

By Senator Latvala

20-00754B-13

20131642__

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 transferring oversight of the H. Lee Moffitt Cancer
5 Center and Research Institute to the Board of Trustees
6 of the University of South Florida; requiring the
7 Board of Trustees to enter into a lease agreement for
8 use of certain land and facilities; providing for the
9 terms of the lease; requiring the University of South
10 Florida and the Florida not-for-profit corporation
11 that governs and operates the H. Lee Moffitt Cancer
12 Center and Research Institute to enter into an
13 agreement to review construction plans and
14 specifications for consistency of certain criteria;
15 deleting the requirement that the President of the
16 University of South Florida, the chair of the Board of
17 Governors, other representatives of the state
18 universities, and others who are not doctors or
19 employees of the state serve as directors; deleting
20 the exemption that the president of the university
21 does not have to be elected by a majority vote of the
22 board; deleting the requirement that the Board of
23 Governors provide for certain approvals of the
24 articles of incorporation of the not-for-profit
25 corporation and use of land and facilities for certain
26 purposes; requiring the not-for-profit corporation to
27 have annual financial audits; requiring the not-for-
28 profit corporation to provide equal employment
29 opportunities; providing for the governance and

20-00754B-13

20131642__

30 operation of the facilities if the agreement between
31 the not-for-profit corporation and the Board of
32 Trustees of the University of South Florida, rather
33 than the Board of Governors, is terminated; requiring
34 the chief executive officer to report annually to the
35 Board of Governors on the educational activities of
36 the not-for-profit corporation; providing for the
37 creation and duties of an external advisory board;
38 providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Section 1004.43, Florida Statutes, is amended to
43 read:

44 1004.43 H. Lee Moffitt Cancer Center and Research
45 Institute.—There is established the H. Lee Moffitt Cancer Center
46 and Research Institute, a statewide resource for basic and
47 clinical research and multidisciplinary approaches to patient
48 care.

49 (1) The Board of Trustees of the University of South
50 Florida ~~Governors~~ shall enter into a lease ~~an~~ agreement for the
51 use utilization of the lands and facilities on the campus of the
52 University of South Florida ~~to be~~ known as the H. Lee Moffitt
53 Cancer Center and Research Institute, including all furnishings,
54 equipment, and other chattels used in the operation of such
55 facilities, with a Florida not-for-profit corporation organized
56 solely for the purpose of governing and operating the H. Lee
57 Moffitt Cancer Center and Research Institute. The lease
58 agreement with the not-for-profit corporation must be rent free

20-00754B-13

20131642

59 so long as the not-for-profit corporation and its subsidiaries
60 use the lands and facilities primarily for research, education,
61 treatment, prevention, and the early detection of cancer or for
62 teaching and research programs conducted by the state
63 universities or other accredited medical schools or research
64 institutes. The lease agreement must provide for review of
65 construction plans and specifications by the university for
66 consistency with the university's campus master plan, impact on
67 the university's utilities infrastructure, and compliance with
68 applicable building code and general design characteristics and
69 compatibility with university architecture, as appropriate. The
70 not-for-profit corporation may, with the prior approval of the
71 Board of Governors, create ~~either~~ for-profit or not-for-profit
72 corporate subsidiaries, or both, to fulfill its mission. The
73 not-for-profit corporation and any approved not-for-profit
74 subsidiary are ~~shall be~~ conclusively deemed corporations
75 primarily acting as instrumentalities of the state, pursuant to
76 s. 768.28(2), for purposes of sovereign immunity. For-profit
77 subsidiaries of the not-for-profit corporation may not compete
78 with for-profit health care providers in the delivery of
79 radiation therapy services to patients. The not-for-profit
80 corporation and its subsidiaries may ~~are authorized to~~ receive,
81 hold, invest, and administer property and any moneys received
82 from private, local, state, and federal sources, as well as
83 technical and professional income generated or derived from
84 practice activities of the institute, for the benefit of the
85 institute and the fulfillment of its mission. The affairs of the
86 corporation shall be managed by a board of directors who shall
87 serve without compensation. The President of the University of

20-00754B-13

20131642__

88 South Florida and the chair of the Board of Governors, or his or
89 her designee, shall be directors of the not-for-profit
90 corporation, ~~together with 5 representatives of the state~~
91 ~~universities and no more than 14 nor fewer than 10 directors who~~
92 ~~are not medical doctors or state employees.~~ Each director has
93 ~~shall have~~ only one vote, serves ~~shall serve~~ a term of 3 years,
94 and may be reelected to the board. Other than the President of
95 the University of South Florida and the chair of the Board of
96 Governors, directors shall be elected by a majority vote of the
97 board. The chair of the board of directors shall be selected by
98 majority vote of the directors.

