

1 A bill to be entitled
 2 An act relating to the H. Lee Moffitt Cancer Center and
 3 Research Institute; amending s. 1004.43, F.S.; revising
 4 provisions relating to the establishment of the institute
 5 and specifying primary responsibilities of the institute;
 6 conforming provisions relating to the agreement by the
 7 Board of Governors and the not-for-profit corporation for
 8 the use of facilities on the campus of the University of
 9 South Florida; specifying that the not-for-profit
 10 corporation and its subsidiaries shall act as
 11 instrumentalities of the state for purposes of sovereign
 12 immunity; authorizing the use of land, facilities, and
 13 personnel for teaching and research programs conducted by
 14 state universities; revising provisions relating to the
 15 control and sharing of certain income; authorizing the
 16 issuance of a medical faculty certificate to an individual
 17 appointed to practice medicine at the institute; providing
 18 an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 1004.43, Florida Statutes, is amended
 23 to read:

24 1004.43 H. Lee Moffitt Cancer Center and Research
 25 Institute.--There is established the H. Lee Moffitt Cancer
 26 Center and Research Institute, a statewide resource for basic
 27 and clinical research and multidisciplinary approaches to
 28 patient care ~~at the University of South Florida.~~

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29 (1) The Board of Governors ~~State Board of Education~~ shall
30 enter into an agreement for the utilization of the facilities on
31 the campus of the University of South Florida to be known as the
32 H. Lee Moffitt Cancer Center and Research Institute, including
33 all furnishings, equipment, and other chattels used in the
34 operation of said facilities, with a Florida not-for-profit
35 corporation organized solely for the purpose of governing and
36 operating the H. Lee Moffitt Cancer Center and Research
37 Institute. The ~~This~~ not-for-profit corporation, ~~acting as an~~
38 ~~instrumentality of the State of Florida,~~ shall govern and
39 operate the H. Lee Moffitt Cancer Center and Research Institute
40 in accordance with the terms of the agreement between the Board
41 of Governors and the not-for-profit corporation. The not-for-
42 profit corporation may, with the prior approval of the Board of
43 Governors, create either for-profit or not-for-profit corporate
44 subsidiaries, or both, to fulfill its mission. The not-for-
45 profit corporation and any authorized and approved subsidiary
46 shall be corporations primarily acting as instrumentalities of
47 the state, pursuant to s. 768.28(2), for purposes of sovereign
48 immunity. For-profit subsidiaries of the not-for-profit
49 corporation may not compete with for-profit health care
50 providers in the delivery of radiation therapy services to
51 patients. The not-for-profit corporation and its subsidiaries
52 are authorized to receive, hold, invest, and administer property
53 and any moneys received from private, local, state, and federal
54 sources, as well as technical and professional income generated
55 or derived from practice activities of the institute, for the
56 benefit of the institute and the fulfillment of its mission. The

57 | affairs of the corporation shall be managed by a board of
58 | directors who shall serve without compensation. The President of
59 | the University of South Florida and the chair of the Board of
60 | Governors, or his or her designee, shall be directors of the
61 | not-for-profit corporation, together with 5 representatives of
62 | the state universities and no more than 14 nor fewer than 10
63 | directors who are not medical doctors or state employees. Each
64 | director shall have only one vote, shall serve a term of 3
65 | years, and may be reelected to the board. Other than the
66 | President of the University of South Florida and the chair of
67 | the Board of Governors, directors shall be elected by a majority
68 | vote of the board. The chair of the board of directors shall be
69 | selected by majority vote of the directors.

70 | (2) The Board of Governors shall provide in the agreement
71 | with the not-for-profit corporation for the following:

72 | (a) Approval of the articles of incorporation of the not-
73 | for-profit corporation by the Board of Governors.

74 | (b) Approval of the articles of incorporation of any ~~not-~~
75 | ~~for-profit~~ corporate subsidiary created by the not-for-profit
76 | corporation.

