

2003-E Special Session

Summary of Legislation Passed



*Compiled and Edited by
Office of the Senate Secretary*

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The 2003-E Special Session *Summary of Legislation Passed* is a collection of reports submitted by Senate Committees to the Secretary of the Senate. These reports have been compiled and edited for standardization. This summary is provided for information only and does not represent the opinion of any Senator, Senate Officer, or Senate Office.

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TRUST FUNDS

HB 5-E — Biomedical Research Trust Fund

by Appropriations Committee and Rep. Green (SB 20-E by Senators Pruitt and Lynn)

This bill re-creates the Department of Health Biomedical Research Trust Fund without modification.

If approved by the Governor, these provisions take effect July 1, 2004, contingent on HB 1-E or SB 6-E also becoming law.

Vote: Senate 38-0; House 104-0

EDUCATION FUNDING

SB 22-E — Florida Education Finance Program and Tax Credits for Contributions to Nonprofit Scholarship Funding Organizations

by Senators Bennett, Lynn, Fasano, Webster, Argenziano, Siplin, and Crist

This bill reduces the maximum corporate tax credit from \$88 million to \$50 million for the Corporate Income Tax Scholarship program for low income students to attend private schools. From the additional General Revenue generated, \$38 million is appropriated to the Florida Education Finance Program for public schools to reduce, as needed, the proration of funds resulting from increased student enrollment for the third through final FEFP calculations.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 38-0; House 100-0

HB 43-E — Lottery/Unclaimed Prize Money

by Appropriations Committee and Rep. Baxley (SB 10-E by Senators Jones, Lynn, Clary, Bennett, Argenziano, Fasano, Alexander, Atwater, Dockery, Saunders, Wise, Cowin, Aronberg, and Crist)

This bill transfers \$30,147,947 of unclaimed lottery prize money to the Educational Enhancement Trust Fund. The funds are appropriated as state matching grants to private donations received by community colleges (\$6,179,148) and state universities (\$23,968,799) under challenge grant programs established in sections 1011.85 and 1011.94, F.S.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 37-0; House 108-0

CS/SB's 14-E and 16-E — Workers' Compensation

by Banking and Insurance Committee and Senators Saunders, Cowin, Lynn, Alexander, Dockery, Haridopolos, and Pruitt

This bill relates to the changes that were made in SB 50-A enacted during the 2003 Special Session A (Chapter 2003-412, L.O.F.), effective January 1, 2004, that limited exemptions from workers' compensation coverage requirements in the construction industry to no more than three corporate officers who each must have at least a 10 percent stock ownership. As a result, sole proprietors and partners in the construction industry will no longer be eligible for an exemption and must either obtain workers' compensative coverage, or incorporate to remain eligible for an exemption. The bill does not change the January 1 effective date for such persons to incorporate (or to form a limited liability company, as noted below) and to obtain an exemption, but the bill provides an extended time period to July 1, 2004, for such persons to obtain approval from the Department of Business and Professional Regulation (DBPR) for a change of licensure status and for a qualified business organization license.

A sole proprietor or partner engaged in the construction industry and licensed under ch. 489, F.S., who changes his or her business structure to a corporation is required by ch. 489, F.S., to apply to the Construction Industry Licensing Board of the DBPR to change the licensure status from an individual or partner to reflect the appropriate corporate name on the contractor's license and apply for a qualified business organization license. The bill provides that such persons who incorporate in order to become eligible for an exemption have until July 1, 2004, to obtain approval from DBPR for the change of status and qualified business license. These licensees would still be subject to the January 1, 2004, deadline for obtaining an exemption from the Division of Workers' Compensation. But, such persons would not be in violation of any provision of chapters 440 (the workers' compensation laws), 489 (contractor licensure laws), or 553 (building codes), F.S., or denied a building permit solely because a change of status or qualified business license is not approved by DBPR before July 1, 2004.

The bill clarifies that applications from these licensees to DBPR are subject to the requirements of s. 120.60, F.S., which requires DBPR to request any additional information within 30 days of receipt of an application, and to either approve or deny the application within 90 days after receipt of a completed application.

