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CHAMBER ACTION

1 The Committee on State Administration recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled

7 An act relating to public records and public meetings
8 exemptions; amending s. 1004.43, F.S.; expanding the public
9 records exemption for proprietary confidential business
10 information owned or controlled by the H. Lee Moffitt Cancer
11 Center and Research Institute to include information relating to
12 methods of manufacture or production, potential trade secrets,
13 potentially patentable material, and proprietary information
14 received, generated, ascertained, or discovered during the
15 course of research, and business transactions resulting from
16 such research; expanding the public records exemption to include
17 information received from another state or nation or the Federal
18 Government which is otherwise exempt or confidential pursuant to
19 the laws of that state or nation or pursuant to federal law;
20 providing for future review and repeal; providing a statement of
21 public necessity; amending s. 1004.445, F.S.; creating a public
22 records exemption for proprietary confidential business
23 information owned or controlled by the Florida Alzheimer's

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24 Center and Research Institute; specifying types of information
 25 that are deemed proprietary confidential business information;
 26 defining "managed care" for purposes of the act; creating a
 27 public meetings exemption for specified meetings or portions of
 28 meetings of the governing board of the Florida Alzheimer's
 29 Center and Research Institute; providing for future review and
 30 repeal; providing a statement of public necessity; providing an
 31 effective date.

32

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

34

35 Section 1. Paragraph (b) of subsection (8) of section
 36 1004.43, Florida Statutes, is amended to read:

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

41 (8)

42 (b)1. Proprietary confidential business information is
 43 confidential and exempt from the provisions of s. 119.07(1) and
 44 s. 24(a), Art. I of the State Constitution. However, the Auditor
 45 General, the Office of Program Policy Analysis and Government
 46 Accountability, and the State Board of Education, pursuant to
 47 their oversight and auditing functions, must be given access to
 48 all proprietary confidential business information upon request
 49 and without subpoena and must maintain the confidentiality of
 50 information so received. As used in this subparagraph ~~paragraph~~,
 51 the term "proprietary confidential business information" means

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52 information, regardless of its form or characteristics, which is
53 owned or controlled by the not-for-profit corporation or its
54 subsidiaries; is intended to be and is treated by the not-for-
55 profit corporation or its subsidiaries as private and the
56 disclosure of which would harm the business operations of the
57 not-for-profit corporation or its subsidiaries; has not been
58 intentionally disclosed by the corporation or its subsidiaries
59 unless pursuant to law, an order of a court or administrative
60 body, a legislative proceeding pursuant to s. 5, Art. III of the
61 State Constitution, or a private agreement that provides that
62 the information may be released to the public; and which is
63 information concerning:

64 ~~a.1.~~ Internal auditing controls and reports of internal
65 auditors;

66 ~~b.2.~~ Matters reasonably encompassed in privileged
67 attorney-client communications;

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

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

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

81 f.6. Corporate officer and employee personnel information;

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

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

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

92 j.10. Trade secrets as defined in s. 688.002, including
93 information relating to methods of manufacture or production,
94 potential trade secrets, potentially patentable material, or
95 proprietary information received, generated, ascertained, or
96 discovered during the course of research conducted by the not-
97 for-profit corporation or its subsidiaries and business
98 transactions resulting from such research, and reimbursement
99 methodologies or rates;~~or~~

100 k.11. The identity of donors or prospective donors of
101 property who wish to remain anonymous or any information
102 identifying such donors or prospective donors. The anonymity of
103 these donors or prospective donors must be maintained in the
104 auditor's report; or

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

110
 111 As used in this ~~subparagraph~~ paragraph, the term "managed care"
 112 means systems or techniques generally used by third-party payors
 113 or their agents to affect access to and control payment for
 114 health care services. Managed-care techniques most often include
 115 one or more of the following: prior, concurrent, and
 116 retrospective review of the medical necessity and
 117 appropriateness of services or site of services; contracts with
 118 selected health care providers; financial incentives or
 119 disincentives related to the use of specific providers,
 120 services, or service sites; controlled access to and
 121 coordination of services by a case manager; and payor efforts to
 122 identify treatment alternatives and modify benefit restrictions
 123 for high-cost patient care.

