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Committee on Commerce

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 288.9551, F.S., SCRIPPS FLORIDA FUNDING CORPORATION

Issue Description

In 2003, the Legislature and Governor appropriated \$310 million to be used by California-based The Scripps Research Institute (TSRI) to open a Florida research facility,¹ and created the nine-member Scripps Florida Funding Corporation (corporation) to release the funds to TSRI as it met job-creation and other specified measures.² Additionally, the Legislature and Governor created public records and public meeting exemptions for certain records or information provided by TSRI or its Florida facility to the corporation or the Governor's Office of Tourism, Trade, and Economic Development (OTTED).³ These exemptions are in s. 288.9551, F.S.

The Open Government Sunset Review Act⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of each exemption from the Public Records Act or the Public Meetings Law. Based on that schedule, the public records and public meeting exemptions created under s. 288.9551, F.S., are repealed on October 2, 2009, unless reenacted after review by the Legislature.

The purpose of this interim project is to conduct the required review.

Background

Background on the Scripps Florida Funding Corporation

In 2003, the Legislature created the corporation, a nine-member, not-for-profit board that is responsible for monitoring its 20-year agreement with TSRI for the establishment of a state-of-the-art biomedical research facility in Florida, and for disbursing state funds on a schedule that coincides with the Florida facility meeting job-creation targets and other specified performance requirements.

The Legislature 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. OTTED was the initial recipient of the appropriation, but it later transferred responsibility for the funds to the corporation pursuant to a funding agreement.

Originally, the funds were to be disbursed over a 7-year period, but because of delays outside of the control of Scripps Florida or the state, related to site selection and environmental permitting, the disbursement period was extended, with the corporation's approval, to 10 years. Undisbursed funds are being invested by the State Board of Administration, and the interest earnings go to TSRI's Florida facility.

As of June 2008, the corporation had disbursed \$158.3 million (including \$8.4 million in interest earnings) to TSRI. Palm Beach County also has invested or committed at least \$200 million to provide TSRI with land, temporary facilities, and permanent laboratory facilities for new operations in the county. Other local entities also have committed funds or in-kind contributions.

¹ Section 5 of ch. 2003-420, L.O.F.

² Section 1 of ch. 2003-420, L.O.F.

³ Ch. 2003-419, L.O.F.

⁴ Section 119.15, F.S.

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

As of June 2008, TSRI's Florida facility had 242 employees. It is operating from the Jupiter campus of Florida International University while its own facilities are being built nearby. The expected completion date of the new facilities is early 2009. Under the terms of its amended agreement, the Florida facility is required to hire 545 employees within the next 10 years.

The Scripps Florida Funding Corporation exemption

In 2003, legislation was enacted creating s. 288.9551, F.S., which makes exempt and confidential specified meetings and records of TSRI or a grantee (its research facility in Palm Beach County, Florida) that are held by the corporation or OTTED.

According to the statute, the following records are confidential and exempt:

- Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, actual trade secrets as defined in s. 688.002, F.S., or proprietary information received, generated, ascertained, or discovered by or through the grantee or TSRI.
- Agreements and proposals to receive funding, including grant applications. However, those portions of such 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 TSRI that governs the release of the state funds.
- 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 that state's or nation's laws 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.

Additionally, those portions of board meetings by the corporation's directors or by OTTED, during which exempt and confidential information is presented or discussed, must be closed to the public. Records (including meeting minutes and recordings) of the closed portions of the board meetings also are exempt from public disclosure.

Finally, the statute declares that TSRI or its Florida facility is a private, not-for-profit entity, and as such is not subject to ch. 119, F.S., or s. 286.011, F.S.⁵ But if a court determines that TSRI or its Florida facility is "acting on behalf of an agency, pursuant to the terms of its agreement with the state under s. 288.955, F.S., or otherwise is subject to s. 24, Art. I, of the State Constitution, and to ch. 119.07(1), F.S., and s. 288.011, F.S., the same exemptions applicable for the corporation and OTTED also apply to these research institutes.⁶

Exempt and confidential information shall be released to public employees, such as staff of the Florida Auditor General, exclusively for the performance of their duties, but must remain confidential. Public employees who violate this requirement commit a first-degree misdemeanor, punishable by a maximum of 1 year in jail and a \$1,000 fine.

