

By Senator Crist

12-1755C-04

See CS for HB 147

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

1 of public necessity; providing severability;
2 providing an effective date.

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

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6 Section 1. Paragraph (b) of subsection (8) of section
7 1004.43, Florida Statutes, is amended to read:

8 1004.43 H. Lee Moffitt Cancer Center and Research
9 Institute.--There is established the H. Lee Moffitt Cancer
10 Center and Research Institute at the University of South
11 Florida.

12 (8)

13 (b)1. Proprietary confidential business information is
14 confidential and exempt from the provisions of s. 119.07(1)
15 and s. 24(a), Art. I of the State Constitution. However, the
16 Auditor General, the Office of Program Policy Analysis and
17 Government Accountability, and the State Board of Education,
18 pursuant to their oversight and auditing functions, must be
19 given access to all proprietary confidential business
20 information upon request and without subpoena and must
21 maintain the confidentiality of information so received. As
22 used in this ~~subparagraph~~ paragraph, the term "proprietary
23 confidential business information" means information,
24 regardless of its form or characteristics, which is owned or
25 controlled by the not-for-profit corporation or its
26 subsidiaries; is intended to be and is treated by the
27 not-for-profit corporation or its subsidiaries as private and
28 the disclosure of which would harm the business operations of
29 the not-for-profit corporation or its subsidiaries; has not
30 been intentionally disclosed by the corporation or its
31 subsidiaries unless pursuant to law, an order of a court or

1 administrative body, a legislative proceeding pursuant to s.
2 5, Art. III of the State Constitution, or a private agreement
3 that provides that the information may be released to the
4 public; and is information concerning:

5 a.1. Internal auditing controls and reports of
6 internal auditors;

7 b.2. Matters reasonably encompassed in privileged
8 attorney-client communications;

9 c.3. Contracts for managed-care arrangements,
10 including preferred provider organization contracts, health
11 maintenance organization contracts, and exclusive provider
12 organization contracts, and any documents directly relating to
13 the negotiation, performance, and implementation of any such
14 contracts for managed-care arrangements;

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

19 e.5. Information relating to private contractual data,
20 the disclosure of which would impair the competitive interest
21 of the provider of the information;

22 f.6. Corporate officer and employee personnel
23 information;

24 g.7. Information relating to the proceedings and
25 records of credentialing panels and committees and of the
26 governing board of the not-for-profit corporation or its
27 subsidiaries relating to credentialing;

28 h.8. Minutes of meetings of the governing board of the
29 not-for-profit corporation and its subsidiaries, except
30 minutes of meetings open to the public pursuant to subsection
31 (9);

1 ~~i.9.~~ Information that reveals plans for marketing
2 services that the corporation or its subsidiaries reasonably
3 expect to be provided by competitors;

4 ~~j.10.~~ Trade secrets as defined in s. 688.002,
5 including information relating to methods of manufacture or
6 production, potential trade secrets, potentially patentable
7 material, or proprietary information received, generated,
8 ascertained, or discovered during the course of research
9 conducted by the not-for-profit corporation or its
10 subsidiaries and reimbursement methodologies or rates; ~~or~~

11 ~~k.11.~~ The identity of donors or prospective donors of
12 property who wish to remain anonymous or any information
13 identifying such donors or prospective donors. The anonymity
14 of these donors or prospective donors must be maintained in
15 the auditor's report; ~~or.~~

16 l. Any information received by the not-for-profit
17 corporation or its subsidiaries from a person in this or
18 another state or nation or the Federal Government which is
19 otherwise exempt or confidential pursuant to the laws of this
20 or another state or nation or pursuant to federal law.

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22 As used in this ~~subparagraph~~ paragraph, the term "managed
23 care" means systems or techniques generally used by
24 third-party payors or their agents to affect access to and
25 control payment for health care services. Managed-care
26 techniques most often include one or more of the following:
27 prior, concurrent, and retrospective review of the medical
28 necessity and appropriateness of services or site of services;
29 contracts with selected health care providers; financial
30 incentives or disincentives related to the use of specific
31 providers, services, or service sites; controlled access to

1 and coordination of services by a case manager; and payor
2 efforts to identify treatment alternatives and modify benefit
3 restrictions for high-cost patient care.

4 2. Sub-subparagraphs j. and l. of subparagraph 1. are
5 subject to the Open Government Sunset Review Act of 1995 in
6 accordance with s. 119.15 and shall stand repealed on October
7 2, 2009, unless reviewed and saved from repeal through
8 reenactment by the Legislature.

