

1 A bill to be entitled
 2 An act relating to public records and public meetings
 3 exemptions; creating s. 288.961, F.S.; providing an
 4 exemption from public records requirements for proprietary
 5 business information of the Florida Vaccine Research
 6 Institute and the not-for-profit corporation established
 7 to govern and manage the institute; providing an exemption
 8 from public meetings requirements for meetings of the not-
 9 for-profit corporation; providing for future review and
 10 repeal; providing a statement of public necessity;
 11 providing a contingent effective date.

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 13 Be It Enacted by the Legislature of the State of Florida:

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 15 Section 1. Section 288.961, Florida Statutes, is created
 16 to read:

17 288.961 Proprietary business information of the Florida
 18 Vaccine Research Institute and the not-for-profit corporation;
 19 meetings of the governing board of the not-for-profit
 20 corporation.--

21 (1) Proprietary business information of the Florida
 22 Vaccine Research Institute and the not-for-profit corporation
 23 established in s. 288.960 is confidential and exempt from the
 24 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 25 Constitution; however, the Auditor General, the Office of
 26 Program Policy Analysis and Government Accountability, and the
 27 Florida Board of Governors, pursuant to their oversight and
 28 auditing functions, must be given access to all proprietary

29 confidential business information upon request and without
 30 subpoena and must maintain the confidentiality of information so
 31 received. As used in this section, the term "proprietary
 32 business information" means information, regardless of its form
 33 or characteristics, which is owned or controlled by the
 34 institute or the not-for-profit corporation or its subsidiaries;
 35 is intended to be and is treated by the institute or not-for-
 36 profit corporation or its subsidiaries as private and the
 37 disclosure of which would harm the business operations of the
 38 not-for-profit corporation or its subsidiaries; has not been
 39 intentionally disclosed by the institute or corporation or its
 40 subsidiaries unless pursuant to law, an order of a court or
 41 administrative body, a legislative proceeding pursuant to s. 5,
 42 Art. III of the State Constitution, or a private agreement that
 43 provides that the information may be released to the public.

44 Such information concerns:

45 (a) Internal auditing controls and reports of internal
 46 auditors;

47 (b) Matters reasonably encompassed in privileged attorney-
 48 client communications;

49 (c) Bids or other contractual data, banking records, and
 50 credit agreements the disclosure of which would impair the
 51 efforts of the not-for-profit corporation or its subsidiaries to
 52 contract for goods or services on favorable terms;

53 (d) Information relating to private contractual data, the
 54 disclosure of which would impair the competitive interest of the
 55 provider of the information;

56 (e) Corporate officer and employee personnel information;

57 (f) Information relating to the proceedings and records of
 58 credentialing panels and committees and of the governing board
 59 of the not-for-profit corporation or its subsidiaries relating
 60 to credentialing;

61 (g) Minutes of meetings of the governing board of the not-
 62 for-profit corporation and its subsidiaries, except minutes of
 63 meetings open to the public pursuant to s. 288.960(12);

64 (h) Information that reveals plans for marketing services
 65 that the corporation or its subsidiaries reasonably expect to be
 66 provided by competitors;

67 (i) Trade secrets as defined in s. 688.002, including
 68 reimbursement methodologies or rates; or

69 (j) The identity of donors or prospective donors of
 70 property who wish to remain anonymous or any information
 71 identifying such donors or prospective donors. The anonymity of
 72 these donors or prospective donors must be maintained in the
 73 auditor's report.

74 (2) Meetings of the governing board of the not-for-profit
 75 corporation and of the subsidiaries of the not-for-profit
 76 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
 77 the State Constitution.

78 (3) This section is subject to the Open Government Sunset
 79 Review Act of 1995 in accordance with s. 119.15, and shall stand
 80 repealed on October 2, 2010, unless reviewed and saved from
 81 repeal through reenactment by the Legislature.

