

**FOR CONSIDERATION By** the Committee on Commerce and Tourism

577-00732A-12

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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; amending s. 288.9626, F.S., which  
4           provides exemptions from public records and open  
5           meeting requirements for the Florida Opportunity Fund  
6           and the Institute for the Commercialization of Public  
7           Research; reorganizing the exemptions by removing  
8           references to the Institute for the Commercialization  
9           of Public Research and transferring the exemptions  
10          relating to the institute to a new statute; saving the  
11          exemptions from repeal under the Open Government  
12          Sunset Review Act; removing the scheduled repeal of  
13          the exemptions; revising definitions; clarifying that  
14          the exemptions pertaining to the Florida Opportunity  
15          Fund apply to prospective investments, alternative  
16          investments, and certain confidential proprietary  
17          information provided by a proprietor; reducing the  
18          time period during which proprietary confidential  
19          business information is confidential and exempt from  
20          disclosure; creating s. 288.9627, F.S.; providing  
21          exemptions from public records and open meetings  
22          requirements relating to the Institute for the  
23          Commercialization of Public Research which were  
24          transferred from s. 288.9626, F.S.; defining terms;  
25          providing exemptions from public records requirements  
26          for information relating to methods of manufacturing,  
27          trade secrets, patents, and research by universities  
28          or other publically supported organizations, materials  
29          supplied by a proprietor, information that would

577-00732A-12

20127020\_\_

30 identify investors or potential investors, and  
31 information that is confidential and exempt under  
32 other laws; reducing the time period during which  
33 proprietary confidential business information is  
34 confidential and exempt from disclosure; requiring the  
35 recording and transcription of closed meetings;  
36 requiring a proprietor of information to prevent the  
37 disclosure of proprietary confidential business  
38 information if a request for the information is made  
39 to the institute; authorizing a person to petition a  
40 court in Palm Beach County or Alachua County for the  
41 release of confidential and exempt information;  
42 requiring a court to make specific findings before the  
43 information may be released; imposing criminal  
44 penalties on a person who willfully and knowingly  
45 violates the public records or public meetings  
46 exemptions pertaining to the institute; providing an  
47 effective date.

48  
49 Be It Enacted by the Legislature of the State of Florida:

50  
51 Section 1. Section 288.9626, Florida Statutes, is amended  
52 to read:

53 288.9626 Exemptions from public records and public meetings  
54 requirements for the Florida Opportunity Fund ~~and the Institute~~  
55 ~~for the Commercialization of Public Research.~~

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

57 (a) "Alternative investment" means an investment or  
58 prospective investment through a loan, acquisition of an equity

577-00732A-12

20127020\_\_

59 interest, or other investment method by the Florida Opportunity  
60 Fund in a private equity fund, venture capital fund, or angel  
61 fund; an investment by the Florida Opportunity Fund or an  
62 alternative investment ~~or a direct investment~~ in a portfolio  
63 company; or an investment through a distribution of securities  
64 to its partners or shareholders by an alternative investment  
65 vehicle.

66 (b) "Alternative investment vehicle" means the limited  
67 partnership, limited liability company, or similar legal fund  
68 structure through which funds of, or funds managed by, the  
69 Florida Opportunity Fund are invested ~~may elect to invest~~ in a  
70 portfolio company.

71 (c) "Florida Opportunity Fund" ~~or "fund"~~ means the Florida  
72 Opportunity Fund as defined in s. 288.9623.

73 ~~(d) "Institute for the Commercialization of Public~~  
74 ~~Research" or "institute" means the institute established by s.~~  
75 ~~288.9625.~~

76 ~~(d)~~ (e) "Portfolio company" means a corporation or other  
77 issuer, any of whose securities or debt obligations are owned,  
78 or are being considered for ownership, by an alternative  
79 investment vehicle or the Florida Opportunity Fund and any  
80 subsidiary of such corporation or other issuer.

81 ~~(e)~~ (f) "Portfolio positions" means individual investments  
82 in portfolio companies that are made by an alternative  
83 investment vehicle or the Florida Opportunity Fund, including  
84 information or specific investment terms associated with any  
85 portfolio company investment.

86 ~~(f)~~ (g) 1. "Proprietary confidential business information"  
87 means information that has been designated by the proprietor

577-00732A-12

20127020\_\_

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

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

99 b. Information provided to the Florida Opportunity Fund ~~or~~  
100 ~~the Institute for the Commercialization of Public Research~~  
101 regarding an existing or a prospective alternative investment in  
102 a private equity fund, venture capital fund, angel fund, or  
103 portfolio company that is proprietary to the provider of the  
104 information.

