

Bill No. SB 1082

Barcode 223656

CHAMBER ACTION

Senate

House

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The Committee on Governmental Oversight and Productivity
(Margolis) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Paragraph (b) of subsection (8) of section
1004.43, Florida Statutes, is amended, and paragraph (c) is
added to that subsection, to read:

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

(8)

(b) Proprietary confidential business information is
confidential and exempt from the provisions of s. 119.07(1)
and s. 24(a), Art. I of the State Constitution. However, the
Auditor General, the Office of Program Policy Analysis and
Government Accountability, and the State Board of Education,
pursuant to their oversight and auditing functions, must be

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1 given access to all proprietary confidential business
 2 information upon request and without subpoena and must
 3 maintain the confidentiality of information so received. As
 4 used in this paragraph, the term "proprietary confidential
 5 business information" means information, regardless of its
 6 form or characteristics, which is owned or controlled by the
 7 not-for-profit corporation or its subsidiaries; is intended to
 8 be and is treated by the not-for-profit corporation or its
 9 subsidiaries as private and the disclosure of which would harm
 10 the business operations of the not-for-profit corporation or
 11 its subsidiaries; has not been intentionally disclosed by the
 12 corporation or its subsidiaries unless pursuant to law, an
 13 order of a court or administrative body, a legislative
 14 proceeding pursuant to s. 5, Art. III of the State
 15 Constitution, or a private agreement that provides that the
 16 information may be released to the public; and which is
 17 information concerning:

18 1. Internal auditing controls and reports of internal
 19 auditors;

20 2. Matters reasonably encompassed in privileged
 21 attorney-client communications;

22 3. Contracts for managed-care arrangements, including
 23 preferred provider organization contracts, health maintenance
 24 organization contracts, and exclusive provider organization
 25 contracts, and any documents directly relating to the
 26 negotiation, performance, and implementation of any such
 27 contracts for managed-care arrangements;

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

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1 5. Information relating to private contractual data,
2 the disclosure of which would impair the competitive interest
3 of the provider of the information;

4 6. Corporate officer and employee personnel
5 information;

6 7. Information relating to the proceedings and records
7 of credentialing panels and committees and of the governing
8 board of the not-for-profit corporation or its subsidiaries
9 relating to credentialing;

10 8. Minutes of meetings of the governing board of the
11 not-for-profit corporation and its subsidiaries, except
12 minutes of meetings open to the public pursuant to subsection
13 (9);

14 9. Information that reveals plans for marketing
15 services that the corporation or its subsidiaries reasonably
16 expect to be provided by competitors;

17 10. Trade secrets as defined in s. 688.002, including:

18 a. Information relating to methods of manufacture or
19 production, potential trade secrets, potentially patentable
20 materials, or proprietary information received, generated,
21 ascertained, or discovered during the course of research
22 conducted by the not-for-profit corporation or its
23 subsidiaries; and

24 b. Reimbursement methodologies or rates; ~~or~~

25 11. The identity of donors or prospective donors of
26 property who wish to remain anonymous or any information
27 identifying such donors or prospective donors. The anonymity
28 of these donors or prospective donors must be maintained in
29 the auditor's report; or-

30 12. Any information received by the not-for-profit
31 corporation or its subsidiaries from an agency in this or

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1 another state or nation or the Federal Government which is
2 otherwise exempt or confidential pursuant to the laws of this
3 or another state or nation or pursuant to federal law.

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5 As used in this paragraph, the term "managed care" means
6 systems or techniques generally used by third-party payors or
7 their agents to affect access to and control payment for
8 health care services. Managed-care techniques most often
9 include one or more of the following: prior, concurrent, and
10 retrospective review of the medical necessity and
11 appropriateness of services or site of services; contracts
12 with selected health care providers; financial incentives or
13 disincentives related to the use of specific providers,
14 services, or service sites; controlled access to and
15 coordination of services by a case manager; and payor efforts
16 to identify treatment alternatives and modify benefit
17 restrictions for high-cost patient care.

18 (c) Subparagraphs 10. and 12. of paragraph (b) are
19 subject to the Open Government Sunset Review Act of 1995 in
20 accordance with s. 119.15 and shall stand repealed on October
21 2, 2010, unless reviewed and saved from repeal through
22 reenactment by the Legislature.

23 Section 2. The Legislature finds that it is a public
24 necessity that information relating to methods of manufacture
25 or production, potential trade secrets, potentially patentable
26 materials, or proprietary information received, generated,
27 ascertained, or discovered during the course of research
28 conducted by the not-for-profit corporation organized solely
29 for the purpose of governing and operating the H. Lee Moffitt
30 Cancer Center and Research Institute or its subsidiaries be
31 held confidential and exempt from public disclosure because

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1 the disclosure of such information would adversely impact the
2 not-for-profit corporation or its subsidiaries and would
3 create an unfair competitive advantage for persons receiving
4 such information. If such confidential and exempt information
5 regarding research in progress were released pursuant to a
6 public records request, others would be allowed to take the
7 benefit of the research without compensation or reimbursement
8 to the research center. The Legislature further finds that it
9 is a public necessity that information received by the
10 not-for-profit corporation or its subsidiaries from an agency
11 in this or another state or nation or the Federal Government
12 which is otherwise exempt or confidential from public
13 disclosure pursuant to the laws of this or another state or
14 nation or pursuant to federal law should remain exempt or
15 confidential from public records requirements because the
16 highly confidential nature of cancer-related research
17 necessitates that the not-for-profit corporation or its
18 subsidiaries be authorized to maintain the status of the
19 exempt or confidential information it receives. Without the
20 exemptions provided for in this act, the disclosure of
21 confidential and exempt information would place the
22 not-for-profit corporation on an unequal footing in the
23 marketplace as compared with its private health care and
24 medical research competitors that are not required to disclose
25 such confidential and exempt information. The Legislature
26 finds that the disclosure of such confidential and exempt
27 information would adversely impact the not-for-profit
28 corporation or its subsidiaries in fulfilling their mission of
29 cancer treatment, research, and education.

30 Section 3. This act shall take effect upon becoming a
31 law.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

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5 and insert:

6 A bill to be entitled

7 An act relating to a public records exemption;

8 amending s. 1004.43, F.S.; expanding the public

9 records exemption for proprietary confidential

10 business information owned or controlled by the

11 not-for-profit corporation operating the H. Lee

12 Moffitt Cancer Center and Research Institute

13 and its subsidiaries relating to trade secrets;

14 expanding the exemption to include information

15 received from an agency in this or another

16 state or nation or the Federal Government which

17 is otherwise exempt or confidential pursuant to

18 the laws of this or another state or nation or

19 pursuant to federal law; providing for future

20 review and repeal; providing a statement of

21 public necessity; providing an effective date.

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