



CHAMBER ACTION

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The Committee on State Administration recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to a public records exemption for proprietary confidential business information owned or controlled by the H. Lee Moffitt Cancer Center and Research Institute; amending s. 1004.43, F.S.; expanding the public records exemption for such proprietary confidential business information to include information relating to methods of manufacture or production, potential trade secrets, potentially patentable material, and proprietary information received, generated, ascertained, or discovered during the course of research, and business transactions resulting from such research; expanding the public records exemption to include information received from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law; providing for future review and



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28 repeal of the exemption; providing a statement of public
29 necessity; providing an effective date.

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31 Be It Enacted by the Legislature of the State of Florida:

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33 Section 1. Paragraph (b) of subsection (8) of section
34 1004.43, Florida Statutes, is amended to read:

35 1004.43 H. Lee Moffitt Cancer Center and Research
36 Institute.--There is established the H. Lee Moffitt Cancer
37 Center and Research Institute at the University of South
38 Florida.

39 (8)

40 (b) Proprietary confidential business information is
41 confidential and exempt from the provisions of s. 119.07(1) and
42 s. 24(a), Art. I of the State Constitution. However, the Auditor
43 General, the Office of Program Policy Analysis and Government
44 Accountability, and the State Board of Education, pursuant to
45 their oversight and auditing functions, must be given access to
46 all proprietary confidential business information upon request
47 and without subpoena and must maintain the confidentiality of
48 information so received. As used in this paragraph, the term
49 "proprietary confidential business information" means
50 information, regardless of its form or characteristics, which is
51 owned or controlled by the not-for-profit corporation or its
52 subsidiaries; is intended to be and is treated by the not-for-
53 profit corporation or its subsidiaries as private and the
54 disclosure of which would harm the business operations of the
55 not-for-profit corporation or its subsidiaries; has not been



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56 intentionally disclosed by the corporation or its subsidiaries
57 unless pursuant to law, an order of a court or administrative
58 body, a legislative proceeding pursuant to s. 5, Art. III of the
59 State Constitution, or a private agreement that provides that
60 the information may be released to the public; and which is
61 information concerning:

62 1. Internal auditing controls and reports of internal
63 auditors;

64 2. Matters reasonably encompassed in privileged attorney-
65 client communications;

66 3. Contracts for managed-care arrangements, including
67 preferred provider organization contracts, health maintenance
68 organization contracts, and exclusive provider organization
69 contracts, and any documents directly relating to the
70 negotiation, performance, and implementation of any such
71 contracts for managed-care arrangements;

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

76 5. Information relating to private contractual data, the
77 disclosure of which would impair the competitive interest of the
78 provider of the information;

79 6. Corporate officer and employee personnel information;

80 7. Information relating to the proceedings and records of
81 credentialing panels and committees and of the governing board
82 of the not-for-profit corporation or its subsidiaries relating
83 to credentialing;



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

87 9. Information that reveals plans for marketing services
88 that the corporation or its subsidiaries reasonably expect to be
89 provided by competitors;

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

92 11. The identity of donors or prospective donors of
93 property who wish to remain anonymous or any information
94 identifying such donors or prospective donors. The anonymity of
95 these donors or prospective donors must be maintained in the
96 auditor's report; ~~or~~

97 12. Information relating to methods of manufacture or
98 production, potential trade secrets, potentially patentable
99 material, or proprietary information received, generated,
100 ascertained, or discovered during the course of research
101 conducted by the not-for-profit corporation or its subsidiaries
102 and business transactions resulting from such research; or

103 13. Any information received by the not-for-profit
104 corporation or its subsidiaries from a person in another state
105 or nation or the Federal Government which is otherwise
106 confidential or exempt pursuant to the laws of that state or
107 nation or pursuant to federal law.

108
109 As used in this paragraph, the term "managed care" means systems
110 or techniques generally used by third-party payors or their
111 agents to affect access to and control payment for health care



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112 services. Managed-care techniques most often include one or
113 more of the following: prior, concurrent, and retrospective
114 review of the medical necessity and appropriateness of services
115 or site of services; contracts with selected health care
116 providers; financial incentives or disincentives related to the
117 use of specific providers, services, or services sites;
118 controlled access to and coordination of services by a case
119 manager; and payor efforts to identify treatment alternatives
120 and modify benefit restrictions for high-cost patient care.

121 Section 2. Subparagraphs 12. and 13. of paragraph (b) of
122 subsection (8) of section 1004.43, Florida Statutes, are subject
123 to the Open Government Sunset Review Act of 1995 in accordance
124 with section 119.15, Florida Statutes, and shall stand repealed
125 on October 2, 2008, unless reviewed and saved from repeal
126 through reenactment by the Legislature.

127 Section 3. The Legislature finds that it is a public
128 necessity that information relating to methods of manufacture or
129 production, potential trade secrets, potentially patentable
130 materials, or proprietary information received, generated,
131 ascertained, or discovered during the course of research
132 conducted by the H. Lee Moffitt Cancer Center and Research
133 Institute or any of its subsidiaries, and business transactions
134 resulting from such research, be made confidential and exempt
135 from public disclosure, because the disclosure of such
136 information would adversely impact the not-for-profit
137 corporation or its subsidiaries and would create an unfair
138 competitive advantage for the persons receiving such
139 information. If such confidential and exempt information



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140 regarding research in progress were released pursuant to a
141 public records request, others would be allowed to take the
142 benefit of the research without compensation or reimbursement to
143 the research center. The Legislature further finds that
144 information received by the not-for-profit corporation or its
145 subsidiaries from a person in another state or nation or the
146 Federal Government which is otherwise confidential or exempt
147 pursuant to the laws of that state or nation or pursuant to
148 federal law should remain confidential or exempt because the
149 highly confidential nature of cancer-related research
150 necessitates that the not-for-profit corporation or its
151 subsidiaries be authorized to maintain the status of
152 confidential or exempt information it receives from the sponsors
153 of research. Without the exemptions provided for herein, the
154 disclosure of confidential and exempt information would place
155 the not-for-profit corporation on an unequal footing in the
156 marketplace as compared with its private health care and medical
157 research competitors that are not required to disclose such
158 confidential and exempt information. The Legislature finds that
159 the disclosure of such confidential and exempt information would
160 adversely impact the not-for-profit corporation or its
161 subsidiaries in fulfilling their mission of cancer treatment,
162 research, and education.

163 Section 4. This act shall take effect upon becoming a law.