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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 record 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 relocating the exemptions
10 relating to the institute in 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 proprietary confidential
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 record and open meeting
22 requirements for the Institute for the
23 Commercialization of Public Research which are
24 relocated from s. 288.9626, F.S.; providing
25 definitions; providing an exemption from public record
26 requirements for materials relating to methods of
27 manufacturing, trade secrets, patents, and research by
28 universities or other publically supported

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29 organizations, materials supplied by a proprietor,
30 information that would identify investors or potential
31 investors, and information that is confidential and
32 exempt under other laws; reducing the time period
33 during which proprietary confidential business
34 information is confidential and exempt from
35 disclosure; providing an exemption from public meeting
36 requirements for portions of meetings of the
37 institute's board of directors at which confidential
38 and exempt information is discussed; requiring the
39 recording and transcription of closed meetings;
40 providing an exemption from public record requirements
41 for transcripts and minutes of exempt portions of
42 meetings of the institute's board of directors;
43 specifying procedure by which a proprietor of
44 information may prevent the disclosure of proprietary
45 confidential business information when a request for
46 such information is made to the institute; authorizing
47 a person to petition a court in Palm Beach County or
48 Alachua County for the release of confidential and
49 exempt information; requiring a court to make specific
50 findings before the information may be released;
51 providing criminal penalties for willful and knowing
52 violation of public record or public meeting
53 exemptions pertaining to the institute; providing an
54 effective date.

55
56 Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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57
 58 Section 1. Section 288.9626, Florida Statutes, is amended
 59 to read:

60 288.9626 Exemptions from public records and public
 61 meetings requirements for the; Florida Opportunity Fund ~~and the~~
 62 ~~Institute for the Commercialization of Public Research.~~

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

64 (a) "Alternative investment" means an investment or
 65 prospective investment through a loan, acquisition of an equity
 66 interest, or other investment method by the Florida Opportunity
 67 Fund in a private equity fund, venture capital fund, or angel
 68 fund; an investment by the Florida Opportunity Fund or an
 69 alternative investment ~~or a direct investment~~ in a portfolio
 70 company; or an investment through a distribution of securities
 71 to its partners or shareholders by an alternative investment
 72 vehicle.

73 (b) "Alternative investment vehicle" means the limited
 74 partnership, limited liability company, or similar legal fund
 75 structure through which funds of, or funds managed by, the
 76 Florida Opportunity Fund are invested ~~may elect to invest~~ in a
 77 portfolio company.

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

80 ~~(d) "Institute for the Commercialization of Public~~
 81 ~~Research" or "institute" means the institute established by s.~~
 82 ~~288.9625.~~

83 ~~(d)(e)~~ "Portfolio company" means a corporation or other
 84 issuer, any of whose securities or debt obligations are owned,

85 or are being considered for ownership, by an alternative
 86 investment vehicle or the Florida Opportunity Fund and any
 87 subsidiary of such corporation or other issuer.

88 (e)~~(f)~~ "Portfolio positions" means individual investments
 89 in portfolio companies that are made by an alternative
 90 investment vehicle or the Florida Opportunity Fund, including
 91 information or specific investment terms associated with any
 92 portfolio company investment.

93 (f)~~(g)~~1. "Proprietary confidential business information"
 94 means information that has been designated by the proprietor
 95 when provided to the Florida Opportunity Fund ~~or the Institute~~
 96 ~~for the Commercialization of Public Research~~ as information that
 97 is owned or controlled by a proprietor; that is intended to be
 98 and is treated by the proprietor as private, the disclosure of
 99 which would harm the business operations of the proprietor and
 100 has not been intentionally disclosed by the proprietor unless
 101 pursuant to a private agreement that provides that the
 102 information will not be released to the public except as
 103 required by law or legal process, or pursuant to law or an order
 104 of a court or administrative body; and that concerns:

- 105 a. Trade secrets as defined in s. 688.002.
- 106 b. Information provided to the Florida Opportunity Fund ~~or~~
 107 ~~the Institute for the Commercialization of Public Research~~
 108 regarding an existing or a prospective alternative investment in
 109 a private equity fund, venture capital fund, angel fund, or
 110 portfolio company that is proprietary to the provider of the
 111 information.
- 112 c. Financial statements and auditor reports of an

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113 alternative investment vehicle or portfolio company, unless
114 publicly released by the alternative investment vehicle or
115 portfolio company.

116 d. Meeting materials of an alternative investment vehicle
117 or portfolio company relating to financial, operating, or
118 marketing information of the alternative investment vehicle or
119 portfolio company.

120 e. Information regarding the portfolio positions in which
121 the alternative investment vehicles or Florida Opportunity Fund
122 invest.

123 f. Capital call and distribution notices to investors or
124 the Florida Opportunity Fund of an alternative investment
125 vehicle.

126 g. Alternative investment agreements and related records.

127 h. Information concerning investors, other than the
128 Florida Opportunity Fund, in an alternative investment vehicle
129 or portfolio company.

130 2. "Proprietary confidential business information" does
131 not include:

132 a. The name, address, and vintage year of an alternative
133 investment vehicle or Florida Opportunity Fund and the identity
134 of the principals involved in the management of the alternative
135 investment vehicle or Florida Opportunity Fund.

