

By Senator Sullivan

22-1544-02

See HB

1 A bill to be entitled
2 An act relating to the H. Lee Moffitt Cancer
3 Center and Research Institute at the University
4 of South Florida; amending s. 240.512, F.S.;
5 assigning duties of the Board of Regents to the
6 Florida Board of Education; providing for the
7 utilization and governance of lands; revising
8 provisions relating to corporate subsidiaries
9 of the not-for-profit corporation; providing
10 for applicability of sovereign immunity
11 provisions; providing for the receipt of local
12 funds; revising provisions relating to
13 insurance protection; assigning duties of the
14 center director to a chief executive officer;
15 requiring approval of the University of South
16 Florida Board of Trustees for establishment of
17 academic programs; authorizing the creation and
18 support of an interdisciplinary oncology
19 program; providing for access to certain
20 research information; providing for
21 appropriations to be paid to the board of
22 directors of the not-for-profit corporation;
23 authorizing a challenge grant program for the
24 construction of facilities and the support of
25 clinical, research, and teaching programs at
26 the institute; providing for matching funds
27 from private sources with state funds for
28 approved projects; providing for the receipt,
29 holding, and disbursement of funds; providing
30 an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 240.512, Florida Statutes, is
4 amended to read:

5 240.512 H. Lee Moffitt Cancer Center and Research
6 Institute.--There is established the H. Lee Moffitt Cancer
7 Center and Research Institute at the University of South
8 Florida.

9 (1) The Florida Board of Education Regents shall
10 maintain ~~enter into~~ an agreement for the utilization of the
11 lands and facilities on the campus of the University of South
12 Florida to be known as the H. Lee Moffitt Cancer Center and
13 Research Institute, including all furnishings, equipment, and
14 other chattels used in the operation of said facilities, with
15 a Florida not-for-profit corporation organized solely for the
16 purpose of governing and operating the H. Lee Moffitt Cancer
17 Center and Research Institute. The ~~This~~ not-for-profit
18 corporation, ~~acting as an instrumentality of the State of~~
19 ~~Florida,~~ shall govern and operate the H. Lee Moffitt Cancer
20 Center and Research Institute in accordance with the terms of
21 the agreement between the Florida Board of Education Regents
22 and the not-for-profit corporation. The not-for-profit
23 corporation may, with the prior approval of the Florida Board
24 of Education Regents, create ~~not-for-profit~~ corporate
25 subsidiaries to fulfill its mission. The not-for-profit
26 corporation and its subsidiaries shall be corporations
27 primarily acting as instrumentalities of the state, pursuant
28 to s. 768.28(2), for purposes of sovereign immunity.The
29 not-for-profit corporation and its subsidiaries are authorized
30 to receive, hold, invest, and administer property and any
31 moneys received from private, local, state, and federal

1 sources, as well as technical and professional income
2 generated or derived from practice activities of the
3 institute, for the benefit of the institute and the
4 fulfillment of its mission. The affairs of the corporation
5 shall be managed by a board of directors who shall serve
6 without compensation. The President of the University of
7 South Florida and the chair of the Florida Board of Education
8 ~~Regents~~, or his or her designee, shall be directors of the
9 not-for-profit corporation, together with 5 representatives of
10 the State University System and no more than 14 nor fewer than
11 10 directors who are not medical doctors or state employees.
12 Each director shall have only one vote, shall serve a term of
13 3 years, and may be reelected to the board. Other than the
14 President of the University of South Florida and the chair of
15 the Florida Board of Education ~~Regents~~, directors shall be
16 elected by a majority vote of the board. The chair of the
17 board of directors shall be selected by majority vote of the
18 directors.

19 (2) The Florida Board of Education ~~Regents~~ shall
20 provide in the agreement with the not-for-profit corporation
21 for the following:

22 (a) Approval of the articles of incorporation of the
23 not-for-profit corporation by the Florida Board of Education
24 ~~Regents~~.

25 (b) Approval of the articles of incorporation of any
26 ~~not-for-profit~~ corporate subsidiary created by the
27 not-for-profit corporation.

