

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 8-E

SPONSOR: Governmental Oversight & Productivity Committee and Senators Atwater and Klein

SUBJECT: Public Records and Meetings

DATE: October 22, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Article I, s. 24 of the State Constitution provides that 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 or by persons acting on their behalf. Further, all meetings of public collegial bodies must be open and noticed. Chapter 119, F.S., the Public Records Law, and s. 286.011, F.S., the Sunshine Law, also contain requirements related to open government.

Under Art. I, s. 24(c) of the State Constitution, only the Legislature is permitted to create an exemption to open government requirements and it may do so only by following the process established in that section. An exemption may be created only by general law. Further, a bill creating an exemption must state with specificity the public necessity justifying the exemption, the exemption must not be any broader than necessary to accomplish the stated necessity, and the bill that creates the exemption must contain only exemptions and enforcement provisions. Finally, such a bill must be passed by a two-thirds vote of each house.

The Committee Substitute for Senate Bill 8-E makes exempt and confidential specified information of The Scripps Research Institute or grantee held by the Scripps Florida Funding Corporation or the Governor's Office of Tourism, Trade, and Economic Development under s. 288.955, F.S., as created by SB 6-E or similar legislation.

The Committee Substitute for Senate Bill 8-E also creates a public meetings exemption for those portions of meetings of the Scripps Florida Funding Corporation's board of directors at which confidential information is presented or discussed. The bill requires confidential information to be released to public employees exclusively for the performance of their duties and provides criminal penalties for a person who fails to maintain the confidentiality of the information.

The exemptions are made subject to the Open Government Sunset Review Act and will repeal on October 2, 2009, unless reenacted after review by the Legislature.

This bill creates s. 288.9551, Florida Statutes.

II. Present Situation:

Public Records and Meetings Requirements

Public Records - 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 1909. 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. Section 24(a), Art. I 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, the Public Records Law¹ specifies the conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. The term “public records” has been defined by the Legislature in s. 119.011(1), F.S., to include:

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.

This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.² Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.³

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under s. 24(c), Art. I of the State Constitution, the Legislature may provide by general law passed by a two-thirds vote of each

¹ Chapter 119, F.S.

² *Shevin v. Byron, Harless, Schaffer, Reid & Assoc., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

³ *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

house for the exemption of records, if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption must only contain exemptions to public records or meetings requirements and must relate to one subject.

Public Meetings - Section 286.011, F.S., commonly referred to as the “Sunshine Law,” provides a right of access to governmental proceedings at both the state and local levels. Three basic requirements are provided: (1) meetings of public boards or commissions must be open to the public (whether appointed or elected); (2) reasonable notice of such meetings must be given; and (3) minutes of the meeting must be taken.

Under the provision, private organizations may be subject to the Sunshine Law. The Attorney General has noted that private organizations generally are not subject to the Sunshine Law unless they have been delegated the authority to perform some governmental function.⁴ While the Sunshine Law has been interpreted not to apply to a private nonprofit corporation established by a local business to foster economic development,⁵ it has been held to apply to private entities created by law or by public agencies,⁶ and also to private entities providing services to governmental agencies and acting on behalf of those agencies in the performance of their public duties.⁷

Open Government Sunset Review Act - The Open Government Sunset Review Act of 1995 establishes a review and repeal process for exemptions to public records or meetings requirements. Under the act, a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.⁸ An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”⁹

In the year before the repeal of an exemption, the Division of Statutory Revision is required to certify to the President of the Senate and the Speaker of the House of Representatives each exemption scheduled for repeal the following year. An exemption that is not identified and certified is not subject to legislative review and repeal under the Open Government Sunset Review Act. If the division fails to certify an exemption that it subsequently determines should have been certified, it must include the exemption in the following year’s certification after the determination.

⁴ See, e.g., Inf. Op. to Fasano, June 7, 1996 (Sunshine Law does not apply to meetings of a homeowners’ association board).

