



1 A bill to be entitled
 2 An act relating to the H. Lee Moffitt Cancer Center and
 3 Research Institute and the Johnnie B. Byrd, Sr.,
 4 Alzheimer's Center and Research Institute at the
 5 University of South Florida; amending s. 1004.43, F.S.;
 6 authorizing the establishment of for-profit subsidiaries
 7 of the governing corporation; prohibiting certain
 8 activities by such for profit subsidiaries; providing that
 9 the contract with the State Board of Education shall
 10 permit the use of lands and facilities for research,
 11 education, treatment, prevention, and early detection of
 12 cancer; authorizing the governing corporation and its
 13 subsidiaries to obtain their own property insurance
 14 coverage; providing that certain appropriations shall be
 15 paid directly to the board of directors of the governing
 16 corporation; changing the appointing authority for certain
 17 members of the council of scientific advisors; amending s.
 18 1004.445, F.S.; renaming the Florida Alzheimer's Center
 19 and Research Institute as the Johnnie B. Byrd, Sr.,
 20 Alzheimer's Center and Research Center; deleting obsolete
 21 language; authorizing the establishment of for-profit
 22 subsidiaries of the governing corporation; providing that
 23 the contract with the State Board of Education shall
 24 permit the use of lands and facilities for research,
 25 education, treatment, prevention, and early detection of
 26 Alzheimer's disease; authorizing the governing corporation
 27 and its subsidiaries to obtain their own property
 28 insurance coverage; providing that certain appropriations



29 | shall be paid directly to the board of directors of the
30 | governing corporation; changing the appointing authority
31 | for certain members of the council of scientific advisors;
32 | providing an effective date.

33 |

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

35 |

36 | Section 1. Section 1004.43, Florida Statutes, is amended
37 | to read:

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

42 | (1) The State Board of Education shall enter into an
43 | agreement for the utilization of the facilities on the campus of
44 | the University of South Florida to be known as the H. Lee
45 | Moffitt Cancer Center and Research Institute, including all
46 | furnishings, equipment, and other chattels used in the operation
47 | of said facilities, with a Florida not-for-profit corporation
48 | organized solely for the purpose of governing and operating the
49 | H. Lee Moffitt Cancer Center and Research Institute. This not-
50 | for-profit corporation, acting as an instrumentality of the
51 | State of Florida, shall govern and operate the H. Lee Moffitt
52 | Cancer Center and Research Institute in accordance with the
53 | terms of the agreement between the State Board of Education and
54 | the not-for-profit corporation. The not-for-profit corporation
55 | may, with the prior approval of the State Board of Education,
56 | create ~~not-for-profit~~ corporate subsidiaries to fulfill its



57 | mission. For profit subsidiaries of the not-for-profit
58 | corporation shall not compete with for profit health care
59 | providers in the delivery of radiation therapy services to
60 | patients. The not-for-profit corporation and its subsidiaries
61 | authorized to receive, hold, invest, and administer property and
62 | any moneys received from private, local, state, and federal
63 | sources, as well as technical and professional income generated
64 | or derived from practice activities of the institute, for the
65 | benefit of the institute and the fulfillment of its mission. The
66 | affairs of the corporation shall be managed by a board of
67 | directors who shall serve without compensation. The President of
68 | the University of South Florida and the chair of the State Board
69 | of Education, or his or her designee, shall be directors of the
70 | not-for-profit corporation, together with 5 representatives of
71 | the state universities and no more than 14 nor fewer than 10
72 | directors who are not medical doctors or state employees. Each
73 | director shall have only one vote, shall serve a term of 3
74 | years, and may be reelected to the board. Other than the
75 | President of the University of South Florida and the chair of
76 | the State Board of Education, directors shall be elected by a
77 | majority vote of the board. The chair of the board of directors
78 | shall be selected by majority vote of the directors.

79 | (2) The State Board of Education shall provide in the
80 | agreement with the not-for-profit corporation for the following:

81 | (a) Approval of the articles of incorporation of the not-
82 | for-profit corporation by the State Board of Education.



83 (b) Approval of the articles of incorporation of any not-
84 for-profit corporate subsidiary created by the not-for-profit
85 corporation.

86 (c) Utilization of lands, hospital facilities, and
87 personnel by the not-for-profit corporation and its subsidiaries
88 for research, education, treatment, prevention, and the early
89 detection of cancer and for mutually approved teaching and
90 research programs conducted by the University of South Florida
91 or other accredited medical schools or research institutes.

