

By the Committee on Appropriations; and Senator Sullivan

309-2284-02

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 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Section 240.512, Florida Statutes, is
28 amended to read:

29 240.512 H. Lee Moffitt Cancer Center and Research
30 Institute.--There is established the H. Lee Moffitt Cancer
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1 Center and Research Institute at the University of South
2 Florida.

3 (1) The Florida Board of Education Regents shall
4 maintain ~~enter into~~ an agreement for the utilization of the
5 lands and facilities on the campus of the University of South
6 Florida to be known as the H. Lee Moffitt Cancer Center and
7 Research Institute, including all furnishings, equipment, and
8 other chattels used in the operation of said facilities, with
9 a Florida not-for-profit corporation organized solely for the
10 purpose of governing and operating the H. Lee Moffitt Cancer
11 Center and Research Institute. The ~~This~~ not-for-profit
12 corporation, ~~acting as an instrumentality of the State of~~
13 ~~Florida~~, shall govern and operate the H. Lee Moffitt Cancer
14 Center and Research Institute in accordance with the terms of
15 the agreement between the Florida Board of Education Regents
16 and the not-for-profit corporation. The not-for-profit
17 corporation may, with the prior approval of the Florida Board
18 of Education Regents, create ~~not-for-profit~~ corporate
19 subsidiaries to fulfill its mission. The not-for-profit
20 corporation and its subsidiaries shall be corporations
21 primarily acting as instrumentalities of the state, pursuant
22 to s. 768.28(2), for purposes of sovereign immunity.The
23 not-for-profit corporation and its subsidiaries are authorized
24 to receive, hold, invest, and administer property and any
25 moneys received from private, local, state, and federal
26 sources, as well as technical and professional income
27 generated or derived from practice activities of the
28 institute, for the benefit of the institute and the
29 fulfillment of its mission. The affairs of the corporation
30 shall be managed by a board of directors who shall serve
31 without compensation. The President of the University of

1 South Florida and the chair of the Florida Board of Education
2 Regents, or his or her designee, shall be directors of the
3 not-for-profit corporation, together with 5 representatives of
4 the State University System and no more than 14 nor fewer than
5 10 directors who are not medical doctors or state employees.
6 Each director shall have only one vote, shall serve a term of
7 3 years, and may be reelected to the board. Other than the
8 President of the University of South Florida and the chair of
9 the Florida Board of Education ~~Regents~~, directors shall be
10 elected by a majority vote of the board. The chair of the
11 board of directors shall be selected by majority vote of the
12 directors.

13 (2) The Florida Board of Education ~~Regents~~ shall
14 provide in the agreement with the not-for-profit corporation
15 for the following:

16 (a) Approval of the articles of incorporation of the
17 not-for-profit corporation by the Florida Board of Education
18 Regents.

19 (b) Approval of the articles of incorporation of any
20 ~~not-for-profit~~ corporate subsidiary created by the
21 not-for-profit corporation.

22 (c) Utilization of lands, hospital facilities, and
23 personnel by the not-for-profit corporation and its
24 subsidiaries for research, education, treatment, prevention,
25 and the early detection of cancer and mutually approved
26 teaching and research programs conducted by the University of
27 South Florida and ~~or~~ other accredited medical schools or
28 research institutes.

29 (d) Preparation of an annual postaudit of the
30 not-for-profit corporation's financial accounts and the
31 financial accounts of any subsidiaries to be conducted by an

1 independent certified public accountant. The annual audit
2 report shall include management letters and shall be submitted
3 to the Auditor General and the Florida Board of Education
4 ~~Regents~~ for review. The Florida Board of Education ~~Regents~~,
5 the Auditor General, and the Office of Program Policy Analysis
6 and Government Accountability shall have the authority to
7 require and receive from the not-for-profit corporation and
8 any subsidiaries or from their independent auditor any detail
9 or supplemental data relative to the operation of the
10 not-for-profit corporation or subsidiary.

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

15 (3) The University of South Florida Health Sciences
16 Center self-insurance program ~~Board of Regents~~ is authorized
17 to secure ~~comprehensive general liability protection,~~
18 ~~including~~ professional liability protection, for the
19 not-for-profit corporation and its subsidiaries pursuant to s.
20 240.213. The not-for-profit corporation and its subsidiaries
21 shall be exempt from participation in any property insurance
22 trust fund established by law, including any property
23 insurance trust fund established under chapter 284, so long as
24 the not-for-profit corporation and its subsidiaries maintain
25 property insurance protection with comparable or greater
26 coverage limits.

27 (4) In the event that the agreement between the
28 not-for-profit corporation and the Florida Board of Education
29 ~~Regents~~ is terminated for any reason, the Florida Board of
30 Education ~~Regents~~ shall assume ~~resume~~ governance and operation
31 of said lands and facilities.

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

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

16 (b) The chief executive officer ~~center director~~ shall
17 have control over the budget and the dollars appropriated or
18 donated to the institute from private, local, state, and
19 federal sources, as well as technical and professional income
20 generated or derived from practice activities of the
21 institute. However, professional income generated by
22 university faculty from practice activities at the institute
23 shall be shared between the institute and the university as
24 determined by the chief executive officer ~~center director~~ and
25 the appropriate university dean or vice president ~~department~~
26 ~~chair.~~

27 (c) The chief executive officer ~~center director~~ shall
28 appoint members to carry out the research, patient care, and
29 educational activities of the institute and determine
30 compensation, benefits, and terms of service. Members of the
31 institute shall be eligible to hold concurrent appointments at

1 affiliated academic institutions. University faculty shall be
2 eligible to hold concurrent appointments at the institute.