105 c. Financial statements and auditor reports of an  
106 alternative investment vehicle or portfolio company, unless  
107 publicly released by the alternative investment vehicle or  
108 portfolio company.

109 d. Meeting materials of an alternative investment vehicle  
110 or portfolio company relating to financial, operating, or  
111 marketing information of the alternative investment vehicle or  
112 portfolio company.

113 e. Information regarding the portfolio positions in which  
114 the alternative investment vehicles or Florida Opportunity Fund  
115 invest.

116 f. Capital call and distribution notices to investors or

577-00732A-12

20127020\_\_

117 the Florida Opportunity Fund of an alternative investment  
118 vehicle.

119 g. Alternative investment agreements and related records.

120 h. Information concerning investors, other than the Florida  
121 Opportunity Fund, in an alternative investment vehicle or  
122 portfolio company.

123 2. "Proprietary confidential business information" does not  
124 include:

125 a. The name, address, and vintage year of an alternative  
126 investment vehicle or Florida Opportunity Fund and the identity  
127 of the principals involved in the management of the alternative  
128 investment vehicle or Florida Opportunity Fund.

129 b. The dollar amount of the commitment made by the Florida  
130 Opportunity Fund to each alternative investment vehicle since  
131 inception, if any.

132 c. The dollar amount and date of cash contributions made by  
133 the Florida Opportunity Fund to each alternative investment  
134 vehicle since inception, if any.

135 d. The dollar amount, on a fiscal-year-end basis, of cash  
136 or other fungible distributions received by the Florida  
137 Opportunity Fund from each alternative investment vehicle.

138 e. The dollar amount, on a fiscal-year-end basis, of cash  
139 or other fungible distributions received by the Florida  
140 Opportunity Fund plus the remaining value of alternative-vehicle  
141 assets that are attributable to the Florida Opportunity Fund's  
142 investment in each alternative investment vehicle.

143 f. The net internal rate of return of each alternative  
144 investment vehicle since inception.

145 g. The investment multiple of each alternative investment

577-00732A-12

20127020\_\_

146 vehicle since inception.

147 h. The dollar amount of the total management fees and costs  
148 paid on an annual fiscal-year-end basis by the Florida  
149 Opportunity Fund to each alternative investment vehicle.

150 i. The dollar amount of cash profit received by the Florida  
151 Opportunity Fund from each alternative investment vehicle on a  
152 fiscal-year-end basis.

153 (g) ~~(h)~~ "Proprietor" means an alternative investment vehicle  
154 or, a portfolio company in which an ~~the~~ alternative investment  
155 vehicle or Florida Opportunity Fund invests, or is considering  
156 for investment ~~is invested~~, or an outside consultant, including  
157 the respective authorized officers, employees, agents, or  
158 successors in interest, that controls or owns information.

159 (2) PUBLIC RECORDS EXEMPTION.—

160 (a) The following records held by the Florida Opportunity  
161 Fund ~~or the Institute for the Commercialization of Public~~  
162 ~~Research~~ are confidential and exempt from s. 119.07(1) and s.  
163 24(a), Art. I of the State Constitution:

164 1. Information Materials that relates ~~relate~~ to methods of  
165 manufacture or production, potential trade secrets, or  
166 patentable material received, generated, ascertained, or  
167 discovered during the course of research or through research  
168 projects and that is included in materials provided by a  
169 proprietor ~~conducted by universities and other publicly~~  
170 ~~supported organizations in this state.~~

171 2. Information that would identify an investor or potential  
172 investor who desires to remain anonymous in projects reviewed by  
173 the Florida Opportunity Fund ~~or institute.~~

174 3. ~~Any information received from a person from another~~

577-00732A-12

20127020\_\_

175 ~~state or nation or the Federal Government which is otherwise~~  
176 ~~confidential or exempt pursuant to the laws of that state or~~  
177 ~~nation or pursuant to federal law.~~

178 3.4. Proprietary confidential business information  
179 regarding alternative investments for 7 ~~10~~ years after the  
180 termination of the alternative investment.

181 (b) At the time any record made confidential and exempt by  
182 this subsection, or portion thereof, is legally available or  
183 subject to public disclosure for any other reason, that record,  
184 or portion thereof, shall no longer be confidential and exempt  
185 and shall be made available for inspection and copying.

