

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 09-11 OGSR Scripps
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2032

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	11 Y, 0 N	Williamson	Williamson
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

In a 2003 special session, the Legislature created the Scripps Florida Funding Corporation (corporation), a nine-member, not-for-profit board that is responsible for: monitoring its 20-year agreement with The Scripps Research Institute (Scripps) for the establishment of a state-of-the-art biomedical research facility in Florida; and disbursing state funds on a schedule that coincides with the Florida facility meeting job-creation targets and other specified performance requirements. The Scripps Florida facility (Scripps Florida) is engaged in a variety of biomedical research, ranging from Alzheimer’s disease, to estrogen-dependent disorders, hepatitis, and neurodegenerative diseases.

The Legislature also created public record and public meeting exemptions for the corporation and the Office of Tourism, Trade, and Economic Development (OTTED). Essentially, proprietary confidential business information is confidential and exempt from public records requirements. In addition, meetings wherein such information is discussed are exempt from open meetings requirements.

The bill amends the definition of “grantee” to include a provision in current law that declares that Scripps and Scripps Florida are not subject to the public records and open meetings requirements.

The bill narrows the public record and public meeting exemptions by removing OTTED because the same information is protected by a duplicative exemption for economic incentive programs. In addition, OTTED has indicated it does not hold closed meetings pursuant to this public meeting exemption.

The bill maintains the public record and public meeting exemptions for the corporation.

The bill makes conforming changes, removes superfluous language, and reorganizes the section.

Finally, the bill provides for repeal of the public record and public meeting exemptions on October 2, 2024, because the 20-year agreement between the corporation and Scripps expires in the first quarter of that year.

The bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Scripps Florida Funding Corporation

In a 2003 special session, the Legislature created the Scripps Florida Funding Corporation (corporation), a nine-member, not-for-profit board that is responsible for:

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

- Monitoring its 20-year agreement with The Scripps Research Institute⁴ (Scripps) for the establishment of a state-of-the-art biomedical research facility in Florida; and
- Disbursing state funds on a schedule that coincides with the Florida facility meeting job-creation targets and other specified performance requirements.⁵

The corporation is not a unit or entity of the state, but is subject to Florida's public records and open meetings laws.⁶

The Legislature also appropriated \$310 million to the project; the source of the money was federal economic stimulus funds provided to Florida under the Jobs and Growth Tax Reconciliation Act of 2003 that had been deposited into the state's General Revenue Fund. At least \$230 million was additionally contributed by Palm Beach County and other entities.⁷

The state funds are disbursed over a 10-year-period, which began in 2004. Undisbursed funds are invested by the State Board of Administration, and the interest earnings go to the Scripps Florida facility (Scripps Florida).

As of November 2008, the corporation had disbursed \$189.3 million, plus \$14.5 million in interest earnings, to Scripps. As of September 2008, Scripps Florida had 262 employees; under the terms of its agreement with the corporation, Scripps Florida is required to hire 545 employees by 2014.⁸

The Scripps Florida Facility

The Scripps Florida facility (Scripps Florida) is engaged in a variety of biomedical research, ranging from Alzheimer's disease, to estrogen-dependent disorders, hepatitis, and neurodegenerative diseases. Its technological discoveries have facilitated the creation of two spin-off companies, Xcovery and cuRNA.⁹

Scripps Florida is not an independent research institute,¹⁰ separate from Scripps. Rather, Scripps Florida is a division of Scripps. The state's funds are spent only on approved expenditures at Scripps Florida. Even though it receives public funds, Scripps (and by extension, Scripps Florida) is a private, not-for-profit research institute, and is not subject to Florida's public records and open meetings laws.¹¹

Public Record and Public Meeting Exemptions under Review

In 2003, the Legislature also created public record and public meeting exemptions for the corporation and the Office of Tourism, Trade, and Economic Development (OTTED).¹²

The following information is confidential and exempt¹³ from public records requirements:

- Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, actual trade secrets,¹⁴ or proprietary information received, generated, ascertained, or discovered by or through Scripps or Scripps Florida.

⁴ The Scripps Research Institute is based in La Jolla, California.

⁵ Chapter 2003-420, L.O.F.; codified as s. 288.955, F.S.

⁶ Section 288.955(2)(b), F.S.

⁷ Senate Bill Analysis and Fiscal Impact Statement for SPB 7052, Commerce Committee, February 18, 2009, at 3.

⁸ *Id.*

⁹ PowerPoint Presentation on the Florida facility presented by Carol Licko, Jan. 14, 2009, Senate Commerce Committee (on file with the House Governmental Affairs Policy Committee).

¹⁰ For its first 4 years, Scripps Florida operated from the Jupiter campus of Florida International University while its own facilities were under construction. Within the next month, Scripps staff expects to move into its new lab and office space.

¹¹ *See* s. 288.9551(6), F.S.

¹² Chapter 2003-419, L.O.F.; codified as s. 288.9551, F.S.