124 2. Sub-subparagraphs j. and l. of subparagraph 1. are
 125 subject to the Open Government Sunset Review Act of 1995 in
 126 accordance with s. 119.15 and shall stand repealed on October 2,
 127 2009, unless reviewed and saved from repeal through reenactment
 128 by the Legislature.

129 Section 2. The Legislature finds that it is a public
 130 necessity that information relating to methods of manufacture or
 131 production, potential trade secrets, potentially patentable
 132 materials, or proprietary information received, generated,

CODING: Words **stricken** are deletions; words **underlined** are additions.

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133 ascertained, or discovered during the course of research
134 conducted by the not-for-profit corporation organized solely for
135 the purpose of governing and operating the H. Lee Moffitt Cancer
136 Center and Research Institute or its subsidiaries, and business
137 transactions resulting from such research, be held confidential
138 and exempt from public disclosure because the disclosure of such
139 information would adversely impact the not-for-profit
140 corporation or its subsidiaries and would create an unfair
141 competitive advantage for persons receiving such information.
142 If such confidential and exempt information regarding research
143 in progress were released pursuant to a public records request,
144 others would be allowed to take the benefit of the research
145 without compensation or reimbursement to the research center.
146 The Legislature further finds that information received by the
147 not-for-profit corporation or its subsidiaries from a person in
148 this or another state or nation or the Federal Government which
149 is otherwise exempt or confidential pursuant to the laws of this
150 or another state or nation or pursuant to federal law should
151 remain exempt or confidential because the highly confidential
152 nature of cancer-related research necessitates that the not-for-
153 profit corporation or its subsidiaries be authorized to maintain
154 the status of exempt or confidential information it receives
155 from the sponsors of research. Without the exemptions provided
156 for herein, the disclosure of confidential and exempt
157 information would place the not-for-profit corporation on an
158 unequal footing in the marketplace as compared with its private
159 health care and medical research competitors who are not
160 required to disclose such confidential and exempt information.

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161 The Legislature finds that the disclosure of such confidential
 162 and exempt information would adversely impact the not-for-profit
 163 corporation or its subsidiaries in fulfilling their mission of
 164 cancer treatment, research, and education.

165 Section 3. Subsection (9) of section 1004.445, Florida
 166 Statutes, is amended, and subsection (10) is added to said
 167 section, to read:

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

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

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

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

182 3. Proprietary confidential business information. As used
 183 in this subparagraph, the term "proprietary confidential
 184 business information" means information, regardless of its form
 185 or characteristics, which is owned or controlled by the
 186 institute; is intended to be and is treated by the institute as
 187 private and the disclosure of which would harm the business
 188 operations of the institute; has not been intentionally

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189 disclosed by the institute unless pursuant to law, an order of a
 190 court or administrative body, a legislative proceeding pursuant
 191 to s. 5, Art. III of the State Constitution, or a private
 192 agreement that provides that the information may be released to
 193 the public; and which is information concerning:

194 a. Trade secrets as defined in s. 688.002, including
 195 information relating

196 ~~(c) Materials that relate to methods of manufacture or~~
 197 ~~production, potential trade secrets, potentially patentable~~
 198 ~~material, actual trade secrets as defined in s. 688.002, or~~
 199 ~~proprietary information received, generated, ascertained, or~~
 200 ~~discovered during the course of research conducted by or through~~
 201 ~~the institute and business transactions resulting from such~~
 202 ~~research, and reimbursement methodologies or rates.~~;

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

207 ~~c.(e)~~ c. Any information received by the institute in the
 208 performance of its duties and responsibilities which is
 209 otherwise confidential and exempt by law.

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

214 e. Internal auditing controls and reports of internal
 215 auditors.

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

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

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

229 i. Corporate officer and employee personnel information.