92 (d) Preparation of an annual financial audit of the not-
93 for-profit corporation's accounts and records and the accounts
94 and records of any subsidiaries to be conducted by an
95 independent certified public accountant. The annual audit report
96 shall include a management letter, as defined in s. 11.45, and
97 shall be submitted to the Auditor General and the State Board of
98 Education. The State Board of Education, the Auditor General,
99 and the Office of Program Policy Analysis and Government
100 Accountability shall have the authority to require and receive
101 from the not-for-profit corporation and any subsidiaries or from
102 their independent auditor any detail or supplemental data
103 relative to the operation of the not-for-profit corporation or
104 subsidiary.

105 (e) Provision by the not-for-profit corporation and its
106 subsidiaries of equal employment opportunities to all persons
107 regardless of race, color, religion, sex, age, or national
108 origin.

109 (3) The State Board of Education is authorized to secure
110 comprehensive general liability protection, including



111 professional liability protection, for the not-for-profit
112 corporation and its subsidiaries pursuant to s. 1004.24. The
113 not-for-profit corporation and its subsidiaries shall be exempt
114 from any participation in any property insurance trust fund
115 established by law, including any property insurance trust fund
116 established pursuant to chapter 284, so long as the not-for-
117 profit corporation and its subsidiaries maintain property
118 insurance protection with comparable or greater coverage limits.

119 (4) In the event that the agreement between the not-for-
120 profit corporation and the State Board of Education is
121 terminated for any reason, the State Board of Education shall
122 resume governance and operation of said facilities.

123 (5) The institute shall be administered by a chief
124 executive officer who shall serve at the pleasure of the board
125 of directors of the not-for-profit corporation and who shall
126 have the following powers and duties subject to the approval of
127 the board of directors:

128 (a) The chief executive officer shall establish programs
129 which fulfill the mission of the institute in research,
130 education, treatment, prevention, and the early detection of
131 cancer; however, the chief executive officer shall not establish
132 academic programs for which academic credit is awarded and which
133 terminate in the conference of a degree without prior approval
134 of the State Board of Education.

135 (b) The chief executive officer shall have control over
136 the budget and the dollars appropriated or donated to the
137 institute from private, local, state, and federal sources, as
138 well as technical and professional income generated or derived



139 from practice activities of the institute. However, professional
140 income generated by university faculty from practice activities
141 at the institute shall be shared between the institute and the
142 university as determined by the chief executive officer and the
143 appropriate university dean or vice president.

144 (c) The chief executive officer shall appoint members to
145 carry out the research, patient care, and educational activities
146 of the institute and determine compensation, benefits, and terms
147 of service. Members of the institute shall be eligible to hold
148 concurrent appointments at affiliated academic institutions.
149 University faculty shall be eligible to hold concurrent
150 appointments at the institute.

151 (d) The chief executive officer shall have control over
152 the use and assignment of space and equipment within the
153 facilities.

154 (e) The chief executive officer shall have the power to
155 create the administrative structure necessary to carry out the
156 mission of the institute.

157 (f) The chief executive officer shall have a reporting
158 relationship to the Commissioner of Education.

159 (g) The chief executive officer shall provide a copy of
160 the institute's annual report to the Governor and Cabinet, the
161 President of the Senate, the Speaker of the House of
162 Representatives, and the chair of the State Board of Education.

163 (6) The board of directors of the not-for-profit
164 corporation shall create a council of scientific advisers to the
165 chief executive officer comprised of leading researchers,
166 physicians, and scientists. This council shall review programs



167 and recommend research priorities and initiatives so as to
168 maximize the state's investment in the institute. The council
169 shall be appointed by the board of directors of the not-for-
170 profit corporation ~~and shall include five appointees of the~~
171 ~~State Board of Education~~. Each member of the council shall be
172 appointed to serve a 2-year term and may be reappointed to the
173 council.

174 (7) In carrying out the provisions of this section, the
175 not-for-profit corporation and its subsidiaries are not
176 "agencies" within the meaning of s. 20.03(11).

177 (8)(a) Records of the not-for-profit corporation and of
178 its subsidiaries are public records unless made confidential or
179 exempt by law.