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

101 ~~(a) Approval of the articles of incorporation of the not-~~
102 ~~for-profit corporation by the Board of Governors.~~

103 ~~(b) Approval of the articles of incorporation of any not-~~
104 ~~for-profit corporate subsidiary created by the not-for-profit~~
105 ~~corporation.~~

106 ~~(c) Utilization of lands, facilities, and personnel by the~~
107 ~~not-for-profit corporation and its subsidiaries for research,~~
108 ~~education, treatment, prevention, and the early detection of~~
109 ~~cancer and for mutually approved teaching and research programs~~
110 ~~conducted by the state universities or other accredited medical~~
111 ~~schools or research institutes.~~

112 ~~(2)(d)~~ The not-for-profit corporation shall cause the
113 ~~Preparation of an annual financial audits~~ audit of the not-for-
114 profit corporation's accounts and records to be prepared and the
115 accounts and records of any subsidiaries to be conducted by an
116 independent certified public accountant. Each ~~The~~ annual

20-00754B-13

20131642__

117 financial audit report must ~~shall~~ include a management letter,
118 as defined in s. 11.45, and must ~~shall~~ be submitted to the
119 Auditor General and the Board of Governors. The Board of
120 Governors, the Auditor General, and the Office of Program Policy
121 Analysis and Government Accountability may ~~shall have the~~
122 ~~authority to~~ require and receive from the not-for-profit
123 corporation and any subsidiaries or from their independent
124 auditor any detail or supplemental data relative to the
125 operation of the not-for-profit corporation or subsidiary.

126 ~~(e) Provision by~~ The not-for-profit corporation and its
127 subsidiaries shall provide ~~of~~ equal employment opportunities to
128 all persons regardless of race, color, religion, sex, age, or
129 national origin.

130 (3) The Board of Governors may ~~is authorized to~~ secure
131 comprehensive general liability protection, including
132 professional liability protection, for the not-for-profit
133 corporation and its subsidiaries pursuant to s. 1004.24. The
134 not-for-profit corporation and its subsidiaries are ~~shall be~~
135 exempt from ~~any~~ participation in any property insurance trust
136 fund established by law, including any property insurance trust
137 fund established pursuant to chapter 284, so long as the not-
138 for-profit corporation and its subsidiaries maintain property
139 insurance protection with comparable or greater coverage limits.

140 (4) ~~If In the event that~~ the agreement between the not-for-
141 profit corporation and the Board of Trustees of the University
142 of South Florida ~~Governors~~ is terminated for any reason, the
143 Board of Governors shall resume governance and operation of such
144 facilities.

145 (5) The institute shall be administered by a chief

20-00754B-13

20131642__

146 executive officer who serves ~~shall serve~~ at the pleasure of the
147 board of directors of the not-for-profit corporation and who has
148 ~~shall have~~ the following powers and duties subject to the
149 approval of the board of directors:

150 (a) The chief executive officer shall establish programs
151 that ~~which~~ fulfill the mission of the institute in research,
152 education, treatment, prevention, and the early detection of
153 cancer; however, the chief executive officer may ~~shall~~ not
154 establish academic programs for which academic credit is awarded
155 and which terminate in the conference of a degree without prior
156 approval of the Board of Governors.

157 (b) The chief executive officer has ~~shall have~~ control over
158 the budget and the dollars appropriated or donated to the
159 institute from private, local, state, and federal sources, as
160 well as technical and professional income generated or derived
161 from practice activities of the not-for-profit corporation and
162 its subsidiaries. Technical and professional income generated
163 from practice activities may be shared between the not-for-
164 profit corporation and its subsidiaries as determined by the
165 chief executive officer. However, professional income generated
166 by state university employees from practice activities at the
167 not-for-profit corporation and its subsidiaries must ~~shall~~ be
168 shared between the university and the not-for-profit corporation
169 and its subsidiaries only as determined by the chief executive
170 officer and the appropriate university dean or vice president.

