

## Committee Substitute for Senate Bill No. 8-E

An act relating to public records and meetings; creating s. 288.9551, F.S.; creating an exemption from public records and public meetings requirements for certain information held by the Scripps Florida Funding Corporation or the Office of Tourism, Trade, and Economic Development; creating an exemption from public records requirements for specified research materials and actual and potential trade secrets; creating an exemption from public records requirements for other proprietary business information; creating an exemption for information made confidential under the laws of other states or nations or pursuant to federal law; creating an exemption from public meetings requirements for meetings of the governing board of directors of the Scripps Florida Funding Corporation and the Office of Tourism, Trade and Economic Development at which exempt records are presented or discussed; providing access to exempt or confidential information under specified circumstances; providing a penalty; providing for future 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 288.9551, Florida Statutes, is created to read:

288.9551 Exemptions from public records and meetings requirements; Scripps Florida Funding Corporation, The Scripps Research Institute or grantee, and the Office of Tourism, Trade, and Economic Development.—

(1) As used in this section, the term “grantee” has the same meaning ascribed in s. 288.955.

(2) The following information held by the Scripps Florida Funding Corporation or the Office of Tourism, Trade, and Economic Development under s. 288.955 is confidential and exempt from s. 24, Art. I of the State Constitution and s. 119.07(1):

(a) Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, actual trade secrets as defined in s. 688.002, or proprietary information received, generated, ascertained, or discovered by or through the grantee or The Scripps Research Institute.

(b) Agreements and proposals to receive funding, including grant applications; however, those portions of such agreements and proposals to receive funding, including grant applications, that do not contain information made exempt by paragraph (a) of this subsection, shall not be confidential and exempt upon issuance of the report that is made after the conclusion of the project for which funding was provided. The exemption created in this paragraph specifically excludes any agreement by the Scripps Florida Funding Corporation to release funds to The Scripps Research Institute or grantee.

(c) Materials that relate to the recruitment of scientists and researchers; and the identity of donors or potential donors.

(d) Any information received from a person or another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to that state's or nation's laws or pursuant to federal law.

(e) Personal identifying information of individuals who participate in human trials or experiments.

(f) Any medical or health records relating to participants in clinical trials.

(3) That portion of a meeting of the board of directors of the Scripps Florida Funding Corporation or the Office of Tourism, Trade and Economic Development at which information is presented or discussed which is confidential and exempt under subsection (2) is closed to the public and exempt from s. 24(b), Art. I of the State Constitution and s. 286.011.

(4) Any records generated during those portions of the board meetings which are closed to the public under subsection (3), such as minutes, tape recordings, videotapes, transcriptions, or notes are confidential and exempt from s. 24, Art. I of the State Constitution and s. 119.07(1).

(5) Public employees shall be permitted to inspect and copy records or information that is made exempt and confidential under this section exclusively for the performance of their public duties. Public employees receiving this exempt and confidential information must maintain the confidentiality of the information. Any such public employee receiving confidential information who violates this subsection commits a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

(6) The Scripps Research Institute or grantee as defined in s. 288.955, is a private, not-for-profit entity and as such is not subject to ch. 119 or s. 286.011. If a court nonetheless determines that The Scripps Research Institute or grantee is acting on behalf of an agency, by virtue of its contract under s. 288.955, or otherwise, such that it is subject to s. 24, Art. I of the State Constitution and s. 119.07(1) and s. 286.011, the exemptions from the public records and meetings requirements provided by this section shall apply equally to the same records and meetings when held by The Scripps Research Institute or grantee.

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

(8) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that certain records held by the Scripps Florida Funding Corporation or the Office of Tourism, Trade, and Economic Development which contain proprietary business and scientific information be made confidential and exempt from public disclosure. The Legislature also finds that, if a court determines that The Scripps Research Institute or grantee, which are private, not-for-profit entities, are acting on behalf of an agency, it is a public necessity that the exemptions created in this act apply to the same documents and meetings when held by The Scripps Research Institute or grantee. The Legislature finds that the economic development of the state is greatly enhanced by the diversification of the industries that are located in the state. In an effort that will greatly benefit the state through economic stimulation, the diversification of industries in the state, and job creation, the Legislature has created the Scripps Florida Funding Corporation to provide a substantial capital investment to attract and assist a private, nonprofit research organization that promotes research and development in the science of biotechnology to develop the means to predict, prevent, treat, or cure diseases that affect Floridians and others.