9 Section 2. The Legislature finds that it is a public
10 necessity that information relating to methods of manufacture
11 or production, potential trade secrets, potentially patentable
12 materials, or proprietary information received, generated,
13 ascertained, or discovered during the course of research
14 conducted by the not-for-profit corporation organized solely
15 for the purpose of governing and operating the H. Lee Moffitt
16 Cancer Center and Research Institute or its subsidiaries be
17 held confidential and exempt from public disclosure because
18 the disclosure of such information would adversely impact the
19 not-for-profit corporation or its subsidiaries and would
20 create an unfair competitive advantage for persons receiving
21 such information. If such confidential and exempt information
22 regarding research in progress were released pursuant to a
23 public records request, others would be allowed to take the
24 benefit of the research without compensation or reimbursement
25 to the research center. The Legislature further finds that
26 information received by the not-for-profit corporation or its
27 subsidiaries from a person in this or another state or nation
28 or the Federal Government which is otherwise exempt or
29 confidential pursuant to the laws of this or another state or
30 nation or pursuant to federal law should remain exempt or
31 confidential because the highly confidential nature of

1 cancer-related research necessitates that the not-for-profit
2 corporation or its subsidiaries be authorized to maintain the
3 status of exempt or confidential information it receives from
4 the sponsors of research. Without the exemptions provided for
5 herein, the disclosure of confidential and exempt information
6 would place the not-for-profit corporation on an unequal
7 footing in the marketplace as compared with its private health
8 care and medical research competitors who are not required to
9 disclose such confidential and exempt information. The
10 Legislature finds that the disclosure of such confidential and
11 exempt information would adversely impact the not-for-profit
12 corporation or its subsidiaries in fulfilling their mission of
13 cancer treatment, research, and education.

14 Section 3. Subsection (9) of section 1004.445, Florida
15 Statutes, is amended, and subsection (10) is added to that
16 section, to read:

17 1004.445 Florida Alzheimer's Center and Research
18 Institute.--

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

22 1.(a) Personal identifying information relating to
23 clients of programs created or funded through the Florida
24 Alzheimer's Center and Research Institute which is held by the
25 institute, the University of South Florida, or the State Board
26 of Education or by persons who provide services to clients of
27 programs created or funded through contracts with the Florida
28 Alzheimer's Center and Research Institute;

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

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1 3. Proprietary confidential business information. As
2 used in this subparagraph, the term "proprietary confidential
3 business information" means information, regardless of its
4 form or characteristics, which is owned or controlled by the
5 institute; is intended to be and is treated by the institute
6 as private and the disclosure of which would harm the business
7 operations of the institute; has not been intentionally
8 disclosed by the institute unless pursuant to law, an order of
9 a court or administrative body, a legislative proceeding
10 pursuant to s. 5, Art. III of the State Constitution, or a
11 private agreement that provides that the information may be
12 released to the public; and which is information concerning:
13 a. Trade secrets as defined in s. 688.002, including
14 information relating
15 ~~(c) Materials that relate to methods of manufacture or~~
16 ~~production, potential trade secrets, potentially patentable~~
17 ~~material, actual trade secrets as defined in s. 688.002, or~~
18 ~~proprietary information received, generated, ascertained, or~~
19 ~~discovered during the course of research conducted by or~~
20 ~~through the institute, and reimbursement methodologies or~~
21 ~~rates and business transactions resulting from such research.~~
22 b.(d) The identity of a donor or prospective donor to
23 ~~the Florida Alzheimer's Center and Research institute who~~
24 ~~wishes to remain anonymous, and all information identifying~~
25 ~~such donor or prospective donor.~~
26 c.(e) Any information received by the institute in the
27 performance of its duties and responsibilities which is
28 otherwise confidential and exempt by law. ~~and~~
29 d.(f) Any information received by the institute from a
30 person from another state or nation or the Federal Government
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1 which is otherwise confidential or exempt pursuant to that
2 state's or nation's laws or pursuant to federal law.

3 e. Systems or techniques used by third-party payors or
4 their agents to access and control health care service
5 payments.

6 f. Financial incentives or disincentives related to
7 the use of specific providers, services, or service sites.

8 g. Methods of access to and coordination of services
9 by a case manager.

10 h. Information relating to private contractual data,
11 upon a determination by the board of directors that the
12 disclosure of that information would impair the competitive
13 interest of the provider of the information. Such
14 determination by the board must be reflected in the minutes of
15 the meeting at which the determination was made.

16 i. That portion of the salary or benefits paid to an
17 employee of the institute who performs scientific research,
18 which salary or benefits are not paid from public funds.
19 Personnel records of such employee shall provide notice that
20 such employee receives a portion of salary or benefits payment
21 from private sources.

22 j. Minutes of those portions of a meeting of the
23 governing board of the institute which are closed pursuant to
24 paragraph (11)(a).

25 (b) Any governmental entity that demonstrates a need
26 to access such confidential and exempt information in order to
27 perform its duties and responsibilities shall have access to
28 such information and shall otherwise keep such information
29 confidential and exempt.

30 (10) Subsection (9)~~This section~~ is subject to the
31 Open Government Sunset Review Act of 1995 in accordance with

1 s. 119.15 and shall stand repealed on October 2, 2009 ~~2006~~,
2 unless reviewed and saved from repeal through reenactment by
3 the Legislature.

4 (11)(a) That portion of a meeting of the governing
5 board of the Florida Alzheimer's Center and Research Institute
6 at which information is discussed which is made confidential
7 and exempt pursuant to subsection (9) is exempt from s.
8 286.011 and s. 24(b), Art. I of the State Constitution.