186 (3) PUBLIC MEETINGS EXEMPTION.—

187 (a) That portion of a meeting of the board of directors of  
188 the Florida Opportunity Fund ~~or the board of directors of the~~  
189 ~~Institute for the Commercialization of Public Research~~ at which  
190 information is discussed which is confidential and exempt under  
191 subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of  
192 the State Constitution.

193 (b) Any exempt portion of a meeting shall be recorded and  
194 transcribed. The board ~~boards~~ of directors shall record the  
195 times of commencement and termination of the meeting, all  
196 discussion and proceedings, the names of all persons present at  
197 any time, and the names of all persons speaking. An exempt  
198 portion of any meeting may not be off the record.

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

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

203 (a) Records made confidential and exempt by this section

577-00732A-12

20127020\_\_

204 may be released, upon written request, to a governmental entity  
205 in the performance of its official duties and responsibilities.

206 (b) Notwithstanding the provisions of paragraph (2)(a), a  
207 request to inspect or copy a public record that contains  
208 proprietary confidential business information shall be granted  
209 if the proprietor of the information fails, within a reasonable  
210 period of time after the request is received by the Florida  
211 ~~Opportunity Fund or the Institute for the Commercialization of~~  
212 ~~Public Research~~, to verify the following to the Florida  
213 Opportunity Fund through a written declaration in the manner  
214 provided by s. 92.525:

215 1. That the requested record contains proprietary  
216 confidential business information and the specific location of  
217 such information within the record;

218 2. If the proprietary confidential business information is  
219 a trade secret, a verification that it is a trade secret as  
220 defined in s. 688.002;

221 3. That the proprietary confidential business information  
222 is intended to be and is treated by the proprietor as private,  
223 is the subject of efforts of the proprietor to maintain its  
224 privacy, and is not readily ascertainable or publicly available  
225 from any other source; and

226 4. That the disclosure of the proprietary confidential  
227 business information to the public would harm the business  
228 operations of the proprietor.

229 (c)1. Any person may petition a court of competent  
230 jurisdiction for an order for the public release of those  
231 portions of any record made confidential and exempt by  
232 subsection (2).



577-00732A-12

20127020\_\_

233           2. Any action under this subsection must be brought in  
234 Orange County, and the petition or other initial pleading shall  
235 be served on the Florida Opportunity Fund ~~or the institute,~~  
236 ~~whichever is applicable,~~ and, if determinable upon diligent  
237 inquiry, on the proprietor of the information sought to be  
238 released.

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

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

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

246           c. The release of the record will not cause damage to or  
247 adversely affect the interests of the proprietor of the released  
248 information, other private persons or business entities, or ~~the~~  
249 ~~fund, or any trust fund the assets of which are invested by the~~  
250 Florida Opportunity Fund.

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

254           ~~(6) OPEN GOVERNMENT SUNSET REVIEW. This section is subject~~  
255 ~~to the Open Government Sunset Review Act in accordance with s.~~  
256 ~~119.15 and shall stand repealed on October 2, 2012, unless~~  
257 ~~reviewed and saved from repeal through reenactment by the~~  
258 ~~Legislature.~~

259           Section 2. Section 288.9627, Florida Statutes, is created  
260 to read:

261           288.9627 Exemptions from public records and public meetings

577-00732A-12

20127020\_\_

262 requirements for the Institute for the Commercialization of  
263 Public Research.-

264 (1) DEFINITIONS.-As used in this section, the term:

265 (a) "Institute for the Commercialization of Public  
266 Research" or "institute" means the institute established by s.  
267 288.9625.

268 (b)1. "Proprietary confidential business information" means  
269 information that has been designated by the proprietor when  
270 provided to the institute as information that is owned, held, or  
271 controlled by a proprietor; that is intended to be and is  
272 treated by the proprietor as private, the disclosure of which  
273 would harm the business operations of the proprietor and has not  
274 been intentionally disclosed by the proprietor unless pursuant  
275 to a private agreement that provides that the information will  
276 not be released to the public except as required by law or legal  
277 process, or pursuant to law or an order of a court or  
278 administrative body; and that concerns:

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

280 b. Financial statements and internal or external auditor  
281 reports of a proprietor corporation, partnership, or person  
282 requesting confidentiality under this statute, unless publicly  
283 released by the proprietor.