180 (b) Proprietary confidential business information is
181 confidential and exempt from the provisions of s. 119.07(1) and
182 s. 24(a), Art. I of the State Constitution. However, the Auditor
183 General, the Office of Program Policy Analysis and Government
184 Accountability, and the State Board of Education, pursuant to
185 their oversight and auditing functions, must be given access to
186 all proprietary confidential business information upon request
187 and without subpoena and must maintain the confidentiality of
188 information so received. As used in this paragraph, the term
189 "proprietary confidential business information" means
190 information, regardless of its form or characteristics, which is
191 owned or controlled by the not-for-profit corporation or its
192 subsidiaries; is intended to be and is treated by the not-for-
193 profit corporation or its subsidiaries as private and the
194 disclosure of which would harm the business operations of the



195 not-for-profit corporation or its subsidiaries; has not been
196 intentionally disclosed by the corporation or its subsidiaries
197 unless pursuant to law, an order of a court or administrative
198 body, a legislative proceeding pursuant to s. 5, Art. III of the
199 State Constitution, or a private agreement that provides that
200 the information may be released to the public; and which is
201 information concerning:

202 1. Internal auditing controls and reports of internal
203 auditors;

204 2. Matters reasonably encompassed in privileged attorney-
205 client communications;

206 3. Contracts for managed-care arrangements, including
207 preferred provider organization contracts, health maintenance
208 organization contracts, and exclusive provider organization
209 contracts, and any documents directly relating to the
210 negotiation, performance, and implementation of any such
211 contracts for managed-care arrangements;

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

216 5. Information relating to private contractual data, the
217 disclosure of which would impair the competitive interest of the
218 provider of the information;

219 6. Corporate officer and employee personnel information;

220 7. Information relating to the proceedings and records of
221 credentialing panels and committees and of the governing board



222 of the not-for-profit corporation or its subsidiaries relating
 223 to credentialing;

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

227 9. Information that reveals plans for marketing services
 228 that the corporation or its subsidiaries reasonably expect to be
 229 provided by competitors;

230 10. Trade secrets as defined in s. 688.002, including
 231 reimbursement methodologies or rates; or

232 11. The identity of donors or prospective donors of
 233 property who wish to remain anonymous or any information
 234 identifying such donors or prospective donors. The anonymity of
 235 these donors or prospective donors must be maintained in the
 236 auditor's report.

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



250 (9) Meetings of the governing board of the not-for-profit
 251 corporation and meetings of the subsidiaries of the not-for-
 252 profit corporation at which the expenditure of dollars
 253 appropriated to the not-for-profit corporation by the state are
 254 discussed or reported must remain open to the public in
 255 accordance with s. 286.011 and s. 24(b), Art. I of the State
 256 Constitution, unless made confidential or exempt by law. Other
 257 meetings of the governing board of the not-for-profit
 258 corporation and of the subsidiaries of the not-for-profit
 259 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
 260 the State Constitution.

261 (10) In addition to the continuing appropriation to the
 262 institute provided in s. 210.20(2), any appropriation to the
 263 institute provided in a general appropriations act shall be paid
 264 directly to the board of directors of the not-for-profit
 265 corporation by warrant drawn by the Chief Financial Officer from
 266 the State Treasury.

267 Section 2. Section 1004.445, Florida Statutes, is amended
 268 to read:

269 1004.445 Johnnie B. Byrd, Sr., ~~Florida~~ Alzheimer's Center
 270 and Research Institute.--

271 (1) ~~Effective July 1, 2002,~~ The Johnnie B. Byrd, Sr.,
 272 ~~Florida~~ Alzheimer's Center and Research Institute is established
 273 at the University of South Florida.

274 (2)(a) The State Board of Education shall enter into an
 275 agreement for the utilization of the facilities on the campus of
 276 the University of South Florida to be known as the Johnnie B.
 277 Byrd, Sr., ~~Florida~~ Alzheimer's Center and Research Institute,



278 including all furnishings, equipment, and other chattels used in
279 the operation of those facilities, with a Florida not-for-profit
280 corporation organized solely for the purpose of governing and
281 operating the Johnnie B. Byrd, Sr., Florida Alzheimer's Center
282 and Research Institute. This not-for-profit corporation, acting
283 as an instrumentality of the state, shall govern and operate the
284 Johnnie B. Byrd, Sr., Florida Alzheimer's Center and Research
285 Institute in accordance with the terms of the agreement between
286 the State Board of Education and the not-for-profit corporation.
287 The not-for-profit corporation may, with the prior approval of
288 the State Board of Education, create ~~not-for-profit~~ corporate
289 subsidiaries to fulfill its mission. The not-for-profit
290 corporation and its subsidiaries are authorized to receive,
291 hold, invest, and administer property and any moneys acquired
292 from private, local, state, and federal sources, as well as
293 technical and professional income generated or derived from
294 practice activities of the institute, for the benefit of the
295 institute and the fulfillment of its mission.

