

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1022

INTRODUCER: Judiciary Committee and Senators Storms and Sobel

SUBJECT: H. Lee Moffitt Cancer Center and Research Institute

DATE: March 29, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Matthews</u>	<u>HE</u>	Fav/1 amendment
2.	<u>Stovall</u>	<u>Wilson</u>	<u>HR</u>	Favorable
3.	<u>Treadwell</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
4.	_____	_____	<u>WPSC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill expressly grants sovereign immunity to the not-for-profit corporation governing the H. Lee Moffitt Cancer Center and Research Institute (Moffitt Center). The bill also extends sovereign immunity to any not-for-profit subsidiary of the Moffitt Center.

Authority is provided for technical and professional income generated by individuals employed or appointed by the Moffitt Center from practice activities to be shared with Moffitt Center subsidiaries. The bill also clarifies that professional income generated by state university employees from practice activities at the Moffitt Center may be shared between the university, the Moffitt Center, and subsidiaries of the Moffitt Center upon approval of the chief executive officer and the university dean or vice president.

This bill expands the authority for the Moffitt Center to enter into joint teaching and research programs beyond the University of South Florida to other state universities.

This bill substantially amends section 1004.43, Florida Statutes.

II. Present Situation:

Moffitt Center

Although established in law earlier, current statutory authority for the H. Lee Moffitt Cancer Center and Research Institute (Moffitt Center) is found in s. 1004.43, F.S., which also provides for its location at the campus of the University of South Florida (USF). The Moffitt Center is classified as a not-for-profit corporation acting as an instrumentality of the state.¹ A board of directors manages the Moffitt Center, and a chief executive officer, who serves at the pleasure of the board of directors, administers the center.² Authority is provided for the Moffitt Center to create both not-for-profit and for-profit subsidiaries.³

The Moffitt Center opened in 1986 and became a National Cancer Institute Comprehensive Cancer Center in 2001. The Moffitt Center's mission is "[t]o contribute to the prevention and cure of cancer."⁴

The Board of Regents approved the only not-for-profit subsidiaries, and these remain in operation. The not-for-profit subsidiaries include:

- The H. Lee Moffitt Cancer Center and Research Institute Hospital, Inc.;
- The H. Lee Moffitt Cancer Center and Research Institute Lifetime Cancer Screening Center, Inc.; and
- The H. Lee Moffitt Cancer Center and Research Institute Foundation, Inc.⁵

Two for-profit subsidiaries exist, the Moffitt Technologies Corporation, approved by the State Board of Education, and the Moffitt Genetics Corporation, approved by the Board of Governors.⁶

Board of Governors Ballot Initiative

In 2002, Florida voters approved a ballot initiative which, in part, established the Board of Governors in the State Constitution.⁷ In so doing, the delineation of responsibilities regarding various duties in public higher education changed. Many post-secondary duties assigned to the State Board of Education transferred to the Board of Governors. Legislation in 2007 replaced a number of references to the State Board of Education with the Board of Governors. At this time, the Legislature, in its discretion, amended s. 1004.43, F.S., to substitute the Board of Governors

¹ Reference is made in statute to the not-for-profit corporation as the entity that actually governs the Moffitt Center.

² Comm. on Higher Education, The Florida Senate, *Open Government Sunset Review of Section 1004.43(8)10. and 12., F.S., H. Lee Moffitt Cancer Center and Research Institute Trade Secrets and Information Exempt or Confidential under the Laws of Another State, Nation, or the Federal Government*, 3 (Interim Report 2010-221) (Sept. 2009), available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-221he.pdf.

³ Section 1004.43(1), F.S.

⁴ Moffitt Cancer Center, *Overview*, available at www.moffitt.org (last visited Mar. 21, 2010).

⁵ L. David de La Parte, *Survey of the H. Lee Moffitt Cancer Center and Research Institute* (Aug. 27, 2009) (on file with the Senate Committee on Judiciary).

⁶ Comm. on Higher Education, *supra* note 2, at 3.

