

By Senator Storms

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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 not-for-profit subsidiaries shall conclusively act as
12 instrumentalities of the state for purposes of
13 sovereign immunity; authorizing the use of land,
14 facilities, and personnel for teaching and research
15 programs conducted by state universities; revising
16 provisions relating to the control and sharing of
17 certain income; providing a definition; providing an
18 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 to
23 read:

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

29 (1) The Board of Governors ~~State Board of Education~~ shall

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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 such ~~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. ~~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 approved not-for-profit subsidiary
46 shall be conclusively deemed corporations primarily acting as
47 instrumentalities of the state, pursuant to s. 768.28(2), for
48 purposes of sovereign immunity. For-profit subsidiaries of the
49 not-for-profit corporation may not compete with for-profit
50 health care providers in the delivery of radiation therapy
51 services to patients. The not-for-profit corporation and its
52 subsidiaries are authorized to receive, hold, invest, and
53 administer property and any moneys received from private, local,
54 state, and federal sources, as well as technical and
55 professional income generated or derived from practice
56 activities of the institute, for the benefit of the institute
57 and the fulfillment of its mission. The affairs of the
58 corporation shall be managed by a board of directors who shall

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59 serve without compensation. The President of the University of
60 South Florida and the chair of the Board of Governors, or his or
61 her designee, shall be directors of the not-for-profit
62 corporation, together with 5 representatives of the state
63 universities and no more than 14 nor fewer than 10 directors who
64 are not medical doctors or state employees. Each director shall
65 have only one vote, shall serve a term of 3 years, and may be
66 reelected to the board. Other than the President of the
67 University of South Florida and the chair of the Board of
68 Governors, directors shall be elected by a majority vote of the
69 board. The chair of the board of directors shall be selected by
70 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 conference 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. As
139 used in this paragraph, the term "institute member" means an
140 individual employed or appointed by the not-for-profit
141 corporation or a subsidiary as a clinical or scientific faculty
142 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

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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 the
151 use and assignment of space and equipment within the facilities.

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

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

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

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

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

174 (8) (a) Records of the not-for-profit corporation and of its

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175 subsidiaries are public records unless made confidential or
176 exempt by law.

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

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

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

203 3. Contracts for managed-care arrangements, including

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

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

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

216 6. Corporate officer and employee personnel information;

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

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

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

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

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

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233 and

234 b. Reimbursement methodologies or rates;

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

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

245

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

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

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262 Legislature.

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

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

280 Section 2. This act shall take effect July 1, 2010.