



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 public records and public meetings exemptions; amending s. 1004.43, F.S.; expanding the public records exemption for proprietary confidential business information owned or controlled by the H. Lee Moffitt Cancer Center and Research Institute 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 this or another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of this or another state or nation or pursuant to federal law; providing for future review and repeal; providing a statement of public necessity; amending s. 1004.445, F.S.; creating a public



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29 records exemption for proprietary confidential business
30 information owned or controlled by the Florida Alzheimer's
31 Center and Research Institute; categorizing specified
32 types of information as proprietary confidential business
33 information; defining "managed care"; providing for access
34 to proprietary confidential business information by
35 specified agencies; creating a public meetings exemption
36 for specified meetings of the governing board of the
37 Florida Alzheimer's Center and Research Institute;
38 providing for future review and repeal of the exemption;
39 providing a statement of public necessity; providing an
40 effective date.

41

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

43

44 Section 1. Paragraph (b) of subsection (8) of section
45 1004.43, Florida Statutes, is amended to read:

46 1004.43 H. Lee Moffitt Cancer Center and Research
47 Institute.--There is established the H. Lee Moffitt Cancer
48 Center and Research Institute at the University of South
49 Florida.

50 (8)

51 (b) Proprietary confidential business information is
52 confidential and exempt from the provisions of s. 119.07(1) and
53 s. 24(a), Art. I of the State Constitution. However, the Auditor
54 General, the Office of Program Policy Analysis and Government
55 Accountability, and the State Board of Education, pursuant to
56 their oversight and auditing functions, must be given access to



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57 | all proprietary confidential business information upon request
58 | and without subpoena and must maintain the confidentiality of
59 | information so received. As used in this paragraph, the term
60 | "proprietary confidential business information" means
61 | information, regardless of its form or characteristics, which is
62 | owned or controlled by the not-for-profit corporation or its
63 | subsidiaries; is intended to be and is treated by the not-for-
64 | profit corporation or its subsidiaries as private and the
65 | disclosure of which would harm the business operations of the
66 | not-for-profit corporation or its subsidiaries; has not been
67 | intentionally disclosed by the corporation or its subsidiaries
68 | unless pursuant to law, an order of a court or administrative
69 | body, a legislative proceeding pursuant to s. 5, Art. III of the
70 | State Constitution, or a private agreement that provides that
71 | the information may be released to the public; and which is
72 | information concerning:

- 73 | 1. Internal auditing controls and reports of internal
74 | auditors;
- 75 | 2. Matters reasonably encompassed in privileged attorney-
76 | client communications;
- 77 | 3. Contracts for managed-care arrangements, including
78 | preferred provider organization contracts, health maintenance
79 | organization contracts, and exclusive provider organization
80 | contracts, and any documents directly relating to the
81 | negotiation, performance, and implementation of any such
82 | contracts for managed-care arrangements;
- 83 | 4. Bids or other contractual data, banking records, and
84 | credit agreements the disclosure of which would impair the



85 efforts of the not-for-profit corporation or its subsidiaries to
86 contract for goods or services on favorable terms;

87 5. Information relating to private contractual data, the
88 disclosure of which would impair the competitive interest of the
89 provider of the information;

90 6. Corporate officer and employee personnel information;

91 7. Information relating to the proceedings and records of
92 credentialing panels and committees and of the governing board
93 of the not-for-profit corporation or its subsidiaries relating
94 to credentialing;

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

98 9. Information that reveals plans for marketing services
99 that the corporation or its subsidiaries reasonably expect to be
100 provided by competitors;

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

103 11. The identity of donors or prospective donors of
104 property who wish to remain anonymous or any information
105 identifying such donors or prospective donors. The anonymity of
106 these donors or prospective donors must be maintained in the
107 auditor's report;~~-~~

108 12. Information relating to methods of manufacture or
109 production, potential trade secrets, potentially patentable
110 material, or proprietary information received, generated,
111 ascertained, or discovered during the course of research



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112 conducted by the not-for-profit corporation or its subsidiaries
113 and business transactions resulting from such research; or
114 13. Any information received by the not-for-profit
115 corporation or its subsidiaries from a person in this or another
116 state or nation or the Federal Government which is otherwise
117 exempt or confidential pursuant to the laws of this or another
118 state or nation or pursuant to federal law.

119

120 As used in this paragraph, the term "managed care" means systems
121 or techniques generally used by third-party payors or their
122 agents to affect access to and control payment for health care
123 services. Managed-care techniques most often include one or
124 more of the following: prior, concurrent, and retrospective
125 review of the medical necessity and appropriateness of services
126 or site of services; contracts with selected health care
127 providers; financial incentives or disincentives related to the
128 use of specific providers, services, or services sites;
129 controlled access to and coordination of services by a case
130 manager; and payor efforts to identify treatment alternatives
131 and modify benefit restrictions for high-cost patient care.

