

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 record 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 record and open meeting  
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 record 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  
 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 record or public meeting  
 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  
 54 | meetings requirements for the; Florida Opportunity Fund ~~and the~~  
 55 | ~~Institute 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  
 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  
 88 when provided to the Florida Opportunity Fund ~~or the Institute~~  
 89 ~~for the Commercialization of Public Research~~ as information that  
 90 is owned or controlled by a proprietor; that is intended to be  
 91 and is treated by the proprietor as private, the disclosure of  
 92 which would harm the business operations of the proprietor and  
 93 has not been intentionally disclosed by the proprietor unless  
 94 pursuant to a private agreement that provides that the  
 95 information will not be released to the public except as  
 96 required by law or legal process, or pursuant to law or an order  
 97 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  
 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  
 121 Florida Opportunity Fund, in an alternative investment vehicle  
 122 or portfolio company.

123 2. "Proprietary confidential business information" does  
 124 not 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  
 133 by 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  
 146 vehicle since inception.

147 h. The dollar amount of the total management fees and  
 148 costs 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  
 151 Florida Opportunity Fund from each alternative investment  
 152 vehicle on a fiscal-year-end basis.

153 ~~(g)-(h)~~ "Proprietor" means an alternative investment  
 154 vehicle or, ~~a~~ portfolio company in which an ~~the~~ alternative  
 155 investment vehicle or Florida Opportunity Fund invests, or is  
 156 considering for investment ~~is invested~~, or an outside  
 157 consultant, including the respective authorized officers,  
 158 employees, agents, or successors in interest, that controls or  
 159 owns information.

160 (2) PUBLIC RECORDS EXEMPTION.—

161 (a) The following records held by the Florida Opportunity  
 162 Fund ~~or the Institute for the Commercialization of Public~~  
 163 ~~Research~~ are confidential and exempt from s. 119.07(1) and s.  
 164 24(a), Art. I of the State Constitution:

165 1. Materials that relate to methods of manufacture or  
 166 production, potential trade secrets, or patentable material  
 167 received, generated, ascertained, or discovered during the  
 168 course of research or through research projects and that is

169 provided by a proprietor ~~conducted by universities and other~~  
 170 ~~publicly supported organizations in this state.~~

171 2. Information that would identify an investor or  
 172 potential investor who desires to remain anonymous in projects  
 173 reviewed by the Florida Opportunity Fund ~~or institute.~~

174 ~~3. Any information received from a person from another~~  
 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  
 200 meetings are confidential and exempt from s. 119.07(1) and s.  
 201 24(a), Art. I of the State Constitution.

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

203 (a) Records made confidential and exempt by this section  
 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).

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  
 244 of the record or portions thereof which exceed the public  
 245 necessity for maintaining the confidentiality of such record;  
 246 and

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

252 (5) PENALTIES.—Any person who willfully and knowingly

253 violates this section commits a misdemeanor of the first degree,  
 254 punishable as provided in s. 775.082 or s. 775.083.

255 ~~(6) OPEN GOVERNMENT SUNSET REVIEW. This section is subject~~  
 256 ~~to the Open Government Sunset Review Act in accordance with s.~~  
 257 ~~119.15 and shall stand repealed on October 2, 2012, unless~~  
 258 ~~reviewed and saved from repeal through reenactment by the~~  
 259 ~~Legislature.~~

260 Section 2. Section 288.9627, Florida Statutes, is created  
 261 to read:

262 288.9627 Exemptions from public record and public meeting  
 263 requirements for the Institute for the Commercialization of  
 264 Public Research.-

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

266 (a) "Institute for the Commercialization of Public  
 267 Research" or "institute" means the institute established by s.  
 268 288.9625.

269 (b)1. "Proprietary confidential business information"  
 270 means information that has been designated by the proprietor  
 271 when provided to the institute as information that is owned or  
 272 controlled by a proprietor; that is intended to be and is  
 273 treated by the proprietor as private, the disclosure of which  
 274 would harm the business operations of the proprietor and has not  
 275 been intentionally disclosed by the proprietor unless pursuant  
 276 to a private agreement that provides that the information will  
 277 not be released to the public except as required by law or legal  
 278 process, or pursuant to law or an order of a court or  
 279 administrative body; and that concerns:

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

281 b. Financial statements and internal or external auditor  
 282 reports of a proprietor corporation, partnership, or person  
 283 requesting confidentiality under this statute, unless publicly  
 284 released by the proprietor.

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

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

290 2. "Proprietary confidential business information" does  
 291 not include:

292 a. The identity and primary address of the proprietor's  
 293 principals.

294 b. The dollar amount and date of the financial commitment  
 295 or contribution made by the institute.

296 c. The dollar amount, on a fiscal-year-end basis, of cash  
 297 repayments or other fungible distributions received by the  
 298 institute from each proprietor.

299 d. The dollar amount, if any, of the total management fees  
 300 and costs paid on an annual fiscal-year-end basis by the  
 301 institute.

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

306 (2) PUBLIC RECORD EXEMPTION.—

307 (a) The following records held by the institute are  
 308 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

309 of the State Constitution:

310 1. Materials that relate to methods of manufacture or  
 311 production, potential trade secrets, or patentable material  
 312 received, generated, ascertained, or discovered during the  
 313 course of research or through research projects conducted by  
 314 universities and other publicly supported organizations in this  
 315 state and that is provided to the institute by a proprietor.

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

319 3. Any information received from a person from another  
 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 MEETING 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  
 343 meetings are confidential and exempt from s. 119.07(1) and s.  
 344 24(a), Art. 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.

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  
 375 Palm 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  
 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  
 384 of the record or portions thereof which exceed the public  
 385 necessity for maintaining the confidentiality of such record;  
 386 and

387 c. The release of the record will not cause damage to or  
 388 adversely affect the interests of the proprietor of the released  
 389 information, other private persons or business entities, or the  
 390 institute.

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

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