230 j. Information relating to the proceedings and records of
 231 the credentialing panels and committees and of the governing
 232 board of the institute relating to credentialing.

233 k. Minutes of exempt meetings of the governing board of
 234 the institute.

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

238
 239 As used in this subparagraph, the term "managed care" means
 240 systems or techniques generally used by third-party payors or
 241 their agents to affect access to and control payment for health
 242 care services. Managed-care techniques most often include one
 243 or more of the following: prior, concurrent, and retrospective

244 review of the medical necessity and appropriateness of services
 245 or site of services; contracts with selected health care
 246 providers; financial incentives or disincentives related to the
 247 use of specific providers, services, or service sites;
 248 controlled access to and coordination of services by a case
 249 manager; and payor efforts to identify treatment alternatives
 250 and modify benefit restrictions for high-cost patient care.

251 (b) The Auditor General, the Office of Program Policy
 252 Analysis and Government Accountability, and the State Board of
 253 Education, pursuant to their oversight and auditing functions,
 254 shall be given access to all proprietary confidential business
 255 information upon request and without subpoena and must maintain
 256 the confidentiality of information so received.

257 (c) Any governmental entity that demonstrates a need to
 258 access such confidential and exempt information in order to
 259 perform its duties and responsibilities shall have access to
 260 such information and shall otherwise keep such information
 261 confidential and exempt.

262 (d) This subsection ~~section~~ is subject to the Open
 263 Government Sunset Review Act of 1995 in accordance with s.
 264 119.15 and shall stand repealed on October 2, ~~2006~~ 2009, unless
 265 reviewed and saved from repeal through reenactment by the
 266 Legislature.

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

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272 (b) This subsection is subject to the Open Government
273 Sunset Review Act of 1995 in accordance with s. 119.15 and shall
274 stand repealed on October 2, 2009, unless reviewed and saved
275 from repeal through reenactment by the Legislature.

276 Section 4. 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, which includes reimbursement methodologies
280 or rates; internal auditing controls and reports of internal
281 auditors; contracts for managed-care arrangements and any
282 documents directly relating to the negotiation, performance, and
283 implementation of any such contracts for managed-care
284 arrangements; bids or other contractual data, banking records,
285 and credit agreements; information relating to private
286 contractual data; corporate officer and employee personnel
287 information; information relating to the proceedings and records
288 of the credentialing panels and committees and of the governing
289 board of the institute relating to credentialing; minutes of
290 meetings of the governing board of the institute; and
291 information that reveals plans for marketing services that the
292 institute reasonably expects to be provided by competitors be
293 held confidential and exempt from public disclosure. The
294 institute must compete directly with its private-sector
295 counterparts. Its economic survival depends on the institute's
296 ability to so compete. As such, these exemptions are necessary
297 because release of this information would adversely impact the
298 institute in the competitive health care and medical research
299 environment. Disclosure of such information would place the

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300 institute on an unequal footing in the marketplace as compared
301 with private health care providers that are not required to
302 disclose such confidential and exempt information. The highly
303 confidential nature of Alzheimer-related research discoveries
304 necessitates that the institute be authorized to maintain
305 confidential information it receives from, or generates for, the
306 sponsors of its research. Accordingly, disclosure of such
307 information would impede the effective and efficient
308 administration of the Florida Alzheimer's Center and Research
309 Institute and would create an unfair competitive advantage for
310 persons or entities receiving such information. Also, such
311 information is of a sensitive, personal nature regarding
312 corporate officers and employees. Disclosure of such information
313 could be harmful to the officer or employee. It is likewise a
314 public necessity that certain meetings or portions of meetings
315 of the governing board of the institute be closed in order to
316 protect the competitive interest of the institute and to
317 guarantee the ability of the governing board to fulfill its
318 Alzheimer's disease research and teaching mission for the
319 benefit of the public. Furthermore, disclosing information made
320 confidential and exempt pursuant to the institute's public
321 records exemption via an open meeting defeats the purpose of the
322 public records exemption.

323 Section 5. This act shall take effect upon becoming a law.