132 Section 2. Subparagraphs 12. and 13. of paragraph (b) of
133 subsection (8) of s. 1004.43, Florida Statutes, are subject to
134 the Open Government Sunset Review Act of 1995 in accordance with
135 s. 119.15, Florida Statutes, and shall stand repealed on October
136 2, 2008, unless reviewed and saved from repeal through
137 reenactment by the Legislature.

138 Section 3. The Legislature finds that it is a public
139 necessity that information relating to methods of manufacture or



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140 production, potential trade secrets, potentially patentable
141 materials, or proprietary information received, generated,
142 ascertained, or discovered during the course of research
143 conducted by the H. Lee Moffitt Cancer Center and Research
144 Institute or any of its subsidiaries, and business transactions
145 resulting from such research, be made confidential and exempt
146 from public disclosure, because the disclosure of such
147 information would adversely impact the not-for-profit
148 corporation or its subsidiaries and would create an unfair
149 competitive advantage for the persons receiving such
150 information. If such confidential and exempt information
151 regarding research in progress were released pursuant to a
152 public records request, others would be allowed to take the
153 benefit of the research without compensation or reimbursement to
154 the research center. The Legislature further finds that
155 information received by the not-for-profit corporation or its
156 subsidiaries from a person in this or another state or nation or
157 the Federal Government which is otherwise exempt or confidential
158 pursuant to the laws of this or another state or nation or
159 pursuant to federal law should remain exempt or confidential
160 because the highly confidential nature of cancer-related
161 research necessitates that the not-for-profit corporation or its
162 subsidiaries be authorized to maintain the status of exempt or
163 confidential information it receives from the sponsors of
164 research. Without the exemptions provided for herein, the
165 disclosure of confidential and exempt information would place
166 the not-for-profit corporation on an unequal footing in the
167 marketplace as compared with its private health care and medical



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168 research competitors that are not required to disclose such
169 confidential and exempt information. The Legislature finds that
170 the disclosure of such confidential and exempt information would
171 adversely impact the not-for-profit corporation or its
172 subsidiaries in fulfilling their mission of cancer treatment,
173 research, and education.

174 Section 4. Subsection (9) of section 1004.445, Florida
175 Statutes, is amended, and subsection (10) is added to said
176 section, to read:

177 1004.445 Florida Alzheimer's Center and Research
178 Institute.—

179 (9)(a) The following information is confidential and
180 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
181 of the State Constitution:

182 1.(a) Personal identifying information relating to clients
183 of programs created or funded through the Florida Alzheimer's
184 Center and Research Institute which is held by the institute,
185 the University of South Florida, or the State Board of Education
186 or by persons who provide services to clients of programs
187 created or funded through contracts with the Florida Alzheimer's
188 Center and Research Institute;

189 2.(b) Any medical or health records relating to patients
190 held ~~which may be created or received~~ by the institute; and

191 3.(c) Proprietary confidential business information. As
192 used in this subparagraph, the term "proprietary confidential
193 business information" means information, regardless of its form
194 or characteristics, which is owned or controlled by the
195 institute; is intended to be and is treated by the institute as



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196 private and the disclosure of which would harm the business
197 operations of the institute; has not been intentionally
198 disclosed by the institute unless pursuant to law, an order of a
199 court or administrative body, a legislative proceeding pursuant
200 to s. 5, Art. III of the State Constitution, or a private
201 agreement that provides that the information may be released to
202 the public; and which is information concerning:

203 a. Materials that relate to methods of manufacture or
204 production, potential trade secrets, potentially patentable
205 material, actual trade secrets as defined in s. 688.002, or
206 proprietary information received, generated, ascertained, or
207 discovered during the course of research conducted by or through
208 the institute and business transactions resulting from such
209 research;

210 b.~~(d)~~ The identity of a donor or prospective donor to the
211 institute ~~Florida Alzheimer's Center and Research Institute~~ who
212 wishes to remain anonymous, and all information identifying such
213 donor or prospective donor;

214 c.~~(e)~~ Any information received by the institute in the
215 performance of its duties and responsibilities which is
216 otherwise confidential and exempt by law; ~~and~~

217 d.~~(f)~~ Any information received by the institute from a
218 person from this or another state or nation or the Federal
219 Government which is otherwise exempt or confidential ~~or exempt~~
220 pursuant to this or another ~~that~~ state's or nation's laws or
221 pursuant to federal law;

222 e. Internal auditing controls and reports of internal
223 auditors;



224 f. Contracts for managed-care arrangements, including
 225 preferred provider organization contracts, health maintenance
 226 organization contracts, and exclusive provider organization
 227 contracts, and any documents directly relating to the
 228 negotiation, performance, and implementation of any such
 229 contracts for managed-care arrangements;

230 g. Bids or other contractual data, banking records, and
 231 credit agreements the disclosure of which would impair the
 232 efforts of the institute to contract for goods or services on
 233 favorable terms;

234 h. Information relating to private contractual data, the
 235 disclosure of which would impair the competitive interest of the
 236 provider of the information;

237 i. Corporate officer and employee personnel information;

238 j. Information relating to the proceedings and records of
 239 the credentialing panels and committees and of the governing
 240 board of the institute relating to credentialing;

241 k. Minutes of meetings of the governing board of the
 242 institute, except minutes of meetings open to the public
 243 pursuant to subsection (10); and

244 l. Information that reveals plans for marketing services
 245 that the institute reasonably expects to be provided by
 246 competitors.

