

Bill No. SB 2612

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Proposed Committee Substitute by the Committee on Governmental Operations

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 288.96275, F.S.; providing definitions;
 4 defining "proprietary confidential business
 5 information" and specifying information that
 6 does not constitute proprietary confidential
 7 business information; creating an exemption
 8 from public-records requirements for
 9 proprietary confidential business information
 10 held by the Florida Opportunity Fund regarding
 11 alternative investments; providing for limited
 12 duration of the exemption; authorizing the
 13 inspection and copying of confidential and
 14 exempt records if the proprietor of the
 15 information fails to verify that a record
 16 contains certain information within a specified
 17 period of time; authorizing a court to order
 18 the release of confidential and exempt records
 19 upon making certain findings; providing for
 20 future review and repeal; providing a statement
 21 of public necessity; providing a contingent
 22 effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

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 26 Section 1. Section 288.96275, Florida Statutes, is
 27 created to read:

28 288.96275 Trade secret information; identification and
 29 performance information; public-records exemption.--

30 (1) As used in this section, the term:

31 (a) "Alternative investment" means an investment by

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1 the Florida Opportunity Fund in a private equity fund, venture
2 capital fund, or angel fund or a direct investment in a
3 portfolio company through a distribution of securities to its
4 partners or shareholders by an alternative investment vehicle.

5 (b) "Alternative investment vehicle" means the limited
6 partnership, limited liability company, or similar legal
7 structure through which the Florida Opportunity Fund invests
8 in a portfolio company.

9 (c) "Florida Opportunity Fund" means the Florida
10 Opportunity Fund authorized in s. 288.9627.

11 (d) "Portfolio company" means a corporation or other
12 issuer, any of whose securities are owned by an alternative
13 investment vehicle or the Florida Opportunity Fund and any
14 subsidiary of such corporation or other issuer.

15 (e) "Portfolio positions" means individual investments
16 in portfolio companies that are made by the alternative
17 investment vehicles, including information or specific
18 investment terms associated with any portfolio company
19 investment.

20 (f) "Proprietor" means an alternative investment
21 vehicle, a portfolio company in which the alternative
22 investment vehicle is invested, or an outside consultant,
23 including the respective authorized officers, employees,
24 agents, or successors in interest, that controls or owns
25 information provided to the Florida Opportunity Fund.

26 (g)1. "Proprietary confidential business information"
27 means information that has been designated by the proprietor
28 when provided to the Florida Opportunity Fund as information
29 that is owned or controlled by a proprietor; that is intended
30 to be and is treated by the proprietor as private, the
31 disclosure of which would harm the business operations of the

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1 proprietor and has not been intentionally disclosed by the
2 proprietor unless pursuant to a private agreement that
3 provides that the information will not be released to the
4 public except as required by law or legal process, or pursuant
5 to law or an order of a court or administrative body; and that
6 concerns:

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

8 b. Information provided to the Florida Opportunity
9 Fund regarding a prospective investment in a private equity
10 fund, venture capital fund, angel fund, or portfolio company
11 that is proprietary to the provider of the information.

12 c. Financial statements and auditor reports of an
13 alternative investment vehicle.

14 d. Meeting materials of an alternative investment
15 vehicle relating to financial, operating, or marketing
16 information of the alternative investment vehicle.

17 e. Information regarding the portfolio positions in
18 which the alternative investment vehicles invest.

19 f. Capital call and distribution notices to investors
20 of an alternative investment vehicle.

21 g. Alternative investment agreements and related
22 records.

23 h. Information concerning investors, other than the
24 Florida Opportunity Fund, in an alternative investment
25 vehicle.

26 2. "Proprietary confidential business information"
27 does not include:

28 a. The name, address, and vintage year of an
29 alternative investment vehicle and the identity of the
30 principals involved in the management of the alternative
31 investment vehicle.

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1 b. The dollar amount of the commitment made by the
2 Florida Opportunity Fund to each alternative investment
3 vehicle since inception.

4 c. The dollar amount and date of cash contributions
5 made by the Florida Opportunity Fund to each alternative
6 investment vehicle since inception.

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

10 e. The dollar amount, on a fiscal-year-end basis, of
11 cash or other fungible distributions received by the Florida
12 Opportunity Fund plus the remaining value of
13 alternative-vehicle assets that are attributable to the
14 Florida Opportunity Fund's investment in each alternative
15 investment vehicle.

16 f. The net internal rate of return of each alternative
17 investment vehicle since inception.

18 g. The investment multiple of each alternative
19 investment vehicle since inception.

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

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

26 (2) Proprietary confidential business information held
27 by the Florida Opportunity Fund regarding alternative
28 investments is confidential and exempt from s. 119.07(1) and
29 s. 24(a), Art. I of the State Constitution for 10 years after
30 the termination of the alternative investment.

