

Council Substitute for
Council Substitute for House Bill No. 131

An act relating to public records and meetings; creating s. 288.9626, F.S.; providing definitions; providing an exemption from public records requirements for certain information held by the Florida Opportunity Fund and for certain information held by the Institute for the Commercialization of Public Research; providing exceptions to the exemption; creating an exemption from public meetings requirements for portions of meetings of the boards of directors of the Florida Opportunity Fund and the Institute for the Commercialization of Public Research at which confidential and exempt records are discussed; providing penalties; providing for future legislative review and repeal; providing a statement of public necessity; amending s. 1004.226, F.S.; creating an exemption from public records requirements for certain information held by the Florida Technology, Research, and Scholarship Board; creating an exemption from public meetings requirements for portions of meetings of the Florida Technology, Research, and Scholarship Board at which confidential and exempt records are discussed; providing exceptions to the exemption; providing penalties; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 288.9626, Florida Statutes, is created to read:

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

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

(a) “Alternative investment” means an investment by the Florida Opportunity Fund in a private equity fund, venture capital fund, or angel fund or a direct investment in a portfolio company or investment through a distribution of securities to its partners or shareholders by an alternative investment vehicle.

(b) “Alternative investment vehicle” means the limited partnership, limited liability company, or similar legal structure through which the Florida Opportunity Fund may elect to invest in a portfolio company.

(c) “Florida Opportunity Fund” or “fund” means the Florida Opportunity Fund as defined in s. 288.9623.

(d) “Institute for the Commercialization of Public Research” or “institute” means the institute established by s. 288.9625.

(e) “Portfolio company” means a corporation or other issuer, any of whose securities are owned by an alternative investment vehicle or the Florida Opportunity Fund and any subsidiary of such corporation or other issuer.

(f) “Portfolio positions” means individual investments in portfolio companies that are made by the Florida Opportunity Fund, including information or specific investment terms associated with any portfolio company investment.

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

a. Trade secrets as defined in s. 688.002.

b. Information provided to the Florida Opportunity Fund or the Institute for the Commercialization of Public Research regarding a prospective investment in a private equity fund, venture capital fund, angel fund, or portfolio company that is proprietary to the provider of the information.

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

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

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

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

g. Alternative investment agreements and related records.

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

2. “Proprietary confidential business information” does not include:

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

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

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

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

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

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

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

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

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

(h) "Proprietor" means an alternative investment vehicle, a portfolio company in which the alternative investment vehicle or Florida Opportunity Fund is invested, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, that controls or owns information.

(2) PUBLIC RECORDS EXEMPTION.—

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

1. Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects conducted by universities and other publicly supported organizations in this state.

2. Information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the fund or institute.

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

4. Proprietary confidential business information regarding alternative investments for 10 years after the termination of the alternative investment.

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

(3) PUBLIC MEETINGS EXEMPTION.—

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

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

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

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

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

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

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

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

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

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

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

2. Any action under this subsection must be brought in Orange County and the petition or other initial pleading shall be served on the fund or the institute, whichever is applicable, and, if determinable upon diligent inquiry, on the proprietor of the information sought to be released.

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

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

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

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

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

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

Section 2. The Legislature finds that it is a public necessity that certain information held by the Florida Opportunity Fund or the Institute for the Commercialization of Public Research be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Materials that relate to methods of manufacture or production, potential trade secrets, or patentable materials received, generated, ascertained, or discovered during the course of research or through research projects by universities, colleges, community colleges, and publicly supported organizations in this state must be confidential and exempt because the disclosure of such information would create an unfair competitive advantage for persons receiving such information. Disclosure of proprietary confidential business information to the public would harm the business operations of the proprietor. The Legislature further finds that information received by the fund or the institute from a person from another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of that state or nation or pursuant to federal law should remain exempt or confidential because the highly confidential nature of research necessitates that it be protected. Without the exemptions provided by this act, the disclosure of confidential and exempt information would jeopardize the effective and efficient administration of this program. In addition, the