⁵ See, e.g., Inf. Op. to Hatcher and Thornton, September 15, 1992 and Inf. Op. to Armesto, September 18, 1979.

⁶ See, e.g., Atty. Gen. Op. 92-80, finding that the Sunshine Law applies to the Board of Directors of Enterprise Florida, Inc.

⁷ See, e.g., Atty. Gen. Op. 98-55, finding that a nonprofit corporation created by a city redevelopment agency to assist in the implementation of the agency’s redevelopment plan is subject to the Sunshine Law.

⁸ Section 119.15(3)(a), F.S.

⁹ Section 119.15(3)(b), F.S.

The Act provides that an exemption is to be created or maintained only if it serves an identifiable public purpose and is no broader than necessary to meet that public purpose.¹⁰ Further, the Act provides that an exemption is to be created or maintained only if:

- The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.¹¹

The failure of the Legislature to comply strictly with the Open Government Sunset Review Act does not invalidate an otherwise valid reenactment. Further, one session of the Legislature cannot bind a future Legislature. Consequently, a new session of the Legislature may preserve an exemption that does not meet the explicit standards set forth in the Open Government Sunset Review Act, if the requirements of s. 24, Art. I of the State Constitution are not violated.

Trade Secrets

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 main its secrecy.

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

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:

¹⁰ Section 119.15(4)(b), F.S.

¹¹ Section 119.15(2), F.S.

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. 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 Attorney General has concluded that the fact that 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.¹² 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.¹³ 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.¹⁴

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.

The Legislature has created a number of specific exemptions for trade secrets.¹⁵

Scripps Florida Funding Corporation

Senate Bill 6-E creates the Scripps Florida Funding Corporation in order to distribute state funds to a Florida-based division, subsidiary, affiliate, or entity in Palm Beach County of The Scripps Research Institute. These state funds are provided as an economic development incentive for The Scripps Research Institute to establish a state-of-the-art biomedical research institution and campus in the state. The funding corporation is established as a not-for-profit corporation, but is

¹² See, Atty. Gen. Op. 92-43.

¹³ Section 688.003, F.S.

¹⁴ Section 688.004, F.S.

¹⁵ 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).

expressly made subject to the public records and meetings requirements of s. 24, Art. I of the State Constitution, ch. 119, F.S., and s. 286.011, F.S.¹⁶

Under SB 6-E, Scripps Florida must enter into a contract with the funding corporation and meet certain performance measures as a condition of the continued disbursement of the incentive funds. Consequently, Scripps Florida would likely be required to submit to the funding corporation certain information about the institute's operations in order to receive the incentive funds. In addition, the Governor's Office of Tourism, Trade, and Economic Development (OTTED) must enter into a contract with the funding corporation for the disbursement of the incentive funds and is responsible for administrative support to the funding corporation. Thus, information about the institute would likely be held also by OTTED.

Current Public Records Exemptions for Economic Development

In 2002, the Legislature enacted public records exemptions for the state's economic development incentive programs.¹⁷ These incentive programs included the following:

- Capital Investment Tax Credit Program (CITC Program) under s. 220.191, F.S.;
- Qualified Defense Contractor Tax Refund Program (QDC Program) under s. 288.1045, F.S.;
- Qualified Target Industry Tax Refund Program (QTI Program) under s. 288.106, F.S.;
- High-Impact Business Performance Incentive Grants Program (HIPI Program) under s. 288.108, F.S.; and
- Quick Action Closing Fund Awards Program (QAC Program) under s. 288.1088, F.S.

