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1 A bill to be entitled

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

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Paragraph (b) of subsection (8) of section  
24 1004.43, Florida Statutes, is amended to read:

25 1004.43 H. Lee Moffitt Cancer Center and Research  
26 Institute.--There is established the H. Lee Moffitt Cancer  
27 Center and Research Institute at the University of South  
28 Florida.

29 (8)



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30 (b) Proprietary confidential business information is  
31 confidential and exempt from the provisions of s. 119.07(1) and  
32 s. 24(a), Art. I of the State Constitution. However, the Auditor  
33 General, the Office of Program Policy Analysis and Government  
34 Accountability, and the State Board of Education, pursuant to  
35 their oversight and auditing functions, must be given access to  
36 all proprietary confidential business information upon request  
37 and without subpoena and must maintain the confidentiality of  
38 information so received. As used in this paragraph, the term  
39 "proprietary confidential business information" means  
40 information, regardless of its form or characteristics, which is  
41 owned or controlled by the not-for-profit corporation or its  
42 subsidiaries; is intended to be and is treated by the not-for-  
43 profit corporation or its subsidiaries as private and the  
44 disclosure of which would harm the business operations of the  
45 not-for-profit corporation or its subsidiaries; has not been  
46 intentionally disclosed by the corporation or its subsidiaries  
47 unless pursuant to law, an order of a court or administrative  
48 body, a legislative proceeding pursuant to s. 5, Art. III of the  
49 State Constitution, or a private agreement that provides that  
50 the information may be released to the public; and which is  
51 information concerning:

- 52 1. Internal auditing controls and reports of internal  
53 auditors;
- 54 2. Matters reasonably encompassed in privileged attorney-  
55 client communications;
- 56 3. Contracts for managed-care arrangements, including  
57 preferred provider organization contracts, health maintenance  
58 organization contracts, and exclusive provider organization  
59 contracts, and any documents directly relating to the



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60 negotiation, performance, and implementation of any such  
 61 contracts for managed-care arrangements;

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

66 5. Information relating to private contractual data, the  
 67 disclosure of which would impair the competitive interest of the  
 68 provider of the information;

69 6. Corporate officer and employee personnel information;

70 7. Information relating to the proceedings and records of  
 71 credentialing panels and committees and of the governing board  
 72 of the not-for-profit corporation or its subsidiaries relating  
 73 to credentialing;

74 8. Minutes of meetings of the governing board of the not-  
 75 for-profit corporation and its subsidiaries, except minutes of  
 76 meetings open to the public pursuant to subsection (9);

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

80 10. Trade secrets as defined in s. 688.002, including  
 81 reimbursement methodologies or rates; ~~or~~

82 11. The identity of donors or prospective donors of  
 83 property who wish to remain anonymous or any information  
 84 identifying such donors or prospective donors. The anonymity of  
 85 these donors or prospective donors must be maintained in the  
 86 auditor's report; ~~or-~~

87 12. Materials and information exempted under s.  
 88 1004.22(2). This subparagraph is subject to the Open Government  
 89 Sunset Review Act of 1995 in accordance with s. 119.15 and shall



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90 stand repealed on October 2, 2008, unless reviewed and saved  
91 from repeal through reenactment by the Legislature.

92  
93 As used in this paragraph, the term "managed care" means systems  
94 or techniques generally used by third-party payors or their  
95 agents to affect access to and control payment for health care  
96 services. Managed-care techniques most often include one or more  
97 of the following: prior, concurrent, and retrospective review of  
98 the medical necessity and appropriateness of services or site of  
99 services; contracts with selected health care providers;  
100 financial incentives or disincentives related to the use of  
101 specific providers, services, or service sites; controlled  
102 access to and coordination of services by a case manager; and  
103 payor efforts to identify treatment alternatives and modify  
104 benefit restrictions for high-cost patient care.

