

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 14-02 OGSR Scripps Florida Funding Corporation

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SPB 7032

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson

### 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), which is a 10-member, not-for-profit board. The corporation is responsible for monitoring its 20-year agreement with the California-based Scripps Research Institute (Scripps) for the establishment of a state-of-the-art biomedical research facility in Florida (Scripps Florida), and disbursing state funds on a schedule that coincides with Scripps Florida meeting job-creation targets and other contractual requirements. The corporation is not a unit or entity of the state; however, it is subject to Florida's public record and open meeting laws.

Current law provides a public record exemption for the following information held by the corporation:

- Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, actual trade secrets, or proprietary information received, generated, ascertained, or discovered by or through Scripps or Scripps Florida.
- Agreements and proposals to receive funding, including grant applications.
- Materials that relate to the recruitment of scientists and researchers.
- The identity of donors or potential donors to Scripps who wish to remain anonymous.
- Certain information received from a person from another state or nation or the Federal Government.
- Personal identifying information of individuals who participate in human trials or experiments.
- Medical or health records relating to participants in clinical trials.

In addition, corporation meetings wherein such confidential and exempt information is discussed are exempt from public meeting requirements. Records generated during those closed meetings are confidential and exempt from public record requirements.

The bill repeals the public record and public meeting exemptions. According to the corporation, it operates in the sunshine and does not receive such confidential and exempt information.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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.<sup>2</sup> 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 created<sup>3</sup> 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 10-member, not-for-profit board<sup>4</sup> responsible for:

- Entering into and monitoring a 20-year agreement with the California-based Scripps Research Institute (Scripps)<sup>5</sup> to establish a state-of-the-art biomedical research facility in Florida (Scripps Florida); and
- Disbursing state funds on a schedule that coincides with the Florida facility meeting job-creation targets and other contractual requirements.<sup>6</sup>

The Legislature appropriated \$310 million to the project from federal economic stimulus funds provided to Florida under the Jobs and Growth Tax Reconciliation Act of 2003.<sup>7</sup> In addition, Palm Beach County provided an economic package that included funding for land and construction of temporary laboratories, the current permanent campus, and related costs.<sup>8</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> The board of directors consists of nine voting members and an ex-officio, nonvoting member. The Governor, President of the Senate, and Speaker of the House of Representatives each appoint three voting members. The executive director of the Department of Economic Opportunity serves as the ex-officio, nonvoting member. Section 288.955(4)(a), F.S.

<sup>5</sup> The Scripps Research Institute is based in La Jolla, California.

<sup>6</sup> Chapter 2003-420, L.O.F.; codified as s. 288.955, F.S.

<sup>7</sup> Section 5, chapter 2003-420, L.O.F.

<sup>8</sup> Information provided at: <http://www.scripps.edu/florida/about/> (last visited February 3, 2014).

The state funds are disbursed over a 10-year period,<sup>9</sup> which began in 2004.<sup>10</sup> Undisbursed funds are invested by the State Board of Administration on behalf of the corporation.<sup>11</sup> According to the corporation's 2013 Annual Report, it has disbursed \$308,750,000 since inception, plus \$40,323,073 in interest.<sup>12</sup>

The corporation is not a unit or entity of the state; however, it is subject to Florida's public record and open meeting laws.<sup>13</sup>

### Scripps Florida

Scripps Florida is a Scripps Research Institute that adjoins the Florida Atlantic University campus in Palm Beach County. It is not an independent research institute, but is a division of the California-based Scripps. Scripps Florida focuses on basic biomedical science, drug discovery, and technology development.<sup>14</sup>

As of September 30, 2013, Scripps Florida had employed 528 people;<sup>15</sup> under the terms of its agreement with the corporation, Scripps Florida is required to hire 545 employees by 2014.<sup>16</sup>

### Public Record and Public Meeting Exemptions under Review

During the 2003 special session in which the corporation was created, the Legislature also created a public record and public meeting exemption for the corporation and the Office of Tourism, Trade, and Economic Development<sup>17</sup>.<sup>18</sup> Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions were scheduled to repeal on October 2, 2009; however, the Legislature reenacted the exemptions with changes.<sup>19</sup>

Currently, the following information held by the corporation is confidential and exempt<sup>20</sup> from public

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<sup>9</sup> Originally, the funds were to be disbursed over a seven year period; however, due to site-selection and permitting delays, the disbursement period was extended to 10 years. See Amendment to Operating and Funding Agreement, November 28, 2006 (on file with the Government Operations Subcommittee).

<sup>10</sup> Scripps Florida Funding Corporation Annual Report for the year ended September 30, 2013 (2013 Annual Report), at 3, available at: <http://www.scripps.edu/florida/about/annual-rpt.html> (last visited February 3, 2014).