The exemptions created by the 2002 law were comparable to public records exemptions that were repealed on October 2, 2001, under the Open Government Sunset Review Act.¹⁸ Under current law, the public records exemptions for these economic development programs and incentives shield specified business information (e.g., certain proprietary, trade-secret, and personal data) from public disclosure.¹⁹ These exemptions apply to the business information of qualified businesses in these incentive programs which is held by:

¹⁶ The term "agency" as used in the Public Records Act includes private entities "acting on behalf of any public agency." The Florida Supreme Court has stated that this broad definition ensures that a public entity cannot avoid disclosure by contractually delegating to a private entity that which would otherwise be an agency responsibility. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 592 So.2d 1029 (Fla. 1992). There is, however, no single factor which controls when analyzing if a private corporation is subject to public records requirements. A "totality of factors" test is used to determine applicability. The nine factors established in *Schwab* include: (1) the level of public funding; (2) commingling of funds; (3) whether the activity is conducted on public-owned property; (4) whether services contracted for are an integral part of the public agency's chosen decision-making process; (5) whether the private entity is performing a governmental function or a function which the agency would otherwise perform; (6) the extent of the public agency's involvement with, regulation of, or control over the private entity; (7) whether the private entity was created by a public entity; (8) whether the public agency has a substantial financial interest in the private entity; and (9) for whose benefit the private entity is functioning. Examples of private entities created pursuant to law or by public agencies that have been determined by the Attorney General to be subject to open records and meetings requirements include the Florida Windstorm Joint Underwriting Association; the Pace Property Finance Authority, Inc., rural health networks, and the South Florida Fair and Palm Beach County Expositions, Inc.

¹⁷ Chapter 2002-68, L.O.F.

¹⁸ Section 119.15, F.S.

¹⁹ Section 288.1067, F.S.

- The Governor’s Office of Tourism, Trade, and Economic Development (OTTED);
- Enterprise Florida, Inc. (EFI), the state’s principal economic development organization;²⁰
- County or municipal governmental entities; or
- Employees or agents of OTTED, EFI, or the local governmental entities.

These public records exemptions expire on October 2, 2007, unless they are reenacted after review by the Legislature under the Open Government Sunset Review Act.²¹

Despite these exemptions, current law allows economic development program administrators to publish statistics in the aggregate, if these statistics are classified as to prevent the identification of a single qualified business,²² and authorizes OTTED and EFI to release the following information:

- The names of qualified businesses, the total number of jobs each business expects to create, the total number of jobs created by each business, and the amount of tax refunds awarded to and claimed by each business under the QTI Program or the QDC Program;
- The amount of incentives awarded and claimed by each business under the HIPI Program or the QAC Program; and
- The names of qualified businesses, the total number of jobs each business expects to create, and the total number of jobs created by each business under the CITC Program.²³

III. Effect of Proposed Changes:

The committee substitute makes exempt and confidential specified records of The Scripps Research Institute or a grantee that are held by the Scripps Florida Funding Corporation or the Office of Tourism, Trade, and Economic Development (OTTED) pursuant to s. 288.955, F.S., as created by SB 6-E or similar legislation. The term “grantee” is defined to have the same meaning as in s. 288.955, F.S., which is created in Senate Bill 6-E or other similar legislation. The term “grantee” is defined to mean

Scripps Florida or a division, subsidiary, affiliate, or entity formed by the Scripps Research Institute to establish a state-of-the-art biomedical research institution and campus in this state.

The bill makes the following records confidential and exempt:

- Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, actual trade secrets as defined in s. 688.002,²⁴ or proprietary information

²⁰ Section 288.901, F.S.

²¹ Section 288.1067(4), F.S.

²² Section 288.1067(3), F.S.

²³ Section 288.1067(2), F.S.

²⁴ Section 688.002(4), F.S., defines “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; (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

received, generated, ascertained, or discovered by or through the grantee or The Scripps Research Institute.

- Federal employer identification numbers, unemployment account numbers, Florida sales tax registration numbers, agreements and proposals to receive funding, personnel recruitment materials, and the identity of donors or prospective.
- Information received from any person or another state or nation, or the Federal Government, which is confidential or exempt under that state's or nation's laws, or under federal law.
- Any information regarding the conduct of the operations or the Scripps Research Institute or grantee which is otherwise confidential or exempt.