The constitutionally required "public necessity statement" accompanying the exemptions asserted a number of reasons supporting the confidentiality of certain information that TSRI and its Florida facility could provide the corporation or OTTED.⁷ For example:

⁵ Section 288.9551(6), F.S.

⁶ Ibid.

⁷ Section 2 of ch. 2003-419, L.O.F.

- The state is making a substantial financial investment in the TSRI project.
- Disclosure of certain TSRI information and records could create an unfair competitive advantage for persons receiving the information, in turn putting TSRI at a competitive disadvantage, and negatively impact anticipated benefits to the state, its economy, and its academic community.
- Specifically, disclosure of grant applications and proposals could put TSRI at a competitive disadvantage for receiving research funds; disclosure of materials related to staff recruitment could allow competitors to outbid TSRI for scientists and researchers; and failure to protect the identities of donors and potential donors could reduce private contributions to TSRI.

Pursuant to s. 119.15, F.S., the exemptions created under s. 288.9551, F.S., are repealed on October 2, 2009, unless reenacted after review by the Legislature under the Open Government Sunset Review Act.

According to corporation staff, the corporation and OTTED have received at least 350 emails since 2003 that contain the term “Scripps” and either “s. 288.9551, F.S.” or “s. 288.075, F.S.”⁸ TSRI has not kept a log of emails related to its Florida facility, but its general counsel has estimated that at least 50 to 150 emails have been received from people seeking confidential information.⁹

Background on Florida’s Public Records and Meetings Requirements

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1892.¹⁰ In 1992, the people of Florida voted to adopt an amendment to the State Constitution that raised the statutory right of public access to public records to a constitutional level.¹¹

Article I, s. 24(a), of the State Constitution provides:

“Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.”

In addition to the State Constitution, Florida’s Public Records Act,¹² which predates the State Constitution’s provisions, specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., states:

“Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”

Unless specifically exempted, all agency¹³ records are available for public inspection. The term “public record” is

⁸ Conversation with Jenni Garrison, OTTED’s Innovation Program Manager, Aug. 25, 2008.

⁹ Conversation with Tom Northrup, TSRI General Counsel, on Aug. 25, 2008.

¹⁰ Section 1390, 1391 F.S. (Rev. 1892)

¹¹ Article 1, s. 24, State Constitution.

¹² Chapter 119, F.S.

¹³ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity

broadly defined to mean:

“ . . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”¹⁴

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.¹⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.¹⁶

Only the Legislature is authorized to create exemptions to open government requirements.¹⁷ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹⁸ A bill enacting an exemption¹⁹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.²⁰

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.²¹ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.²²

The Open Government Sunset Review Act²³ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are if the exemption:

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

acting on behalf of any public agency.” The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

¹⁴ Section 119.011(11), F.S.

¹⁵ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2nd 633,640 (Fla. 1980).

¹⁶ *Wait v. Florida Power & Light Company*, 372 So.2nd 420 (Fla. 1979).

¹⁷ Article 1, s. 24(c), State Constitution.

¹⁸ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

²⁰ Art. I, s. 24(c) of the State Constitution.

²¹ Attorney General Opinion 85-62.

²² *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

²³ Section 119.15, F.S.

- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.²⁴

The act also requires consideration of the following issues:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.²⁵ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

“ . . . notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.”

Under s. 119.10(1) (a), F.S., any public officer who violates any provision of the Public Records Act is guilty of a noncriminal infraction, punishable by a fine not to exceed \$500. Further, under paragraph (b) of that section, a public officer who knowingly violates the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, commits a first-degree misdemeanor penalty, and is subject to suspension and removal from office or impeachment. Any person who willfully and knowingly violates any provision of the chapter is guilty of a first-degree misdemeanor, punishable by potential imprisonment not exceeding 1 year and a fine not exceeding \$1,000.²⁶

Background on Florida’s trade secrets law

Chapter 688, F.S., the Uniform Trade Secrets Act, defines a 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.”