28 (c) Utilization of lands, hospital facilities, and
29 personnel by the not-for-profit corporation and its
30 subsidiaries for research, education, treatment, prevention,
31 and the early detection of cancer and mutually approved

1 teaching and research programs conducted by the University of
2 South Florida and ~~or~~ other accredited medical schools or
3 research institutes.

4 (d) Preparation of an annual postaudit of the
5 not-for-profit corporation's financial accounts and the
6 financial accounts of any subsidiaries to be conducted by an
7 independent certified public accountant. The annual audit
8 report shall include management letters and shall be submitted
9 to the Auditor General and the Florida Board of Education
10 ~~Regents~~ for review. The Florida Board of Education Regents,
11 the Auditor General, and the Office of Program Policy Analysis
12 and Government Accountability shall have the authority to
13 require and receive from the not-for-profit corporation and
14 any subsidiaries or from their independent auditor any detail
15 or supplemental data relative to the operation of the
16 not-for-profit corporation or subsidiary.

17 (e) Provision by the not-for-profit corporation and
18 its subsidiaries of equal employment opportunities to all
19 persons regardless of race, color, religion, sex, age, or
20 national origin.

21 (3) The University of South Florida Health Sciences
22 Center self-insurance program ~~Board of Regents~~ is authorized
23 to secure ~~comprehensive general liability protection,~~
24 ~~including~~ professional liability protection, for the
25 not-for-profit corporation and its subsidiaries pursuant to s.
26 240.213. The not-for-profit corporation and its subsidiaries
27 shall be exempt from participation in any property insurance
28 trust fund established by law, including any property
29 insurance trust fund established under chapter 284, so long as
30 the not-for-profit corporation and its subsidiaries maintain
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1 property insurance protection with comparable or greater
2 coverage limits.

3 (4) In the event that the agreement between the
4 not-for-profit corporation and the Florida Board of Education
5 ~~Regents~~ is terminated for any reason, the Florida Board of
6 Education Regents shall assume ~~resume~~ governance and operation
7 of said lands and facilities.

8 (5) The institute shall be administered by a chief
9 executive officer ~~center director~~ who shall serve at the
10 pleasure of the board of directors of the not-for-profit
11 corporation and who shall have the following powers and duties
12 subject to the approval of the board of directors:

13 (a) The chief executive officer ~~center director~~ shall
14 establish programs which fulfill the mission of the institute
15 in research, education, treatment, prevention, and the early
16 detection of cancer; however, the chief executive officer
17 ~~center director~~ shall not establish academic programs for
18 which academic credit is awarded and which terminate in the
19 conference of a degree without prior approval of the
20 University of South Florida Board of Trustees based on
21 criteria established by the Florida Board of Education
22 Regents.

23 (b) The chief executive officer ~~center director~~ shall
24 have control over the budget and the dollars appropriated or
25 donated to the institute from private, local, state, and
26 federal sources, as well as technical and professional income
27 generated or derived from practice activities of the
28 institute. However, professional income generated by
29 university faculty from practice activities at the institute
30 shall be shared between the institute and the university as
31 determined by the chief executive officer ~~center director~~ and

1 the appropriate university dean or vice president ~~department~~
2 ~~chair~~.

3 (c) The chief executive officer ~~center director~~ shall
4 appoint members to carry out the research, patient care, and
5 educational activities of the institute and determine
6 compensation, benefits, and terms of service. Members of the
7 institute shall be eligible to hold concurrent appointments at
8 affiliated academic institutions. University faculty shall be
9 eligible to hold concurrent appointments at the institute.

10 (d) The chief executive officer ~~center director~~ shall
11 have control over the use and assignment of space and
12 equipment within the facilities.

13 (e) The chief executive officer ~~center director~~ shall
14 have the power to create the administrative structure
15 necessary to carry out the mission of the institute.

16 (f) The chief executive officer ~~center director~~ shall
17 have a reporting relationship to the Chancellor of Colleges
18 and Universities ~~the State University System~~.

19 (g) The chief executive officer ~~center director~~ shall
20 provide a copy of the institute's annual report to the
21 Governor and Cabinet, the President of the Senate, the Speaker
22 of the House of Representatives, and the chair of the Florida
23 Board of Education ~~Regents~~.

