

By Senator Cowin

11-1404-02

1                                   A bill to be entitled  
2           An act relating to state university boards of  
3           trustees; amending s. 240.213, F.S.; describing  
4           powers and duties of boards of trustees to  
5           procure liability insurance; deleting  
6           provisions relating to the Board of Regents;  
7           amending s. 766.112, F.S.; prescribing  
8           applicability of provisions relating to  
9           comparative fault to boards of trustees;  
10          amending s. 768.28, F.S.; providing venue in  
11          actions brought against boards of trustees;  
12          providing applicability of provisions relating  
13          to waiver of sovereign immunity to boards of  
14          trustees; amending s. 240.215, F.S.; providing  
15          for payment of costs in civil actions against  
16          employees, officers, agents, and members of  
17          boards of trustees; amending s. 240.513, F.S.;  
18          providing organization and governance of the J.  
19          Hillis Miller Health Center; amending s.  
20          240.5135, F.S.; providing authority of the  
21          University of Florida board of trustees with  
22          respect to procurement of insurance for Shands  
23          Jacksonville Healthcare, Inc.; amending s.  
24          626.852, F.S.; providing inapplicability of  
25          provisions relating to insurance adjusters to  
26          employees and agents of a board of trustees;  
27          amending s. 627.912, F.S.; requiring certain  
28          reports with respect to actions for damages  
29          caused by employees or agents of a board of  
30          trustees; providing 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 240.213, Florida Statutes, is  
4 amended to read:

5 240.213 Boards of trustees ~~Board~~ authorized to secure  
6 liability insurance.--

7 (1) A board of trustees of a state university ~~The~~  
8 ~~Board of Regents~~ is authorized to secure, or otherwise provide  
9 as a self-insurer, or by a combination thereof, comprehensive  
10 general liability insurance, including professional liability  
11 for health care and veterinary sciences, for:

12 (a) The board of trustees.

13 (b) The officers and members of the board of trustees  
14 ~~students and faculty of any university within the State~~  
15 ~~University System.~~

16 (c) The faculty and other ~~officers, employees and,~~ or  
17 agents of the board of trustees.

18 (d) The students of a state university ~~professional~~  
19 ~~practitioners practicing a profession within, or by virtue of~~  
20 ~~employment by, any university in the State University System.~~

21 (e) A state university or any college, school,  
22 institute, center, or program thereof ~~Any of the universities~~  
23 ~~in the State University System or subdivisions thereof.~~

24 (f) Any not-for-profit corporation organized pursuant  
25 to chapter 617, and the directors, officers, employees, and  
26 agents thereof, which is affiliated with a state university ~~in~~  
27 ~~the State University System~~, if the corporation is operated  
28 for the benefit of the ~~a~~ state university in a manner  
29 consistent with the best interests of the state, and if such  
30 participation is approved by a self-insurance program ~~the~~

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1 ~~appropriate insurance trust fund~~ council, university  
2 president, and the board of trustees ~~Regents~~.

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4 ~~The Board of Regents is authorized to delegate to the~~  
5 ~~universities, as appropriate, the authority to secure any~~  
6 ~~liability insurance for the above.~~

7 (2) In the event a ~~the~~ board of trustees ~~Regents~~  
8 adopts a self-insurance program, a governing council chaired  
9 by the vice president for health affairs or his or her  
10 academic equivalent shall be established to administer the  
11 program and its duties and responsibilities, including the  
12 administration of self-insurance program assets and  
13 expenditure policies, which shall be defined in rules as  
14 authorized by this section. The council shall have an annual  
15 actuary review performed to establish funding requirements to  
16 maintain the fiscal integrity of the self-insurance program.  
17 ~~the necessary trust funds in the State Treasury may be~~  
18 ~~established pursuant to law. Provided that the annual~~  
19 ~~actuarial report to the self-insurance trust fund council is~~  
20 ~~provided each year to the Auditor General within 60 days after~~  
21 ~~acceptance by the council, The assets of a self-insurance~~  
22 ~~program shall~~ may be deposited outside the State Treasury and,  
23 ~~at the option of the Board of Regents, in accounts established~~  
24 ~~pursuant to law for that purpose. Self-insurance program trust~~  
25 ~~funds shall be administered in accordance with rules as~~  
26 authorized by this section ~~established by the Board of~~  
27 ~~Regents.~~

