

CHAPTER 2011-101

House Bill No. 7225

An act relating to a review under the Open Government Sunset Review Act; transferring, renumbering, and amending s. 215.44(8), F.S., which provides exemptions from public records requirements for the State Board of Administration; creating s. 215.440, F.S.; specifying information that does not constitute proprietary confidential business information held by the State Board of Administration; requiring the State Board of Administration to maintain a written list of records covered under a verified, written declaration; conforming cross-references; making editorial changes; removing the scheduled repeal of the exemption; amending s. 215.47, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (8) of section 215.44, Florida Statutes, is transferred and renumbered as section 215.440, Florida Statutes, and amended to read:

215.440 Board of Administration; public record exemptions.—

(1)(8)(a) In order to effectively and efficiently administer the real estate investment program of the State Board of Administration, the Legislature finds a public necessity in protecting specified records of the board. Accordingly, records and information relating to acquiring, hypothecating, or disposing of real property or related personal property or mortgage interests in same, as well as interest in collective real estate investment funds, publicly traded securities, or private placement investments, are confidential and exempt from s. 119.07(1) in order to protect proprietary information requisite to the board's ability to transact arms length negotiations necessary to successfully compete in the real estate investment market. All reports and documents relating to value, offers, counteroffers, or negotiations are confidential and exempt from s. 119.07(1) until closing is complete and all funds have been disbursed. Reports and documents relating to tenants, leases, contracts, rent rolls, and negotiations in progress are confidential and exempt from the provisions of s. 119.07(1) until the executive director determines that releasing such information would not be detrimental to the interests of the board and would not cause a conflict with the fiduciary responsibilities of the State Board of Administration.

(2)(b) In order to effectively and efficiently administer the investment programs of the board, the Legislature finds a public necessity in protecting records other than those described in subsection (1) paragraph (a). Accordingly, records and other information relating to investments made by the board pursuant to its constitutional and statutory investment duties and responsibilities are confidential and exempt from s. 119.07(1) until 30 days after completion of an investment transaction. However, if in the opinion of

the executive director of the board it would be detrimental to the financial interests of the board or would cause a conflict with the fiduciary responsibilities of the board, information concerning service provider fees may be maintained as confidential and exempt from s. 119.07(1) until 6 months after negotiations relating to such fees have been terminated. This exemption prevents the use of confidential internal investment decisions of the State Board of Administration for improper personal gain.

~~(3)(a)(e)1.~~ As used in this subsection ~~paragraph~~, the term:

1.a. “Alternative investment” means an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager.

2.b. “Alternative investment vehicle” means the limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company.

3.e. “Portfolio company” means a corporation or other issuer, any of whose securities are owned by an alternative investment vehicle or the State Board of Administration and any subsidiary of such corporation or other issuer.

4.d. “Portfolio positions” means individual investments in portfolio companies which are made by the alternative investment vehicles, including information or specific investment terms associated with any portfolio company investment.

5.e. “Proprietor” means an alternative investment vehicle, a portfolio company in which the alternative investment vehicle is invested, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, which controls or owns information provided to the State Board of Administration.

6.f. “Proprietary confidential business information” means information that has been designated by the proprietor when provided to the State Board of Administration 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.(I) Trade secrets as defined in s. 688.002.

b.(II) Information provided to the State Board of Administration regarding a prospective investment in a private equity fund, venture fund, hedge

fund, distress fund, or portfolio company which is proprietary to the provider of the information.

c.(III) Financial statements and auditor reports of an alternative investment vehicle.

d.(IV) Meeting materials of an alternative investment vehicle relating to financial, operating, or marketing information of the alternative investment vehicle.

e.(V) Information regarding the portfolio positions in which the alternative investment vehicles invest.

f.(VI) Capital call and distribution notices to investors of an alternative investment vehicle.

g.(VII) Alternative investment agreements and related records.

h.(VIII) Information concerning investors, other than the State Board of Administration, in an alternative investment vehicle.

7.g. “Proprietary confidential business information” does not include:

a.(I) The name, address, and vintage year of an alternative investment vehicle and the identity of the principals involved in the management of the alternative investment vehicle.

b.(II) The dollar amount of the commitment made by the State Board of Administration to each alternative investment vehicle since inception.

c.(III) The dollar amount and date of cash contributions made by the State Board of Administration to each alternative investment vehicle since inception.

d.(IV) The dollar amount, on a fiscal-year-end basis, of cash distributions received by the State Board of Administration from each alternative investment vehicle.

e.(V) The dollar amount, on a fiscal-year-end basis, of cash distributions received by the State Board of Administration plus the remaining value of alternative-vehicle assets that are attributable to the State Board of Administration’s investment in each alternative investment vehicle.

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

g.(VII) The investment multiple of each alternative investment vehicle since inception.

h.(VIII) The dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the State Board of Administration to each alternative investment vehicle.

~~i.(IX)~~ The dollar amount of cash profit received by the State Board of Administration from each alternative investment vehicle on a fiscal-year-end basis.

j. A description of any compensation, fees, or expenses, including the amount or value, paid or agreed to be paid by a proprietor to any person to solicit the board to make an alternative investment or investment through an alternative investment vehicle. This does not apply to an executive officer, general partner, managing member, or other employee of the proprietor, who is paid by the proprietor to solicit the board to make such investments.

~~(b)2.~~ Proprietary confidential business information held by the State Board of Administration regarding alternative investments is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 10 years after the termination of the alternative investment. This exemption applies to proprietary confidential business information held by the State Board of Administration before, on, or after October 1, 2006.

~~(c)1.3.~~ Notwithstanding the provisions of ~~paragraph (b) subparagraph 2.~~, a request to inspect or copy a record under s. 119.07(1) ~~that~~ which 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 State Board of Administration, to verify the following to the State Board of Administration through a written declaration in the manner provided by s. 92.525:

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

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

c. 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

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

2. The State Board of Administration shall maintain a list and a description of the records covered by any verified, written declaration made under this paragraph.

~~(d)4.~~ 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 ~~paragraph (b) subparagraph 2.~~ Any action under this ~~paragraph~~ subparagraph must be brought in Leon County, Florida, and the petition or other initial pleading shall be served on the State Board of Administration and, if determinable upon diligent inquiry, on the proprietor of the information sought to be released. In any order for the public release of

a record under this ~~paragraph~~ subparagraph, the court shall make a finding that the record or portion thereof is not a trade secret as defined in s. 688.002, that 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 that 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 State Board of Administration, or any trust fund, the assets of which are invested by the State Board of Administration.

~~5.—This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (15) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(15) With no more, in the aggregate, than 10 percent of any fund in alternative investments, as defined in s. ~~215.440(3)(a)1.~~ 215.44(8)(e)1.a., through participation in the vehicles defined in s. ~~215.440(3)(a)2.~~ 215.44(8)(e)1.b., or in securities or investments that are not publicly traded and are not otherwise authorized by this section.

Section 3. This act shall take effect October 1, 2011.

Approved by the Governor May 31, 2011.

Filed in Office Secretary of State May 31, 2011.