77 | (c) Utilization of lands, facilities, and personnel by the
78 | not-for-profit corporation and its subsidiaries for research,
79 | education, treatment, prevention, and the early detection of
80 | cancer and for mutually approved teaching and research programs
81 | conducted by the state universities ~~University of South Florida~~
82 | or other accredited medical schools or research institutes.

83 | (d) Preparation of an annual financial audit of the not-
84 | for-profit corporation's accounts and records and the accounts

85 and records of any subsidiaries to be conducted by an
86 independent certified public accountant. The annual audit report
87 shall include a management letter, as defined in s. 11.45, and
88 shall be submitted to the Auditor General and the Board of
89 Governors. The Board of Governors, the Auditor General, and the
90 Office of Program Policy Analysis and Government Accountability
91 shall have the authority to require and receive from the not-
92 for-profit corporation and any subsidiaries or from their
93 independent auditor any detail or supplemental data relative to
94 the operation of the not-for-profit corporation or subsidiary.

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

99 (3) The Board of Governors is authorized to secure
100 comprehensive general liability protection, including
101 professional liability protection, for the not-for-profit
102 corporation and its subsidiaries pursuant to s. 1004.24. The
103 not-for-profit corporation and its subsidiaries shall be exempt
104 from any participation in any property insurance trust fund
105 established by law, including any property insurance trust fund
106 established pursuant to chapter 284, so long as the not-for-
107 profit corporation and its subsidiaries maintain property
108 insurance protection with comparable or greater coverage limits.

109 (4) In the event that the agreement between the not-for-
110 profit corporation and the Board of Governors is terminated for
111 any reason, the Board of Governors shall resume governance and
112 operation of such facilities.

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113 (5) The institute shall be administered by a chief
114 executive officer who shall serve at the pleasure of the board
115 of directors of the not-for-profit corporation and who shall
116 have the following powers and duties subject to the approval of
117 the board of directors:

118 (a) The chief executive officer shall establish programs
119 which fulfill the mission of the institute in research,
120 education, treatment, prevention, and the early detection of
121 cancer; however, the chief executive officer shall not establish
122 academic programs for which academic credit is awarded and which
123 terminate in the conference of a degree without prior approval
124 of the Board of Governors.

125 (b) The chief executive officer shall have control over
126 the budget and the dollars appropriated or donated to the
127 institute from private, local, state, and federal sources, as
128 well as technical and professional income generated or derived
129 from practice activities of the not-for-profit corporation and
130 its subsidiaries ~~institute~~. However, professional income
131 generated by state university faculty from practice activities
132 at the institute shall be shared between the institute and the
133 university as determined by the chief executive officer and the
134 appropriate university dean or vice president. Professional
135 income generated by institute members from practice activities
136 may be shared between the not-for-profit corporation and its
137 subsidiaries as determined by the chief executive officer.

138 (c) The chief executive officer shall appoint members to
139 carry out the research, patient care, and educational activities
140 of the institute and determine compensation, benefits, and terms

141 of service. Members of the institute shall be eligible to hold
142 concurrent appointments at affiliated academic institutions.
143 State university faculty shall be eligible to hold concurrent
144 appointments at the institute.

145 (d) The chief executive officer shall have control over
146 the use and assignment of space and equipment within the
147 facilities.

148 (e) The chief executive officer shall have the power to
149 create the administrative structure necessary to carry out the
150 mission of the institute.

151 (f) The chief executive officer shall have a reporting
152 relationship to the Board of Governors or its designee.

153 (g) The chief executive officer shall provide a copy of
154 the institute's annual report to the Governor and Cabinet, the
155 President of the Senate, the Speaker of the House of
156 Representatives, and the chair of the Board of Governors.

