

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; providing exceptions; authorizing the use of
 13 land, facilities, and personnel for teaching and research
 14 programs conducted by state universities; revising
 15 provisions relating to the control and sharing of certain
 16 income; providing a definition; amending s. 458.3145,
 17 F.S.; authorizing the issuance of a medical faculty
 18 certificate without examination to certain faculty at the
 19 H. Lee Moffitt Cancer Center and Research Institute;
 20 providing an 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. However, sovereign immunity shall not apply to claims
51 for bodily injury or death made against any person or entity
52 that is a licensed health care provider acting within the course
53 and scope of any agency relationship with a for-profit
54 subsidiary where such bodily injury or death is legally caused
55 by treatment or therapy, except when such treatment or therapy
56 is undertaken pursuant to a research study conducted with the

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

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

83 (a) Approval of the articles of incorporation of the not-
84 for-profit corporation by the Board of Governors.

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

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

94 (d) Preparation of an annual financial audit of the not-
95 for-profit corporation's accounts and records and the accounts
96 and records of any subsidiaries to be conducted by an
97 independent certified public accountant. The annual audit report
98 shall include a management letter, as defined in s. 11.45, and
99 shall be submitted to the Auditor General and the Board of
100 Governors. The Board of Governors, the Auditor General, and the
101 Office of Program Policy Analysis and Government Accountability
102 shall have the authority to require and receive from the not-
103 for-profit corporation and any subsidiaries or from their
104 independent auditor any detail or supplemental data relative to
105 the operation of the not-for-profit corporation or 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 Board of Governors 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
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 Board of Governors is terminated for
122 any reason, the Board of Governors shall resume governance and
123 operation of such 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 conferral of a degree without prior approval
135 of the Board of Governors.

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 not-for-profit corporation and

141 its subsidiaries ~~institute~~. However, professional income
142 generated by state university faculty from practice activities
143 at the institute shall be shared between the institute and the
144 university as determined by the chief executive officer and the
145 appropriate university dean or vice president. Professional
146 income generated by institute members from practice activities
147 may be shared between the not-for-profit corporation and its
148 subsidiaries as determined by the chief executive officer. As
149 used in this paragraph, the term "institute member" means an
150 individual employed by the not-for-profit corporation or a
151 subsidiary as a clinical or scientific faculty member.

152 (c) The chief executive officer shall appoint members to
153 carry out the research, patient care, and educational activities
154 of the institute and determine compensation, benefits, and terms
155 of service. Members of the institute shall be eligible to hold
156 concurrent appointments at affiliated academic institutions.
157 State university faculty shall be eligible to hold concurrent
158 appointments at the institute.

159 (d) The chief executive officer shall have control over
160 the use and assignment of space and equipment within the
161 facilities.

162 (e) The chief executive officer shall have the power to
163 create the administrative structure necessary to carry out the
164 mission of the institute.

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

167 (g) The chief executive officer shall provide a copy of
168 the institute's annual report to the Governor and Cabinet, the

169 President of the Senate, the Speaker of the House of
 170 Representatives, and the chair of the Board of Governors.

171 (6) The board of directors of the not-for-profit
 172 corporation shall create a council of scientific advisers to the
 173 chief executive officer comprised of leading researchers,
 174 physicians, and scientists. This council shall review programs
 175 and recommend research priorities and initiatives so as to
 176 maximize the state's investment in the institute. The council
 177 shall be appointed by the board of directors of the not-for-
 178 profit corporation. Each member of the council shall be
 179 appointed to serve a 2-year term and may be reappointed to the
 180 council.

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

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

187 (b) Proprietary confidential business information is
 188 confidential and exempt from the provisions of s. 119.07(1) and
 189 s. 24(a), Art. I of the State Constitution. However, the Auditor
 190 General, the Office of Program Policy Analysis and Government
 191 Accountability, and the Board of Governors, pursuant to their
 192 oversight and auditing functions, must be given access to all
 193 proprietary confidential business information upon request and
 194 without subpoena and must maintain the confidentiality of
 195 information so received. As used in this paragraph, the term
 196 "proprietary confidential business information" means

