

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Benson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause, and insert:

Section 1. Section 288.9551, Florida Statutes, is created to read:

288.9551 Exemptions from public records and public meetings requirements; Scripps Florida Funding Corporation, Office of Program Policy Analysis and Government Accountability, and 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, the Office of Program Policy Analysis and Government Accountability, or the Office of Tourism, Trade, and Economic Development under s. 288.955 is confidential and exempt

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28 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
29 State Constitution:

30 (a) Materials that relate to methods of manufacture or
31 production, potential trade secrets, patentable material, actual
32 trade secrets as defined in s. 688.002, or proprietary
33 information received, generated, ascertained, or discovered
34 during the course of research conducted by or through the
35 grantee, and business transactions resulting from such research.

36 (b) Agreements and proposals to receive funding for
37 projects, including grant applications; however, those portions
38 of such agreements and proposals, including grant applications,
39 are no longer confidential and exempt upon conclusion of the
40 project that was funded, except that information made
41 confidential and exempt pursuant to paragraph (a) shall remain
42 confidential and exempt. This exemption does not apply to any
43 agreement or contract by the Scripps Florida Funding Corporation
44 to release funds to the grantee.

45 (c) Materials that relate to the recruitment of scientists
46 and researchers.

47 (d) Personal identifying information of a donor or
48 prospective donor to the grantee who wishes to remain anonymous.

49 (e) Any record that is exempt or confidential under the
50 laws of another state or under federal law.

51 (f) Personal identifying information of individuals who
52 participate in human trials or experiments.

53 (g) Any medical or health records relating to participants
54 in clinical trials.

55 (3)(a) That portion of a meeting of the board of directors
56 of the Scripps Florida Funding Corporation at which information

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57 or records are presented or discussed that are confidential and
58 exempt pursuant to subsection (2) is exempt from the provisions
59 of s. 286.011 and s. 24(b), Art. I of the State Constitution.

60 (b) Any records generated during those portions of board
61 meetings that are exempt pursuant to paragraph (a) are
62 confidential and exempt from the provisions of s. 119.07(1) and
63 s. 24(a), Art. I of the State Constitution.

64 (4) A willful and knowing violation of this section is a
65 misdemeanor of the first degree, punishable as provided in s.
66 775.082 or s. 775.083.

67 (5) The grantee is a private not-for-profit entity and is
68 not subject to s. 119.07(1), s. 286.011, or s. 24, Art. I of the
69 State Constitution. In the event a court nonetheless determines
70 that the grantee is acting on behalf of an agency by virtue of
71 its contract under s. 288.955, or otherwise, such that it is
72 subject to s. 119.07(1), s. 286.011, and s. 24(a), Art. I of the
73 State Constitution, the exemptions created herein shall also
74 apply to the grantee.

75 Section 2. Section 288.9551, Florida Statutes, is subject
76 to the Open Government Sunset Review Act of 1995 in accordance
77 with s. 119.15, Florida Statutes, and shall stand repealed on
78 October 2, 2009, unless reviewed and saved from repeal through
79 reenactment by the Legislature.

80 Section 3. The Legislature finds that it is a public
81 necessity that certain proprietary information held by the
82 Scripps Florida Funding Corporation, the Office of Program
83 Policy Analysis and Government Accountability, or the Office of
84 Tourism, Trade, and Economic Development be made confidential
85 and exempt from public disclosure. The Legislature finds that

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86 the economic development of the state is greatly enhanced by the
87 diversification of the industries that are located in the state.
88 In an effort that will greatly benefit the state through
89 economic stimulation, the diversification of industries in the
90 state, and job creation, the Legislature has created the Scripps
91 Florida Funding Corporation to provide a substantial capital
92 investment to attract and assist a private nonprofit research
93 organization that promotes research and development in the
94 science of biotechnology for the purpose of developing the means
95 to predict, prevent, treat, or cure diseases that affect
96 Floridians and others. In particular, the Legislature has, under
97 the terms specified in s. 288.955, Florida Statutes, authorized
98 the release of a significant appropriation to the Scripps
99 Research Institute to establish a new research facility in
100 Florida in order to create new jobs, to reinvest a significant
101 portion of the appropriation from the net proceeds of certain
102 grants for research activities it conducts in Florida in a
103 Florida state trust fund, and, in cooperation with the economic
104 development agencies of the state and the State University
105 System, to seek to create new business and academic
106 opportunities in this state. The Legislature finds that the
107 ability of these entities to conduct meaningful scientific
108 research and meet their obligations will be impaired
109 significantly if certain proprietary information as described in
110 this act is not held confidential and exempt from public
111 disclosure. The Legislature finds that it is a public necessity
112 that materials that relate to methods of manufacture or
113 production, actual or potential trade secrets, patentable
114 materials, or proprietary information received, generated,

