



1 A bill to be entitled
2 An act relating to public records and public meetings
3 exemptions; amending s. 1004.43, F.S.; expanding the
4 public records exemption for proprietary confidential
5 business information owned or controlled by the H. Lee
6 Moffitt Cancer Center and Research Institute to include
7 information relating to methods of manufacture or
8 production, potential trade secrets, potentially
9 patentable material, and proprietary information received,
10 generated, ascertained, or discovered during the course of
11 research, and business transactions resulting from such
12 research; expanding the public records exemption to
13 include information received from this or another state or
14 nation or the Federal Government which is otherwise exempt
15 or confidential pursuant to the laws of this or another
16 state or nation or pursuant to federal law; providing for
17 future review and repeal; providing a statement of public
18 necessity; amending s. 1004.445, F.S.; creating a public
19 records exemption for proprietary confidential business
20 information owned or controlled by the Florida Alzheimer's
21 Center and Research Institute; categorizing specified
22 types of information as proprietary confidential business
23 information; defining "managed care"; providing for access
24 to proprietary confidential business information by
25 specified agencies; creating a public meetings exemption
26 for specified meetings of the governing board of the
27 Florida Alzheimer's Center and Research Institute;
28 providing for future review and repeal of the exemption;



29 | providing a statement of public necessity; providing an
30 | effective date.

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32 | Be It Enacted by the Legislature of the State of Florida:

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34 | Section 1. Paragraph (b) of subsection (8) of section
35 | 1004.43, Florida Statutes, is amended to read:

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

40 | (8)

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



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

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

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

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

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

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

80 | 6. Corporate officer and employee personnel information;

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



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

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

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

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

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

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

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



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

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

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



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

164 Section 4. Subsection (9) of section 1004.445, Florida
165 Statutes, is amended, and subsection (10) is added to said
166 section, to read:

167 1004.445 Florida Alzheimer's Center and Research
168 Institute.-



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

172 ~~1.(a)~~ Personal identifying information relating to clients
173 of programs created or funded through the Florida Alzheimer's
174 Center and Research Institute which is held by the institute,
175 the University of South Florida, or the State Board of Education
176 or by persons who provide services to clients of programs
177 created or funded through contracts with the Florida Alzheimer's
178 Center and Research Institute;

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

181 ~~3.(c)~~ Proprietary confidential business information. As
182 used in this subparagraph, the term "proprietary confidential
183 business information" means information, regardless of its form
184 or characteristics, which is owned or controlled by the
185 institute; is intended to be and is treated by the institute as
186 private and the disclosure of which would harm the business
187 operations of the institute; has not been intentionally
188 disclosed by the institute unless pursuant to law, an order of a
189 court or administrative body, a legislative proceeding pursuant
190 to s. 5, Art. III of the State Constitution, or a private
191 agreement that provides that the information may be released to
192 the public; and which is information concerning:

193 a. Materials that relate to methods of manufacture or
194 production, potential trade secrets, potentially patentable
195 material, actual trade secrets as defined in s. 688.002, or
196 proprietary information received, generated, ascertained, or



197 discovered during the course of research conducted by or through
 198 the institute and business transactions resulting from such
 199 research;

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

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

207 d.~~(f)~~ Any information received by the institute from a
 208 person from this or another state or nation or the Federal
 209 Government which is otherwise exempt or confidential ~~or exempt~~
 210 pursuant to this or another ~~that~~ state's or nation's laws or
 211 pursuant to federal law;

212 e. Internal auditing controls and reports of internal
 213 auditors;

214 f. Contracts for managed-care arrangements, including
 215 preferred provider organization contracts, health maintenance
 216 organization contracts, and exclusive provider organization
 217 contracts, and any documents directly relating to the
 218 negotiation, performance, and implementation of any such
 219 contracts for managed-care arrangements;

220 g. Bids or other contractual data, banking records, and
 221 credit agreements the disclosure of which would impair the
 222 efforts of the institute to contract for goods or services on
 223 favorable terms;



224 h. Information relating to private contractual data, the
 225 disclosure of which would impair the competitive interest of the
 226 provider of the information;

227 i. Corporate officer and employee personnel information;

228 j. Information relating to the proceedings and records of
 229 the credentialing panels and committees and of the governing
 230 board of the institute relating to credentialing;

231 k. Minutes of meetings of the governing board of the
 232 institute, except minutes of meetings open to the public
 233 pursuant to subsection (10); and

234 l. Information that reveals plans for marketing services
 235 that the institute reasonably expects to be provided by
 236 competitors.