197 information, regardless of its form or characteristics, which is
198 owned or controlled by the not-for-profit corporation or its
199 subsidiaries; is intended to be and is treated by the not-for-
200 profit corporation or its subsidiaries as private and the
201 disclosure of which would harm the business operations of the
202 not-for-profit corporation or its subsidiaries; has not been
203 intentionally disclosed by the corporation or its subsidiaries
204 unless pursuant to law, an order of a court or administrative
205 body, a legislative proceeding pursuant to s. 5, Art. III of the
206 State Constitution, or a private agreement that provides that
207 the information may be released to the public; and which is
208 information concerning:

209 1. Internal auditing controls and reports of internal
210 auditors;

211 2. Matters reasonably encompassed in privileged attorney-
212 client communications;

213 3. Contracts for managed-care arrangements, including
214 preferred provider organization contracts, health maintenance
215 organization contracts, and exclusive provider organization
216 contracts, and any documents directly relating to the
217 negotiation, performance, and implementation of any such
218 contracts for managed-care arrangements;

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

223 5. Information relating to private contractual data, the
 224 disclosure of which would impair the competitive interest of the
 225 provider of the information;

226 6. Corporate officer and employee personnel information;

227 7. Information relating to the proceedings and records of
 228 credentialing panels and committees and of the governing board
 229 of the not-for-profit corporation or its subsidiaries relating
 230 to credentialing;

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

234 9. Information that reveals plans for marketing services
 235 that the corporation or its subsidiaries reasonably expect to be
 236 provided by competitors;

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

238 a. Information relating to methods of manufacture or
 239 production, potential trade secrets, potentially patentable
 240 materials, or proprietary information received, generated,
 241 ascertained, or discovered during the course of research
 242 conducted by the not-for-profit corporation or its subsidiaries;
 243 and

244 b. Reimbursement methodologies or rates;

245 11. The identity of donors or prospective donors of
 246 property who wish to remain anonymous or any information
 247 identifying such donors or prospective donors. The anonymity of
 248 these donors or prospective donors must be maintained in the
 249 auditor's report; or

250 12. Any information received by the not-for-profit
251 corporation or its subsidiaries from an agency in this or
252 another state or nation or the Federal Government which is
253 otherwise exempt or confidential pursuant to the laws of this or
254 another state or nation or pursuant to federal law.

255

256 As used in this paragraph, the term "managed care" means systems
257 or techniques generally used by third-party payors or their
258 agents to affect access to and control payment for health care
259 services. Managed-care techniques most often include one or more
260 of the following: prior, concurrent, and retrospective review of
261 the medical necessity and appropriateness of services or site of
262 services; contracts with selected health care providers;
263 financial incentives or disincentives related to the use of
264 specific providers, services, or service sites; controlled
265 access to and coordination of services by a case manager; and
266 payor efforts to identify treatment alternatives and modify
267 benefit restrictions for high-cost patient care.

268 (c) Subparagraphs 10. and 12. of paragraph (b) are subject
269 to the Open Government Sunset Review Act in accordance with s.
270 119.15 and shall stand repealed on October 2, 2010, unless
271 reviewed and saved from repeal through reenactment by the
272 Legislature.

273 (9) Meetings of the governing board of the not-for-profit
274 corporation and meetings of the subsidiaries of the not-for-
275 profit corporation at which the expenditure of dollars
276 appropriated to the not-for-profit corporation by the state are
277 discussed or reported must remain open to the public in

278 accordance with s. 286.011 and s. 24(b), Art. I of the State
 279 Constitution, unless made confidential or exempt by law. Other
 280 meetings of the governing board of the not-for-profit
 281 corporation and of the subsidiaries of the not-for-profit
 282 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
 283 the State Constitution.

284 (10) In addition to the continuing appropriation to the
 285 institute provided in s. 210.20(2), any appropriation to the
 286 institute provided in a general appropriations act shall be paid
 287 directly to the board of directors of the not-for-profit
 288 corporation by warrant drawn by the Chief Financial Officer from
 289 the State Treasury.

290 Section 2. Paragraph (i) of subsection (1) of section
 291 458.3145, Florida Statutes, is amended to read:

292 458.3145 Medical faculty certificate.--

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

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

- 297 1. The University of Florida,
- 298 2. The University of Miami,
- 299 3. The University of South Florida,
- 300 4. The Florida State University,
- 301 5. The Florida International University,
- 302 6. The University of Central Florida, ~~or~~
- 303 7. The Mayo Medical School at the Mayo Clinic in
 304 Jacksonville, Florida, or

CS/CS/HB 491

2009

305 8. The H. Lee Moffitt Cancer Center and Research
306 Institute.

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