

By Senator Miller

18-1221-03

See HB 387

1 A bill to be entitled
2 An act relating to a public records exemption
3 for proprietary confidential business
4 information owned or controlled by the H. Lee
5 Moffitt Cancer Center and Research Institute;
6 amending s. 1004.43, F.S.; revising the
7 exemption for proprietary confidential business
8 information owned or controlled by the
9 not-for-profit corporation which governs and
10 operates the H. Lee Moffitt Cancer Center and
11 Research Institute or subsidiaries of the
12 corporation to include specified materials,
13 potential trade secrets, potentially patentable
14 material, actual trade secrets, business
15 transactions, or proprietary information
16 received, generated, ascertained, or discovered
17 during the course of research conducted within
18 state universities that are exempt from public
19 records requirements under s. 1004.22(2), F.S.;
20 providing for future review and repeal of the
21 exemption; providing a statement of public
22 necessity; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Paragraph (b) of subsection (8) of section
27 1004.43, Florida Statutes, is amended to read:

28 1004.43 H. Lee Moffitt Cancer Center and Research
29 Institute.--There is established the H. Lee Moffitt Cancer
30 Center and Research Institute at the University of South
31 Florida.

1 (8)
2 (b) Proprietary confidential business information is
3 confidential and exempt from the provisions of s. 119.07(1)
4 and s. 24(a), Art. I of the State Constitution. However, the
5 Auditor General, the Office of Program Policy Analysis and
6 Government Accountability, and the State Board of Education,
7 pursuant to their oversight and auditing functions, must be
8 given access to all proprietary confidential business
9 information upon request and without subpoena and must
10 maintain the confidentiality of information so received. As
11 used in this paragraph, the term "proprietary confidential
12 business information" means information, regardless of its
13 form or characteristics, which is owned or controlled by the
14 not-for-profit corporation or its subsidiaries; is intended to
15 be and is treated by the not-for-profit corporation or its
16 subsidiaries as private and the disclosure of which would harm
17 the business operations of the not-for-profit corporation or
18 its subsidiaries; has not been intentionally disclosed by the
19 corporation or its subsidiaries unless pursuant to law, an
20 order of a court or administrative body, a legislative
21 proceeding pursuant to s. 5, Art. III of the State
22 Constitution, or a private agreement that provides that the
23 information may be released to the public; and which is
24 information concerning:

- 25 1. Internal auditing controls and reports of internal
26 auditors;
- 27 2. Matters reasonably encompassed in privileged
28 attorney-client communications;
- 29 3. Contracts for managed-care arrangements, including
30 preferred provider organization contracts, health maintenance
31 organization contracts, and exclusive provider organization

1 contracts, and any documents directly relating to the
2 negotiation, performance, and implementation of any such
3 contracts for managed-care arrangements;
4 4. Bids or other contractual data, banking records,
5 and credit agreements the disclosure of which would impair the
6 efforts of the not-for-profit corporation or its subsidiaries
7 to contract for goods or services on favorable terms;
8 5. Information relating to private contractual data,
9 the disclosure of which would impair the competitive interest
10 of the provider of the information;
11 6. Corporate officer and employee personnel
12 information;
13 7. Information relating to the proceedings and records
14 of credentialing panels and committees and of the governing
15 board of the not-for-profit corporation or its subsidiaries
16 relating to credentialing;
17 8. Minutes of meetings of the governing board of the
18 not-for-profit corporation and its subsidiaries, except
19 minutes of meetings open to the public pursuant to subsection
20 (9);
21 9. Information that reveals plans for marketing
22 services that the corporation or its subsidiaries reasonably
23 expect to be provided by competitors;
24 10. Trade secrets as defined in s. 688.002, including
25 reimbursement methodologies or rates; ~~or~~
26 11. The identity of donors or prospective donors of
27 property who wish to remain anonymous or any information
28 identifying such donors or prospective donors. The anonymity
29 of these donors or prospective donors must be maintained in
30 the auditor's report; or.
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1 12. Materials and information exempted under s.
2 1004.22(2). This subparagraph is subject to the Open
3 Government Sunset Review Act of 1995 in accordance with s.
4 119.15 and shall stand repealed on October 2, 2008, unless
5 reviewed and saved from repeal through reenactment by the
6 Legislature.