Additionally, s. 812.081(2), F.S., provides that:

²⁴Section 119.15(6)(b), F.S.

²⁵ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla.1974).

²⁶ Yet, any employee of an economic development agency who violates the provisions of s. 288.075, F.S., which makes confidential and exempt records related to state economic development incentives, is guilty of a second-degree misdemeanor, punishable as specified in s. 775.082, F.S., or s. 775.083, F.S.

“ Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.”

Section 812.081(1)(c), F.S., defines “trade secret” to mean “. . . the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. “Trade secret” includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The Florida Attorney General has concluded that the fact certain information constitutes a trade secret under s. 812.081, F.S., does not, in and of itself, remove it from the requirements of the Public Records Act.²⁷ When there is no exemption making information confidential or exempt, an agency is therefore under a duty to release public records even though such records may constitute trade secrets.

The Uniform Trade Secrets Act permits the courts to enter an injunction for the actual or threatened misappropriation of a trade secret.²⁸ Further, the court may, in appropriate circumstances, require affirmative acts to protect trade secrets. A complainant under the act is also entitled to damages, which can include the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In the alternative, royalties can be required.²⁹

In an action under the Uniform Trade Secrets Act, the court is required to preserve the secrecy of the alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. Over the years, the Legislature has created a number of specific exemptions for trade secrets.³⁰

Findings

Committee staff used surveys,³¹ interviews, and document research to collect information for this report. A discussion of staff’s findings are summarized as they relate to the questions posed in s. 119.11(6)(a), F.S., for the Open Government Sunset Review Act process.

What specific records or meetings are affected by the exemption?

As explained in the “Background” section above, the exemption in s. 288.9551, F.S., affects:

²⁷ Attorney General Opinion 92-43.

²⁸ Section 688.003, F.S.

²⁹ Section 688.004, F.S.

³⁰ See, e.g., s. 1004.78(2), F.S. (trade secrets produced in technology research within community colleges); s. 365.174, F.S. (proprietary confidential business information and trade secrets submitted by wireless 911 provider to specified agencies); s. 570.544(8), F.S. (trade secrets contained in records of the Division of Consumer Services of the Department of Agriculture and Consumer Services); s. 627.6699(8)(c), F.S. (trade secrets involving small employer health insurance carriers).

³¹ On file with the Senate Commerce Committee.

- Methods of manufacture or production;
- Potential trade secrets;
- Patentable materials or discoveries;
- Actual trade secrets as defined in s. 688.002, F.S.;
- Proprietary information;
- Agreements and proposals for funding, including grant applications;
- Materials relating to the recruitment of scientists and researchers;
- Information identifying donors or potential donors for the institutes;
- Information received from a person or another state or nation or the Federal Government that 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; and
- Any medical or health records of participants in clinical trials.

Additionally, meetings or portions of meetings by the corporation, OTTED, TSRI, or TSRI's Florida facility where the exempt and confidential information is discussed are closed to the public. Records of these discussions from the closed portions of the meetings also are confidential and exempt.

Whom does the exemption uniquely affect, as opposed to the general public?

This exemption uniquely affects the corporation, TSRI, TSRI's Florida research facility in Palm Beach County; and OTTED. All four of these entities are requesting that s. 288.9551, F.S., be re-enacted.

What is the identifiable public purpose or goal of the exemption?

Ch. 2003-419, L.O.F., listed several reasons (see "Background" section above) why the specified Scripps-related information and records should be closed. The key reason was that making the information publicly available could put TSRI and its Florida facility at a competitive disadvantage with similar research institutes or companies, thus compromising the state's \$310 million investment.

Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?

If so, how?

