

## CHAPTER 2012-223

### House Bill No. 7103

An act relating to a review under the Open Government Sunset Review Act; amending s. 288.9626, F.S., which provides exemptions from public record and open meeting requirements for the Florida Opportunity Fund and the Institute for the Commercialization of Public Research; reorganizing the exemptions by removing references to the Institute for the Commercialization of Public Research and relocating the exemptions relating to the institute in a new statute; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions; revising definitions; clarifying that the exemptions pertaining to the Florida Opportunity Fund apply to prospective investments, alternative investments, and certain proprietary confidential information provided by a proprietor; reducing the time period during which proprietary confidential business information is confidential and exempt from disclosure; creating s. 288.9627, F.S.; providing exemptions from public record and open meeting requirements for the Institute for the Commercialization of Public Research which are relocated from s. 288.9626, F.S.; providing definitions; providing an exemption from public record requirements for materials relating to methods of manufacturing, trade secrets, patents, and research by universities or other publically supported organizations, materials supplied by a proprietor, information that would identify investors or potential investors, and information that is confidential and exempt under other laws; reducing the time period during which proprietary confidential business information is confidential and exempt from disclosure; providing an exemption from public meeting requirements for portions of meetings of the institute's board of directors at which confidential and exempt information is discussed; requiring the recording and transcription of closed meetings; providing an exemption from public record requirements for transcripts and minutes of exempt portions of meetings of the institute's board of directors; specifying procedure by which a proprietor of information may prevent the disclosure of proprietary confidential business information when a request for such information is made to the institute; authorizing a person to petition a court in Palm Beach County or Alachua County for the release of confidential and exempt information; requiring a court to make specific findings before the information may be released; providing criminal penalties for willful and knowing violation of public record or public meeting exemptions pertaining to the institute; providing an effective date.

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

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

288.9626 Exemptions from public records and public meetings requirements for the; 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 or prospective investment through a loan, acquisition of an equity interest, or other investment method by the Florida Opportunity Fund in a private equity fund, venture capital fund, or angel fund; an investment by the Florida Opportunity Fund or an alternative investment or a direct investment in a portfolio company; or an 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 fund structure through which funds of, or funds managed by, the Florida Opportunity Fund are invested 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.~~

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

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

~~(f)(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 an existing or a prospective alternative 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.

(g)(h) “Proprietor” means an alternative investment vehicle ~~or~~ a portfolio company in which an the alternative investment vehicle or Florida Opportunity Fund invests or which is being considered for investment 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 and that are provided by a proprietor 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 Florida Opportunity 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.~~

~~3.4.~~ Proprietary confidential business information regarding alternative investments for 7 ~~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 board ~~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 Florida Opportunity 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 Florida Opportunity 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, ~~or 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. Section 288.9627, Florida Statutes, is created to read:

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

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

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

(b)1. “Proprietary confidential business information” means information that has been designated by the proprietor when provided to the institute 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. Financial statements and internal or external auditor reports of a proprietor corporation, partnership, or person requesting confidentiality under this statute, unless publicly released by the proprietor.

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

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

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

- a. The identity and primary address of the proprietor’s principals.
- b. The dollar amount and date of the financial commitment or contribution made by the institute.
- c. The dollar amount, on a fiscal-year-end basis, of cash repayments or other fungible distributions received by the institute from each proprietor.
- d. The dollar amount, if any, of the total management fees and costs paid on an annual fiscal-year-end basis by the institute.

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

(2) PUBLIC RECORD EXEMPTION.—

(a) The following records held by the institute 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 and that are provided to the institute by a proprietor.

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

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 for 7 years after the termination of the institute’s financial commitment to the company.

(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 MEETING EXEMPTION.—

(a) That portion of a meeting of the institute’s board of directors 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 board 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 institute, to verify the following to the institute 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 Palm Beach County or Alachua County, and the petition or other initial pleading shall be served on the institute 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, or the institute.

(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.

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

Approved by the Governor May 4, 2012.

Filed in Office Secretary of State May 4, 2012.