Also, the bill expands eligibility for an exemption in the construction industry, to provide that up to three members of a limited liability company, who each has at least a 10 percent ownership interest in the company, are eligible for an exemption from coverage, subject to approval by the Division of Workers' Compensation, effective January 1, 2004.

If approved by the Governor, these provisions take effect upon becoming law, except as noted above.

Vote: Senate 38-0; House 102-0

**Senate Committee on
Commerce, Economic Opportunities,
and Consumer Services**

CS/CS/SB 6-E — Economic Development

by Appropriations Committee; Commerce, Economic Opportunities, and Consumer Services Committee; and Senators Atwater, Klein, Aronberg, Fasano, and Lynn

The committee substitute provides for the creation of the Scripps Florida Funding Corporation, which is to enter into a contract with The Scripps Research Institute (TSRI), or an entity formed by the institute, to establish a state-of-the-art biomedical research institute and campus in this state. The funding for the contract is provided by \$310 million of the \$543.5 million in federal funds provided to Florida under the Jobs and Growth Tax Reconciliation Act of 2003. The Scripps Research Institute must reinvest \$155 to \$200 million to the Biomedical Research Trust Fund from a portion of its revenues generated from royalties and naming rights.

Flow of Funds

The committee substitute provides that the Office of Tourism, Trade, and Economic Development (OTTED) will be the initial recipient of the \$310 million appropriation and will disburse the funds to the Scripps Florida Funding Corporation (funding corporation) pursuant to a funding agreement. The purpose of the funding corporation is to receive payment of \$310 million guaranteeing that a funding source will be available for disbursements to TSRI's Florida operation over a seven-year period. Undisbursed funds held by the funding corporation will be invested by the State Board of Administration. In the event that no agreement is reached between the funding corporation and TSRI by specific deadlines or in the event that the contract between the funding corporation and TSRI is terminated, the funds will revert to the General Revenue Fund.

Governance of Funding Corporation

The committee substitute authorizes the funding corporation as a private, not-for-profit corporation. The board of directors of the funding corporation will consist of nine voting members. The Governor, the President of the Senate, and the Speaker of the House of Representatives will appoint three board members each. The director of OTTED will serve as an ex-officio non-voting member. The chair and vice chair of the board will be selected from among the board members. The board members will be appointed for staggered four-year terms. The Governor, the President of the Senate, and the Speaker of the House of Representatives will fill vacancies on the board based on who initially appointed a board member to the vacant position. Board members may be removed by the officer who appointed them for cause. The funding corporation is subject to public records laws and public meeting laws in chapters 119 and 286, F.S., respectively.

Certain board decisions, including approval of a contract with TSRI, contract amendments, and determination of default, must be approved by seven of the nine board members. Other board decisions will require approval by five board members or by simple majority vote of a quorum. Board members will not be authorized to vote by proxy. Board members, however, are authorized to vote if they are in attendance at the board meeting in person or through means of electronic communication. OTTED will provide administrative support to the funding corporation upon request.

Accountability of Funding Corporation Members

Each board member has a fiduciary duty to the people of the state to ensure that the funds are used as prescribed by law and the contract with TSRI. Each board member must also file a disclosure of financial interests. Board members are prohibited from having a material relationship with TSRI for a period of five years before to five years after serving as a member of the board. The existence of a prohibited relationship is a first-degree misdemeanor. The board members serve without compensation, but are entitled to per diem and travel expenses.

Required Contract/Statutory Provisions

The committee substitute specifies that, at a minimum, the 20-year contract between the funding corporation and TSRI must contain certain provisions, and the committee substitute also prescribes certain statutory requirements, such as:

- A schedule for the disbursement of funds.
- Requirement for the submission of a business plan.
- A prohibition on the establishment of TSRI research facilities outside of Florida or California for 12 years after the execution of a contract with the funding corporation.
- Requirements for Florida residents to be given preference in hiring decisions, except for certain scientific staff positions.
- Requirements that TSRI be an equal opportunity employer.
- A requirement that TSRI advertise employment opportunities on the Agency for Workforce Innovation website.
- A requirement that TSRI make purchases from Florida vendors when cost effective.
- A requirement that TSRI establish accredited science degree programs.
- A requirement that TSRI create internship programs for educators, high school students, and undergraduate and graduate students.
- A requirement to produce annual reports accounting for the use of state funds and progress toward meeting performance measures.
- A provision that the funding corporation shall review TSRI's compliance with the law and its contract with the funding corporation.
- A requirement that TSRI allow an independent certified public accountant hired by the funding corporation to inspect its records to audit the expenditure of state funds.