<sup>11</sup> Section 288.955(7), F.S.

<sup>12</sup> 2013 Annual Report, at 36.

<sup>13</sup> Section 288.955(2)(b), F.S.

<sup>14</sup> 2013 Annual Report, at 3.

<sup>15</sup> The employees include 54 faculty positions, 337 scientific staff positions, and 137 administration positions. Faculty positions include tenure track professors, associate professors, and assistant professors. Scientific staff positions include non-tenure track scientists (research faculty and staff scientists), research associates/post-docs, lab technicians, and Scripps paid graduate students. Administration positions include all other support personnel. *Id.* at 36.

<sup>16</sup> *Id.*, at 36.

<sup>17</sup> Chapter 2011-142, L.O.F., transferred by a type two transfer all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to the Department of Economic Opportunity.

<sup>18</sup> Chapter 2003-419, L.O.F.; codified as s. 288.9551, F.S.

<sup>19</sup> Chapter 2009-236, L.O.F.

<sup>20</sup> 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).

record requirements:

- Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, actual trade secrets,<sup>21</sup> or proprietary information received, generated, ascertained, or discovered by or through Scripps or Scripps Florida.<sup>22</sup>
- Agreements and proposals to receive funding, including grant applications.<sup>23</sup>
- Materials that relate to the recruitment of scientists and researchers.<sup>24</sup>
- The identity of donors or potential donors to Scripps who wish to remain anonymous.<sup>25</sup>
- 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.<sup>26</sup>
- Personal identifying information of individuals who participate in human trials or experiments.<sup>27</sup>
- Medical or health records relating to participants in clinical trials.<sup>28</sup>

In addition, those portions of meetings held by the corporation's board of directors, during which confidential and exempt information is presented or discussed, are exempt from public meeting requirements.<sup>29</sup> Records generated during those closed meetings are confidential and exempt from public record requirements.<sup>30</sup>

Current law also requires that public employees be permitted to inspect and copy the confidential and exempt information in the furtherance of their duties and responsibilities.<sup>31</sup>

Any person who willfully and knowingly violates the public record or public meeting exemption commits a misdemeanor of the second degree.<sup>32</sup> A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days,<sup>33</sup> and a fine not to exceed \$500.<sup>34</sup>

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2014, unless reenacted by the Legislature.<sup>35</sup>

During the 2013 interim, subcommittee staff sent a questionnaire to the corporation as part of the Open Government Sunset Review process. The corporation recommended repealing the public record and public meeting exemptions under review, because it "operates in the sunshine and does not hold, gather or disseminate proprietary information about Scripps Florida business or technologies."<sup>36</sup>

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<sup>21</sup> The exemption provides a public record exemption for an actual trade secret as defined in s. 688.002, F.S. Section 688.002(4), F.S., defines the term "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) 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

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

<sup>22</sup> Section 288.9551(2)(a), F.S.

<sup>23</sup> Those portions of agreements and proposals to receive funding, including grant applications, that do not contain confidential and exempt information, are not confidential and exempt upon issuance of the report that is made after the conclusion of the project for which funding was provided. In addition, the public record exemption does not apply to any agreement between the corporation and Scripps that governs the release of the state funds. Section 288.9551(2)(b), F.S.

<sup>24</sup> Section 288.9551(2)(c), F.S.

<sup>25</sup> Section 288.9551(2)(d), F.S.

<sup>26</sup> Section 288.9551(2)(e), F.S.

<sup>27</sup> Section 288.9551(2)(f), F.S.

<sup>28</sup> Section 288.9551(2)(g), F.S.

<sup>29</sup> Section 288.9551(3)(a), F.S.

<sup>30</sup> Section 288.9551(3)(b), F.S.

<sup>31</sup> Section 288.9551(4), F.S.

<sup>32</sup> Section 288.9551(5), F.S.

<sup>33</sup> Section 775.082(4)(b), F.S.

<sup>34</sup> Section 775.083(1)(e), F.S.

<sup>35</sup> Section 288.9551(6), F.S.

<sup>36</sup> Open Government Sunset Review Questionnaire for the Scripps Florida Funding Corporation, received September 10, 2013, at question 13 (on file with the Government Operations Subcommittee).

## **Effect of the Bill**

The bill repeals s. 288.9551, F.S., thereby repealing the public record and public meeting exemptions for the Scripps Florida Funding Corporation.

### **B. SECTION DIRECTORY:**

Section 1 repeals s. 288.9551, F.S., which provides public record and public meeting exemptions for the Scripps Florida Funding Corporation.

Section 2 provides an effective date of October 1, 2014.

## **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.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to affect county or municipal governments.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.