28 (3) Any self-insurance program created under this  
29 section shall be funded by the entities and individuals  
30 protected by such program. There shall be no funds  
31 appropriated ~~directly~~ to any self-insurance program ~~insurance~~

1 ~~trust fund.~~ The assets of the self-insurance program shall be  
2 the property of the university board of trustees and shall be  
3 used only to pay the administrative expenses of the  
4 self-insurance program and to pay any claim, judgment, or  
5 claims bill arising out of activities for which the  
6 self-insurance program was created. Investment income that is  
7 in excess of that income necessary to ensure the solvency of a  
8 self-insurance program as established by a casualty actuary  
9 may be used to defray the annual contribution paid into the  
10 program by the entities and individuals protected by the  
11 ~~program. The Board of Regents is authorized to accept any~~  
12 ~~payments, receipts, gifts, or donations made for the purposes~~  
13 ~~of this section and deposit such funds in the appropriate~~  
14 ~~insurance trust fund.~~

15 (4) No self-insurance program adopted by a ~~the~~ board  
16 of trustees ~~Regents~~ may sue or be sued. ~~The Board of Regents~~  
17 ~~shall pay, out of the assets of a trust fund established~~  
18 ~~pursuant to this section, any claim or judgment for which the~~  
19 ~~self-insurance trust funds were created and which is rendered~~  
20 ~~against the board.~~ The claims files of any such program are  
21 privileged and confidential, exempt from the provisions of s.  
22 119.07(1), and are only for the use of the program in  
23 fulfilling its duties. Any self-insurance trust fund and  
24 revenues generated by that fund shall only be used to pay  
25 claims and administration expenses.

26 (5) Each self-insurance program council shall make  
27 provision for an annual postaudit of its financial accounts to  
28 be conducted by an independent certified public accountant in  
29 accordance with rules to be adopted by the board of trustees.  
30 The annual audit report must include a management letter and  
31 shall be submitted to the board of trustees for review. The

1 university board of trustees shall have the authority to  
2 require and receive from the self-insurance program council or  
3 from its independent auditor any detail or supplemental data  
4 relative to the operation of the self-insurance program.

5 ~~(6)(5)~~ The university boards of trustees are ~~Board of~~  
6 ~~Regents is~~ authorized and empowered to make such rules as may  
7 be necessary to carry out the provisions of this section,  
8 ~~including the delegation of authority, other than rulemaking~~  
9 ~~authority, to appropriate levels of administration within the~~  
10 ~~State University System.~~

11 Section 2. Subsection (2) of section 766.112, Florida  
12 Statutes, is amended to read:

13 766.112 Comparative fault.--

14 (2) In an action for damages for personal injury or  
15 wrongful death arising out of medical malpractice, whether in  
16 contract or tort, when an apportionment of damages pursuant to  
17 s. 768.81 is attributed to a a the board of trustees of a state  
18 university Regents, the court shall enter judgment against the  
19 board of trustees Regents on the basis of the board's such  
20 party's percentage of fault and not on the basis of the  
21 doctrine of joint and several liability. No amount of any  
22 judgment attributed to a board of trustees shall be assessed  
23 against any other party, including a codefendant of the board  
24 of trustees.The sole remedy available to a claimant to  
25 collect a judgment against a board of trustees damages,  
26 subject to the provisions of this subsection, ~~against the~~  
27 ~~Board of Regents~~ shall be pursuant to s. 768.28.

28 Section 3. Subsections (1) and (2) of section 768.28,  
29 Florida Statutes, are amended to read:

30 768.28 Waiver of sovereign immunity in tort actions;  
31 recovery limits; limitation on attorney fees; statute of