⁷ The initiative placed the provision in article IX, section 7 of the Florida Constitution.

for the State Board of Education regarding the agreement with the Moffitt Center for land, facilities, and personnel use at the USF, and the approval of articles of incorporation.⁸

Sovereign Immunity

The state is immune from tort liability through the long-standing principle of sovereign immunity. The Florida Constitution authorizes the Legislature to provide for lawsuits against the state.⁹ Section 768.28, F.S., modeled after the Federal Tort Claims Act, provides a waiver of sovereign immunity for tort liability and limits the waiver to a specified cap on damages.¹⁰ Tortious actions apply to injury or a loss of property, personal injury, or death caused through negligence or wrongful acts. Sovereign immunity is available to the state and its agencies or subdivisions.¹¹ State agencies and subdivisions are defined to include:

the executive departments, the Legislature, the judicial branch . . . , and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities. . . .¹²

The cap on damages for sovereign immunity is set at \$100,000 per claim and \$200,000 per incident.¹³ However, claim bills, authorized at the prerogative of the Legislature, may exceed these amounts.¹⁴

In *McBride v. H. Lee Moffitt Cancer Center and Research Institute of Tampa*, the Hillsborough County Circuit Court, Thirteenth Judicial Circuit, granted the defendant's motion to dismiss the case. In so doing, the court clarified that the Moffitt Center is entitled to sovereign immunity coverage based on its status as a corporation acting as an instrumentality of the state.¹⁵ The Second District Court of Appeal subsequently affirmed this decision.¹⁶

Courts have included subsidiaries of the state within the scope of coverage of sovereign immunity.¹⁷ The First District Court of Appeal has previously held that the "state and its subsidiaries are generally immune from tort liability."¹⁸ However, case law does not specify whether sovereign immunity expressly extends to not-for-profit subsidiaries of the Moffitt Center.

⁸ Chapter 2007-217, Laws of Fla., amended, in part, s. 1004.43(1) and (2), F.S.

⁹ FLA. CONST. art. X, s. 13.

¹⁰ Section 768.28(1), F.S.; Thomas A. Bustin and William N. Drake, Jr., *Judicial Tort Reform: Transforming Florida's Waiver of Sovereign Immunity Statute*, 32 STETSON L. REV. 469 (2003).

¹¹ Section 768.28(1), F.S.

¹² Section 768.28(2), F.S.

¹³ Section 768.28(5), F.S.

¹⁴ *Id.*

¹⁵ *McBride v. H. Lee Moffitt Cancer Center & Research Institute of Tampa*, Case No. 95-7231 (13th Jud. Cir. Tr. Ct. 1996).

¹⁶ *McBride v. H. Lee Moffitt Cancer Center & Research Institute of Tampa, Inc.*, 683 So. 2d 122 (Fla. 2d DCA 1996).

¹⁷ *See, e.g., Mosby v. Harrell*, 909 So. 2d 323, 326 (Fla. 1st DCA 2005).

¹⁸ *Id.* at 326.

III. Effect of Proposed Changes:

This bill clarifies that the H. Lee Moffitt Cancer Center and Research Institute (Moffitt Center) is a statewide resource for research and multidisciplinary approaches to patient treatment.

This bill updates obsolete authority provided to the State Board of Education to enter into an agreement regarding facility use on the University of South Florida campus and replaces it with the Board of Governors. This bill also expands the potential for mutual teaching and research programs beyond the University of South Florida to other state universities. Therefore, authority is provided to the Board of Governors to enter into agreements for these new projects.

This bill expressly provides sovereign immunity to the Moffitt Center and extends it to not-for-profit subsidiaries of the Moffitt Center.

This bill authorizes technical and professional income generated by institute members (clinical or scientific faculty staff members) from practice activities to be shared between the Moffitt Center and its subsidiaries, at the discretion of the chief executive officer. University-employee-derived-income may be shared by the university, the Moffitt Center, and subsidiaries of the Moffitt Center upon approval by the chief executive officer and the appropriate dean or vice president of the university.

The bill provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although there is no case law available specifically granting sovereign immunity status to not-for-profit subsidiaries of the Moffitt Center, it appears that sovereign immunity would apply to such a subsidiary. Therefore, no fiscal impact to private litigants is expected.

C. Government Sector Impact:

The Board of Governors expects a minimal possible fiscal impact through implementation of this legislation. In fact, the potential exists for the state university system to benefit from increased revenue due to the ability of the Moffitt Center to enter into future partnerships with other universities.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 26, 2010:**

The committee substitute:

- Clarifies that technical and professional income generated from practice activities may be shared between the Moffitt Center and its subsidiaries subject to the approval of the chief executive officer; and
- Requires both the chief executive officer and the dean or vice president of the university to approve the sharing of university-employee-derived income between the university, the Moffitt Center, and subsidiaries of the Moffitt Center.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁹ Florida Board of Governors, *2010 Legislative Bill Analysis: SB 1022*, 2 (Jan. 25, 2010).