296 (b)1. The affairs of the not-for-profit corporation shall
297 be managed by a board of directors who shall serve without
298 compensation. The board of directors shall consist of the
299 President of the University of South Florida and the chair of
300 the State Board of Education, or their designees, 5
301 representatives of the state universities, and no fewer than 9
302 nor more than 14 representatives of the public who are neither
303 medical doctors nor state employees. Each director who is a
304 representative of a state university or of the public shall be
305 appointed to serve a term of 3 years. The chair of the board of



306 directors shall be selected by a majority vote of the directors.
307 Each director shall have only one vote.

308 2. The initial board of directors shall consist of the
309 President of the University of South Florida and the chair of
310 the State Board of Education, or their designees; the five
311 university representatives, of whom one shall be appointed by
312 the Governor, two by the President of the Senate, and two by the
313 Speaker of the House of Representatives; and nine public
314 representatives, of whom three shall be appointed by the
315 Governor, three by the President of the Senate, and three by the
316 Speaker of the House of Representatives. Upon the expiration of
317 the terms of the initial appointed directors, all directors
318 subject to 3-year terms of office under this paragraph shall be
319 appointed by a majority vote of the directors and the board may
320 be expanded to include additional public representative
321 directors up to the maximum number allowed. Any vacancy in
322 office shall be filled for the remainder of the term by majority
323 vote of the directors. Any director may be reappointed.

324 (3) The State Board of Education shall provide in the
325 agreement with the not-for-profit corporation for the following:

326 (a) Approval by the State Board of Education of the
327 articles of incorporation of the not-for-profit corporation.

328 (b) Approval by the State Board of Education of the
329 articles of incorporation of any not-for-profit corporate
330 subsidiary created by the not-for-profit corporation.

331 (c) Utilization of lands, ~~hospital~~ facilities, and
332 personnel by the not-for-profit corporation and its subsidiaries
333 for research, education, treatment, prevention, and the early



334 detection of Alzheimer's disease and for mutually approved
335 teaching and research programs conducted by the University of
336 South Florida or other accredited medical schools or research
337 institutes.

338 (d) Preparation of an annual postaudit of the not-for-
339 profit corporation's financial accounts and the financial
340 accounts of any subsidiaries to be conducted by an independent
341 certified public accountant. The annual audit report shall
342 include management letters and shall be submitted to the Auditor
343 General and the State Board of Education for review. The State
344 Board of Education, the Auditor General, and the Office of
345 Program Policy Analysis and Government Accountability shall have
346 the authority to require and receive from the not-for-profit
347 corporation and any subsidiaries, or from their independent
348 auditor, any detail or supplemental data relative to the
349 operation of the not-for-profit corporation or subsidiary.

350 (e) Provision by the not-for-profit corporation and its
351 subsidiaries of equal employment opportunities for all persons
352 regardless of race, color, religion, gender, age, or national
353 origin.

354 (4) The State Board of Education is authorized to secure
355 comprehensive general liability protection, including
356 professional liability protection, for the not-for-profit
357 corporation and its subsidiaries, pursuant to s. 1004.24. The
358 not-for-profit corporation and its subsidiaries shall be exempt
359 from any participation in any property insurance trust fund
360 established by law, including any property insurance trust fund
361 established pursuant to chapter 284, so long as the not-for-



362 profit corporation and its subsidiaries maintain property
363 insurance protection with comparable or greater coverage limits.

364 (5) In the event that the agreement between the not-for-
365 profit corporation and the State Board of Education is
366 terminated for any reason, the State Board of Education shall
367 assume governance and operation of the facilities.

368 (6) The institute shall be administered by a chief
369 executive officer, who shall be appointed by and serve at the
370 pleasure of the board of directors of the not-for-profit
371 corporation, and who shall exercise the following powers and
372 duties, subject to the approval of the board of directors:

373 (a) The chief executive officer shall establish programs
374 that fulfill the mission of the institute in research,
375 education, treatment, prevention, and early detection of
376 Alzheimer's disease; however, the chief executive officer may
377 not establish academic programs for which academic credit is
378 awarded and which culminate in the conferring of a degree,
379 without prior approval of the State Board of Education.

