

# 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 2212

SPONSOR: Education Committee and Senator Miller

SUBJECT: H. Lee Moffitt Cancer Center and Research Institute

DATE: April 13, 2003

REVISED: 04/21/03 \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR     | REFERENCE  | ACTION                  |
|----|-----------------|--------------------|------------|-------------------------|
| 1. | <u>Matthews</u> | <u>O'Farrell</u>   | <u>ED</u>  | <u>Favorable/CS</u>     |
| 2. | <u>Knudson</u>  | <u>Deffenbaugh</u> | <u>BI</u>  | <u>Fav /1 amendment</u> |
| 3. | _____           | _____              | <u>GO</u>  | _____                   |
| 4. | _____           | _____              | <u>AED</u> | _____                   |
| 5. | _____           | _____              | <u>AP</u>  | _____                   |
| 6. | _____           | _____              | _____      | _____                   |

## I. Summary:

This committee substitute would authorize the not-for-profit corporation governing the H. Lee Moffitt Cancer Center and Research Institute to create for-profit subsidiaries with the approval of the State Board of Education. The committee substitute expands the operating agreement between the State Board of Education and the not-for-profit corporation to provide for use of lands, facilities, and personnel for research, education, treatment prevention, and the early detection of cancer. The committee substitute exempts the center from participation in any property insurance trust fund established by law if the center and its subsidiaries maintain property insurance protection that is comparable or greater in coverage limits. The committee substitute revises the composition of the council of scientific advisers by eliminating State Board of Education authority to appoint members to the council. Finally, the committee substitute provides for direct appropriations to the board of directors of the not-for-profit corporation.

This committee substitute substantially amends s. 1004.43 of the Florida Statutes.

## II. Present Situation:

Section 1004.43, F.S., establishes the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida. A not-for-profit corporation governs the institute in accordance with an agreement with the State Board of Education for the use of facilities on the campus of the University of South Florida. The corporation is managed by a board of directors consisting of the President of the University of South Florida and the chair of the State Board of Education, or his or her designee, five representatives of the state university system, and between 10-14 additional directors who are not medical doctors or state employees. The institute is administered by a chief executive officer, who serves at the pleasure of the board of directors.

Subject to approval of the State Board of Education, the not-for-profit corporation may create not-for-profit corporate subsidiaries. There are currently three not-for-profit subsidiaries: a hospital, a cancer screening center, and a foundation.

The agreement between the State Board of Education and the not-for-profit corporation provides, in pertinent part, for the use of hospital facilities and personnel for mutually approved teaching and research programs conducted by the University of South Florida or other accredited medical schools or research institutes.

As an instrumentality of the state, the not-for profit corporation participates in the property insurance trust fund pursuant to chapter 284, F.S. In addition, the agreement authorizes the State Board of Education to secure comprehensive general liability protection, including professional liability protection, for the corporation and its subsidiaries pursuant to s. 1004.24, F.S.

A council of scientific advisers reviews programs and research priorities. The board of directors appoints all but five of the members of the council of scientific advisers with the State Board of Education appointing five members to the council.

### **III. Effect of Proposed Changes:**

This committee substitute amends the powers and duties of the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida. The committee substitute authorizes the not-for-profit corporation to create subsidiaries that are for-profit corporations with approval of the State Board of Education.

The committee substitute expands the purposes of the not-for-profit corporation and its subsidiaries to include use of lands, facilities, and personnel for research, education, treatment, prevention, and the early detection of cancer. The expansion in the operating agreement to provide for the use of lands may represent an attempt to obtain leverage in any property disputes between the University of South Florida and the institute. The expansion of the purposes for which the institute could operate may represent an attempt to conduct research beyond participating with the University of South Florida, other accredited medical schools, or research institutes. This provision, coupled with the creation of for-profit subsidiaries, may represent an attempt by the institute to actively engage with private entities for research and treatment. However, representatives of the H. Lee Moffitt Cancer Center have stated that the University of South Florida is in agreement with the provisions of this bill and that the current lease agreement permits the use of lands expressly authorized by this bill.

The committee substitute provides an opt-out provision from the property insurance coverage under the State Risk Management Trust Fund if the entities maintain property insurance protection with comparable or greater coverage limits. The not-for-profit corporation maintains private property insurance coverage under an umbrella policy of \$10 million, which is greater than the coverage provided by the fire insurance trust fund.

The committee substitute revises the membership of the council of scientific advisers. The committee substitute eliminates the appointment power of the State Board of Education to name

five members to the council. Instead, the board of directors of the not-for-profit corporation would appoint all members to the council of scientific advisers.

The committee substitute provides that any appropriation to the institute shall be paid directly to the board of directors of the not-for-profit corporation by warrant drawn by the Chief Financial Officer from the State Treasury. This direct appropriation would include funds appropriated under s. 210.20(2), F.S., the cigarette tax collection trust fund. This direct appropriation would provide the institute with greater independence from the University of South Florida as the appropriations act currently provides for the funds to flow through the University of South Florida with proviso that the funds would be distributed to the institute.

The committee substitute takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section (7), Art. IX of the State Constitution creates the Statewide Board of Governors to govern the state university system. Since the institute is housed on the University of South Florida and shares personnel with the university, it may be more appropriate, if not constitutionally required, that the Board of Governors assume the responsibilities of the State Board of Education with respect to the institute.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The authorization of for-profit subsidiaries may encourage private entities to share research with the institute.

**C. Government Sector Impact:**

If the not-for-profit corporation were allowed to create for-profit subsidiaries, there may be private corporations that would be more likely to share research with the institute in hopes of making a profit.

If the current not-for-profit subsidiaries were to become for-profit corporations, this could result in the loss of tax-exempt status and require the state to pay taxes on the subsidiaries.

The institute maintains that the opt-out provision from the state property insurance trust fund would annually save the institute approximately \$30,000 in premiums while maintaining greater coverage.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The committee substitute authorizes the not-for-profit corporation to create for-profit subsidiaries with prior approval from the State Board of Education. However, the agreement between the State Board of Education and the not-for-profit corporation authorizes the State Board of Education to approve the articles of incorporation of any not-for-profit subsidiary. Accordingly, the State Board of Education may approve for-profit subsidiaries, but the operating agreement would not provide for State Board of Education approval of the articles of incorporation of the for-profit subsidiaries.

**VIII. Amendments:**

#1 by Banking and Insurance:

States that for-profit subsidiaries of the H. Lee Moffit Cancer Center are not permitted to compete with for-profit health care providers in the delivery of radiation therapy services to patients.