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

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

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

12 (g) The chief executive officer ~~center director~~ shall
13 provide a copy of the institute's annual report to the
14 Governor and Cabinet, the President of the Senate, the Speaker
15 of the House of Representatives, and the chair of the Florida
16 Board of Education Regents.

17 (6) The not-for-profit corporation and its
18 subsidiaries shall have the authority to enter into an
19 affiliation agreement or agreements with the University of
20 South Florida for the creation and support of an
21 interdisciplinary oncology program. The affiliation may
22 include joint financial and administrative support of the
23 clinical, research, and educational activities of university
24 faculty, as well as the sharing of revenues from those
25 activities by the institute and the university in furtherance
26 of the mission of the institute.

27 ~~(7)~~(6) The board of directors of the not-for-profit
28 corporation shall create a council of scientific advisers to
29 the chief executive officer ~~center director~~ comprised of
30 leading researchers, physicians, and scientists. This council
31 shall review programs and recommend research priorities and

1 initiatives so as to maximize the state's investment in the
2 institute. The council shall be appointed by the board of
3 directors of the not-for-profit corporation ~~and shall include~~
4 ~~five appointees of the Board of Regents~~. Each member of the
5 council shall be appointed to serve a 2-year term and may be
6 reappointed to the council.

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

10 (9)~~(8)~~(a) Records of the not-for-profit corporation
11 and of its subsidiaries are public records unless made
12 confidential or exempt by law.

13 (b) Proprietary confidential business information is
14 confidential and exempt from the provisions of s. 119.07(1)
15 and s. 24(a), Art. I of the State Constitution. However, the
16 Auditor General, the Office of Program Policy Analysis and
17 Government Accountability, and Florida Board of Education
18 Regents, pursuant to their oversight and auditing functions,
19 must be given access to all proprietary confidential business
20 information upon request and without subpoena and must
21 maintain the confidentiality of information so received. As
22 used in this paragraph, the term "proprietary confidential
23 business information" means information, regardless of its
24 form or characteristics, which is owned or controlled by the
25 not-for-profit corporation or its subsidiaries; is intended to
26 be and is treated by the not-for-profit corporation or its
27 subsidiaries as private and the disclosure of which would harm
28 the business operations of the not-for-profit corporation or
29 its subsidiaries; has not been intentionally disclosed by the
30 corporation or its subsidiaries unless pursuant to law, an
31 order of a court or administrative body, a legislative

1 proceeding pursuant to s. 5, Art. III of the State
2 Constitution, or a private agreement that provides that the
3 information may be released to the public; and which is
4 information concerning:

- 5 1. Internal auditing controls and reports of internal
6 auditors;
- 7 2. Matters reasonably encompassed in privileged
8 attorney-client communications;
- 9 3. Contracts for managed-care arrangements, including
10 preferred provider organization contracts, health maintenance
11 organization contracts, and exclusive provider organization
12 contracts, and any documents directly relating to the
13 negotiation, performance, and implementation of any such
14 contracts for managed-care arrangements;
- 15 4. Bids or other contractual data, banking records,
16 and credit agreements the disclosure of which would impair the
17 efforts of the not-for-profit corporation or its subsidiaries
18 to contract for goods or services on favorable terms;
- 19 5. Information relating to private contractual data,
20 the disclosure of which would impair the competitive interest
21 of the provider of the information;
- 22 6. Corporate officer and employee personnel
23 information;
- 24 7. Information relating to the proceedings and records
25 of credentialing panels and committees and of the governing
26 board of the not-for-profit corporation or its subsidiaries
27 relating to credentialing;
- 28 8. Minutes of meetings of the governing board of the
29 not-for-profit corporation and its subsidiaries, except
30 minutes of meetings open to the public pursuant to subsection
31 (10)~~(9)~~;

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

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

6 11. The identity of donors or prospective donors of
7 property who wish to remain anonymous or any information
8 identifying such donors or prospective donors. The anonymity
9 of these donors or prospective donors must be maintained in
10 the auditor's report.

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12 As used in this paragraph, the term "managed care" means
13 systems or techniques generally used by third-party payors or
14 their agents to affect access to and control payment for
15 health care services. Managed-care techniques most often
16 include one or more of the following: prior, concurrent, and
17 retrospective review of the medical necessity and
18 appropriateness of services or site of services; contracts
19 with selected health care providers; financial incentives or
20 disincentives related to the use of specific providers,
21 services, or service sites; controlled access to and
22 coordination of services by a case manager; and payor efforts
23 to identify treatment alternatives and modify benefit
24 restrictions for high-cost patient care.

25 (10)~~(9)~~ Meetings of the governing board of the
26 not-for-profit corporation and meetings of the subsidiaries of
27 the not-for-profit corporation at which the expenditure of
28 dollars appropriated to the not-for-profit corporation by the
29 state are discussed or reported must remain open to the public
30 in accordance with s. 286.011 and s. 24(b), Art. I of the
31 State Constitution, unless made confidential or exempt by law.

1 Other meetings of the governing board of the not-for-profit
2 corporation and of the subsidiaries of the not-for-profit
3 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
4 the State Constitution.

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

12 Section 2. This act shall take effect July 1, 2002.

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14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 Senate Bill 2202

17 The Committee Substitute for SB 2202 deletes the challenge
18 grant program for facilities, research, and teaching at the
19 Moffitt Cancer Center. The Committee Substitute also deletes
20 a provision that would have led to an expansion of the public
21 records exemption for the center. The current records
22 exemption stays in place without expansion.
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