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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 an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
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

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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

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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.

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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.

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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

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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

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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);

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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

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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.