

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 an effective date.

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 18   Be It Enacted by the Legislature of the State of Florida:  
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20           Section 1.   Section 1004.43, Florida Statutes, is amended  
 21   to read:

22           1004.43   H. Lee Moffitt Cancer Center and Research  
 23   Institute.—There is established the H. Lee Moffitt Cancer Center  
 24   and Research Institute, a statewide resource for basic and  
 25   clinical research and multidisciplinary approaches to patient  
 26   care at the University of South Florida.

27           (1)   The Board of Governors ~~State Board of Education~~ shall  
 28   enter into an agreement for the utilization of the facilities on

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

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

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

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

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

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

82 | (d) Preparation of an annual financial audit of the not-  
83 | for-profit corporation's accounts and records and the accounts  
84 | and records of any subsidiaries to be conducted by an

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

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

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

108 (4) In the event that the agreement between the not-for-  
109 profit corporation and the Board of Governors is terminated for  
110 any reason, the Board of Governors shall resume governance and  
111 operation of such facilities.

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

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

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

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

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

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

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

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

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

166 appointed to serve a 2-year term and may be reappointed to the  
167 council.

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

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

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

194 the information may be released to the public; and which is  
 195 information concerning:

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

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

200 3. Contracts for managed-care arrangements, including  
 201 preferred provider organization contracts, health maintenance  
 202 organization contracts, and exclusive provider organization  
 203 contracts, and any documents directly relating to the  
 204 negotiation, performance, and implementation of any such  
 205 contracts for managed-care arrangements;

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

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

213 6. Corporate officer and employee personnel information;

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

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



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

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

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

231 b. Reimbursement methodologies or rates;

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

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

242  
 243 As used in this paragraph, the term "managed care" means systems  
 244 or techniques generally used by third-party payors or their  
 245 agents to affect access to and control payment for health care  
 246 services. Managed-care techniques most often include one or more  
 247 of the following: prior, concurrent, and retrospective review of  
 248 the medical necessity and appropriateness of services or site of

249 services; contracts with selected health care providers;  
250 financial incentives or disincentives related to the use of  
251 specific providers, services, or service sites; controlled  
252 access to and coordination of services by a case manager; and  
253 payor efforts to identify treatment alternatives and modify  
254 benefit restrictions for high-cost patient care.

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

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

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

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