Some of the information made confidential by s. 288.9551, F.S., could be available, if not readily, by researching TSRI filings to the U.S. Securities and Exchange Commission or the U.S. Patent and Trademark Office. Employee recruitment efforts and incentives, as well as donor identities and contribution amounts, contested proprietary information, and clinical trial information, could be discovered through searches of property records, wills and codicils, lawsuits, federal tax returns, and other public records maintained at county courthouses. In summary, staff research indicates that the information listed in the statute is not readily available.

Is the record or meeting protected by another exemption?

Section 288.075, F.S., last updated in 2007, makes confidential and exempt a variety of economic development information, including some of the information protected under s. 288.9551, F.S. OTTED is listed as one of the entities whose relevant economic development information is covered by the public records exemption in s. 288.075, F.S. It is arguable whether the corporation meets the definition of "economic development agency" pursuant to s. 288.075, F.S. Also, s. 288.075, F.S., does not address confidential and exempt information being disclosed in a public meeting.

In addition, s. 288.9551(6), F.S., declares that TSRI and its Florida facility are private, not-for-profit entities and thus are not subject to Florida's public records and open meetings laws.³²

Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

As explained above, s. 288.075, F.S., makes confidential and exempt some of the same types of information and records protected under s. 288.9551, F.S. However, there are enough significant differences between the two

³² Section 288.9551(6), F.S.

statutes that a merger would require a substantial revision of one or the other statute, and could create some confusion about its applicability to general economic-development organizations.

Additionally, there are policy considerations related to the state's recruitment and support of TSRI. Survey responses from the corporation, TSRI, and TSRI's Florida facility indicate that without the confidentiality protections of s. 288.9551, F.S., the research institute's ability to competitively conduct operations in Florida would be impaired. For example, TSRI's survey response noted:

“Repeal of this public records exemption now would (a) significantly compromise the ability of TSRI to compete in the relevant marketplace and thus, significantly compromise the ability of TSRI to fulfill its economic development mission to the State of Florida and (b) potentially expose the proprietary records of a California corporation to public disclosure even though no funds from the State of Florida are used to support activities in California.”³³

The corporation's survey response indicated that the corporation does not receive the TSRI information listed as confidential and exempt in the statute, and does not have “direct access” to the proprietary and confidential work products its outside auditor receives when evaluating the annual audit of TSRI and its Florida facility prepared by their outside auditor. Nonetheless, the corporation is recommending reenactment of the statute because it:

“feels that the contract reporting requirements are fairly detailed and require publication of information which typically would not be made public through the [corporation's] and Scripps Florida annual reports. Additionally, TSRI oftentimes provides additional information at the request of [the corporation] and in order to continue to engage in open, honest and detailed reporting, reenactment of this statute is necessary. Finally, reenactment of this statute is important to TSRI and Scripps Florida and the [corporation] supports them in that position.”³⁴

As representatives of TSRI, the corporation, and OTTED reiterated during follow-up interviews with legislative staff, they believe that if TSRI and its Florida facility are unable to keep confidential and exempt information about their patentable inventions, research, staff recruitment, and efforts to attract private donations, they may not be as successful as anticipated, and the state's \$310 million investment may not achieve its anticipated results.

Representatives for the corporation, TSRI, and TSRI's Florida facility also have responded in writing and during interviews that s. 288.9551(6), F.S., discourages legal challenges to the research institute's right, as a private, not-for-profit corporation, to maintain the confidentiality of certain records.

OTTED, in its survey responses, indicates that s. 288.9551, F.S., is duplicative of s. 288.075, F.S., which creates a more general exemption for economic development records and information received by OTTED and other categories of economic development entities. However, s. 288.075, F.S., does not include a public meetings exemption for confidential and exempt information, so OTTED recommends reenacting s. 288.9551, F.S.

Options and Recommendations

Committee professional staff recommends reenacting most of s. 288.9551, F.S., but also recommends several revisions that the Senate may wish to consider.

