

By the Council for Lifelong Learning and Representative  
Melvin

1                                   A bill to be entitled  
2           An act relating to exemption from public  
3           records and meeting requirements; creating s.  
4           1005.385, F.S.; creating an exemption from  
5           public records requirements for specified  
6           complaints filed with the Commission for  
7           Independent Education and all information  
8           obtained pursuant to the investigation of such  
9           complaints by the commission; providing a time  
10          limitation for the exemption; providing an  
11          exception to the exemption; creating an  
12          exemption from public meeting requirements for  
13          proceedings of the commission's probable-cause  
14          panel; providing a time limitation for the  
15          exemption; amending s. 1004.43, F.S., as  
16          created by HB \_\_\_\_, 2002 Regular Session;  
17          providing an exemption from public records  
18          requirements for specified proprietary  
19          confidential business information concerning  
20          materials that relate to methods of manufacture  
21          or production, potential trade secrets,  
22          potentially patentable materials, or  
23          proprietary information received, generated,  
24          ascertained, or discovered during the course of  
25          research conducted at the H. Lee Moffitt Cancer  
26          Center and Research Institute or by the  
27          not-for-profit organization of the institute or  
28          its subsidiaries; providing for future review  
29          and repeal of the exemptions; providing  
30          findings of public necessity; providing a  
31          conditional effective date.

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

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3 Section 1. Section 1005.385, Florida Statutes, is  
4 created to read:

5 1005.385 Actions against a licensee and other  
6 penalties; public records and public meetings exemption.--A  
7 complaint filed with the Commission for Independent Education  
8 under s. 1005.38 and all information obtained pursuant to the  
9 investigation of such complaint by the commission is  
10 confidential and exempt from the provisions of s. 119.07(1)  
11 and s. 24(a), Art. I of the State Constitution for a period  
12 not to exceed 10 days after the probable cause panel  
13 established under s. 1005.38 declares a finding of probable  
14 cause, at which time the exemption shall expire. The  
15 commission may provide information obtained pursuant to s.  
16 1005.38 to any law enforcement or regulatory agency. The  
17 proceedings of the probable cause panel established under s.  
18 1005.38 are exempt from the provisions of s. 286.011 and s.  
19 24(b), Art. I of the State Constitution until the panel  
20 declares a finding of probable cause, at which time the  
21 exemption shall expire. This section is subject to the Open  
22 Government Sunset Review Act of 1995 in accordance with s.  
23 119.15, and shall stand repealed on October 2, 2007, unless  
24 reviewed and saved from repeal through reenactment by the  
25 Legislature.

26 Section 2. The Legislature finds that it is a public  
27 necessity to make confidential and exempt from public  
28 disclosure complaints filed with the Commission for  
29 Independent Education under s. 1005.38, Florida Statutes, and  
30 all information obtained in the course of an investigation of  
31 such complaints by the commission, and to close the

1 proceedings at which a finding of probable cause under s.  
2 1005.38 is determined because the exemption prevents unfounded  
3 complaints and investigations from being used to damage the  
4 good name of an institution or persons associated with the  
5 institution. Because the information made exempt under this  
6 act would be released after a finding of probable cause, the  
7 public would continue to be protected.

8 Section 3. Subsection (8) of section 1004.43, Florida  
9 Statutes, as created by HB\_\_\_, 2002 Regular Session, is  
10 amended to read:

11 1004.43 H. Lee Moffitt Cancer Center and Research  
12 Institute.--There is established the H. Lee Moffitt Cancer  
13 Center and Research Institute at the University of South  
14 Florida.

15 (8)(a) Records of the not-for-profit corporation and  
16 of its subsidiaries are public records unless made  
17 confidential or exempt by law.

18 (b) Proprietary confidential business information is  
19 confidential and exempt from the provisions of s. 119.07(1)  
20 and s. 24(a), Art. I of the State Constitution. However, the  
21 Auditor General, the Office of Program Policy Analysis and  
22 Government Accountability, and the State Board of Education,  
23 pursuant to their oversight and auditing functions, must be  
24 given access to all proprietary confidential business  
25 information upon request and without subpoena and must  
26 maintain the confidentiality of information so received. As  
27 used in this paragraph, the term "proprietary confidential  
28 business information" means information, regardless of its  
29 form or characteristics, which is owned or controlled by the  
30 not-for-profit corporation or its subsidiaries; is intended to  
31 be and is treated by the not-for-profit corporation or its

1 subsidiaries as private and the disclosure of which would harm  
2 the business operations of the not-for-profit corporation or  
3 its subsidiaries; has not been intentionally disclosed by the  
4 corporation or its subsidiaries unless pursuant to law, an  
5 order of a court or administrative body, a legislative  
6 proceeding pursuant to s. 5, Art. III of the State  
7 Constitution, or a private agreement that provides that the  
8 information may be released to the public; and which is  
9 information concerning:

- 10 1. Internal auditing controls and reports of internal  
11 auditors;
- 12 2. Matters reasonably encompassed in privileged  
13 attorney-client communications;
- 14 3. Contracts for managed-care arrangements, including  
15 preferred provider organization contracts, health maintenance  
16 organization contracts, and exclusive provider organization  
17 contracts, and any documents directly relating to the  
18 negotiation, performance, and implementation of any such  
19 contracts for managed-care arrangements;
- 20 4. Bids or other contractual data, banking records,  
21 and credit agreements the disclosure of which would impair the  
22 efforts of the not-for-profit corporation or its subsidiaries  
23 to contract for goods or services on favorable terms;
- 24 5. Information relating to private contractual data,  
25 the disclosure of which would impair the competitive interest  
26 of the provider of the information;
- 27 6. Corporate officer and employee personnel  
28 information;
- 29 7. Information relating to the proceedings and records  
30 of credentialing panels and committees and of the governing  
31

1 board of the not-for-profit corporation or its subsidiaries  
2 relating to the credentialing;

3 8. Minutes of meetings of the governing board of the  
4 not-for-profit corporation and its subsidiaries, except  
5 minutes of meetings open to the public pursuant to subsection  
6 (9);

7 9. Information that reveals plans for marketing  
8 services that the corporation or its subsidiaries reasonably  
9 expect to be provided by competitors;

10 10. Trade secrets as defined in s. 688.002, including  
11 reimbursement methodologies or rates;

12 11. The identity of donors or prospective donors of  
13 property who wish to remain anonymous or any information  
14 identifying such donors or prospective donors. The anonymity  
15 of these donors or prospective donors must be maintained in  
16 the auditor's report.

17 12. Materials that relate to methods of manufacture or  
18 production, potential trade secrets, potentially patentable  
19 materials, or proprietary information received, generated,  
20 ascertained, or discovered during the course of research  
21 conducted at the institute or by the not-for-profit  
22 corporation or its subsidiaries.

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24 As used in this paragraph, the term "managed care" means  
25 systems or techniques generally used by third-party payors or  
26 their agents to affect access to and control payment for  
27 health care services. Managed-care techniques most often  
28 include one or more of the following: prior, concurrent, and  
29 retrospective review of the medical necessity and  
30 appropriateness of services or site of services; contracts  
31 with selected health care providers; financial incentives or

1 disincentives related to the use of specific providers,  
2 services, or service sites; controlled access to and  
3 coordination of services by a case manager; and payor efforts  
4 to identify treatment alternatives and modify benefit  
5 restrictions for high-cost patient care.

6       Section 4. The Legislature finds that it is a public  
7 necessity that records of the not-for-profit corporation of  
8 the H. Lee Moffitt Cancer Center and Research Institute or its  
9 subsidiaries, which contain proprietary confidential business  
10 information regarding trade secrets and other information  
11 relating to research, including, materials that relate to  
12 methods of manufacture or production, potential trade secrets,  
13 potentially patentable materials, or proprietary information  
14 received, generated, ascertained or discovered during the  
15 course of research conducted at the institute or by the  
16 not-for-profit corporation or its subsidiaries, be made  
17 confidential and exempt from disclosure. This exemption is  
18 necessary because these records contain information that, if  
19 disclosed, would adversely impact the not-for-profit  
20 corporation or its subsidiaries in the competitive health care  
21 and medical research environment. The highly confidential  
22 nature of proprietary pharmaceutical and other cancer-related  
23 research necessitates that the not-for-profit corporation and  
24 its subsidiaries be authorized to maintain confidential  
25 information it receives from, or generates for, the sponsors  
26 of its research. Disclosure of confidential information would  
27 place the not-for-profit corporation and its subsidiaries on  
28 an unequal footing in the marketplace as compared with its  
29 private health care and medical research competitors that are  
30 not required to disclose such proprietary and confidential  
31 information. The Legislature finds that disclosure of such

1 proprietary and confidential information would effectively  
2 prevent the not-for-profit corporation and its subsidiaries  
3 from expeditiously fulfilling the H. Lee Moffitt Cancer Center  
4 and Research Institute's mission of cancer treatment,  
5 research, and education.

6 Section 5. This act shall take effect on January 7,  
7 2003, if HB \_\_\_\_\_ or similar legislation is adopted in the  
8 same legislative session or an extension thereof.

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11 HOUSE SUMMARY

12 Creates an exemption from public records requirements for  
13 specified complaints filed with the Commission for  
14 Independent Education and all information obtained  
15 pursuant to the investigation of such complaints by the  
16 commission. Provides a time limitation for the  
17 exemption. Provides an exception to the exemption.  
Creates an exemption from public meeting requirements for  
proceedings of the commission's probable-cause panel.  
Provides a time limitation for the exemption.

18 Provides an exemption from public records requirements  
19 for specified proprietary confidential business  
20 information concerning materials that relate to methods  
21 of manufacture or production, potential trade secrets,  
22 potentially patentable materials, or proprietary  
23 information received, generated, ascertained, or  
discovered during the course of research conducted at the  
H. Lee Moffitt Cancer Center and Research Institute or by  
the not-for-profit organization of the institute or its  
subsidiaries.

24 Provides for future review and repeal of the exemptions.  
25 Provides findings of public necessity. Provides that the  
26 act is effective conditional upon the passage of HB  
\_\_\_\_\_, 2002 Regular Session.