(2) In particular, the Legislature has authorized the release, under the terms specified in section 288.955, Florida Statutes, of an appropriation of \$310 million to The Scripps Research Institute or a grantee as defined in section 288.955, Florida Statutes, to establish a new research facility in Florida, to create new jobs, and to reinvest in a Florida state trust fund a significant portion of the foregoing appropriation from the net proceeds of certain grants to research activities it conducts in Florida, and, in cooperation with the economic development agencies of the state and the state university system, to seek to create new business and academic opportunities in this state. The Legislature finds that the ability of these entities to conduct meaningful scientific research and meet their obligations will be significantly impaired if certain proprietary business information or scientific research as discussed and defined in this act is not made confidential and exempt from public disclosure. Specifically, the Legislature finds that it is a public necessity to make exempt and confidential proprietary business information or scientific research that relates to methods of manufacture or production, potential trade secrets, patentable material, actual trade secrets as defined in section 688.002, Florida Statutes, or proprietary information received, generated, ascertained, or discovered by or through The Scripps Research Institute or the grantee because the disclosure of this information would negate the benefit expected by exposing valuable proprietary work to competitors. Disclosure of this information would create an unfair competitive advantage for competitors and others in receipt of the information and would adversely impact The Scripps Research Institute or grantee by negatively affecting the revenues generated by its research. In turn, this would negatively affect the financial and other substantial interests of the state, its economy, and the academic community.

(3) The Legislature also finds that it is a public necessity to make exempt and confidential agreements and proposals to receive funding, including grant applications, until after the conclusion of the project and the issuance of a report, while maintaining the exemption for proprietary information provided for in s. 288.9551(2)(a) in those agreements and grant applications.

If these records are not protected during the application process and during the time work on the project is ongoing, the grantee would be at a competitive disadvantage in competing for those funds. Further, it is a public necessity to make exempt and confidential materials that relate to the recruitment of scientists and researchers. If this information is not protected, it could adversely affect the ability of the grantee to attract the highest quality scientists and researchers to The Scripps Research Institute or grantee by permitting competitors to determine what the terms of employment negotiations for scientists and researchers are and to outbid The Scripps Research Institute or grantee. This would adversely affect the program and defeat its purpose. Furthermore, oversight and accountability for hiring of scientists and researchers is maintained through the requirement in s. 288.955 that reports on average compensation, numbers and types of personnel be provided to the Scripps Florida Funding Corporation or the Office of Tourism, Trade and Economic Development.

(4) The Legislature also finds that it is a public necessity to protect the identity of donors and potential donors to The Scripps Research Institute or grantee because some donors wish to remain anonymous and if their identity is not protected they would not make donations. Such donations provide additional funding for research and may provide additional reinvestment funds to the state. Thus, the identity of the donors must be protected in order to enhance and ensure the continuation of such funding and donations.

(5) The Legislature also finds that it is a public necessity to make confidential and exempt from public disclosure any information received from a person, another state, the Federal Government, or another nation which is confidential or exempt from disclosure pursuant to the laws of that state, nation, or the Federal Government. Failure to protect such information would inhibit scientific research by The Scripps Research Institute or grantee because other persons, states, the Federal Government, or nations could be unwilling to share information and research if it could be released. Without protecting such information, The Scripps Research Institute or grantee would be on an unequal footing in the biomedical industry as compared with research competitors that are not required to disclose confidential and exempt information, and thus operate to the economic detriment of the State.

(6) The Legislature also finds that it is a public necessity to make confidential and exempt from public disclosure personal identifying information of individuals who participate in human trials or experiments and any medical or health records relating to patients, participants, or clients which are held by the Scripps Florida Funding Corporation, The Scripps Research Institute or grantee, or the Office of Tourism, Trade, and Economic Development. Compilation of this information is necessary to conduct scientific research but could be damaging to those persons who have volunteered or otherwise agreed to participate. Such persons might be denied health insurance, suffer employment discrimination, and experience other personal problems and embarrassment if this highly sensitive and personal information were to be made public. If potential volunteers, patients, or clients feared that such consequences could be suffered by participating in human trials and other scientific research, they might refuse to participate, which

would adversely affect biomedical research by The Scripps Research Institute or grantee and place those entities on an unequal footing with other research institutes that protect this information, and thus operate to the economic detriment of the state.

(7) Similarly, the Legislature finds that the ability of The Scripps Research Institute or grantee to conduct meaningful scientific research and meet its obligations under section 288.955, Florida Statutes, will be impaired significantly if meetings held by the Scripps Florida Funding Corporation, The Scripps Research Institute or grantee, or the Office of Tourism, Trade, and Economic Development at which the records and information made confidential and exempt from public disclosure by this act are discussed are not closed. Failure to protect that portion of meetings during which such protected records and information are discussed would defeat the exemption created by this act. Further, the Legislature finds that records generated during those portions of meetings which are closed, and the minutes, tape recordings, videotapes, transcriptions, or notes, must be protected for the same reasons that those portions of the meetings are closed.

(8) The Legislature also finds that, given the size of the appropriation made to facilitate this program, the state has a substantial financial interest in the success of this program.

Section 3. This act shall take effect on the same date that Senate Bill 6-E, or similar legislation takes effect, if such legislation is enacted in the same legislative session, or an extension thereof, and becomes law.

Approved by the Governor November 3, 2003.

Filed in Office Secretary of State November 3, 2003.