136 b. The dollar amount of the commitment made by the Florida
137 Opportunity Fund to each alternative investment vehicle since
138 inception, if any.

139 c. The dollar amount and date of cash contributions made
140 by the Florida Opportunity Fund to each alternative investment

141 vehicle since inception, if any.

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

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

150 f. The net internal rate of return of each alternative
 151 investment vehicle since inception.

152 g. The investment multiple of each alternative investment
 153 vehicle since inception.

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

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

160 (g) ~~(h)~~ "Proprietor" means an alternative investment
 161 vehicle or, ~~a~~ portfolio company in which an ~~the~~ alternative
 162 investment vehicle or Florida Opportunity Fund invests or which
 163 is being considered for investment ~~is invested~~, or an outside
 164 consultant, including the respective authorized officers,
 165 employees, agents, or successors in interest, that controls or
 166 owns information.

167 (2) PUBLIC RECORDS EXEMPTION.—

168 (a) The following records held by the Florida Opportunity

169 ~~Fund or the Institute for the Commercialization of Public~~
 170 ~~Research~~ are confidential and exempt from s. 119.07(1) and s.
 171 24(a), Art. I of the State Constitution:

172 1. Materials that relate to methods of manufacture or
 173 production, potential trade secrets, or patentable material
 174 received, generated, ascertained, or discovered during the
 175 course of research or through research projects and that are
 176 provided by a proprietor ~~conducted by universities and other~~
 177 ~~publicly supported organizations in this state.~~

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

181 ~~3. Any information received from a person from another~~
 182 ~~state or nation or the Federal Government which is otherwise~~
 183 ~~confidential or exempt pursuant to the laws of that state or~~
 184 ~~nation or pursuant to federal law.~~

185 ~~3.4.~~ Proprietary confidential business information
 186 regarding alternative investments for 7 ~~10~~ years after the
 187 termination of the alternative investment.

188 (b) At the time any record made confidential and exempt by
 189 this subsection, or portion thereof, is legally available or
 190 subject to public disclosure for any other reason, that record,
 191 or portion thereof, shall no longer be confidential and exempt
 192 and shall be made available for inspection and copying.

193 (3) PUBLIC MEETINGS EXEMPTION.—

194 (a) That portion of a meeting of the board of directors of
 195 the Florida Opportunity Fund ~~or the board of directors of the~~
 196 ~~Institute for the Commercialization of Public Research~~ at which

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197 information is discussed which is confidential and exempt under
 198 subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of
 199 the State Constitution.

200 (b) Any exempt portion of a meeting shall be recorded and
 201 transcribed. The board ~~boards~~ of directors shall record the
 202 times of commencement and termination of the meeting, all
 203 discussion and proceedings, the names of all persons present at
 204 any time, and the names of all persons speaking. An exempt
 205 portion of any meeting may not be off the record.

206 (c) A transcript and minutes of exempt portions of
 207 meetings are confidential and exempt from s. 119.07(1) and s.
 208 24(a), Art. I of the State Constitution.

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

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

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

222 1. That the requested record contains proprietary
 223 confidential business information and the specific location of
 224 such information within the record;

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225 2. If the proprietary confidential business information is
 226 a trade secret, a verification that it is a trade secret as
 227 defined in s. 688.002;

228 3. That the proprietary confidential business information
 229 is intended to be and is treated by the proprietor as private,
 230 is the subject of efforts of the proprietor to maintain its
 231 privacy, and is not readily ascertainable or publicly available
 232 from any other source; and

233 4. That the disclosure of the proprietary confidential
 234 business information to the public would harm the business
 235 operations of the proprietor.

236 (c)1. Any person may petition a court of competent
 237 jurisdiction for an order for the public release of those
 238 portions of any record made confidential and exempt by
 239 subsection (2).

240 2. Any action under this subsection must be brought in
 241 Orange County, and the petition or other initial pleading shall
 242 be served on the Florida Opportunity Fund ~~or the institute,~~
 243 ~~whichever is applicable,~~ and, if determinable upon diligent
 244 inquiry, on the proprietor of the information sought to be
 245 released.

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

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

250 b. A compelling public interest is served by the release
 251 of the record or portions thereof which exceed the public
 252 necessity for maintaining the confidentiality of such record;

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253 and

254 c. The release of the record will not cause damage to or
 255 adversely affect the interests of the proprietor of the released
 256 information, other private persons or business entities, or the
 257 ~~fund, or any trust fund the assets of which are invested by the~~
 258 Florida Opportunity Fund.

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

262 ~~(6) OPEN GOVERNMENT SUNSET REVIEW. This section is subject~~
 263 ~~to the Open Government Sunset Review Act in accordance with s.~~
 264 ~~119.15 and shall stand repealed on October 2, 2012, unless~~
 265 ~~reviewed and saved from repeal through reenactment by the~~
 266 ~~Legislature.~~

267 Section 2. Section 288.9627, Florida Statutes, is created
 268 to read:

269 288.9627 Exemptions from public record and public meeting
 270 requirements for the Institute for the Commercialization of
 271 Public Research.—

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

273 (a) "Institute for the Commercialization of Public
 274 Research" or "institute" means the institute established by s.
 275 288.9625.