82 Section 2. (1) The Legislature finds that it is a public
 83 necessity that information relating to methods of manufacture or
 84 production, potential trade secrets, potentially patentable

85 materials, or proprietary information received, generated,
86 ascertained, or discovered during the course of research
87 conducted by the not-for-profit corporation organized solely for
88 the purpose of governing and operating the Florida Vaccine
89 Research Institute or its subsidiaries, and business
90 transactions resulting from such research, be held confidential
91 and exempt from public disclosure because the disclosure of such
92 information would adversely impact the not-for-profit
93 corporation or its subsidiaries and would create an unfair
94 competitive advantage for persons receiving such information. If
95 such confidential and exempt information regarding research in
96 progress were released pursuant to a public records request,
97 others would be allowed to take the benefit of the research
98 without compensation or reimbursement to the corporation or
99 institute. The Legislature further finds that information
100 received by the not-for-profit corporation or its subsidiaries
101 from a person in this or another state or nation or the Federal
102 Government which is otherwise exempt or confidential pursuant to
103 the laws of this or another state or nation or pursuant to
104 federal law should remain exempt or confidential because the
105 highly confidential nature of vaccine related research
106 necessitates that the not-for-profit corporation or its
107 subsidiaries be authorized to maintain the status of exempt or
108 confidential information it receives from the sponsors of
109 research. Without the exemptions provided for herein, the
110 disclosure of confidential and exempt information would place
111 the not-for-profit corporation on an unequal footing in the
112 marketplace as compared with its private health care and medical

113 research competitors who are not required to disclose such
 114 confidential and exempt information. The Legislature finds that
 115 the disclosure of such confidential and exempt information would
 116 adversely impact the not-for-profit corporation or its
 117 subsidiaries in fulfilling their mission of vaccine research and
 118 production.

119 (2) The Legislature finds that it is in the public
 120 interest to enhance education and research, promote economic
 121 development and diversity, explore novel approaches to vaccine
 122 development, explore the uses of plant and animal cell culture
 123 microbes, and develop a cleaner and faster approach to
 124 production of flu vaccines and biodefense mechanisms, other
 125 vaccines, and other related products. The Legislature also finds
 126 that it is in the public interest to facilitate and oversee the
 127 state goal and public purpose of providing expanded economic
 128 development and diversity in the amount and prominence of
 129 biomedical research conducted in this state, provide an
 130 inducement for high-technology businesses and employees to
 131 locate and stay in this state, create educational opportunities
 132 through access to and partnerships with businesses, and promote
 133 improved health care through the scientific outcomes of the
 134 vaccine research. Research conducted in this state on these
 135 subjects can make Florida a leader in new and innovative
 136 technologies and encourage investment and economic development
 137 within the state.

138 (3) The Legislature finds that in order to achieve these
 139 benefits, it is a public necessity that certain proprietary
 140 business information owned or controlled by the Florida Vaccine

141 Research Institute and the not-for-profit corporation
 142 established to govern and manage the institute be made
 143 confidential and exempt from public disclosure. If information
 144 relating to recruiting, proprietary business information, and
 145 research information is not made confidential, businesses
 146 participating in these activities will be put at a competitive
 147 disadvantage. As a result, these businesses will not be willing
 148 to participate in the recruitment and location process or to
 149 share information on research needs, ongoing research, or
 150 research results. The state will lose the benefits of the
 151 economic development of businesses relocating to Florida, of
 152 having advanced research into vaccines conducted in Florida, and
 153 of being positioned to make maximum use of new developments in
 154 vaccine production and distribution. The state university
 155 research system will also lose the benefits of a coordinated
 156 vaccine research program involving private companies. Finally,
 157 because some donors wish to remain anonymous and will not make
 158 donations if their identity is not protected, donor-identity
 159 information must be made confidential.

160 (4) It is likewise a public necessity that certain
 161 meetings or portions of meetings of the governing board of the
 162 institute be closed in order to protect the competitive interest
 163 of the institute and the not-for-profit corporation and to
 164 guarantee the ability of the governing board to fulfill its
 165 vaccine research and education mission for the benefit of the
 166 public. Furthermore, disclosing information made confidential
 167 and exempt pursuant to the institute's public records exemption
 168 via an open meeting defeats the purpose of the public records

HB 1509

2005

169 | exemption.

170 | Section 3. This act shall take effect July 1, 2005, only
171 | if HB 1507 or similar legislation is enacted during the same
172 | legislative session or an extension thereof and becomes a law.