The bill creates a public meetings exemption, providing that those portions of board meetings for the board of directors of the Scripps Florida Funding Corporation 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.

Under Public Records Law, there is a distinction between records that are made exempt and records that are made exempt and confidential. If a record is made exempt only, an agency is not prohibited from disclosing the documents in all circumstances.²⁵ If the Legislature makes certain information exempt and confidential, however, such information may not be released to anyone other than to the persons or entities designated in statute.²⁶ The bill requires information made exempt and confidential by the bill to be released to public employees exclusively for the performance of their duties. This release provision permits employees of the Auditor General or other entities with oversight responsibilities to obtain access to records made confidential and exempt by the section.

The bill also requires public employees receiving confidential information to maintain the confidentiality of the information. The bill provides criminal penalties for a public employee who fails to maintain the confidentiality of the information, punishable as a misdemeanor of the first degree (up to 1 year in jail or up to a \$1,000 fine).

Open Government Sunset Review Act - The bill provides that the public records and meetings exemptions created by the bill are repealed on October 2, 2009, unless reenacted after review by the Legislature under the Open Government Sunset Review Act.

Statement of Public Necessity - The bill provides a legislative statement of public necessity for the public records exemption, as required under s. 24(c), Art. I of the State Constitution. The statement of public necessity notes the substantial financial and other interests of the State in the enactment of Senate Bill 6-E or similar legislation. Further, it ties the stated bases for the exemptions more closely to the records and meetings exemptions that are created than the original bill does.

A stated basis for the exemption is that disclosure of the records would create an unfair competitive advantage for persons receiving the information, which would create an unfair competitive disadvantage for The Scripps Research Institute, the grantee and the state. Persons

²⁵ See, *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

²⁶ See, Inf. Op. to Chiaro, January 24, 1997.

who obtained this information would receive the benefit of the research and business development without compensation or reimbursement. Disclosure of trade secrets, tax identification numbers, the amount of taxes paid, and the amount of employee wages, among other issues, could injure these entities in the market place by providing competitors with detailed insights into the financial status and strategic plans of these entities.

Contingent Effective Date - The bill provides that it takes effect on the effective date of SB 6-E (upon becoming a law) or similar legislation, if SB 6-E or similar legislation becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 24(c), Art. I of the State Constitution permits the Legislature to create exemptions to public records and meetings requirements by general law. These exemptions must be no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption must contain only exemptions from the public records and meetings requirements and provisions governing enforcement and must relate to one subject. The bill appears to relate to one subject and contain only provisions creating exemptions and providing for enforcement.

Pursuant to s. 119.011(2), F.S., an “agency” is

. . . 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 . . . *any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency [emphasis added]*.

The Florida Supreme Court has adopted a “totality of factors” approach to use as a guide for evaluating whether a private entity is “acting on behalf of” a public agency and, therefore, is subject to ch. 119, F.S.²⁷ This test has been determined to present a mixed question of fact and law.²⁸ The factors listed by the Florida Supreme Court in *Schwab* are:

- (1) The level of public funding;
- (2) Commingling of funds;
- (3) Whether the activity was conducted on publicly-owned property;
- (4) Whether services contracted for are an integral part of the public agency’s chosen decision-making process;

²⁷ *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992).

²⁸ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373, 381 (Fla. 1999).

- (5) Whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
- (6) The extent of the public agency's involvement with, regulation of, or control over the private entity;
- (7) Whether the private entity was created by the public agency;
- (8) Whether the public agency has a substantial financial interest in the private entity; and
- (9) For whose benefit the private entity is functioning.