284 c. Meeting materials related to financial, operating,  
285 investment, or marketing information of the proprietor  
286 corporation, partnership, or person.

287 d. Information concerning private investors in the  
288 proprietor corporation, partnership, or person.

289 2. "Proprietary confidential business information" does not  
290 include:

577-00732A-12

20127020

291 a. The identity and primary address of the proprietor's  
292 principals.

293 b. The dollar amount and date of the financial commitment  
294 or contribution made by the institute.

295 c. The dollar amount, on a fiscal-year-end basis, of cash  
296 repayments or other fungible distributions received by the  
297 institute from each proprietor.

298 d. The dollar amount, if any, of the total management fees  
299 and costs paid on an annual fiscal-year-end basis by the  
300 institute.

301 (c) "Proprietor" means a corporation, partnership, or  
302 person that has applied for or received assistance, financial or  
303 otherwise, from the institute and that controls or owns the  
304 proprietary confidential business information.

305 (2) PUBLIC RECORDS EXEMPTION.—

306 (a) The following records held by the institute are  
307 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
308 of the State Constitution:

309 1. Information that relates to methods of manufacture or  
310 production, potential trade secrets, or patentable material  
311 received, generated, ascertained, or discovered during the  
312 course of research or through research projects conducted by  
313 universities and other publicly supported organizations in this  
314 state and that is included in materials provided to the  
315 institute by a proprietor.

316 2. Information that would identify an investor or potential  
317 investor who desires to remain anonymous in projects reviewed by  
318 the institute for assistance.

319 3. Any information received from a person from another

577-00732A-12

20127020

320 state or nation or the Federal Government which is otherwise  
321 confidential or exempt pursuant to the laws of that state or  
322 nation or pursuant to federal law.

323 4. Proprietary confidential business for 7 years after the  
324 termination of the institute's financial commitment to the  
325 company.

326 (b) At the time any record made confidential and exempt by  
327 this subsection, or portion thereof, is legally available or  
328 subject to public disclosure for any other reason, that record,  
329 or portion thereof, shall no longer be confidential and exempt  
330 and shall be made available for inspection and copying.

331 (3) PUBLIC MEETINGS EXEMPTION.—

332 (a) That portion of a meeting of the institute's board of  
333 directors at which information is discussed which is  
334 confidential and exempt under subsection (2) is exempt from s.  
335 286.011 and s. 24(b), Art. I of the State Constitution.

336 (b) Any exempt portion of a meeting shall be recorded and  
337 transcribed. The board of directors shall record the times of  
338 commencement and termination of the meeting, all discussion and  
339 proceedings, the names of all persons present at any time, and  
340 the names of all persons speaking. An exempt portion of any  
341 meeting may not be off the record.

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

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

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

577-00732A-12

20127020

349       (b) Notwithstanding the provisions of paragraph (2) (a), a  
350 request to inspect or copy a public record that contains  
351 proprietary confidential business information shall be granted  
352 if the proprietor of the information fails, within a reasonable  
353 period of time after the request is received by the institute,  
354 to verify the following to the institute through a written  
355 declaration in the manner provided by s. 92.525:

356       1. That the requested record contains proprietary  
357 confidential business information and the specific location of  
358 such information within the record;

359       2. If the proprietary confidential business information is  
360 a trade secret, a verification that it is a trade secret as  
361 defined in s. 688.002;

362       3. That the proprietary confidential business information  
363 is intended to be and is treated by the proprietor as private,  
364 is the subject of efforts of the proprietor to maintain its  
365 privacy, and is not readily ascertainable or publicly available  
366 from any other source; and

367       4. That the disclosure of the proprietary confidential  
368 business information to the public would harm the business  
369 operations of the proprietor.

370       (c)1. Any person may petition a court of competent  
371 jurisdiction for an order for the public release of those  
372 portions of any record made confidential and exempt by  
373 subsection (2).

374       2. Any action under this subsection must be brought in Palm  
375 Beach County or Alachua County, and the petition or other  
376 initial pleading shall be served on the institute and, if  
377 determinable upon diligent inquiry, on the proprietor of the

577-00732A-12

20127020\_\_

378 information sought to be released.

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

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

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

386 c. The release of the record will not cause damage to or  
387 adversely affect the interests of the proprietor of the released  
388 information, other private persons or business entities, or the  
389 institute.

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

393 Section 3. This act shall take effect upon becoming law.