

By the Committee on Commerce and Tourism

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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

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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

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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

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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

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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

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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~~

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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

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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).

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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

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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:

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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

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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.

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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

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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 a law.