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

13 Section 4. The Legislature finds that it is a public
14 necessity that personal identifying information relating to
15 clients of programs created or funded through the Florida
16 Alzheimer's Center and Research Institute, any medical or
17 health records relating to patients, and proprietary
18 confidential business information owned or controlled by the
19 Florida Alzheimer's Center and Research Institute be made
20 confidential and exempt. If information identifying clients of
21 programs created or funded through the institute were made
22 available, the personal privacy of those clients would be
23 invaded. Those clients could be subjected to public
24 embarrassment if their participation in these programs were
25 made known. Without protection for the identity of clients,
26 the ability of the institute to attract clients and perform
27 the duties for which it was created would be adversely
28 affected. Further, the Legislature finds that medical or
29 health records relating to patients of the institute must be
30 confidential and exempt. Medical and health records contain
31 sensitive, highly personal information and, without protection

1 for such information, patients might refuse the services of
2 the institute. Further, access to proprietary confidential
3 business information owned or controlled by the institute
4 could be used to create an unfair competitive advantage for
5 persons receiving such information, which would adversely
6 impact the institute, as well as entities whose proprietary
7 confidential business information is controlled by the
8 institute. If trade secrets owned or controlled by the
9 institute could be inspected and copied, other persons could
10 take the benefit of the research performed by the institute,
11 or of its business partners or agents, without compensation or
12 reimbursement to the institute or its business partners or
13 agents. Further, if such information were not protected, other
14 entities would likely decline to enter into partnership or
15 other business arrangements with the institute knowing that
16 their proprietary confidential business information could be
17 publicly available. The Legislature further finds that systems
18 or techniques used by third-party payors or their agents to
19 access and control health care service payments must also be
20 confidential and exempt because these methods or techniques
21 are developed by these third-party payors and if such
22 information were made available when in the possession of the
23 institute, competitors of the third-party payors could obtain
24 an economic advantage over the third-party payors. If that
25 were to occur, third-party payors would refuse to contract
26 with the institute, which would adversely affect the
27 institute. Further, the Legislature finds that financial
28 incentives or disincentives related to the use of specific
29 providers, services, or service sites and methods of access
30 and coordination of services must also be confidential and
31 exempt. If this information were obtained by competitors, it

1 could be used to the disadvantage of entities that contract
2 with the institute and these entities might refrain from
3 entering into such contracts on that basis. Further, the
4 Legislature finds that if the identity of a donor or
5 prospective donor who wishes to remain anonymous were not
6 protected, income from donations would be adversely affected,
7 which would cause a negative impact on the institute. The
8 Legislature also finds that information received by the
9 institute from a person in another state or nation or the
10 Federal Government which is otherwise exempt or confidential
11 pursuant to the laws of that state or nation or pursuant to
12 federal law should remain exempt or confidential because the
13 highly confidential nature of research necessitates that the
14 institute be authorized to maintain the status of exempt or
15 confidential information it receives from sponsors of research
16 and other persons. The Legislature finds that the disclosure
17 of such information would adversely impact the institute's
18 ability to fulfill the mission of research for which the
19 institute was created. It is a public necessity that the
20 institute have the same confidential protections for
21 information received in the performance of its duties and
22 obligations which is confidential and exempt by law in order
23 to put it on an equal footing with other public research
24 institutes and to ensure that it has similar opportunities for
25 success as other private research entities. Further, the
26 Legislature finds that it is a public necessity that portions
27 of such meetings of the governing board of the institute at
28 which personal identifying information of clients, medical or
29 health records relating to patients, and proprietary
30 confidential business information that is discussed be made
31 confidential and exempt. Further, the Legislature finds that

1 exempting that portion of the salary or benefit of a
2 scientific researcher that is not paid from public funds is a
3 public necessity to enable the institute to attract the most
4 highly competent and qualified researchers as employees, while
5 still maintaining oversight over the expenditure of public
6 funds. If those portions of meetings of the governing board of
7 the institute at which confidential and exempt information is
8 discussed were not exempt, the exemption for that information
9 would be defeated. Further, for the same reason, the
10 Legislature finds that minutes of those portions of meetings
11 at which information made confidential and exempt by this act
12 are discussed must also be made confidential and exempt.
13 Further, the Legislature finds that protecting private
14 contractual data of entities that are in the possession of the
15 institute is a public necessity because those entities might
16 refuse to provide necessary information to the institute if it
17 were to be available to the public. Thus, for the foregoing
18 reasons, the Legislature finds that it is a public necessity
19 that personal identifying information relating to clients of
20 programs created or funded through the Florida Alzheimer's
21 Center and Research Institute, any medical or health records
22 relating to patients, and proprietary confidential business
23 information owned or controlled by the institute must be made
24 confidential and exempt from public disclosure.

25 Section 5. If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 invalidity does not affect other provisions or applications of
28 the act which can be given effect without the invalid
29 provision or application, and to this end the provisions of
30 this act are declared severable.

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1 Section 6. This act shall take effect upon becoming a
2 law.
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