1 limitations; exclusions; indemnification; risk management  
2 programs.--

3 (1) In accordance with s. 13, Art. X of the State  
4 Constitution, the state, for itself and for its agencies or  
5 subdivisions, hereby waives sovereign immunity for liability  
6 for torts, but only to the extent specified in this act.  
7 Actions at law against the state or any of its agencies or  
8 subdivisions to recover damages in tort for money damages  
9 against the state or its agencies or subdivisions for injury  
10 or loss of property, personal injury, or death caused by the  
11 negligent or wrongful act or omission of any employee of the  
12 agency or subdivision while acting within the scope of the  
13 employee's office or employment under circumstances in which  
14 the state or such agency or subdivision, if a private person,  
15 would be liable to the claimant, in accordance with the  
16 general laws of this state, may be prosecuted subject to the  
17 limitations specified in this act. Other than an action  
18 against a state university board of trustees, which must be  
19 brought in the county in which that university's main campus  
20 is located,any such action may be brought in the county where  
21 the property in litigation is located or, if the affected  
22 agency or subdivision has an office in such county for the  
23 transaction of its customary business, where the cause of  
24 action accrued.

25 (2) As used in this act, "state agencies or  
26 subdivisions" include the executive departments, the  
27 Legislature, the judicial branch (including public defenders),  
28 and the independent establishments of the state, including  
29 state university boards of trustees; counties and  
30 municipalities; and corporations primarily acting as

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1 instrumentalities or agencies of the state, counties, or  
2 municipalities, including the Spaceport Florida Authority.

3 Section 4. Section 240.215, Florida Statutes, is  
4 amended to read:

5 240.215 Payment of costs of civil action against  
6 officers, agents, employees, or members of state university  
7 ~~the board of trustees Regents.~~--

8 (1) Whenever any civil action has been brought against  
9 any officers, agents, employees, or members of a state  
10 university board of trustees ~~board member or employee~~ for any  
11 act or omission arising out of and in the course of the  
12 performance of his or her duties and responsibilities, the  
13 board of trustees ~~Regents~~ may defray all costs of defending  
14 such action, including reasonable attorney's fees and expenses  
15 together with costs of appeal, and may save harmless and  
16 protect such person from any financial loss resulting from the  
17 lawful performance of his or her duties and responsibilities.  
18 Claims based on such actions or omissions may, in the  
19 discretion of the board of trustees ~~Regents~~, be settled prior  
20 to or after the filing of suit thereon. The board of trustees  
21 ~~Regents~~ may arrange for and pay the premium for appropriate  
22 insurance to cover all such losses and expenses.

23 (2) An employee or agent under the right of control of  
24 the board of trustees ~~Regents~~ who, pursuant to board of  
25 ~~Regents~~ policies or rules, renders medical care or treatment  
26 at any hospital or health care facility with which the board  
27 of trustees ~~Regents~~ maintains an affiliation agreement whereby  
28 the hospital or health care facility provides to the board of  
29 trustees ~~Regents~~ a clinical setting for health care education,  
30 research, and services, shall not be deemed to be an agent of  
31 any person other than the Board of Regents in any civil action

1 resulting from any act or omission of the employee or agent  
2 while rendering said medical care or treatment. For this  
3 subsection to apply, the patient shall be provided separate  
4 written conspicuous notice by the board of trustees ~~Regents~~ or  
5 by the hospital or health care facility, and shall acknowledge  
6 receipt of this notice, in writing, unless impractical by  
7 reason of an emergency, either personally or through another  
8 person authorized to give consent for him or her, that he or  
9 she will receive care provided by board of trustees ~~Regents~~  
10 employees and liability, if any, that may arise from that care  
11 is limited as provided by law. Compliance by a hospital or  
12 health care facility with the requirements of chapter 395 or  
13 s. 766.110(1) shall not be used as evidence in any civil  
14 action to establish an employment or agency relationship  
15 between the hospital or health care facility and an employee  
16 or agent of the board of trustees ~~Regents~~ providing services  
17 within the hospital or health care facility.

18 (3) All faculty physicians employed by the board of  
19 trustees ~~Regents~~ who are subject to the requirements of s.  
20 456.013 shall complete their risk management continuing  
21 education on issues specific to academic medicine. Such  
22 continuing education shall include instruction for the  
23 supervision of resident physicians as required by the  
24 Accreditation Council for Graduate Medical Education. The  
25 boards described in s. 456.013 shall adopt rules to implement  
26 the provisions of this subsection.