31 (3) Notwithstanding the provisions of subsection (2),

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1 a request to inspect or copy a public record that contains
2 proprietary confidential business information shall be granted
3 if the proprietor of the information fails, within a
4 reasonable period of time after the request is received by the
5 Florida Opportunity Fund, to verify the following to the
6 Florida Opportunity Fund through a written declaration in the
7 manner provided by s. 92.525:

8 (a) That the requested record contains proprietary
9 confidential business information and the specific location of
10 such information within the record;

11 (b) If the proprietary confidential business
12 information is a trade secret, a verification that it is a
13 trade secret as defined in s. 688.002;

14 (c) That the proprietary confidential business
15 information is intended to be and is treated by the proprietor
16 as private, is the subject of efforts of the proprietor to
17 maintain its privacy, and is not readily ascertainable or
18 publicly available from any other source; and

19 (d) That the disclosure of the proprietary
20 confidential business information to the public would harm the
21 business operations of the proprietor.

22 (4)(a) Any person may petition a court of competent
23 jurisdiction for an order for the public release of those
24 portions of any record made confidential and exempt by
25 subsection (2).

26 (b) Any action under this subsection must be brought
27 in Orange County, Florida, and the petition or other initial
28 pleading shall be served on the Florida Opportunity Fund and,
29 if determinable upon diligent inquiry, on the proprietor of
30 the information sought to be released.

31 (c) In any order for the public release of a record

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1 under this subsection, the court shall make a finding that:

2 1. The record or portion thereof is not a trade secret
3 as defined in s. 688.002;

4 2. A compelling public interest is served by the
5 release of the record or portions thereof which exceed the
6 public necessity for maintaining the confidentiality of such
7 record; and

8 3. The release of the record will not cause damage to
9 or adversely affect the interests of the proprietor of the
10 released information, other private persons or business
11 entities, the Florida Opportunity Fund, or any trust fund, the
12 assets of which are invested by the Florida Opportunity Fund.

13 (5) This section is subject to the Open Government
14 Sunset Review Act in accordance with s. 119.15 and shall stand
15 repealed on October 2, 2012, unless reviewed and saved from
16 repeal through reenactment by the Legislature.

17 Section 2. The Legislature finds that it is a public
18 necessity that proprietary confidential business information
19 held by the Florida Opportunity Fund regarding alternative
20 investments be held confidential and exempt from s. 119.07(1),
21 Florida Statutes, and s. 24(a), Art. I of the State
22 Constitution for 10 years after the termination of the
23 alternative investment. Disclosing proprietary confidential
24 business information, including trade secrets as defined in s.
25 688.002, Florida Statutes, used in determining how private
26 equity investments are made or managed by private partnerships
27 investing assets on behalf of the Florida Opportunity Fund
28 would negatively affect the business interests of private
29 partnerships that rely heavily on their information advantage
30 to generate investment returns, and competitor partnerships
31 could gain an unfair competitive advantage if provided access

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1 to such information. The release of proprietary confidential
2 business information, including trade secrets, revealing how
3 alternative investments are made could result in inadequate
4 returns and ultimately frustrate attainment of the investment
5 objective of the Florida Opportunity Fund. It is the
6 Legislature's intent to allow the public access to sufficient
7 information in order to be informed regarding the alternative
8 investments of the Florida Opportunity Fund and to balance the
9 public's right to information against the right of private
10 business entities to be protected from harmful disclosure of
11 confidential and exempt proprietary confidential business
12 information, the disclosure of which would injure them in the
13 marketplace. It is also the Legislature's intent to establish
14 consistency with regard to the classification of information
15 relating to alternative investments by the Florida Opportunity
16 Fund as either confidential or suitable for public disclosure.
17 In finding that the public-records exemption created by this
18 act is a public necessity, the Legislature finds that the
19 public and private harm in disclosing proprietary confidential
20 business information relating to alternative investments by
21 the Florida Opportunity Fund significantly outweighs any
22 public benefit derived from disclosure; that the exemption
23 created by this act will enhance the ability of the Florida
24 Opportunity Fund to fulfill its duties as an investment
25 fiduciary by making it more effective and competitive in the
26 marketplace as an investor that is able to gain access to the
27 best alternative investment vehicles; and that the public's
28 ability to be informed regarding the alternative investments
29 made by the Florida Opportunity Fund is preserved by the
30 disclosure of information excepted from the created exemption.

31 Section 3. This act shall take effect July 1, 2007, if

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1 Senate Bill 1762 or similar legislation is adopted in the same
2 legislative session or an extension thereof and becomes law.

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