Based upon the totality of factors test, it would appear that the Scripps Funding Corporation is acting on behalf of the state, regardless of whether this is made explicit in statute. A more unusual question is raised regarding Scripps Florida and The Scripps Research Institute. Given the level of public funding that is being provided to Scripps Florida and the Scripps Research Institute, the level of state involvement, as well as the expected public benefit, it may be appropriate to consider extending the exemption created in the bill to the Scripps Research Institute and grantee. As a result of this concern, in the event of a court determining that the Scripps Research Institute or grantee are "acting on behalf of an agency," the committee substitute makes provision in the exemption and in the public necessity statement to protect the same records and meetings when held by these not-for-profit entities.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By protecting sensitive business information, the public records and meetings exemptions created by the bill may help prevent The Scripps Research Institute from being injured in the marketplace through the disclosure of insights about its finances and strategies to competitors. In addition, to the extent the public records and meetings exemptions make the institute less reluctant to establish a state-of-the-art biomedical research institution and campus in Palm Beach County, they may help facilitate economic development activities that benefit the state.

C. Government Sector Impact:

The Scripps Florida Funding Corporation and the Governor's Office of Tourism, Trade, and Economic Development are responsible for maintaining the security of records generated through their administration of economic development incentives provided to The Scripps Research Institute or its Florida-based grantee. The administrative costs associated with maintaining such confidentiality are estimated to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Page 2, lines 18-19, makes exempt “. . . agreements and proposals to receive funding, including grant applications.” It would appear that this includes agreements for the release of funds by the funding corporation or OTTED, as opposed to funding from other entities, such as private foundations. If this section includes agreements for the release of funds by the funding corporation or OTTED, public oversight over that decision-making process could be limited. An exemption is required to be narrowly-tailored to meet the specific public necessity stated by the Legislature in order to avoid a challenge due to over breadth. Public records law typically requires that only those portions of a record that are exempt or confidential are redacted, with the remainder of the document available for public inspection. Further, where a public record contains some information that is exempt, s. 119.07(2)(a), F.S., requires the custodian of that document to delete or excise only that portion or portions of the records for which an exemption exists.²⁹ The bill exempts the entire document, as opposed to those aspects of the document that are exempt and confidential.

Page 2, line 20 - It is not clear that the funding corporation or OTTED would obtain recruitment materials for The Scripps Research Institute or grantee. Further, there has been longstanding debate regarding the exemption of materials that relate to the recruitment of personnel by the universities. To date, the Legislature has not created an exemption for recruitment materials for universities.

The building in Palm Beach County that will house the institute is owned by an agency, and as such, the building plans are protected under current law.³⁰ As a result, the committee substitute removed building plans from the exemption. Further, if there is concern that security is an issue, whether the building is owned by an agency or by a private entity, s. 119.071, F.S., protects security system plans.

Subsection (4) of the exemption provides that *public employees* who receive confidential information under that section must maintain the confidentiality of the information. The provision in the original bill provided that any *person* who violates the subsection commits a misdemeanor of the first degree. The committee substitute changed “person” to “public employee.”

Further, subsection (4) of the exemption does not state whether the violation must be willful and knowing. Under s. 119.10, F.S., a public officer who violates any provision of ch. 119, F.S., is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. Any person willfully and knowingly violating any of the provisions in the chapter is guilty of a misdemeanor of the first degree. Willful and knowing violations of s. 119.105, F.S., which relates to commercial

²⁹ See, *Ocala Star banner Corp. v. McGhee*, 643 So.2d 1196 (Fla. 5th DCA 1994); *City of Riviera Beach v. Barfield*, 642 So.2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995).

³⁰ Section 119.07(3)(ee), F.S.

solicitation of the victims or relatives of the victims of reported crimes or incidents, is a felony of the third degree.

The original statement of public necessity provided that documentation to support a claim for incentive funding “. . . could reveal private information, such as employee names and social security numbers, concerning the employees of the grantee or The Scripps Research Institute.” The exemption, however, does not make such “private information” exempt or confidential. This portion of the statement of public necessity was removed.

The bill makes minutes and tape recordings of meetings exempt and confidential. The bill does not, however, provide an access to courts for review in camera nor does it contain an end date for protecting such information.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