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

21 Section 2. (1) In 1995, the Legislature, in its
22 discretion as expressed in chapter 95-263, Laws of Florida,
23 made the not-for-profit corporation organized solely for the
24 purpose of governing and operating the H. Lee Moffitt Cancer
25 Center and Research Institute and its subsidiaries subject to
26 the public records requirements of section 119.07(1), Florida
27 Statutes, and the open meeting requirements of section
28 286.011, Florida Statutes. The provisions of chapter 95-263,
29 Laws of Florida, currently expressed in section 1004.43,
30 Florida Statutes, exempted from the public records
31 requirements of the not-for-profit corporation trade secrets

1 as defined in section 688.002, Florida Statutes, owned or
2 controlled by the not-for-profit corporation or its
3 subsidiaries. "Trade secret" which is broadly defined in
4 section 688.002, Florida Statutes, includes a "device, method,
5 technique, or process" that "derives economic value, actual or
6 potential, from not being generally known." As the
7 not-for-profit corporation's research activities have grown,
8 the not-for-profit corporation has enjoyed significant
9 coordination and joint development of research with the
10 University of South Florida Division of Sponsored Research.
11 The public records exemption for divisions of sponsored
12 research at state universities contained in section
13 1004.22(2), Florida Statutes, which applies to the Division of
14 Sponsored Research at the University of South Florida, is
15 different than the exemption in section 1004.43(8), Florida
16 Statutes, for the H. Lee Moffitt Cancer Center and Research
17 Institute, and this has led to confusion over the scope of
18 protection of intellectual property enjoyed by the Division of
19 Sponsored Research and the not-for-profit corporation.
20 Conforming the public records exemption in section 1004.43(8),
21 Florida Statutes, with the exemption in section 1004.22(2),
22 Florida Statutes, will eliminate this confusion and allow the
23 not-for-profit corporation to fulfill the institute's mission
24 in the area of cancer research.

25 (2) In the event that the public records exemption in
26 section 1004.22(2), Florida Statutes, is determined to be
27 broader than the public records exemption in section
28 1004.43(8), Florida Statutes, a statement of public necessity
29 would be appropriate. Because of the high incidence of cancer
30 in the state, the Legislature recognizes the public need among
31 the citizens of the state for access to the services provided

1 by the H. Lee Moffitt Cancer Center and Research Institute,
2 the public need for rapid advances in cancer prevention,
3 treatments, and cures through medical research, and the public
4 need for the not-for-profit corporation and its subsidiaries
5 that operate the institute to be allowed the maximum degree of
6 flexibility possible to fulfill the institute's mission in
7 cancer treatment, research, and education. The Legislature
8 finds that a public-sector and private-sector partnership
9 between the state and the not-for-profit corporation and its
10 subsidiaries is essential to fulfill the institute's mission.
11 The Legislature further finds that the not-for-profit
12 corporation and its subsidiaries must compete directly with
13 their private-sector counterparts and that their economic
14 survival depends on their ability to so compete. It is the
15 intent of the Legislature that the not-for-profit corporation
16 and its subsidiaries not be at a disadvantage in the
17 competitive health care and medical research environment.

18 (3) The Legislature finds that it is a public
19 necessity that certain records of the not-for-profit
20 corporation which governs and operates the H. Lee Moffitt
21 Cancer Center and Research Institute and its subsidiaries,
22 which contain proprietary confidential business information,
23 including materials that relate to methods of manufacture or
24 production, potential trade secrets, potentially patentable
25 material, actual trade secrets, business transactions, or
26 proprietary information received, generated, ascertained, or
27 discovered during the course of research conducted at the
28 institute or by the not-for-profit corporation or its
29 subsidiaries be confidential and exempt from disclosure in the
30 same manner as provided in section 1004.22(2), Florida
31 Statutes. This exemption is necessary, to the extent that the

1 exemption in section 1004.22(2), Florida Statutes, is broader
2 than the exemption in section 1004.43(8), Florida Statutes,
3 because the records contain information that, if disclosed,
4 would adversely impact the not-for-profit corporation or its
5 subsidiaries in the competitive health care and medical
6 research environment. The highly confidential nature of
7 cancer-related research discoveries necessitates that the
8 not-for-profit corporation and its subsidiaries continue to be
9 authorized to maintain confidential information it receives
10 from, or generates for, the sponsors of its research. Without
11 the exemption from public records requirements provided by
12 section 1 of this act, the potential for the disclosure of
13 confidential information would place the not-for-profit
14 corporation and its subsidiaries on an unequal footing in the
15 marketplace as compared with its private health care and
16 medical research competitors that are not required to disclose
17 such proprietary and confidential information. The Legislature
18 finds that disclosure of such proprietary and confidential
19 information would effectively prevent the not-for-profit
20 corporation and its subsidiaries from expeditiously fulfilling
21 the institute's mission of cancer treatment, research, and
22 education.

23 Section 3. This act shall take effect upon becoming a
24 law.

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