

By Senator Fasano

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

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

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

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

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

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

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

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

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

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

84 (d) Preparation of an annual financial audit of the not-
85 for-profit corporation's accounts and records and the accounts
86 and records of any subsidiaries to be conducted by an
87 independent certified public accountant. The annual audit report

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

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

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

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

114 (5) The institute shall be administered by a chief
115 executive officer who shall serve at the pleasure of the board
116 of directors of the not-for-profit corporation and who shall

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117 have the following powers and duties subject to the approval of
118 the board of directors:

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

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

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

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

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 its
171 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

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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

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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

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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

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

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