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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/06/2010	.	
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	.	
	.	

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (8) and (9) of section 1004.43,
Florida Statutes, are amended to read:

1004.43 H. Lee Moffitt Cancer Center and Research
Institute.—There is established the H. Lee Moffitt Cancer Center
and Research Institute at the University of South Florida.

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



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13 (b) The following information is confidential and exempt
14 from s. 119.07(1) and s. 24(a), Art. I of the State
15 Constitution:

16 1. Information received by the not-for-profit corporation
17 or its subsidiaries from a person in another state or nation or
18 the Federal Government which is otherwise exempt or confidential
19 pursuant to the laws of that state or nation or pursuant to
20 federal law.

21 2. Information received by the not-for-profit corporation
22 or its subsidiaries in the performance of its duties and
23 responsibilities which is otherwise confidential or exempt by
24 law.

25 3. Matters reasonably encompassed in privileged attorney-
26 client communications.

27 4. Proprietary confidential business information ~~is~~
28 ~~confidential and exempt from the provisions of s. 119.07(1) and~~
29 ~~s. 24(a), Art. I of the State Constitution.~~

30 5. Records of credentialing panels and committees and of
31 the governing board of the not-for-profit corporation or its
32 subsidiaries relating to credentialing.

33 6. The identity of a donor or prospective donor to the not-
34 for-profit corporation or its subsidiaries who wishes to remain
35 anonymous.

36 7. Trade secrets.

37 (c) ~~However,~~ The Auditor General, the Office of Program
38 Policy Analysis and Government Accountability, and the Board of
39 Governors, pursuant to their oversight and auditing functions,
40 must be given access to all ~~proprietary confidential business~~
41 information made confidential and exempt under paragraph (b),



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42 upon request and without subpoena, and must maintain the
43 confidentiality of information so received.

44 (d) As used in this subsection paragraph, the term:

45 1. "Managed care" means systems or techniques generally
46 used by third-party payors or their agents to affect access to
47 and control payment for health care services. Managed-care
48 techniques most often include one or more of the following:

49 a. Prior, concurrent, and retrospective review of the
50 medical necessity and appropriateness of services or site of
51 services;

52 b. Contracts with selected health care providers;

53 c. Financial incentives or disincentives related to the use
54 of specific providers, services, or service sites;

55 d. Controlled access to and coordination of services by a
56 case manager; and

57 e. Payor efforts to identify treatment alternatives and
58 modify benefit restrictions for high-cost patient care.

59 2. "Proprietary confidential business information" means
60 information, regardless of its form or characteristics, which is
61 owned or controlled by the not-for-profit corporation or its
62 subsidiaries; is intended to be and is treated by the not-for-
63 profit corporation or its subsidiaries as private and the
64 disclosure of which would harm the business operations of the
65 not-for-profit corporation or its subsidiaries; has not been
66 intentionally disclosed by the not-for-profit corporation or its
67 subsidiaries unless pursuant to law, an order of a court or
68 administrative body, a legislative proceeding pursuant to s. 5,
69 Art. III of the State Constitution, or a private agreement that
70 provides that the information may be released to the public; and



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71 which is information concerning:

72 ~~a.1.~~ Internal auditing controls and reports of internal
73 auditors;

74 ~~2. Matters reasonably encompassed in privileged attorney-~~
75 ~~client communications;~~

76 ~~b.3.~~ Contracts for managed-care arrangements, including
77 preferred provider organization contracts, health maintenance
78 organization contracts, and exclusive provider organization
79 contracts, and any records ~~documents~~ directly relating to the
80 negotiation, performance, and implementation of any such
81 contracts for managed-care arrangements;

82 ~~c.4.~~ Bids or other contractual data, banking records, and
83 credit agreements the disclosure of which would impair the
84 efforts of the not-for-profit corporation or its subsidiaries to
85 contract for goods or services on favorable terms;

86 ~~d.5.~~ Information relating to private contractual data, the
87 disclosure of which would impair the competitive interest of the
88 provider of the information;

89 ~~e.6.~~ Corporate officer and employee personnel information;

90 ~~7. Information relating to the proceedings and records of~~
91 ~~credentialing panels and committees and of the governing board~~
92 ~~of the not-for-profit corporation or its subsidiaries relating~~
93 ~~to credentialing;~~

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

97 ~~f.9.~~ Information that reveals plans for marketing services
98 that the not-for-profit corporation or its subsidiaries
99 reasonably expect to be provided by competitors;



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100 ~~10. Trade secrets as defined in s. 688.002, including:~~
101 ~~g.a. Information relating to methods of manufacture or~~
102 ~~production, potential trade secrets, or patentable or~~
103 ~~potentially patentable materials, or proprietary information~~
104 ~~received, generated, ascertained, or discovered during the~~
105 ~~course of research conducted by the not-for-profit corporation~~
106 ~~or its subsidiaries; and~~

107 ~~h.b. Reimbursement methodologies or rates.~~

108 ~~3. "Trade secret" means a trade secret as defined in s.~~
109 ~~688.002.~~

110 ~~11. The identity of donors or prospective donors of~~
111 ~~property who wish to remain anonymous or any information~~
112 ~~identifying such donors or prospective donors. The anonymity of~~
113 ~~these donors or prospective donors must be maintained in the~~
114 ~~auditor's report; or~~

115 ~~12. Any information received by the not-for-profit~~
116 ~~corporation or its subsidiaries from an agency in this or~~
117 ~~another state or nation or the Federal Government which is~~
118 ~~otherwise exempt or confidential pursuant to the laws of this or~~
119 ~~another state or nation or pursuant to federal law.~~

