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

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 1004.43, Florida Statutes, is amended
22 to read:

23 1004.43 H. Lee Moffitt Cancer Center and Research
24 Institute.--There is established the H. Lee Moffitt Cancer
25 Center and Research Institute, a statewide resource for basic
26 and clinical research and multidisciplinary approaches to
27 patient care ~~at the University of South Florida.~~

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

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

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

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

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

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

83 (d) Preparation of an annual financial audit of the not-
84 for-profit corporation's accounts and records and the accounts
85 and records of any subsidiaries to be conducted by an
86 independent certified public accountant. The annual audit report
87 shall include a management letter, as defined in s. 11.45, and
88 shall be submitted to the Auditor General and the Board of
89 Governors. The Board of Governors, the Auditor General, and the
90 Office of Program Policy Analysis and Government Accountability
91 shall have the authority to require and receive from the not-
92 for-profit corporation and any subsidiaries or from their
93 independent auditor any detail or supplemental data relative to
94 the operation of the not-for-profit corporation or subsidiary.

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

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

109 (4) In the event that the agreement between the not-for-
110 profit corporation and the Board of Governors is terminated for

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111 any reason, the Board of Governors shall resume governance and
112 operation of such facilities.

113 (5) The institute shall be administered by a chief
114 executive officer who shall serve at the pleasure of the board
115 of directors of the not-for-profit corporation and who shall
116 have the following powers and duties subject to the approval of
117 the board of directors:

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

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

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139 individual employed or appointed by the not-for-profit
140 corporation or a subsidiary as a clinical or scientific faculty
141 member.

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

149 (d) The chief executive officer shall have control over
150 the use and assignment of space and equipment within the
151 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
158 the 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
 175 its 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

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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
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;
 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
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

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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.