



1 A bill to be entitled

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



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31 Regular Session of the Legislature; providing an effective
 32 date.

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

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



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61 are authorized to receive, hold, invest, and administer property
62 and 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



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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



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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.



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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



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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



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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



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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 Bryars Byrd, Sr., Florida Alzheimer's
270 Center and Research Institute.--



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271 (1) ~~Effective July 1, 2002,~~ The Johnnie Bryars 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 Bryars Byrd, Sr., ~~Florida~~ Alzheimer's
282 Center and Research Institute. This not-for-profit corporation,
283 acting as an instrumentality of the state, shall govern and
284 operate the Johnnie Bryars Byrd, Sr., ~~Florida~~ Alzheimer's Center
285 and Research Institute in accordance with the terms of the
286 agreement between the State Board of Education and the not-for-
287 profit corporation. The not-for-profit corporation may, with the
288 prior approval of the State Board of Education, create ~~not-for-~~
289 ~~profit~~ corporate subsidiaries to fulfill its mission. The not-
290 for-profit corporation and its subsidiaries are authorized to
291 receive, hold, invest, and administer property and any moneys
292 acquired from private, local, state, and federal sources, as
293 well as technical and professional income generated or derived
294 from practice activities of the institute, for the benefit of
295 the 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



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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.



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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



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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,



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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



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

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

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

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

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

450 (f) Any information received by the institute from a



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451 person from another state or nation or the Federal Government
 452 which is otherwise confidential or exempt pursuant to that
 453 state's or nation's laws or pursuant to federal law.

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

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

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

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