¹³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985)

- Agreements and proposals to receive funding, including grant applications.¹⁵
- Materials that relate to the recruitment of scientists and researchers.
- Materials that relate to the identity of donors or potential donors.
- Any information received from a person or 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.
- Personal identifying information of individuals who participate in human trials or experiments.
- Any medical or health records relating to participants in clinical trials.¹⁶

In addition, those portions of meetings held by the corporation's board of directors or by OTTED, during which confidential and exempt information is presented or discussed, are exempt from open meetings requirements.¹⁷ Records generated during those closed meetings (including meeting minutes and recordings) are confidential and exempt from public records requirements.¹⁸

Public employees are permitted to inspect and copy the confidential and exempt records in the furtherance of their duties and responsibilities. Any public employee violating the exemption commits a misdemeanor of the first degree,¹⁹ punishable by a maximum of one year in jail and a \$1000 fine.²⁰ This is a stronger penalty than that provided in the general public record exemption for other economic incentive programs.²¹

Finally, the statute declares that Scripps and Scripps Florida are a private, not-for-profit entity and, as such, are not subject to the public records and open meetings requirements.²² The section, however, provides the same exemptions for Scripps and Scripps Florida *just in case* a court determines the facilities are acting on behalf of an agency. Such provision is not common for public record and public meeting exemptions.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2009, unless reenacted by the Legislature.

EFFECT OF BILL

The bill amends the definition of "grantee" in s. 288.955, F.S., by relocating and including the provision declaring that Scripps and Scripps Florida are not subject to the public records and open meetings requirements. Under the bill, "grantee" means:

The Scripps Research Institute, a not-for-profit public benefit corporation, or a division, subsidiary, affiliate, or entity formed by The Scripps Research Institute to establish a state-of-the-art biomedical research institution and campus in this state. *The grantee is not an agency nor an entity acting on behalf of an agency for purposes of chapter 119 and s. 286.011.*²³

¹⁴ Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

¹⁵ Those portions of agreements and proposals to receive funding, including grant applications, that do not contain information otherwise exempt, 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. Excluded from this exemption is the agreement between the corporation and Scripps that governs the release of the state funds.

¹⁶ Section 288.9551(2), F.S.

¹⁷ Section 288.9551(3), F.S.

¹⁸ Section 288.9551(4), F.S.

¹⁹ Section 288.9551(5), F.S.

²⁰ Sections 775.082 and 775.083, F.S.

²¹ Any employee who violates the exemption for economic incentive programs provided in s. 288.075, F.S., commits a misdemeanor of the second degree.

²² Section 288.9551(6), F.S.

²³ The new language is italicized.

The bill narrows the public record and public meeting exemptions by removing OTTED. In its questionnaire response to House and Senate staff, OTTED noted it does not receive any of the confidential and exempt information from Scripps or Scripps Florida²⁴ and it does not hold closed meetings to discuss such information.²⁵ OTTED also indicated that the exemptions under review were duplicative of the public record exemption provided in s. 288.075, F.S.²⁶ Section 288.075, F.S., provides a general public record exemption for economic development agencies with custody of similar proprietary information received from businesses as a result of administering economic incentive programs. OTTED is defined as an economic development agency for purposes of that exemption; however, the corporation is not included in the definition.²⁷

The bill maintains the public record and public meeting exemptions for the corporation; however, it should be noted that the corporation indicated to House and Senate staff in its questionnaire response that it does not receive the confidential and exempt information,²⁸ nor does it hold closed meetings to discuss such information.²⁹

The bill conforms the public record exemption for information that identifies a donor or potential donor to that of other similar exemptions. The bill requires a donor or potential donor to indicate a desire to remain anonymous in order to trigger the public record exemption.

The bill conforms the penalty provision to that provided in the general exemption for economic incentive programs. The penalty is reduced from a first degree misdemeanor to a second degree misdemeanor.

The bill makes other conforming changes, removes superfluous language, and reorganizes the section.

Finally, the bill provides for repeal of s. 288.9551, F.S., on October 2, 2024, because the 20-year agreement between the corporation and Scripps expires in the first quarter of that year.

B. SECTION DIRECTORY:

Section 1 amends s. 288.955, F.S., to revise the definition of “grantee”.

Section 2 amends s. 288.9551, F.S., to reenact the public record and public meeting exemptions for the Scripps Florida Funding Corporation.

Section 3 provides an effective date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

²⁴ OTTED’s response to the joint House and Senate questionnaire regarding the open government sunset review of s. 288.9551, F.S., response completed by Jenni Garrison, Innovation Program Manager, received July 31, 2008, at question 2. This response was reiterated during a conference call on August 25, 2008, from 1:00pm – 3:00pm, with representatives from Scripps, Scripps Florida, and OTTED. The corporation was unable to participate.

²⁵ *Id.* at question 8.

²⁶ *Id.* at question 4.

²⁷ *See* s. 288.075(1)(a), F.S.

²⁸ The corporation’s response to the joint House and Senate questionnaire regarding the open government sunset review of s. 288.9551, F.S.; response completed by Jenni Garrison, Innovation Program Manager for OTTED, Chris Sullivan, Chairman for the corporation, and Kathy Deutsch, outside counsel for the corporation; received July 30, 2008, at question 6. This response was reiterated during a conference call on August 25, 2008, from 1:00pm – 3:00pm, with representatives from Scripps, Scripps Florida, and OTTED. The corporation was unable to participate.

When asked whether the corporation received proprietary information, it responded with the following:

The outside auditors for TSRI provide the outside auditor of the SFFC with highly proprietary and confidential work product during their audit of TSRI and Scripps Florida. SFFC does not directly receive this information. (question 6.e.)

²⁹ *Id.* at question 12.

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.