Legislature further finds that the identity of an investor or prospective investor who wishes to remain anonymous should be confidential and exempt from public disclosure. This exemption is necessary because the disclosure of investor identities may adversely impact the ability of the fund or the institute to attract investors who desire anonymity. The Legislature also finds that it is a public necessity that proprietary confidential business information held by the fund or the institute regarding alternative investments be held confidential and exempt for 10 years after the termination of the alternative investment. Disclosing proprietary confidential business information used in determining how private equity investments are made or managed by private partnerships investing assets on behalf of the fund would negatively affect the business interests of private partnerships that rely heavily on their information advantage to generate investment returns, and competitor partnerships could gain an unfair competitive advantage if provided access to such information. The release of proprietary confidential business information revealing how alternative investments are made could result in inadequate returns and ultimately frustrate attainment of the investment objective of the fund. It is the Legislature's intent to allow the public access to sufficient information in order to be informed regarding the alternative investments of the fund and to balance the public's right to information against the right of business entities to be protected from harmful disclosure of proprietary confidential business information the disclosure of which would injure them in the marketplace. The Legislature further finds that it is a public necessity that portions of meetings of the board of directors of the fund or of the board of directors of the institute at which records made confidential and exempt by this act are discussed be made exempt from public meetings requirements in order to maintain the confidential and exempt status of this information. Public oversight is preserved by requiring a transcript of any portion of a closed meeting of these boards.

Section 3. Subsection (8) of section 1004.226, Florida Statutes, as created by CS/CS/HB 83, 2007 Regular Session, is renumbered as subsection (9) and a new subsection (8) is added to that section, to read:

1004.226 The 21st Century Technology, Research, and Scholarship Enhancement Act.—

(8) EXEMPTIONS FROM PUBLIC RECORDS AND PUBLIC MEETINGS REQUIREMENTS; STATE UNIVERSITY RESEARCH COMMERCIALIZATION ASSISTANCE GRANT PROGRAM.—

(a) The following information held by the Florida Technology, Research, and Scholarship Board is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, trade secrets as defined in s. 688.002, or proprietary information received, generated, ascertained, or discovered by or through state university research projects submitted for funding under the State University Research Commercialization Assistance Grant Program.

2. Information that would identify an investor or potential investor, who desires to remain anonymous, in projects reviewed by the Florida Technology, Research, and Scholarship Board.

3. Any information received from a person or another state or nation or the Federal Government which is otherwise confidential or exempt under the laws of that state or nation or under federal law.

(b)1. That portion of a meeting of the Florida Technology, Research, and Scholarship Board at which information is discussed that is confidential and exempt under subsection (1) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any records generated during that portion of an exempt meeting are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c)1. Information made confidential and exempt pursuant to this section may be released to a governmental entity in the furtherance of its duties and responsibilities.

2. Any public officer or employee who willfully and knowingly releases such confidential and exempt information, in violation of this subsection, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

Section 4. The Legislature finds that it is a public necessity that certain records held by the Florida Technology, Research, and Scholarship Board be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Materials that relate to methods of manufacture or production, actual or potential trade secrets, patentable materials, or proprietary information received, generated, ascertained, or discovered by or through state university research projects submitted for funding under the State University Research Commercialization Assistance Grant Program must be confidential and exempt because the disclosure of such information would create an unfair competitive advantage for persons receiving such information. Disclosing proprietary confidential business information derived from university research projects, including trade secrets as defined in s. 688.002, Florida Statutes, would negatively affect the ability of state universities that rely heavily on the information gained from publicly funded research products to generate investment returns and competitor partnerships could gain an unfair competitive advantage if provided access to such information. The release of university-based proprietary confidential business information could result in inadequate returns and ultimately frustrate attainment of the investment objective of the State University Research Commercialization Assistance Grant Program. If such confidential and exempt information regarding research in progress were released pursuant to a public records request, others would be allowed to take

the benefit of the research without compensation or reimbursement. The Legislature further finds that information received by the Florida Technology, Research, and Scholarship Board from a person from another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of that state or nation or pursuant to federal law should remain exempt or confidential because the highly confidential nature of research necessitates that it be protected. Without the exemptions provided by this act, the disclosure of confidential and exempt information would jeopardize the effective and efficient administration of this program. In addition, the Legislature further finds that the identity of an investor or prospective investor who wishes to remain anonymous should be confidential and exempt from public disclosure. This exemption is necessary because the disclosure of investor identities may adversely impact the ability of state universities to attract investors who desire anonymity. The Legislature further finds that it is a public necessity that portions of meetings of the Florida Technology, Research, and Scholarship Board at which information made confidential and exempt by this act is discussed be made exempt from public meetings requirements in order to allow the Florida Technology, Research, and Scholarship Board to maintain the confidential and exempt status of this information.

Section 5. This act shall take effect July 1, 2007, if CS/CS/HB 83 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

Approved by the Governor June 19, 2007.

Filed in Office Secretary of State June 19, 2007.