Based on professional staff's assessment, s. 288.9551, F.S., is narrowly drawn to the Scripps Florida Funding Corporation, TSRI, and TSRI's Florida facility. The statute accomplishes its original purpose of keeping “confidential and exempt” certain proprietary information, research documents, trademarks and patentable materials, research grant applications, information related to clinical and human trials, and donor identities. Those types of information generally are confidential under federal laws, so s. 288.9551, F.S., can be described as closing the loop on their accessibility by the public.

³³ On file with the Senate Commerce Committee.

³⁴ On file with the Senate Commerce Committee.

The chapter law creating s. 288.9551, F.S., also considers confidential and exempt “materials related to the recruitment of scientists and researchers.” The public necessity statement included in the legislation creating the exemption stated:

“If this information is not protected, it could adversely affect the ability of the grantee to attract the highest quality of scientists and researchers to The Scripps Research Institute or grantee by permitting competitors to determine what the terms of employment negotiations for scientists and researchers are and to outbid The Scripps Research Institute or grantee. This would adversely affect the program and defeat its purpose”³⁵

The provision references the requirement in s. 288.955, F.S., the substantive law that created the corporation, that TSRI’s quarterly and annual reports to the corporation and OTTED include information about “average compensation, numbers and types of personnel” employed. The same type of job-related information is reported annually by Enterprise Florida, Inc., the state’s industry recruitment partner, for private businesses that receive state funds for each new job created under several other Florida economic incentive programs. As such, keeping certain job-related information confidential and exempt for TSRI and its Florida facility is consistent with state law for other economic incentive programs.

Committee professional staff offers the following options for revisions to the existing s. 288.9551, F.S.:

- Delete the reference to OTTED from the statute, as s. 288.075, F.S., offers that agency broader authority to keep confidential and exempt information related to economic development efforts. While s. 288.075, F.S., does not have an open-meetings exemption, OTTED, which serves as staff to the Governor, does not hold public meetings.
- Delete subsection (6) from s. 288.9551, F.S., because it is unnecessary. TSRI is registered with the Florida Division of Corporations as a nonprofit, public benefit corporation headquartered in La Jolla, Calif., and it files its federal tax returns as a non-profit organization pursuant to s. 501(c)(3) of the U.S. Tax Code. These designations substantiate that TSRI is a private, not-for-profit entity. TSRI created the Jupiter, Fla., facility as a division within the company, not as a separate legal entity, so the Florida facility falls under the TSRI umbrella of being a private, not-for-profit. As such, TSRI and its Florida facility are not subject to ch. 119, F.S., and s. 286.011, F.S.

Subsection (6) further specifies that if a court nonetheless rules that TSRI or its Florida facility is acting “on behalf of an agency, by virtue of its contract” with the corporation under s. 288.955, F.S., then its records would not be subject to ch. 119, F.S., or s. 286.011, F.S. However, the corporation, while it is subject to Florida’s Government in the Sunshine laws, is not considered an agency of the state, according to its description in s. 288.955(2)(b), F.S. That paragraph describes the corporation this way:

“The corporation is not a unit or entity of state government.”

- Repeal this statute as of October 2, 2024, because the 20-year agreement between the corporation and TSRI will expire in the first quarter of that year. Disbursement of state funding is scheduled to expire in 2014. Reinvestment to the state begins 6 months after the last disbursement of state funding, and ends when the total reinvestment reaches \$155 million (if TSRI has met all of its performance measures) or when the agreement expires, whichever is sooner.
- Delete the term “grantee” in s. 288.9551, F.S., and in s. 288.955, F.S., and replace it with TSRI, which is the actual recipient of the state funds, according to the contract signed with the corporation. Both sections of law could be amended to reflect that the state funds are being used at a Florida research facility that is a division within TSRI. This change would reduce confusion about the term “grantee” and reflect the actual contractual relationship with the state.
- Amend s. 288.9551(5), F.S., to eliminate extraneous verbiage and to reduce the penalty for public employees who release confidential and exempt information protected under this section, so that it is consistent with the

³⁵ Section 2(3) of ch. 2003-419, L.O.F.

penalty in s. 288.075, F.S. Instead of a first-degree misdemeanor, the revised penalty would be a second-degree misdemeanor.