



HB 0077A

2003

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A bill to be entitled

An act relating to the H. Lee Moffitt Cancer Center and Research Institute and the Johnnie Bryars Byrd, Sr., Alzheimer's Center and Research Institute at the University of South Florida; amending s. 1004.43, F.S.; authorizing the establishment of for-profit subsidiaries of the governing corporation; prohibiting certain activities by such for profit subsidiaries; providing that the contract with the State Board of Education shall permit the use of lands and facilities for research, education, treatment, prevention, and early detection of cancer; authorizing the governing corporation and its subsidiaries to obtain their own property insurance coverage; providing that certain appropriations shall be paid directly to the board of directors of the governing corporation; changing the appointing authority for certain members of the council of scientific advisors; amending s. 1004.445, F.S.; renaming the Florida Alzheimer's Center and Research Institute as the Johnnie Bryars Byrd, Sr., Alzheimer's Center and Research Institute; deleting obsolete language; authorizing the establishment of for-profit subsidiaries of the governing corporation; providing that the contract with the State Board of Education shall permit the use of lands and facilities for research, education, treatment, prevention, and early detection of Alzheimer's disease; authorizing the governing corporation and its subsidiaries to obtain their own property insurance coverage; providing that certain appropriations shall be paid directly to the board of directors of the governing corporation; changing the



HB 0077A

2003

31 appointing authority for certain members of the council of
32 scientific advisors; providing for construction of the act
33 in pari materia with laws enacted during the Regular
34 Session of the Legislature; providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 1004.43, Florida Statutes, is amended
39 to read:

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

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



HB 0077A

2003

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

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

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

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

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



HB 0077A

2003

91 detection of cancer and for mutually approved teaching and
 92 research programs conducted by the University of South Florida
 93 or other accredited medical schools or research institutes.

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

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

111 (3) The State Board of Education is authorized to secure
 112 comprehensive general liability protection, including
 113 professional liability protection, for the not-for-profit
 114 corporation and its subsidiaries pursuant to s. 1004.24. The
 115 not-for-profit corporation and its subsidiaries shall be exempt
 116 from any participation in any property insurance trust fund
 117 established by law, including any property insurance trust fund
 118 established pursuant to chapter 284, so long as the not-for-
 119 profit corporation and its subsidiaries maintain property
 120 insurance protection with comparable or greater coverage limits.



HB 0077A

2003

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

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

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

137 (b) The chief executive officer shall have control over
138 the budget and the dollars appropriated or donated to the
139 institute from private, local, state, and federal sources, as
140 well as technical and professional income generated or derived
141 from practice activities of the institute. However, professional
142 income generated by university faculty from practice activities
143 at the institute shall be shared between the institute and the
144 university as determined by the chief executive officer and the
145 appropriate university dean or vice president.

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



HB 0077A

2003

151 University faculty shall be eligible to hold concurrent
152 appointments at the institute.

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

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

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

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

165 (6) The board of directors of the not-for-profit
166 corporation shall create a council of scientific advisers to the
167 chief executive officer comprised of leading researchers,
168 physicians, and scientists. This council shall review programs
169 and recommend research priorities and initiatives so as to
170 maximize the state's investment in the institute. The council
171 shall be appointed by the board of directors of the not-for-
172 profit corporation ~~and shall include five appointees of the~~
173 ~~State Board of Education~~. Each member of the council shall be
174 appointed to serve a 2-year term and may be reappointed to the
175 council.

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

179 (8)(a) Records of the not-for-profit corporation and of
180 its subsidiaries are public records unless made confidential or



HB 0077A

2003

181 exempt by law.

182 (b) Proprietary confidential business information is
183 confidential and exempt from the provisions of s. 119.07(1) and
184 s. 24(a), Art. I of the State Constitution. However, the Auditor
185 General, the Office of Program Policy Analysis and Government
186 Accountability, and the State Board of Education, pursuant to
187 their oversight and auditing functions, must be given access to
188 all proprietary confidential business information upon request
189 and without subpoena and must maintain the confidentiality of
190 information so received. As used in this paragraph, the term
191 "proprietary confidential business information" means
192 information, regardless of its form or characteristics, which is
193 owned or controlled by the not-for-profit corporation or its
194 subsidiaries; is intended to be and is treated by the not-for-
195 profit corporation or its subsidiaries as private and the
196 disclosure of which would harm the business operations of the
197 not-for-profit corporation or its subsidiaries; has not been
198 intentionally disclosed by the corporation or its subsidiaries
199 unless pursuant to law, an order of a court or administrative
200 body, a legislative proceeding pursuant to s. 5, Art. III of the
201 State Constitution, or a private agreement that provides that
202 the information may be released to the public; and which is
203 information concerning:

204 1. Internal auditing controls and reports of internal
205 auditors;

206 2. Matters reasonably encompassed in privileged attorney-
207 client communications;

208 3. Contracts for managed-care arrangements, including
209 preferred provider organization contracts, health maintenance
210 organization contracts, and exclusive provider organization



HB 0077A

2003

211 contracts, and any documents directly relating to the
212 negotiation, performance, and implementation of any such
213 contracts for managed-care arrangements;

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

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

221 6. Corporate officer and employee personnel information;

222 7. Information relating to the proceedings and records of
223 credentialing panels and committees and of the governing board
224 of the not-for-profit corporation or its subsidiaries relating
225 to credentialing;

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

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

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

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

239

240 As used in this paragraph, the term "managed care" means systems



HB 0077A

2003

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

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

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

269 Section 2. Section 1004.445, Florida Statutes, is amended
270 to read:



HB 0077A

2003

271 1004.445 Johnnie Bryars Byrd, Sr., Florida Alzheimer's
272 Center and Research Institute.--

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

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

298 (b)1. The affairs of the not-for-profit corporation shall
299 be managed by a board of directors who shall serve without
300 compensation. The board of directors shall consist of the



HB 0077A

2003

301 President of the University of South Florida and the chair of
302 the State Board of Education, or their designees, 5
303 representatives of the state universities, and no fewer than 9
304 nor more than 14 representatives of the public who are neither
305 medical doctors nor state employees. Each director who is a
306 representative of a state university or of the public shall be
307 appointed to serve a term of 3 years. The chair of the board of
308 directors shall be selected by a majority vote of the directors.
309 Each director shall have only one vote.

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

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

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

330 (b) Approval by the State Board of Education of the



HB 0077A

2003

331 articles of incorporation of any not-for-profit corporate
 332 subsidiary created by the not-for-profit corporation.

333 (c) Utilization of lands, hospital facilities, and
 334 personnel by the not-for-profit corporation and its subsidiaries
 335 for research, education, treatment, prevention, and the early
 336 detection of Alzheimer's disease and for mutually approved
 337 teaching and research programs conducted by the University of
 338 South Florida or other accredited medical schools or research
 339 institutes.

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

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

356 (4) The State Board of Education is authorized to secure
 357 comprehensive general liability protection, including
 358 professional liability protection, for the not-for-profit
 359 corporation and its subsidiaries, pursuant to s. 1004.24. The
 360 not-for-profit corporation and its subsidiaries shall be exempt



HB 0077A

2003

361 from any participation in any property insurance trust fund
362 established by law, including any property insurance trust fund
363 established pursuant to chapter 284, so long as the not-for-
364 profit corporation and its subsidiaries maintain property
365 insurance protection with comparable or greater coverage limits.

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

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

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

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



HB 0077A

2003

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

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

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

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

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

411 (7) The board of directors of the not-for-profit
412 corporation shall create a council of scientific advisers to the
413 chief executive officer comprised of leading researchers,
414 physicians, and scientists. The council shall review programs
415 and recommend research priorities and initiatives to maximize
416 the state's investment in the institute. The members of the
417 council shall be appointed by the board of directors of the not-
418 for-profit corporation, ~~except for five members who shall be~~
419 ~~appointed by the State Board of Education.~~ Each member of the
420 council shall be appointed to serve a 2-year term and may be



HB 0077A

2003

421 reappointed to the council.

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

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

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

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

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

445 (d) The identity of a donor or prospective donor to the
 446 Johnnie Bryars Byrd, Sr., Florida Alzheimer's Center and
 447 Research Institute who wishes to remain anonymous, and all
 448 information identifying such donor or prospective donor;

449 (e) Any information received by the institute in the
 450 performance of its duties and responsibilities which is



HB 0077A

2003

451 otherwise confidential and exempt by law; and

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

456

457 Any governmental entity that demonstrates a need to access such
458 confidential and exempt information in order to perform its
459 duties and responsibilities shall have access to such
460 information and shall otherwise keep such information
461 confidential and exempt. This section is subject to the Open
462 Government Sunset Review Act of 1995 in accordance with s.
463 119.15 and shall stand repealed on October 2, 2006, unless
464 reviewed and saved from repeal through reenactment by the
465 Legislature.

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

470 Section 3. If any law amended by this act was also amended
471 by a law enacted at the 2003 Regular Session of the Legislature,
472 such laws shall be construed as if they had been enacted at the
473 same session of the Legislature, and full effect shall be given
474 to each if possible.

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