380 (b) The chief executive officer shall have control over
381 the budget and the moneys appropriated or donated to the
382 institute from private, local, state, and federal sources, as
383 well as technical and professional income generated or derived
384 from practice activities of the institute. However, professional
385 income generated by university faculty from practice activities
386 at the institute shall be shared between the institute and the
387 university as determined by the chief executive officer and the
388 appropriate university dean or vice president.



389 (c) The chief executive officer shall appoint
390 representatives of the institute to carry out the research,
391 patient care, and educational activities of the institute and
392 establish the compensation, benefits, and terms of service of
393 such representatives. Representatives of the institute shall be
394 eligible to hold concurrent appointments at affiliated academic
395 institutions. University faculty shall be eligible to hold
396 concurrent appointments at the institute.

397 (d) The chief executive officer shall have control over
398 the use and assignment of space and equipment within the
399 facilities.

400 (e) The chief executive officer shall have the power to
401 create the administrative structure necessary to carry out the
402 mission of the institute.

403 (f) The chief executive officer shall have a reporting
404 relationship to the Commissioner of Education.

405 (g) The chief executive officer shall provide a copy of
406 the institute's annual report to the Governor and Cabinet, the
407 President of the Senate, the Speaker of the House of
408 Representatives, and the chair of the State Board of Education.

409 (7) The board of directors of the not-for-profit
410 corporation shall create a council of scientific advisers to the
411 chief executive officer comprised of leading researchers,
412 physicians, and scientists. The council shall review programs
413 and recommend research priorities and initiatives to maximize
414 the state's investment in the institute. The members of the
415 council shall be appointed by the board of directors of the not-
416 for-profit corporation, ~~except for five members who shall be~~



417 ~~appointed by the State Board of Education.~~ Each member of the
418 council shall be appointed to serve a 2-year term and may be
419 reappointed to the council.

420 (8) In carrying out the provisions of this section, the
421 not-for-profit corporation and its subsidiaries are not agencies
422 within the meaning of s. 20.03(11).

423 (9) The following information is confidential and exempt
424 from the provisions of s. 119.07(1) and s. 24, Art. I of the
425 State Constitution:

426 (a) Personal identifying information relating to clients
427 of programs created or funded through the Johnnie B. Byrd, Sr.,
428 ~~Florida~~ Alzheimer's Center and Research Institute which is held
429 by the institute, University of South Florida, or State Board of
430 Education or by persons who provide services to clients of
431 programs created or funded through contracts with the Johnnie B.
432 Byrd, Sr., ~~Florida~~ Alzheimer's Center and Research Institute;

433 (b) Any medical or health records relating to patients
434 which may be created or received by the institute;

435 (c) Materials that relate to methods of manufacture or
436 production, potential trade secrets, potentially patentable
437 material, actual trade secrets as defined in s. 688.002, or
438 proprietary information received, generated, ascertained, or
439 discovered during the course of research conducted by or through
440 the institute and business transactions resulting from such
441 research;

442 (d) The identity of a donor or prospective donor to the
443 Johnnie B. Byrd, Sr., ~~Florida~~ Alzheimer's Center and Research



444 Institute who wishes to remain anonymous, and all information
445 identifying such donor or prospective donor;

446 (e) Any information received by the institute in the
447 performance of its duties and responsibilities which is
448 otherwise confidential and exempt by law; and

449 (f) Any information received by the institute from a
450 person from another state or nation or the Federal Government
451 which is otherwise confidential or exempt pursuant to that
452 state's or nation's laws or pursuant to federal law.

453

454 Any governmental entity that demonstrates a need to access such
455 confidential and exempt information in order to perform its
456 duties and responsibilities shall have access to such
457 information and shall otherwise keep such information
458 confidential and exempt. This section is subject to the Open
459 Government Sunset Review Act of 1995 in accordance with s.
460 119.15 and shall stand repealed on October 2, 2006, unless
461 reviewed and saved from repeal through reenactment by the
462 Legislature.

463 (10) Any appropriation to the institute provided in a
464 general appropriations act shall be paid directly to the board
465 of directors of the not-for-profit corporation by warrant drawn
466 by the Chief Financial Officer from the State Treasury.

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

468