- A requirement that TSRI must create a specific number of jobs per year within 25 percent of the requirement. TSRI, however, must have no fewer than 545 positions by the end of the seventh year.
- A requirement that at least \$45 million of the funds disbursed be used for the purchase of equipment and the maintenance of equipment.
- A requirement for TSRI to maintain liability insurance.
- A limitation on the expenditure of state funds outside Florida.
- A prohibition on the use of state funds to lobby the state or its political subdivisions.
- Provisions requiring that, in the event of contract termination, property purchased with state funds reverts to the state and that property purchased with county funds reverts to the county.
- Provisions for the reduction or elimination of funding if TSRI fails to continue operating in this state or is in material breach or default of the contract.
- Provisions authorizing funding to maintain TSRI's current operations should certain events arise beyond TSRI's control.
- Provisions requiring TSRI to maintain separate accounts for funds provided by the state.

Performance Expectations

The Scripps Research Institute (TSRI) in cooperation with OTTED must also report to the funding corporation on performance expectations relating to the aspirational goals of the Governor and Legislature:

- The number and dollar value of research grants obtained from sources other than this state.
- The percentage of total funding from sources other than this state that is used to conduct research activities in this state.
- The number of patents and licensing agreements obtained by TSRI.
- The extent to which research conducted by TSRI results in commercial applications.
- The number of collaborative agreements with colleges and universities in this state.
- The number of collaborative partnerships established and maintained with businesses in this state.
- The number and value of spin off businesses created in this state as a result of TSRI's research in this state.
- The number and value of businesses recruited to this state.
- The establishment and implementation of policies to promote supplier diversity and the designation of a TSRI representative to coordinate with the Office of Supplier Diversity.
- The implementation of a program to conduct workforce recruitment activities at public and private colleges and universities and community colleges in this state.

Disbursement Conditions

The contract between the funding corporation and TSRI must require TSRI to satisfy the following minimum conditions as a condition for continued disbursement of funds:

- A minimum number of jobs created and average salaries paid.
- By 18 months after the occupancy of a permanent facility, TSRI shall annually obtain \$100,000 of nonstate funding for each full-time-equivalent tenured-track faculty member.
- By three years after the occupancy of a permanent facility, TSRI shall apply for accreditation of its Florida graduate program.
- The purchase of equipment pursuant to a schedule in the contract.
- By 18 months after occupancy of a permanent facility, TSRI shall provide certain Florida graduate students access to its facilities for research.
- By 18 months after occupancy of a permanent facility, TSRI shall establish a summer internship program for high school students.
- By three years after the occupancy of a permanent facility, TSRI shall establish a research program for middle and high school teachers.
- By 18 months after occupancy of a permanent facility, TSRI shall establish a program for adjunct professors.
- By six months after the installation of high throughput technology, TSRI shall make the equipment available for certain research projects.
- By June 2004, TSRI shall begin collaboration with public and private colleges and universities in this state.
- By 18 months after occupancy of a permanent facility, TSRI shall establish an annual seminar series featuring a review of the research performed at its facility.
- By June 2004, TSRI shall begin assisting OTTED with the recruitment of biotech/biomedical businesses.

Funding Corporation's Reporting Requirements

By December 1 of each year, the funding corporation must provide an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report must include the following information:

- A description of the corporation's activities regarding the management and enforcement of the contract with TSRI.
- An accounting of funds disbursed to and expended by TSRI.
- TSRI's job-creation and salary statistics.
- A description of economic activity generated by TSRI's activities in Florida.
- An assessment of factors affecting the progress toward achieving the biotech cluster projected by economists hired by the Governor.

