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1 A bill to be entitled

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

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30 directors of the governing corporation; changing the
 31 appointing authority for certain members of the council of
 32 scientific advisers; providing an effective date.
 33

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

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

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

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

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

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

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

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

87 (c) Utilization of lands, ~~hospital~~ facilities, and

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88 personnel by the not-for-profit corporation and its subsidiaries
 89 for research, education, treatment, prevention, and the early
 90 detection of cancer and for mutually approved teaching and
 91 research programs conducted by the University of South Florida
 92 or other accredited medical schools or research institutes.

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

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

110 (3) The State Board of Education is authorized to secure
 111 comprehensive general liability protection, including
 112 professional liability protection, for the not-for-profit
 113 corporation and its subsidiaries pursuant to s. 1004.24. The
 114 not-for-profit corporation and its subsidiaries shall be exempt
 115 from any participation in any property insurance trust fund
 116 established by law, including any property insurance trust fund

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117 established pursuant to chapter 284, so long as the not-for-
 118 profit corporation and its subsidiaries maintain property
 119 insurance protection with comparable or greater coverage limits.

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

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

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

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

145 (c) The chief executive officer shall appoint members to

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146 carry out the research, patient care, and educational activities
 147 of the institute and determine compensation, benefits, and terms
 148 of service. Members of the institute shall be eligible to hold
 149 concurrent appointments at affiliated academic institutions.
 150 University faculty shall be eligible to hold concurrent
 151 appointments at the institute.

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

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

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

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

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

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

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

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

203 1. Internal auditing controls and reports of internal

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204 auditors;

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

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

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

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

220 6. Corporate officer and employee personnel information;

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

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

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

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

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

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

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

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

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

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

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

275 (2)(a) The State Board of Education shall enter into an
 276 agreement for the utilization of the facilities on the campus of
 277 the University of South Florida to be known as the Johnnie B.
 278 Byrd, Sr., Florida Alzheimer's Center and Research Institute,
 279 including all furnishings, equipment, and other chattels used in
 280 the operation of those facilities, with a Florida not-for-profit
 281 corporation organized solely for the purpose of governing and
 282 operating the Johnnie B. Byrd, Sr., Florida Alzheimer's Center
 283 and Research Institute. This not-for-profit corporation, acting
 284 as an instrumentality of the state, shall govern and operate the
 285 Johnnie B. Byrd, Sr., Florida Alzheimer's Center and Research
 286 Institute in accordance with the terms of the agreement between
 287 the State Board of Education and the not-for-profit corporation.
 288 The not-for-profit corporation may, with the prior approval of
 289 the State Board of Education, create either for-profit or not-
 290 for-profit corporate subsidiaries, or both, to fulfill its

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291 mission. The not-for-profit corporation and its subsidiaries are
 292 authorized to receive, hold, invest, and administer property and
 293 any moneys acquired from private, local, state, and federal
 294 sources, as well as technical and professional income generated
 295 or derived from practice activities of the institute, for the
 296 benefit of the institute and the fulfillment of its mission.

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

309 2. The initial board of directors shall consist of the
 310 President of the University of South Florida and the chair of
 311 the State Board of Education, or their designees; the five
 312 university representatives, of whom one shall be appointed by
 313 the Governor, two by the President of the Senate, and two by the
 314 Speaker of the House of Representatives; and nine public
 315 representatives, of whom three shall be appointed by the
 316 Governor, three by the President of the Senate, and three by the
 317 Speaker of the House of Representatives. Upon the expiration of
 318 the terms of the initial appointed directors, all directors
 319 subject to 3-year terms of office under this paragraph shall be

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320 appointed by a majority vote of the directors and the board may
 321 be expanded to include additional public representative
 322 directors up to the maximum number allowed. Any vacancy in
 323 office shall be filled for the remainder of the term by majority
 324 vote of the directors. Any director may be reappointed.

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

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

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

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

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

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349 auditor, any detail or supplemental data relative to the
 350 operation of the not-for-profit corporation or subsidiary.

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

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

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

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

374 (a) The chief executive officer shall establish programs
 375 that fulfill the mission of the institute in research,
 376 education, treatment, prevention, and early detection of
 377 Alzheimer's disease; however, the chief executive officer may

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378 not establish academic programs for which academic credit is
 379 awarded and which culminate in the conferring of a degree,
 380 without prior approval of the State Board of Education.

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

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

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

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

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

406 (g) The chief executive officer shall provide a copy of

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407 the institute's annual report to the Governor and Cabinet, the
 408 President of the Senate, the Speaker of the House of
 409 Representatives, and the chair of the State Board of Education.

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

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

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

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

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

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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 B. Byrd, Sr., Florida Alzheimer's Center and Research
 445 Institute who wishes to remain anonymous, and all information
 446 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
 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

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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. This act shall take effect upon becoming a law.