157 (6) The board of directors of the not-for-profit
158 corporation shall create a council of scientific advisers to the
159 chief executive officer comprised of leading researchers,
160 physicians, and scientists. This council shall review programs
161 and recommend research priorities and initiatives so as to
162 maximize the state's investment in the institute. The council
163 shall be appointed by the board of directors of the not-for-
164 profit corporation. Each member of the council shall be
165 appointed to serve a 2-year term and may be reappointed to the
166 council.

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

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

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

- 195 1. Internal auditing controls and reports of internal
 196 auditors;
- 197 2. Matters reasonably encompassed in privileged attorney-
 198 client communications;
- 199 3. Contracts for managed-care arrangements, including
 200 preferred provider organization contracts, health maintenance
 201 organization contracts, and exclusive provider organization
 202 contracts, and any documents directly relating to the
 203 negotiation, performance, and implementation of any such
 204 contracts for managed-care arrangements;
- 205 4. Bids or other contractual data, banking records, and
 206 credit agreements the disclosure of which would impair the
 207 efforts of the not-for-profit corporation or its subsidiaries to
 208 contract for goods or services on favorable terms;
- 209 5. Information relating to private contractual data, the
 210 disclosure of which would impair the competitive interest of the
 211 provider of the information;
- 212 6. Corporate officer and employee personnel information;
- 213 7. Information relating to the proceedings and records of
 214 credentialing panels and committees and of the governing board
 215 of the not-for-profit corporation or its subsidiaries relating
 216 to credentialing;
- 217 8. Minutes of meetings of the governing board of the not-
 218 for-profit corporation and its subsidiaries, except minutes of
 219 meetings open to the public pursuant to subsection (9);
- 220 9. Information that reveals plans for marketing services
 221 that the corporation or its subsidiaries reasonably expect to be
 222 provided by competitors;

223 10. Trade secrets as defined in s. 688.002, including:
 224 a. Information relating to methods of manufacture or
 225 production, potential trade secrets, potentially patentable
 226 materials, or proprietary information received, generated,
 227 ascertained, or discovered during the course of research
 228 conducted by the not-for-profit corporation or its subsidiaries;
 229 and

230 b. Reimbursement methodologies or rates;

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

236 12. Any information received by the not-for-profit
 237 corporation or its subsidiaries from an agency in this or
 238 another state or nation or the Federal Government which is
 239 otherwise exempt or confidential pursuant to the laws of this or
 240 another state or nation or pursuant to federal law.

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

251 access to and coordination of services by a case manager; and
 252 payor efforts to identify treatment alternatives and modify
 253 benefit restrictions for high-cost patient care.

254 (c) Subparagraphs 10. and 12. of paragraph (b) are subject
 255 to the Open Government Sunset Review Act in accordance with s.
 256 119.15 and shall stand repealed on October 2, 2010, unless
 257 reviewed and saved from repeal through reenactment by the
 258 Legislature.

259 (9) Meetings of the governing board of the not-for-profit
 260 corporation and meetings of the subsidiaries of the not-for-
 261 profit corporation at which the expenditure of dollars
 262 appropriated to the not-for-profit corporation by the state are
 263 discussed or reported must remain open to the public in
 264 accordance with s. 286.011 and s. 24(b), Art. I of the State
 265 Constitution, unless made confidential or exempt by law. Other
 266 meetings of the governing board of the not-for-profit
 267 corporation and of the subsidiaries of the not-for-profit
 268 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
 269 the State Constitution.

270 (10) In addition to the continuing appropriation to the
 271 institute provided in s. 210.20(2), any appropriation to the
 272 institute provided in a general appropriations act shall be paid
 273 directly to the board of directors of the not-for-profit
 274 corporation by warrant drawn by the Chief Financial Officer from
 275 the State Treasury.

276 (11) Notwithstanding the requirements set forth in s.
 277 458.3145, a medical faculty certificate as described in s.
 278 458.3145 may be issued to an individual who has been offered and

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279 | accepted a full-time appointment to practice medicine at the
280 | institute.

281 | Section 2. This act shall take effect July 1, 2009.