276 (b)1. "Proprietary confidential business information"
 277 means information that has been designated by the proprietor
 278 when provided to the institute as information that is owned or
 279 controlled by a proprietor; that is intended to be and is
 280 treated by the proprietor as private, the disclosure of which

281 would harm the business operations of the proprietor and has not
 282 been intentionally disclosed by the proprietor unless pursuant
 283 to a private agreement that provides that the information will
 284 not be released to the public except as required by law or legal
 285 process, or pursuant to law or an order of a court or
 286 administrative body; and that concerns:

- 287 a. Trade secrets as defined in s. 688.002.
- 288 b. Financial statements and internal or external auditor
 289 reports of a proprietor corporation, partnership, or person
 290 requesting confidentiality under this statute, unless publicly
 291 released by the proprietor.

- 292 c. Meeting materials related to financial, operating,
 293 investment, or marketing information of the proprietor
 294 corporation, partnership, or person.

- 295 d. Information concerning private investors in the
 296 proprietor corporation, partnership, or person.

297 2. "Proprietary confidential business information" does
 298 not include:

- 299 a. The identity and primary address of the proprietor's
 300 principals.

- 301 b. The dollar amount and date of the financial commitment
 302 or contribution made by the institute.

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

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

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309 (c) "Proprietor" means a corporation, partnership, or
310 person that has applied for or received assistance, financial or
311 otherwise, from the institute and that controls or owns the
312 proprietary confidential business information.

313 (2) PUBLIC RECORD EXEMPTION.—

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

317 1. Materials that relate to methods of manufacture or
318 production, potential trade secrets, or patentable material
319 received, generated, ascertained, or discovered during the
320 course of research or through research projects conducted by
321 universities and other publicly supported organizations in this
322 state and that are provided to the institute by a proprietor.

323 2. Information that would identify an investor or
324 potential investor who desires to remain anonymous in projects
325 reviewed by the institute for assistance.

326 3. Any information received from a person from another
327 state or nation or the Federal Government which is otherwise
328 confidential or exempt pursuant to the laws of that state or
329 nation or pursuant to federal law.

330 4. Proprietary confidential business information for 7
331 years after the termination of the institute's financial
332 commitment to the company.

333 (b) At the time any record made confidential and exempt by
334 this subsection, or portion thereof, is legally available or
335 subject to public disclosure for any other reason, that record,
336 or portion thereof, shall no longer be confidential and exempt

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337 and shall be made available for inspection and copying.

338 (3) PUBLIC MEETING EXEMPTION.—

339 (a) That portion of a meeting of the institute's board of
340 directors at which information is discussed which is
341 confidential and exempt under subsection (2) is exempt from s.
342 286.011 and s. 24(b), Art. I of the State Constitution.

343 (b) Any exempt portion of a meeting shall be recorded and
344 transcribed. The board of directors shall record the times of
345 commencement and termination of the meeting, all discussion and
346 proceedings, the names of all persons present at any time, and
347 the names of all persons speaking. An exempt portion of any
348 meeting may not be off the record.

349 (c) A transcript and minutes of exempt portions of
350 meetings are confidential and exempt from s. 119.07(1) and s.
351 24(a), Art. I of the State Constitution.

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

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

356 (b) Notwithstanding the provisions of paragraph (2)(a), a
357 request to inspect or copy a public record that contains
358 proprietary confidential business information shall be granted
359 if the proprietor of the information fails, within a reasonable
360 period of time after the request is received by the institute,
361 to verify the following to the institute through a written
362 declaration in the manner provided by s. 92.525:

363 1. That the requested record contains proprietary
364 confidential business information and the specific location of

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365 such information within the record;

366 2. If the proprietary confidential business information is
367 a trade secret, a verification that it is a trade secret as
368 defined in s. 688.002;

369 3. That the proprietary confidential business information
370 is intended to be and is treated by the proprietor as private,
371 is the subject of efforts of the proprietor to maintain its
372 privacy, and is not readily ascertainable or publicly available
373 from any other source; and

374 4. That the disclosure of the proprietary confidential
375 business information to the public would harm the business
376 operations of the proprietor.

377 (c)1. Any person may petition a court of competent
378 jurisdiction for an order for the public release of those
379 portions of any record made confidential and exempt by
380 subsection (2).

381 2. Any action under this subsection must be brought in
382 Palm Beach County or Alachua County, and the petition or other
383 initial pleading shall be served on the institute and, if
384 determinable upon diligent inquiry, on the proprietor of the
385 information sought to be released.

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

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

390 b. A compelling public interest is served by the release
391 of the record or portions thereof which exceed the public
392 necessity for maintaining the confidentiality of such record;

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393 | and

394 | c. The release of the record will not cause damage to or
395 | adversely affect the interests of the proprietor of the released
396 | information, other private persons or business entities, or the
397 | institute.

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

401 | Section 3. This act shall take effect October 1, 2012.