237
 238 As used in this subparagraph, the term "managed care" means
 239 systems or techniques generally used by third-party payors or
 240 their agents to affect access to and control payment for health
 241 care services. Managed-care techniques most often include one or
 242 more of the following: prior, concurrent, and retrospective
 243 review of the medical necessity and appropriateness of services
 244 or site of services; contracts with selected health care
 245 providers; financial incentives or disincentives related to the
 246 use of specific providers, services, or service sites;
 247 controlled access to and coordination of services by a case
 248 manager; and payor efforts to identify treatment alternatives
 249 and modify benefit restrictions for high-cost patient care.

250 (b) The Auditor General, the Office of Program Policy
 251 Analysis and Government Accountability, and the State Board of



252 Education, pursuant to their oversight and auditing functions,
253 must be given access to all proprietary confidential business
254 information upon request and without subpoena and must maintain
255 the confidentiality of information so received.

256 (c) Any governmental entity that demonstrates a need to
257 access such confidential and exempt information in order to
258 perform its duties and responsibilities shall have access to
259 such information and shall otherwise keep such information
260 confidential and exempt. ~~This section is subject to the Open~~
261 ~~Government Sunset Review Act of 1995 in accordance with s.~~
262 ~~119.15 and shall stand repealed on October 2, 2006, unless~~
263 ~~reviewed and saved from repeal through reenactment by the~~
264 ~~Legislature.~~

265 (10) Meetings or portions of meetings of the governing
266 board of the Florida Alzheimer's Center and Research Institute
267 at which information is discussed that is made confidential and
268 exempt pursuant to subsection (9) of this section are exempt
269 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

270 Section 5. Subsections (9) and (10) of s. 1004.445,
271 Florida Statutes, are subject to the Open Government Sunset
272 Review Act of 1995 in accordance with s. 119.15, Florida
273 Statutes, and shall stand repealed on October 2, 2008, unless
274 reviewed and saved from repeal through reenactment by the
275 Legislature.

276 Section 6. The Legislature finds that it is a public
277 necessity that proprietary confidential business information
278 owned or controlled by the Florida Alzheimer's Center and
279 Research Institute; internal auditing controls and reports of



280 internal auditors; contracts for managed-care arrangements and
281 any documents directly relating to the negotiation, performance,
282 and implementation of any such contracts for managed-care
283 arrangements; bids or other contractual data, banking records,
284 and credit agreements; information relating to private
285 contractual data; corporate officer and employee personnel
286 information; information relating to the proceedings and records
287 of the credentialing panels and committees and of the governing
288 board of the Florida Alzheimer's Center and Research Institute
289 relating to credentialing; minutes of meetings of the governing
290 board of the institute; and information that reveals plans for
291 marketing services that the institute reasonably expects to be
292 provided by competitors be made confidential and exempt from
293 public disclosure. The institute must compete directly with its
294 private-sector counterparts. Its economic survival depends on
295 the institute's ability to so compete. As such, these exemptions
296 are necessary because release of such information and records
297 would adversely impact the institute in the competitive health
298 care and medical research environment. Disclosure of such
299 information and records would place the institute on an unequal
300 footing in the marketplace as compared with private health care
301 providers that are not required to disclose such confidential
302 and exempt information and records. The highly confidential
303 nature of Alzheimer-related research discoveries necessitates
304 that the institute be authorized to maintain confidential
305 information it receives from, or generates for, the sponsors of
306 its research. Accordingly, disclosure of such information and
307 records would impede the effective and efficient administration



308 of the Florida Alzheimer's Center and Research Institute and
309 would create an unfair competitive advantage for persons or
310 entities receiving such information. Also, such information and
311 records contain information of a sensitive, personal nature
312 regarding corporate officers and employees. Disclosure of such
313 information could be harmful to the officer or employee. It is
314 likewise a public necessity that the meetings of the governing
315 board of the institute be closed in order to protect the
316 competitive interest of the institute and to guarantee the
317 ability of the governing board to fulfill its Alzheimer's
318 disease research and teaching mission for the benefit of the
319 public. Closing access to such board meetings enables the boards
320 to be more open and frank in the information so provided and
321 discussed without the attendant fear that honest and truthful
322 exchange of information will result in the public dissemination
323 of information discussed that could be used to harm the
324 institute and its members. Furthermore, disclosing information
325 and records made confidential and exempt pursuant to the
326 institute's public records exemption via an open meeting defeats
327 the purpose of the public records exemption.

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