- A compliance and financial audit of the funding corporation's accounts and records conducted by an independent certified public accountant in accordance with the rules of the Auditor General.
- An assessment of TSRI's achievement of performance expectations and disbursement conditions.

Reinvestment of Funds

The Scripps Research Institute must reinvest a portion of its revenues generated from royalties and naming rights to the Biomedical Research Trust Fund. The payments from royalty revenues will be equal to 15 percent of all royalties generated from Florida activities during the 20-year period after a contract is executed with the funding corporation. These payments will begin six months after TSRI receives its final disbursement from the funding corporation. Payments equal to 15 percent of the proceeds for naming rights at the Florida facility will begin upon contract execution. TSRI will be required to reinvest \$155 million if it satisfies all of its contractual obligations or \$200 million if it does not satisfy its obligations.

Timetable

The Governor, the President of the Senate, and the Speaker of the House of Representatives must make initial appointments to the board by November 15, 2003. OTTED must disburse \$300,000 to the funding corporation as soon as it is formed. At least two weeks before the contract between TSRI and the funding corporation may be executed, the contract and TSRI's organizational plan for the establishment of a biotechnology research campus must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Upon the execution of a contract between the funding corporation and TSRI, OTTED must disburse \$309.7 million to the funding corporation. The funding corporation and TSRI have until January 30, 2004, plus one 45-day extension, to negotiate and execute a contract with the requisite performance measures and contract provisions. Disbursements from the funding corporation to TSRI will be made over a seven-year period beginning in the 2004 calendar year. The disbursement of all funds payable to TSRI under the contract must be completed by December 31, 2010. Any undisbursed funds remaining after December 31, 2010, must be paid to the Biomedical Research Trust Fund of the Department of Health.

State and Funding Corporation Liability

The committee substitute provides that the disbursement of funds is not a debt or liability of the state. The committee substitute further provides that the disbursement of funds will not subject the state or the funding corporation to liability related to the research activities and research products of TSRI.

OPPAGA Program Evaluation

By January 1, 2007, the Office of Program Policy Analysis and Government Accountability must conduct a performance audit of OTTED and the funding corporation. The audit must address the following issues:

- OTTED's oversight of funds appropriated for the funding corporation and TSRI.
- The funding corporation's performance in managing and enforcing the contract with TSRI.
- The funding corporation's compliance with the law authorizing funding for TSRI and its contract with TSRI.
- Economic activity generated by funding provided to TSRI through the contract with the funding corporation.

An audit report due by January 1, 2010, shall update the prior report and recommend whether the Legislature should retain statutory authority for the funding corporation.

Biomedical Research Trust Fund

The committee substitute deletes s. 20.435(1)(h)3., F.S., which would have terminated the Biomedical Research Trust Fund on July 1, 2004. As such, the trust fund will continue in existence until terminated by the Legislature.

Expedited Permitting and Administrative Challenges

The committee substitute expressly provides that projects designated by the board of county commissioners as part of the TSRI Florida facility are entitled to expedited permitting under s. 403.973, F.S. Challenges to permitting decisions must be held within 30 days of a party's request for a summary proceeding.

Quick Action Closing Fund

Under the committee substitute, in order to use the Quick Action Closing Fund, the Governor must submit to the Legislature a recommendation for approval of a project and a budget amendment releasing the funds for the project, pursuant to the consultation and review requirements of s. 216.177, F.S.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 29-3; House 56-28

CS/SB 8-E — Public Records and Meetings

by Governmental Oversight and Productivity Committee and Senators Atwater, Klein, and Lynn

This bill creates a public records exemption for specified information of The Scripps Research Institute or its Florida-based grantee of the state's economic development incentive funds under s. 288.955, F.S., as created by CS/CS/SB 6-E, when this information is held by the Scripps Florida Funding Corporation or the Governor's Office of Tourism, Trade, and Economic Development. This confidential and exempt information includes:

- Materials that relate to methods of manufacture or production, actual or potential trade secrets, patentable material, or proprietary information.
- Agreements and proposals to receive funding, including grant applications, except that a portion of an agreement or proposal is not confidential or exempt upon issuance of the report that is made after the conclusion of the project for which funding is provided, unless that portion of the agreement or proposal contains exempt information described in the preceding exemption. Agreements by the Scripps Florida Funding Corporation to release funds to The Scripps Research Institute or its Florida-based grantee are specifically excluded from being made confidential or exempt.
- Materials that relate to the recruitment of scientists and researchers.
- Identity of donors or potential donors.
- Personal identifying information of individuals who participate in human trials or experiments.
- Medical or health records relating to participants in clinical trials.
- Information received from a person or another state or nation or the Federal Government which is otherwise confidential or exempt under that state's or nation's laws or under federal law.

The bill creates a public meetings exemption, providing that those portions of the meetings of the Scripps Florida Funding Corporation's board of directors at which confidential information is presented or discussed must be closed to the public. The bill also exempts records of the closed portions of the board meetings from public disclosure.

The bill requires that public employees be permitted, exclusively for the performance of their public duties, to inspect and copy confidential and exempt records and information and provides criminal penalties for a public employee who fails to maintain the confidentiality of the confidential information.

The bill declares that The Scripps Research Institute or its Florida-based grantee is a private, not-for-profit entity and, accordingly, is not subject to the state's public records or meetings laws (ch. 119, F.S., and s. 286.011, F.S.). The bill further specifies that, if a court determines that The Scripps Research Institute or its Florida-based grantee is subject to the state's public records or meetings laws, the exemptions created by the bill apply equally to The Scripps Research Institute and its Florida-based grantee.

The bill also provides for the future release of confidential and exempt records and information when they become legally available or subject to public disclosure for any other reason.

These exemptions from the state's public records and meetings laws are repealed on October 2, 2009, unless reenacted after review by the Legislature under the Open Government Sunset Review Act (s. 119.15, F.S.).

If approved by the Governor, these provisions take effect on the same date that CS/CS/SB 6-E or similar legislation takes effect (i.e., if approved by the Governor, CS/CS/SB 6-E takes effect upon becoming a law) if such legislation becomes a law.

Vote: Senate 35-3; House 87-13

HJR 25-E — Apportionment

by Rep. Goodlette and others (SJR 4-E by Senator Lee)

The joint resolution preserves for elections in 2004 and thereafter the Florida House of Representatives districts that were entered as an interim court-ordered plan and used for elections in 2002. The United States Department of Justice objected to one state house district in HJR 1987 (2002).¹ To cure the § 5 objection, a federal court modified three house districts—76, 101, and 112—and ordered that the resulting interim remedial state house redistricting plan be used for elections in 2002. *See, Martinez, et al., v. Bush, et al.*, 234 F.Supp2d 1275.

This joint resolution applies to the qualification, nomination, and election of members of the Florida House of Representatives in the primary and general elections of 2004 and thereafter.

Vote: Senate 25-7; House 71-35

¹ Section 5 of the Voting Rights Act of 1965, as amended, requires federal approval before a redistricting plan affecting Collier, Hardee, Hendry, Hillsborough, or Monroe County is implemented. *See*, 42 U.S.C. § 1973c.

CS/SB 18-E — Phosphate Mining

by Appropriations Committee and Senators Alexander, Lynn, Dockery, Constantine, Bennett, and Argenziano

The bill amends the severance tax on phosphate rock by providing for an increase in the tax and creating a new distribution formula for the tax proceeds. Owners or operators of phosphogypsum stacks are required to demonstrate financial responsibility for the costs of terminal closure in ways that protect the public health and safety. Specifically, the bill provides the following:

- New distributions of severance tax proceeds retain the current appropriation levels for CARL, General Revenue, Phosphate Research Trust Fund, and the Minerals Trust Fund.
- The funds to impacted counties for economic development are increased.
- The Department of Environmental Protection can use up to \$2 million annually to purchase a surety bond that covers the costs of restoration, reclamation, and cleanup of stack systems and mining activities in the event of a bankruptcy by an owner or permittee.
- The severance tax for phosphate is increased from \$1.31 per ton severed to \$1.62 per ton severed.

