

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1787 (PCB SA 03-25) Public Records/Board of Admin./Alternative Investments
SPONSOR(S): State Administration and Mack
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill creates a public records exemption for certain proprietary confidential business information; contractual information; and due diligence materials, which include sensitive, personal information regarding company employees and board members; in connection with the alternative investments program, held by the State Board of Administration. The board may use such confidential and exempt information in any legal or administrative proceeding.

This bill also requires the Auditor General to report to the Commission on Ethics any investment transactions made that appear to be in violation of the code of ethics for public officers and employees. Any information obtained by the Auditor General, which is made confidential and exempt pursuant to this exemption, must remain confidential and exempt; however, such information may be released if it relates to a violation of the code of ethics.

This bill provides for future review and repeal of the exemption, and provides a statement of public necessity.

This bill does not appear to have a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1787.sa.doc
DATE: April 1, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill requires the Auditor General, pursuant to an audit, to report to the Commission on Ethics any investment transactions that appear to be in violation of chapter 112, part III.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law requires the State Board of Administration (board) to invest all of the state’s funds (approximately \$80 billion) in the System Trust Fund and all other funds required by law to be invested by the board. The board has the power to make purchases, sales, exchanges, investments, and reinvestments for and on behalf of the funds. The board must see that the moneys invested are at all times handled in the best interests of the state.¹

Current law also provides guidelines for investing those funds. More specifically, no more than five percent of any fund may be invested in private equity through participation in limited partnerships and limited liability companies.² This type of investment falls under the category of “alternative investments”. Alternative investment programs are long term investments that are considered risky, because such investments are not monitored by the Securities and Exchange Commission, and because the moneys are invested in individual start-up companies. However, such programs are expected to provide a greater return than do more conservative investments.

The board, like many other state investment boards, intends to invest in “alternative investments”. Due to Florida’s public records laws, if the board decides to contract with a private equity limited partnership, that partnership’s information, along with information regarding the start-up companies, would be a public record when in the possession of the board. This information could include proprietary confidential business information as well as personal information on employees and detailed financial information on individual partners. According to board staff, release of such information would limit the ability of the board to access the best possible investments.

Effect of Bill

This bill creates a public records exemption for certain information obtained by the board as a result of its participation in the alternative investments program. The following information, in connection with such program, is confidential and exempt³ from public disclosure:

¹ Section 215.44, F.S.

² Section 215.47(14), F.S.

³ There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the

- Information or specific investment terms associated with each individual portfolio company investment;
- Contractual side letters of, or other information concerning, other investors in current or prospective partnerships or investment management relationships; and
- Due diligence materials concerning prospective or current partnerships or investment management relationships.

The public will have access to the rate of returns and the board's selection process regarding the private equity limited partnership. This bill also allows the board to use such confidential and exempt information in any legal or administrative proceeding.

This bill requires the Auditor General to report to the Commission on Ethics any investment transactions made that appear to be in violation of the code of ethics for public officers and employees. Any information obtained by the Auditor General, which is confidential and exempt pursuant to this exemption, must remain confidential and exempt; however, such information may be released if it relates to a violation of the code of ethics.

This bill provides for future review and repeal of the exemption, and provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1. Amends s. 215.44(8), F.S., creating a public records exemption for the State Board of Administration alternative investments program.

Section 2. Provides for future review and repeal.

Section 3. Provides a statement of public necessity.

Section 4. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995⁴ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

⁴ Section 119.15, F.S.