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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:

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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

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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

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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

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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.

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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

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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

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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

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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

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225 | not otherwise authorized by this section.

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