24 (6) The not-for-profit corporation and its
25 subsidiaries shall have the authority to enter into an
26 affiliation agreement or agreements with the University of
27 South Florida for the creation and support of an
28 interdisciplinary oncology program. The affiliation may
29 include joint financial and administrative support of the
30 clinical, research, and educational activities of university
31 faculty, as well as the sharing of revenues from those

1 activities by the institute and the university in furtherance
2 of the mission of the institute.

3 (7)~~(6)~~ The board of directors of the not-for-profit
4 corporation shall create a council of scientific advisers to
5 the chief executive officer ~~center director~~ comprised of
6 leading researchers, physicians, and scientists. This council
7 shall review programs and recommend research priorities and
8 initiatives so as to maximize the state's investment in the
9 institute. The council shall be appointed by the board of
10 directors of the not-for-profit corporation ~~and shall include~~
11 ~~five appointees of the Board of Regents.~~ Each member of the
12 council shall be appointed to serve a 2-year term and may be
13 reappointed to the council.

14 (8)~~(7)~~ In carrying out the provisions of this section,
15 the not-for-profit corporation and its subsidiaries are not
16 "agencies" within the meaning of s. 20.03(11).

17 (9)~~(8)~~(a) Records of the not-for-profit corporation
18 and of its subsidiaries are public records unless made
19 confidential or exempt by law.

20 (b) Proprietary confidential business information is
21 confidential and exempt from the provisions of s. 119.07(1)
22 and s. 24(a), Art. I of the State Constitution. However, the
23 Auditor General, the Office of Program Policy Analysis and
24 Government Accountability, and Florida Board of Education
25 ~~Regents~~, pursuant to their oversight and auditing functions,
26 must be given access to all proprietary confidential business
27 information upon request and without subpoena and must
28 maintain the confidentiality of information so received. As
29 used in this paragraph, the term "proprietary confidential
30 business information" means information, regardless of its
31 form or characteristics, which is owned or controlled by the

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

12 1. Internal auditing controls and reports of internal
13 auditors;

14 2. Matters reasonably encompassed in privileged
15 attorney-client communications;

16 3. Contracts for managed-care arrangements, including
17 preferred provider organization contracts, health maintenance
18 organization contracts, and exclusive provider organization
19 contracts, and any documents directly relating to the
20 negotiation, performance, and implementation of any such
21 contracts for managed-care arrangements;

22 4. Bids or other contractual data, banking records,
23 and credit agreements the disclosure of which would impair the
24 efforts of the not-for-profit corporation or its subsidiaries
25 to contract for goods or services on favorable terms;

26 5. Information relating to private contractual data,
27 the disclosure of which would impair the competitive interest
28 of the provider of the information;

29 6. Corporate officer and employee personnel
30 information;

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1 7. Information relating to the proceedings and records
2 of credentialing panels and committees and of the governing
3 board of the not-for-profit corporation or its subsidiaries
4 relating to credentialing;

5 8. Minutes of meetings of the governing board of the
6 not-for-profit corporation and its subsidiaries, except
7 minutes of meetings open to the public pursuant to subsection
8 ~~(10)(9)~~;

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

12 10. Trade secrets as defined in s. 688.002, including
13 reimbursement methodologies or rates and other materials and
14 information exempted in s. 240.241(2); or

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

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

1 to identify treatment alternatives and modify benefit
2 restrictions for high-cost patient care.

3 (10)~~(9)~~ Meetings of the governing board of the
4 not-for-profit corporation and meetings of the subsidiaries of
5 the not-for-profit corporation at which the expenditure of
6 dollars appropriated to the not-for-profit corporation by the
7 state are discussed or reported must remain open to the public
8 in accordance with s. 286.011 and s. 24(b), Art. I of the
9 State Constitution, unless made confidential or exempt by law.
10 Other meetings of the governing board of the not-for-profit
11 corporation and of the subsidiaries of the not-for-profit
12 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
13 the State Constitution.

14 (11) In addition to the continuing appropriation to
15 the institute pursuant to s. 210.20(2), any appropriation to
16 the institute in the annual General Appropriations Act shall
17 be paid directly to the board of directors of the
18 not-for-profit corporation by warrant drawn by the Comptroller
19 upon the State Treasury, and shall not be subject to ss.
20 216.052(7) and 216.301 pursuant to s. 216.351.