247
 248 As used in this subparagraph, the term "managed care" means
 249 systems or techniques generally used by third-party payors or
 250 their agents to affect access to and control payment for health
 251 care services. Managed-care techniques most often include one or



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252 more of the following: prior, concurrent, and retrospective
253 review of the medical necessity and appropriateness of services
254 or site of services; contracts with selected health care
255 providers; financial incentives or disincentives related to the
256 use of specific providers, services, or service sites;
257 controlled access to and coordination of services by a case
258 manager; and payor efforts to identify treatment alternatives
259 and modify benefit restrictions for high-cost patient care.

260 (b) The Auditor General, the Office of Program Policy
261 Analysis and Government Accountability, and the State Board of
262 Education, pursuant to their oversight and auditing functions,
263 must be given access to all proprietary confidential business
264 information upon request and without subpoena and must maintain
265 the confidentiality of information so received.

266 (c) Any governmental entity that demonstrates a need to
267 access such confidential and exempt information in order to
268 perform its duties and responsibilities shall have access to
269 such information and shall otherwise keep such information
270 confidential and exempt. ~~This section is subject to the Open~~
271 ~~Government Sunset Review Act of 1995 in accordance with s.~~
272 ~~119.15 and shall stand repealed on October 2, 2006, unless~~
273 ~~reviewed and saved from repeal through reenactment by the~~
274 ~~Legislature.~~

275 (10) Meetings of the governing board of the Florida
276 Alzheimer's Center and Research Institute at which the
277 expenditure of funds appropriated to the not-for-profit
278 corporation by the state are discussed or reported must remain
279 open to the public in accordance with s. 286.011 and s. 24(b),



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280 Art. I of the State Constitution, unless made exempt by law.
281 Other meetings of the governing board of the institute are
282 exempt from s. 286.011 and s. 24(b), Art. I of the State
283 Constitution.

284 Section 5. Subsections (9) and (10) of s. 1004.445,
285 Florida Statutes, are subject to the Open Government Sunset
286 Review Act of 1995 in accordance with s. 119.15, Florida
287 Statutes, and shall stand repealed on October 2, 2008, unless
288 reviewed and saved from repeal through reenactment by the
289 Legislature.

290 Section 6. The Legislature finds that it is a public
291 necessity that proprietary confidential business information
292 owned or controlled by the Florida Alzheimer's Center and
293 Research Institute; internal auditing controls and reports of
294 internal auditors; contracts for managed-care arrangements and
295 any documents directly relating to the negotiation, performance,
296 and implementation of any such contracts for managed-care
297 arrangements; bids or other contractual data, banking records,
298 and credit agreements; information relating to private
299 contractual data; corporate officer and employee personnel
300 information; information relating to the proceedings and records
301 of the credentialing panels and committees and of the governing
302 board of the Florida Alzheimer's Center and Research Institute
303 relating to credentialing; minutes of meetings of the governing
304 board of the institute; and information that reveals plans for
305 marketing services that the institute reasonably expects to be
306 provided by competitors be made confidential and exempt from
307 public disclosure. The institute must compete directly with its



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308 private-sector counterparts. Its economic survival depends on
309 the institute's ability to so compete. As such, these exemptions
310 are necessary because release of such information and records
311 would adversely impact the institute in the competitive health
312 care and medical research environment. Disclosure of such
313 information and records would place the institute on an unequal
314 footing in the marketplace as compared with private health care
315 providers that are not required to disclose such confidential
316 and exempt information and records. The highly confidential
317 nature of Alzheimer-related research discoveries necessitates
318 that the institute be authorized to maintain confidential
319 information it receives from, or generates for, the sponsors of
320 its research. Accordingly, disclosure of such information and
321 records would impede the effective and efficient administration
322 of the Florida Alzheimer's Center and Research Institute and
323 would create an unfair competitive advantage for persons or
324 entities receiving such information. Also, such information and
325 records contain information of a sensitive, personal nature
326 regarding corporate officers and employees. Disclosure of such
327 information could be harmful to the officer or employee. It is
328 likewise a public necessity that the meetings of the governing
329 board of the institute be closed in order to protect the
330 competitive interest of the institute and to guarantee the
331 ability of the governing board to fulfill its Alzheimer's
332 disease research and teaching mission for the benefit of the
333 public. Closing access to such board meetings enables the boards
334 to be more open and frank in the information so provided and
335 discussed without the attendant fear that honest and truthful



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336 exchange of information will result in the public dissemination
337 of information discussed that could be used to harm the
338 institute and its members. Furthermore, disclosing information
339 and records made confidential and exempt pursuant to the
340 institute's public records exemption via an open meeting defeats
341 the purpose of the public records exemption.

342 Section 7. This act shall take effect upon becoming a law.