the public would harm the business  
186 operations of the proprietor.

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

190 (d)4. Any person may petition a court of competent  
191 jurisdiction for an order for the public release of those  
192 portions of any record made confidential and exempt by paragraph  
193 (b) subparagraph 2. Any action under this paragraph ~~subparagraph~~  
194 must be brought in Leon County, Florida, and the petition or  
195 other initial pleading shall be served on the State Board of  
196 Administration and, if determinable upon diligent inquiry, on

HB 7225

2011

197 the proprietor of the information sought to be released. In any  
 198 order for the public release of a record under this paragraph  
 199 ~~subparagraph~~, the court shall make a finding that the record or  
 200 portion thereof is not a trade secret as defined in s. 688.002,  
 201 that a compelling public interest is served by the release of  
 202 the record or portions thereof which exceed the public necessity  
 203 for maintaining the confidentiality of such record, and that the  
 204 release of the record will not cause damage to or adversely  
 205 affect the interests of the proprietor of the released  
 206 information, other private persons or business entities, the  
 207 State Board of Administration, or any trust fund, the assets of  
 208 which are invested by the State Board of Administration.

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

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

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

220 (15) With no more, in the aggregate, than 10 percent of  
 221 any fund in alternative investments, as defined in s.  
 222 215.440(3)(a)1. ~~215.44(8)(c)1.a.~~, through participation in the  
 223 vehicles defined in s. 215.440(3)(a)2. ~~215.44(8)(c)1.b.~~, or in  
 224 securities or investments that are not publicly traded and are



HB 7225

2011

225 | not otherwise authorized by this section.

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