

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; providing a
 16 definition; amending s. 458.3145, F.S.; authorizing the
 17 issuance of a medical faculty certificate without
 18 examination to certain faculty at the H. Lee Moffitt
 19 Cancer Center and Research Institute; providing an
 20 effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 1004.43, Florida Statutes, is amended
 25 to read:

26 1004.43 H. Lee Moffitt Cancer Center and Research
 27 Institute.--There is established the H. Lee Moffitt Cancer
 28 Center and Research Institute, a statewide resource for basic

29 and clinical research and multidisciplinary approaches to
 30 patient care at the University of South Florida.

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

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

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

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

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

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

CS/HB 491

2009

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

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

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

111 (4) In the event that the agreement between the not-for-
112 profit corporation and the Board of Governors is terminated for

113 any reason, the Board of Governors shall resume governance and
 114 operation of such facilities.

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

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

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

141 individual employed by the not-for-profit corporation or a
142 subsidiary as a clinical or scientific faculty member.

143 (c) The chief executive officer shall appoint members to
144 carry out the research, patient care, and educational activities
145 of the institute and determine compensation, benefits, and terms
146 of service. Members of the institute shall be eligible to hold
147 concurrent appointments at affiliated academic institutions.
148 State university faculty shall be eligible to hold concurrent
149 appointments at the institute.

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

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

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

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

162 (6) The board of directors of the not-for-profit
163 corporation shall create a council of scientific advisers to the
164 chief executive officer comprised of leading researchers,
165 physicians, and scientists. This council shall review programs
166 and recommend research priorities and initiatives so as to
167 maximize the state's investment in the institute. The council
168 shall be appointed by the board of directors of the not-for-

CS/HB 491

2009

169 profit corporation. Each member of the council shall be
170 appointed to serve a 2-year term and may be reappointed to the
171 council.

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

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

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

CS/HB 491

2009

197 State Constitution, or a private agreement that provides that
198 the information may be released to the public; and which is
199 information concerning:

200 1. Internal auditing controls and reports of internal
201 auditors;

202 2. Matters reasonably encompassed in privileged attorney-
203 client communications;

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

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

214 5. Information relating to private contractual data, the
215 disclosure of which would impair the competitive interest of the
216 provider of the information;

217 6. Corporate officer and employee personnel information;

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

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

225 9. Information that reveals plans for marketing services
 226 that the corporation or its subsidiaries reasonably expect to be
 227 provided by competitors;

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

229 a. Information relating to methods of manufacture or
 230 production, potential trade secrets, potentially patentable
 231 materials, or proprietary information received, generated,
 232 ascertained, or discovered during the course of research
 233 conducted by the not-for-profit corporation or its subsidiaries;
 234 and

235 b. Reimbursement methodologies or rates;

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

241 12. Any information received by the not-for-profit
 242 corporation or its subsidiaries from an agency in this or
 243 another state or nation or the Federal Government which is
 244 otherwise exempt or confidential pursuant to the laws of this or
 245 another state or nation or pursuant to federal law.

246
 247 As used in this paragraph, the term "managed care" means systems
 248 or techniques generally used by third-party payors or their
 249 agents to affect access to and control payment for health care
 250 services. Managed-care techniques most often include one or more
 251 of the following: prior, concurrent, and retrospective review of
 252 the medical necessity and appropriateness of services or site of

253 services; contracts with selected health care providers;
254 financial incentives or disincentives related to the use of
255 specific providers, services, or service sites; controlled
256 access to and coordination of services by a case manager; and
257 payor efforts to identify treatment alternatives and modify
258 benefit restrictions for high-cost patient care.

259 (c) Subparagraphs 10. and 12. of paragraph (b) are subject
260 to the Open Government Sunset Review Act in accordance with s.
261 119.15 and shall stand repealed on October 2, 2010, unless
262 reviewed and saved from repeal through reenactment by the
263 Legislature.

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

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

CS/HB 491

2009

281 Section 2. Paragraph (i) of subsection (1) of section
 282 458.3145, Florida Statutes, is amended to read:

283 458.3145 Medical faculty certificate.--

284 (1) A medical faculty certificate may be issued without
 285 examination to an individual who:

286 (i) Has been offered and has accepted a full-time faculty
 287 appointment to teach in a program of medicine at:

- 288 1. The University of Florida,
- 289 2. The University of Miami,
- 290 3. The University of South Florida,
- 291 4. The Florida State University,
- 292 5. The Florida International University,
- 293 6. The University of Central Florida, ~~or~~
- 294 7. The Mayo Medical School at the Mayo Clinic in
 295 Jacksonville, Florida, or
- 296 8. The H. Lee Moffitt Cancer Center and Research
 297 Institute.

298 Section 3. This act shall take effect July 1, 2009.