120
121 ~~As used in this paragraph, the term "managed care" means systems~~
122 ~~or techniques generally used by third-party payors or their~~
123 ~~agents to affect access to and control payment for health care~~
124 ~~services. Managed care techniques most often include one or more~~
125 ~~of the following: prior, concurrent, and retrospective review of~~
126 ~~the medical necessity and appropriateness of services or site of~~
127 ~~services; contracts with selected health care providers;~~
128 ~~financial incentives or disincentives related to the use of~~



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129 ~~specific providers, services, or service sites; controlled~~
130 ~~access to and coordination of services by a case manager; and~~
131 ~~payor efforts to identify treatment alternatives and modify~~
132 ~~benefit restrictions for high-cost patient care.~~

133 (e)(e) This subsection is Subparagraphs 10. and 12. of
134 paragraph (b) are subject to the Open Government Sunset Review
135 Act in accordance with s. 119.15 and shall stand repealed on
136 October 2, ~~2015~~ 2010, unless reviewed and saved from repeal
137 through reenactment by the Legislature.

138 (9)(a) Those portions of meetings of the governing board of
139 the not-for-profit corporation and meetings of the subsidiaries
140 of the not-for-profit corporation at which the expenditure of
141 dollars appropriated to the not-for-profit corporation by the
142 state are discussed or reported must remain open to the public
143 in accordance with s. 286.011 and s. 24(b), Art. I of the State
144 Constitution, unless made confidential or exempt by law.

145 (b) Other meetings of the governing board of the not-for-
146 profit corporation and of the subsidiaries of the not-for-profit
147 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
148 the State Constitution. Any meeting closed pursuant to this
149 paragraph must be recorded and no portion of the closed meeting
150 may be off the record. The recording shall be maintained by the
151 not-for-profit corporation and its subsidiaries.

152 (c) The recording of a closed portion of a meeting is
153 exempt from s. 286.011 and s. 24(b), Art. I of the State
154 Constitution.

155 (d) Minutes of closed meetings of the governing board of
156 the not-for-profit corporation and of its subsidiaries are
157 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I



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158 of the State Constitution.

159 (e) Paragraph (c) is subject to the Open Government Sunset
160 Review Act in accordance with s. 119.15 and shall stand repealed
161 on October 2, 2015, unless reviewed and saved from repeal by the
162 Legislature.

163 Section 2. The Legislature finds that it is a public
164 necessity to make confidential and exempt from public-records
165 requirements the identity of a donor or prospective donor to the
166 not-for-profit corporation of the H. Lee Moffitt Cancer Center
167 and Research Institute or a subsidiary thereof who wishes to
168 remain anonymous. The Legislature finds that the identity of a
169 donor or prospective donor who wishes to remain anonymous should
170 be confidential and exempt from public disclosure in the same
171 manner as provided to direct-support organizations at the state
172 universities pursuant to s. 1004.28(5), Florida Statutes. This
173 exemption is necessary because the disclosure of such
174 confidential and exempt information may adversely affect the
175 ability of the not-for-profit corporation or its subsidiaries to
176 receive donations from individuals who request anonymity. In
177 addition, the Legislature finds that patentable materials
178 received, generated, ascertained, or discovered during the
179 course of research conducted by or through the not-for-profit
180 corporation of the H. Lee Moffitt Cancer Center and Research
181 Institute or a subsidiary thereof must be made confidential and
182 exempt because the disclosure of such information would create
183 an unfair competitive advantage for persons receiving such
184 information and would adversely affect the not-for-profit
185 corporation or its subsidiaries. If such confidential and exempt
186 information was released pursuant to a public-records request,



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187 others would be allowed to avail themselves of the benefits of
188 the research without compensation or reimbursement to the not-
189 for-profit corporation or its subsidiaries. The Legislature
190 further finds that it is a public necessity to make exempt from
191 public-records requirements the recordings made of closed
192 portions of meetings. During such closed meetings confidential
193 or exempt information may be discussed, and allowing recordings
194 of such discussions would negate the purpose of the existing
195 public-records exemptions. Without the exemptions provided for
196 in this act, the disclosure of confidential and exempt
197 information would place the not-for-profit corporation in an
198 unequal footing in the marketplace as compared with its private
199 research competitors that are not required to disclose
200 confidential and exempt information. The Legislature finds that
201 the disclosure of such confidential and exempt information would
202 adversely affect the ability of the not-for-profit corporation
203 or its subsidiaries to fulfill the mission of research and
204 education.

205 Section 3. This act shall take effect upon becoming a law.

206
207 ===== T I T L E A M E N D M E N T =====

208 And the title is amended as follows:

209 Delete everything before the enacting clause
210 and insert:

211 A bill to be entitled
212 An act relating to a review under the Open Government
213 Sunset Review Act; amending s. 1004.43, F.S., relating
214 to the H. Lee Moffitt Cancer Center and Research
215 Institute; expanding an exemption from the public-



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216 records law for certain information and records that
217 are held by the not-for-profit corporation operating
218 the H. Lee Moffitt Cancer Center and Research
219 Institute or held by the corporation's subsidiaries;
220 defining terms; providing for future review and repeal
221 of the expanded exemption; requiring that a recording
222 be made and maintained of any closed portion of a
223 meeting of the governing board of the not-for-profit
224 corporation or its subsidiaries; providing an
225 exemption from the public-records law for recordings
226 and minutes of any closed portion of such meetings;
227 providing for future review and repeal of the
228 exemption; providing a statement of public necessity;
229 providing an effective date.