105 Section 2. (1) In 1995, the Legislature, in its  
106 discretion as expressed in chapter 95-263, Laws of Florida, made  
107 the not-for-profit corporation organized solely for the purpose  
108 of governing and operating the H. Lee Moffitt Cancer Center and  
109 Research Institute and its subsidiaries subject to the public  
110 records requirements of s. 119.07(1), Florida Statutes, and the  
111 open meeting requirements of s. 286.011, Florida Statutes. The  
112 provisions of chapter 95-263, Laws of Florida, currently  
113 expressed in s. 1004.43, Florida Statutes, exempted from the  
114 public records requirements of the not-for-profit corporation  
115 trade secrets as defined in s. 688.002, Florida Statutes, owned  
116 or controlled by the not-for-profit corporation or its  
117 subsidiaries. "Trade secret" which is broadly defined in s.  
118 688.002, Florida Statutes, includes a "device, method,  
119 technique, or process" that "derives economic value, actual or



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120 potential, from not being generally known." As the not-for-  
121 profit corporation's research activities have grown, the not-  
122 for-profit corporation has enjoyed significant coordination and  
123 joint development of research with the University of South  
124 Florida Division of Sponsored Research. The public records  
125 exemption for divisions of sponsored research at state  
126 universities contained in s. 1004.22(2), Florida Statutes, which  
127 applies to the Division of Sponsored Research at the University  
128 of South Florida, is different than the exemption in s.  
129 1004.43(8), Florida Statutes, for the H. Lee Moffitt Cancer  
130 Center and Research Institute, and this has led to confusion  
131 over the scope of protection of intellectual property enjoyed by  
132 the Division of Sponsored Research and the not-for-profit  
133 corporation. Conforming the public records exemption in s.  
134 1004.43(8), Florida Statutes, with the exemption in s.  
135 1004.22(2), Florida Statutes, will eliminate this confusion and  
136 allow the not-for-profit corporation to fulfill the institute's  
137 mission in the area of cancer research.

138 (2) In the event that the public records exemption in s.  
139 1004.22(2), Florida Statutes, is determined to be broader than  
140 the public records exemption in s. 1004.43(8), Florida Statutes,  
141 a statement of public necessity would be appropriate. Because  
142 of the high incidence of cancer in the state, the Legislature  
143 recognizes the public need among the citizens of the state for  
144 access to the services provided by the H. Lee Moffitt Cancer  
145 Center and Research Institute, the public need for rapid  
146 advances in cancer prevention, treatments, and cures through  
147 medical research, and the public need for the not-for-profit  
148 corporation and its subsidiaries that operate the institute to  
149 be allowed the maximum degree of flexibility possible to fulfill



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150 the institute's mission in cancer treatment, research, and  
151 education. The Legislature finds that a public-sector and  
152 private-sector partnership between the state and the not-for-  
153 profit corporation and its subsidiaries is essential to fulfill  
154 the institute's mission. The Legislature further finds that the  
155 not-for-profit corporation and its subsidiaries must compete  
156 directly with their private-sector counterparts and that their  
157 economic survival depends on their ability to so compete. It is  
158 the intent of the Legislature that the not-for-profit  
159 corporation and its subsidiaries not be at a disadvantage in the  
160 competitive health care and medical research environment.

161 (3) The Legislature finds that it is a public necessity  
162 that certain records of the not-for-profit corporation which  
163 governs and operates the H. Lee Moffitt Cancer Center and  
164 Research Institute and its subsidiaries, which contain  
165 proprietary confidential business information, including  
166 materials that relate to methods of manufacture or production,  
167 potential trade secrets, potentially patentable material, actual  
168 trade secrets, business transactions, or proprietary information  
169 received, generated, ascertained, or discovered during the  
170 course of research conducted at the institute or by the not-for-  
171 profit corporation or its subsidiaries be confidential and  
172 exempt from disclosure in the same manner as provided in s.  
173 1004.22(2), Florida Statutes. This exemption is necessary, to  
174 the extent that the exemption in s. 1004.22(2), Florida  
175 Statutes, is broader than the exemption in s. 1004.43(8),  
176 Florida Statutes, because the records contain information that,  
177 if disclosed, would adversely impact the not-for-profit  
178 corporation or its subsidiaries in the competitive health care  
179 and medical research environment. The highly confidential



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180 nature of cancer-related research discoveries necessitates that  
181 the not-for-profit corporation and its subsidiaries continue to  
182 be authorized to maintain confidential information it receives  
183 from, or generates for, the sponsors of its research. Without  
184 the exemption from public records requirements provided by  
185 section 1 of this act, the potential for the disclosure of  
186 confidential information would place the not-for-profit  
187 corporation and its subsidiaries on an unequal footing in the  
188 marketplace as compared with its private health care and medical  
189 research competitors that are not required to disclose such  
190 proprietary and confidential information. The Legislature finds  
191 that disclosure of such proprietary and confidential information  
192 would effectively prevent the not-for-profit corporation and its  
193 subsidiaries from expeditiously fulfilling the institute's  
194 mission of cancer treatment, research, and education.

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