27 (4) The board of trustees may use ~~There are~~  
28 ~~appropriated out of any funds available in the university~~  
29 ~~system,~~ not subject to the obligation of contract, covenant,  
30 or trust in, the amounts necessary to carry out the purposes  
31 of this section.



1           (5) Failure of the board of trustees ~~Regents~~ or an  
2 affiliated health care provider to do any act authorized by  
3 this section shall not constitute a cause of action against  
4 the board of trustees ~~Regents~~, or an affiliated health care  
5 provider, or any of their members, officers, agents, or  
6 employees.

7           Section 5. Subsection (1), paragraph (a) of subsection  
8 (3), and subsection (4) of section 240.513, Florida Statutes,  
9 are amended to read:

10           240.513 University of Florida; J. Hillis Miller Health  
11 Center.--

12           (1) There is established the J. Hillis Miller Health  
13 Center at the University of Florida, including campuses at  
14 Gainesville and Jacksonville and affiliated teaching hospitals  
15 which shall include the following colleges:

16           (a) College of Dentistry.

17           (b) College of Health ~~Health-Related~~ Professions.

18           (c) College of Medicine.

19           (d) College of Nursing.

20           (e) College of Pharmacy.

21           (f) College of Veterinary Medicine and related  
22 teaching hospitals.

23           (3)(a) The University of Florida Health Center  
24 Operations and Maintenance Trust Fund shall ~~is hereby created,~~  
25 ~~to~~ be administered by the board of trustees for the University  
26 of Florida ~~Department of Education~~. Funds shall be credited  
27 to the trust fund from the sale of goods and services  
28 performed by the University of Florida Veterinary Medicine  
29 Teaching Hospitals ~~Hospital~~. The purpose of the trust fund is  
30 to support the instruction, research, and service missions of  
31 the University of Florida College of Veterinary Medicine.

1           (4)(a) The State Board of Education shall lease the  
2 hospital facilities of the health center, known as the Shands  
3 Teaching Hospital and Clinics, ~~and consisting of Building 446~~  
4 ~~and parts of Buildings 204 and 205~~ on the campus of the  
5 University of Florida and all furnishings, equipment, and  
6 other chattels or choses in action used in the operation of  
7 the hospital, to a private not-for-profit ~~nonprofit~~  
8 corporation organized solely for the purpose of operating the  
9 hospital and ancillary health care facilities of the health  
10 center and other health care facilities and programs  
11 determined to be necessary by the board of the not-for-profit  
12 ~~nonprofit~~ corporation. The rental for the hospital facilities  
13 shall be an amount equal to the debt service on bonds or  
14 revenue certificates issued solely for capital improvements to  
15 the hospital facilities ~~or as otherwise provided by law~~. The  
16 ~~board shall request recommendations from the Board of Regents~~  
17 ~~of the State University System as to the terms of the lease~~  
18 ~~not otherwise provided for in this act.~~

19           (b) The board of trustees for the University of  
20 Florida shall provide in the lease or by separate contract or  
21 agreement with the not-for-profit ~~nonprofit~~ corporation for  
22 the following:

23           1. Approval of the articles of incorporation of the  
24 not-for-profit ~~nonprofit~~ corporation by the board of trustees  
25 for the University of Florida ~~Regents~~ and the governance of  
26 the not-for-profit ~~nonprofit~~ corporation by a board of  
27 directors appointed by the President of the University of  
28 Florida and chaired by the Vice President for Health Affairs  
29 of the University of Florida.

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1           ~~2. The orderly and just transition of hospital~~  
2 ~~employees from state to corporate employment with the same or~~  
3 ~~equivalent seniority, earnings, and benefits.~~

4           2.3. The appropriate use of hospital facilities and  
5 personnel in support of the research programs and of the  
6 teaching role of the health center.

7           ~~4. The continued recognition of the collective~~  
8 ~~bargaining units and collective bargaining agreements as~~  
9 ~~currently composed and recognition of the certified labor~~  
10 ~~organizations representing those units and agreements.~~

11           ~~5. The use of hospital facilities and personnel in~~  
12 ~~connection with research programs conducted by the health~~  
13 ~~center.~~

14           3.6. Reimbursement to the hospital for indigent  
15 patients, state-mandated programs, underfunded state programs,  
16 and costs to the hospital for support of the teaching and  
17 research programs of the health center. Such reimbursement  
18 shall be appropriated to either the health center or the  
19 hospital each year by the Legislature after review and  
20 approval of the request for funds.