21 (12)(a) The Legislature recognizes that to strengthen
22 and enhance the institute, it is necessary to provide
23 facilities and support for clinical, teaching, and research
24 programs in addition to those currently available from
25 existing revenue sources. It further recognizes that there are
26 sources of private support that, if matched with state
27 support, can assist in constructing much-needed facilities,
28 support clinical, teaching, and research programs, and
29 strengthen the commitment of citizens and organizations in
30 promoting the clinical, teaching, and research missions of the
31 institute. Therefore, it is the intent of the Legislature to

1 establish the H. Lee Moffitt Cancer Center and Research
2 Institute Challenge Grant Program and to authorize the
3 not-for-profit corporation and its subsidiaries to solicit
4 gifts from private sources to be deposited into a challenge
5 grant account of the university foundation pursuant to ss.
6 240.2601 and 240.2605 for the construction of facilities and
7 the support of clinical, research, and teaching programs at
8 the institute. Such activities are referred to collectively in
9 this subsection as projects. The not-for-profit corporation,
10 or its designated subsidiary, shall solicit gifts from private
11 sources to provide matching funds for eligible projects. For
12 the purposes of this subsection, private sources of funds
13 shall not include any federal, state, or local government
14 funds.

15 (b) Prior to solicitation of gifts for a project to be
16 funded through the H. Lee Moffitt Cancer Center and Research
17 Institute Challenge Grant Program, a project must be approved
18 by the Council of Scientific Advisors. For a project to be
19 eligible for funding through the H. Lee Moffitt Cancer Center
20 and Research Institute Challenge Grant Program, the
21 not-for-profit corporation, or its designated subsidiary,
22 shall raise a contribution equal to one-half of the total cost
23 of a project from private sources which shall be matched by a
24 state appropriation equal to the amount raised for a project,
25 subject to the annual General Appropriations Act.

26 (c) By September 1 of each year, the Council of
27 Scientific Advisors may approve a list of projects that meet
28 all the eligibility requirements for participation in the H.
29 Lee Moffitt Cancer Center and Research Institute Challenge
30 Grant Program, and the board of directors of the
31 not-for-profit corporation may transmit the approved list to

1 the Legislature with a budget request that includes the
2 recommended schedule necessary to complete each project.

3 (d) The not-for-profit corporation, or its designated
4 subsidiary, shall transfer to the university foundation
5 challenge grant account private gifts for projects approved
6 for funding. The university foundation shall also receive and
7 hold any appropriated state matching funds. Interest income
8 accruing in the university foundation shall increase the total
9 funds available for the approved projects. The challenge grant
10 account shall not be subject to ss. 216.052(7) and 216.301
11 pursuant to s. 216.351.

12 (e) After receiving the state matching funds for a
13 project, the university foundation shall disburse both the
14 private contributions and the state matching funds to the
15 board of directors of the not-for-profit corporation for the
16 benefit of the project.

17 (f) If the state's share of the required match is
18 insufficient to meet the requirements of the approved project,
19 the not-for-profit corporation, or its designated subsidiary,
20 may renegotiate the terms of the contributions with the
21 donors.

22 (g) Nothing in this subsection shall be interpreted to
23 prevent the Legislature from providing matching funds for
24 gifts pursuant to ss. 240.2601 and 240.2605 for the
25 construction of facilities and the support of research and
26 teaching programs at the H. Lee Moffitt Cancer Center and
27 Research Institute or the University of South Florida.

28 Section 2. This act shall take effect July 1, 2002.
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HOUSE SUMMARY

With respect to the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida: assigns duties of the Board of Regents to the Florida Board of Education; provides for the utilization and governance of lands; revises provisions relating to corporate subsidiaries of the not-for-profit corporation; provides for applicability of sovereign immunity provisions; provides for the receipt of local funds; revises provisions relating to insurance protection; assigns duties of the center director to a chief executive officer; requires approval of the University of South Florida Board of Trustees for establishment of academic programs; authorizes the creation and support of an interdisciplinary oncology program; provides for access to certain research information; provides for appropriations to be paid to the board of directors of the not-for-profit corporation; and authorizes a challenge grant program for the construction of facilities and the support of clinical, research, and teaching programs at the institute.