The bill also provides for the following:

- A study by the Department of Environmental Protection, in consultation with the Southwest Florida Water Management District, to look at the cumulative impacts of changes in landform and hydrology in the Peace River Basin. The study must also address the impacts of establishing a buffer to protect the watershed from mining impacts. The department may use up to \$750,000 from the Nonmandatory Land Reclamation Trust Fund to prepare the study and prepare a plan for the basin.
- The department may allow certain permitting variances for certain water supply and resource projects.
- Certain reserve requirements in the Nonmandatory Land Reclamation Trust Fund are deleted to allow for the continued cleanups at Piney Point and Mulberry.

- The amount of funds that may be encumbered during this fiscal year for land reclamation is capped at \$15 million.
- A nonprofit corporation may be created to assist in developing recreational opportunities on phosphate lands.
- Criminal penalties are provided for the violation of certain financial reporting requirements. It is a third degree felony punishable by a fine of not more than \$50,000 and/or imprisonment for 5 years to misrepresent the financial condition or closure costs of a stack or stack system, or to issue dividends or make other distributions from earnings in the event of a failure to meet financial responsibility tests for stack operations.
- Requires the DEP to initiate rulemaking to require that an interim stack system management plan (ISSM) be added to the stack system operation plans that are currently required by department rule. The DEP shall also initiate rulemaking to require that general plans and schedules for the closure of phosphogypsum stack systems include certain specified items.
- Requires the DEP to revise ch. 62-673, F.A.C., to require the owner or operator of a stack management system to demonstrate financial responsibility for the costs of terminal closure of the stack system in a manner that protects the public health and safety, and must include criteria to evaluate the adequacy of the demonstration of financial responsibility. Specifies what the rule must include.
- For FY 2003-2004, \$11.71 million is transferred from the Nonmandatory Land Reclamation Trust Fund to the General Revenue Fund.
- For FY 2003-2004, \$800,000 is appropriated to the Phosphate Research Trust Fund from the proceeds of the phosphate severance tax deposited into the Nonmandatory Land Reclamation Trust Fund to be used by the Florida Institute of Phosphate Research to conduct a bench and pilot scale study of the FIPR/DIPR process for the purpose of determining its technical and economic feasibility.
- For FY 2003-2004, \$460,000 is transferred from the Nonmandatory Land Reclamation Trust Fund to the Minerals Trust Fund. For FY 2003-2004, \$60,000 is transferred from the Nonmandatory Land Reclamation Trust Fund to the Phosphate Research Trust Fund in the Division of Universities of the Department of Education.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 36-0; House 103-1

HB 23-E — Engineering

by Rep. Paul and others (SB 2-E by Senators Saunders and Lynn)

This bill provides an exemption from the engineering licensure requirements of ch. 471, F.S., for any defense, space, or aerospace company or its employees or contractors of the company who provide engineering services. It provides definitions for “space and aerospace” and “defense” companies. The bill allows any person exempt from licensure under these provisions to use the term “engineer” in the scope of his or her work as long as the title does not include or connote the terms “professional,” “registered,” or “licensed” engineer.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 38-0; House 109-0

HB 35-E — Governor/One-time Stay

by Rep. Stargel and others (SB 12-E by Senators Webster, Campbell, and Crist)

This bill (Chapter 2003-418, L.O.F.) gives the Governor the authority to issue a one-time stay on the action of withholding or withdrawal of nutrition and hydration from a patient in a situation where certain specified conditions applied as of October 15, 2003.

The Governor's authority to issue such a stay will expire 15 days after the effective date of the bill. The expiration does not impact the validity or the effect of any existing stay, and the Governor retains the authority to lift the stay at any time.

This bill provides that a person may not be held civilly liable or be subject to regulatory or disciplinary sanctions for taking actions to comply with any stay issued by the Governor pursuant to this bill.

Upon the issuance of a stay by the Governor pursuant to this bill, the chief judge of the circuit must appoint a guardian ad litem for the patient to make recommendations to the Governor and the court.

These provisions were approved by the Governor and took effect October 21, 2003.

Vote: Senate 23-15; House 73-24

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