21           ~~7. The transfer of funds appropriated for and~~  
22 ~~accumulated from the operation of the hospital to the health~~  
23 ~~center to be used to fund contracts for services with the~~  
24 ~~hospital.~~

25           (c) The board of trustees for the University of  
26 Florida may, ~~with the approval of the Legislature,~~ increase  
27 the hospital facilities or remodel or renovate them, provided  
28 that the rental paid by the hospital for such new, remodeled,  
29 or renovated facilities is sufficient to amortize the costs  
30 thereof over a reasonable period of time or fund the debt  
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1 service for any bonds or revenue certificates issued to  
2 finance such improvements.

3 (d) The board of trustees for the University of  
4 Florida Regents is authorized to provide to the not-for-profit  
5 ~~nonprofit~~ corporation leasing the hospital facilities, and its  
6 not-for-profit subsidiaries, comprehensive general liability  
7 insurance including professional liability from a the  
8 self-insurance program ~~trust fund~~ established pursuant to s.  
9 240.213.

10 (e) In the event that the lease of the hospital  
11 facilities to the not-for-profit ~~nonprofit~~ corporation is  
12 terminated for any reason, the board of trustees for the  
13 University of Florida Regents shall resume management and  
14 operation of the hospital facilities. In such event, the  
15 Administration Commission is authorized to appropriate  
16 revenues generated from the operation of the hospital  
17 facilities to the board of trustees for the University of  
18 Florida Regents to pay the costs and expenses of operating the  
19 hospital facility for the remainder of the fiscal year in  
20 which such termination occurs.

21 Section 6. Section 240.5135, Florida Statutes, is  
22 amended to read:

23 240.5135 Shands Jacksonville Healthcare, Inc.; board  
24 of trustees ~~Regents~~ authorized to provide insurance.--The  
25 board of trustees for the University of Florida Regents is  
26 authorized to provide to Shands Jacksonville Healthcare, Inc.,  
27 and its not-for-profit subsidiaries and affiliates and any  
28 successor corporation that acts in support of the board of  
29 trustees ~~Regents~~, comprehensive general liability coverage,  
30 including professional liability, from the self-insurance  
31 programs established pursuant to s. 240.213.

1           Section 7. Subsection (5) of section 626.852, Florida  
2 Statutes, is amended to read:

3           626.852 Scope of this part.--

4           (5) This part does not apply to any employee or agent  
5 of a state university ~~the board of trustees Regents~~ providing  
6 services in support of any self-insurance program created  
7 under s. 240.213 ~~adopted by such Board of Regents.~~

8           Section 8. Subsection (5) of section 627.912, Florida  
9 Statutes, is amended to read:

10          627.912 Professional liability claims and actions;  
11 reports by insurers.--

12          (5) Any self-insurance program established under s.  
13 240.213 shall report in duplicate to the Department of  
14 Insurance any claim or action for damages for personal  
15 injuries claimed to have been caused by error, omission, or  
16 negligence in the performance of professional services  
17 provided by a state university ~~the board of trustees Regents~~  
18 through an employee or agent of the board of trustees Regents,  
19 including practitioners of medicine licensed under chapter  
20 458, practitioners of osteopathic medicine licensed under  
21 chapter 459, podiatric physicians licensed under chapter 461,  
22 and dentists licensed under chapter 466, or based on a claimed  
23 performance of professional services without consent if the  
24 claim resulted in a final judgment in any amount, or a  
25 settlement in any amount. The reports required by this  
26 subsection shall contain the information required by  
27 subsection (3) and the name, address, and specialty of the  
28 employee or agent of a ~~the~~ board of trustees Regents whose  
29 performance or professional services is alleged in the claim  
30 or action to have caused personal injury.

31          Section 9. This act shall take effect July 1, 2002.

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SENATE SUMMARY

Imposes several powers and responsibilities relating to insurance and tort liability and formerly applicable to the Board of Regents on state university boards of trustees. Provides for the organization and structure of the J. Hillis Miller Health Center. (See bill for details.)