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115 ascertained, or discovered during the course of research
116 conducted by or through the grantee, and business transactions
117 resulting from such research, be made confidential and exempt
118 from public records requirements because the disclosure of such
119 information would negate the benefit expected by exposing
120 valuable proprietary work to competitors. Disclosure of this
121 information would create an unfair competitive advantage for
122 competitors and others and would adversely impact the grantee by
123 negatively affecting the revenues generated by its research. In
124 turn, this would negatively affect the financial and other
125 substantial interests of the state, its economy, and the
126 academic community. The Legislature also finds that it is a
127 public necessity to make confidential and exempt agreements and
128 proposals to receive funding for projects, including grant
129 applications. If this information is not protected, it could
130 adversely affect the ability of the grantee to operate. Without
131 the exemption, the disclosure of confidential and exempt
132 information would place the grantee on an unequal footing in the
133 marketplace as compared with other research competitors whose
134 information is kept confidential and exempt. Furthermore, upon
135 completion of a project, such agreements and proposals, less any
136 confidential and exempt information, are to be available for
137 public inspection. The Legislature finds that it is a public
138 necessity to make confidential and exempt the materials that
139 relate to the recruitment of scientists and researchers. If this
140 information is not protected, it could adversely affect the
141 ability of the grantee to attract the highest quality scientists
142 and researchers by permitting competitors to determine the terms
143 of employment negotiations, thereby enabling a competitor to

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144 outbid the grantee. The Legislature also finds that it is a
145 public necessity to protect the personal identifying information
146 of donors or prospective donors to the grantee who wish to
147 remain anonymous. If such information is not protected from
148 public disclosure, donors could be less likely to make donations
149 to the grantee. Such donations provide additional funding for
150 research. As such, such information must be protected in order
151 to enhance and ensure the continuation of donations. The
152 Legislature further finds that any record that is exempt or
153 confidential under the laws of another state or under federal
154 law should be held confidential and exempt from public
155 disclosure. Failure to protect such records would inhibit
156 scientific research by the grantee because other states or the
157 Federal Government could be unwilling to share information and
158 research if such records could be released. Without the
159 exemption, the disclosure of confidential and exempt records
160 would place the grantee on an unequal footing in the marketplace
161 as compared with other research competitors whose records are
162 kept confidential and exempt. The Legislature further finds that
163 disclosure of confidential and exempt records would adversely
164 impact the grantee's fulfilling the mission of research. The
165 Legislature finds that it is a public necessity to make
166 confidential and exempt personal identifying information of
167 individuals who participate in human trials or experiments and
168 any medical or health records relating to participants in
169 clinical trials. Compilation of this information is necessary to
170 conduct scientific research but could be damaging to those
171 persons who have volunteered or otherwise agreed to participate.
172 Such persons might be denied health insurance, suffer employment

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173 discrimination, and experience other social problems if this
174 information is not made confidential and exempt. If potential
175 participants feared that such consequences could be suffered by
176 participating in human trials or other scientific research, they
177 might refuse to participate, which would adversely impact
178 biomedical research by the grantee. The Legislature further
179 finds that it is a public necessity that portions of meetings of
180 the corporation at which confidential and exempt information and
181 records are presented or discussed be made exempt from public
182 meetings requirements in order to allow the corporation to
183 maintain the confidential and exempt status of such information
184 and records and to prevent an unfair competitive advantage for
185 the persons receiving the information and records. Moreover,
186 disclosing information and records made confidential and exempt
187 pursuant to this act via open meetings defeats the purpose of
188 the public records exemption. Furthermore, the Legislature finds
189 that it is a public necessity that records generated during
190 those portions of closed meetings of the corporation at which
191 confidential and exempt information and records are presented or
192 discussed be made confidential and exempt from public disclosure
193 for the reasons set forth in this section to justify the closing
194 of such portions of meetings.

195 Section 4. This act shall take effect upon becoming a law
196 if HB 1E or similar legislation is adopted in the same
197 legislative session or an extension thereof and becomes law.

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200 ===== T I T L E A M E N D M E N T =====

201 Remove the entire title, and insert:

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202
203 A bill to be entitled
204 An act relating to public records and public meetings
205 exemptions; creating s. 288.9551, F.S.; creating an exemption
206 from public records requirements for specified materials, actual
207 and potential trade secrets, patentable material, and
208 proprietary information received, generated, ascertained, or
209 discovered during the course of research conducted by or through
210 the Scripps Research Institute, a not-for-profit public benefit
211 corporation, or a division, subsidiary, affiliate, or entity
212 formed by the Scripps Research Institute to establish a state-
213 of-the-art biomedical research institution and campus in the
214 state, hereinafter referred to as the "grantee," and business
215 transactions resulting from such research; creating an exemption
216 from public records requirements for agreements and proposals to
217 receive funding; providing for cessation of the exemption;
218 clarifying that the exemption does not apply to an agreement or
219 contract by the Scripps Florida Funding Corporation to release
220 funds to the grantee; creating an exemption from public records
221 requirements for materials that relate to the recruitment of
222 scientists and researchers; creating an exemption from public
223 records requirements for personal identifying information of a
224 donor or prospective donor to the grantee; creating an exemption
225 from public records requirements for any record that is exempt
226 or confidential under the laws of another state or under federal
227 law; creating an exemption from public records requirements for
228 personal identifying information of individuals who participate
229 in human trials or experiments and for medical or health records
230 of participants in clinical trials; creating an exemption from

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231 public meetings and records requirements for portions of
232 meetings of the board of directors of the Scripps Florida
233 Funding Corporation at which confidential and exempt information
234 or records are presented or discussed and for records generated
235 during such exempt portions of meetings; providing a penalty;
236 providing for applicability of exemption under specified
237 circumstances; providing for future review and repeal; providing
238 a statement of public necessity; providing a contingent
239 effective date.