

By the Committee on Judiciary; and Senators Storms and Sobel

590-03774-10

20101022c1

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

590-03774-10

20101022c1

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

590-03774-10

20101022c1

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

590-03774-10

20101022c1

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

590-03774-10

20101022c1

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~~. Technical and professional income
132 generated from practice activities may be shared between the
133 not-for-profit corporation and its subsidiaries as determined by
134 the chief executive officer. However, professional income
135 generated by state university employees ~~faculty~~ from practice
136 activities at the not-for-profit corporation and its
137 subsidiaries ~~institute~~ shall be shared between the ~~institute and~~
138 ~~the~~ university and the not-for-profit corporation and its
139 subsidiaries only as determined by the chief executive officer
140 and the appropriate university dean or vice president.

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

590-03774-10

20101022c1

146 State university faculty shall be eligible to hold concurrent
147 appointments at the institute.

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

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

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

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

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

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

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

590-03774-10

20101022c1

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

197 1. Internal auditing controls and reports of internal
198 auditors;

199 2. Matters reasonably encompassed in privileged attorney-
200 client communications;

201 3. Contracts for managed-care arrangements, including
202 preferred provider organization contracts, health maintenance
203 organization contracts, and exclusive provider organization

590-03774-10

20101022c1

204 contracts, and any documents directly relating to the
205 negotiation, performance, and implementation of any such
206 contracts for managed-care arrangements;

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

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

214 6. Corporate officer and employee personnel information;

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

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

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

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

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

232 b. Reimbursement methodologies or rates;

590-03774-10

20101022c1

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

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

243
244 As used in this paragraph, the term "managed care" means systems
245 or techniques generally used by third-party payors or their
246 agents to affect access to and control payment for health care
247 services. Managed-care techniques most often include one or more
248 of the following: prior, concurrent, and retrospective review of
249 the medical necessity and appropriateness of services or site of
250 services; contracts with selected health care providers;
251 financial incentives or disincentives related to the use of
252 specific providers, services, or service sites; controlled
253 access to and coordination of services by a case manager; and
254 payor efforts to identify treatment alternatives and modify
255 benefit restrictions for high-cost patient care.

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

261 (9) Meetings of the governing board of the not-for-profit

590-03774-10

20101022c1

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

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

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