171 (c) The chief executive officer shall appoint members to
172 carry out the research, patient care, and educational activities
173 of the institute and determine compensation, benefits, and terms
174 of service. Members of the institute are ~~shall be~~ eligible to

20-00754B-13

20131642__

175 hold concurrent appointments at affiliated academic
176 institutions. State university faculty are ~~shall be~~ eligible to
177 hold concurrent appointments at the institute.

178 (d) The chief executive officer has ~~shall have~~ control over
179 the use and assignment of space and equipment within the
180 facilities.

181 (e) The chief executive officer has ~~shall have~~ the power to
182 create the administrative structure necessary to carry out the
183 mission of the institute.

184 (f) The chief executive officer shall report annually ~~have~~
185 ~~a reporting relationship~~ to the Board of Governors or its
186 designee on the educational activities of the not-for-profit
187 corporation.

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

192 (6) The board of directors of the not-for-profit
193 corporation shall create an external advisory board ~~a council~~ of
194 scientific advisers to the chief executive officer comprised of
195 leading researchers, physicians, and scientists. This board
196 ~~council~~ shall review programs and recommend research priorities
197 and initiatives so as to maximize the state's investment in the
198 institute. The board ~~council~~ shall be appointed by the board of
199 directors of the not-for-profit corporation. Each member of the
200 board ~~council~~ shall be appointed to serve a 2-year term and may
201 be reappointed to the council.

202 (7) In carrying out the provisions of this section, the
203 not-for-profit corporation and its subsidiaries are not

20-00754B-13

20131642__

204 "agencies" within the meaning of s. 20.03(11).

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

208 (b) Proprietary confidential business information is
209 confidential and exempt from the provisions of s. 119.07(1) and
210 s. 24(a), Art. I of the State Constitution. However, the Auditor
211 General, the Office of Program Policy Analysis and Government
212 Accountability, and the Board of Governors, pursuant to their
213 oversight and auditing functions, must be given access to all
214 proprietary confidential business information upon request and
215 without subpoena and must maintain the confidentiality of
216 information so received. As used in this paragraph, the term
217 "proprietary confidential business information" means
218 information, regardless of its form or characteristics, which is
219 owned or controlled by the not-for-profit corporation or its
220 subsidiaries; is intended to be and is treated by the not-for-
221 profit corporation or its subsidiaries as private and the
222 disclosure of which would harm the business operations of the
223 not-for-profit corporation or its subsidiaries; has not been
224 intentionally disclosed by the corporation or its subsidiaries
225 unless pursuant to law, an order of a court or administrative
226 body, a legislative proceeding pursuant to s. 5, Art. III of the
227 State Constitution, or a private agreement that provides that
228 the information may be released to the public; and ~~which~~ is
229 information concerning:

230 1. Internal auditing controls and reports of internal
231 auditors;

232 2. Matters reasonably encompassed in privileged attorney-

20-00754B-13

20131642__

233 client communications;

234 3. Contracts for managed-care arrangements, including
235 preferred provider organization contracts, health maintenance
236 organization contracts, and exclusive provider organization
237 contracts, and any documents directly relating to the
238 negotiation, performance, and implementation of any such
239 contracts for managed-care arrangements;

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

244 5. Information relating to private contractual data, the
245 disclosure of which would impair the competitive interest of the
246 provider of the information;

247 6. Corporate officer and employee personnel information;

248 7. Information relating to the proceedings and records of
249 credentialing panels and committees and of the governing board
250 of the not-for-profit corporation or its subsidiaries relating
251 to credentialing;

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

255 9. Information that reveals plans for marketing services
256 that the corporation or its subsidiaries reasonably expect to be
257 provided by competitors;

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

259 a. Information relating to methods of manufacture or
260 production, potential trade secrets, potentially patentable
261 materials, or proprietary information received, generated,

20-00754B-13

20131642__

262 ascertained, or discovered during the course of research
263 conducted by the not-for-profit corporation or its subsidiaries;
264 and

265 b. Reimbursement methodologies or rates;

266 11. The identity of donors or prospective donors of
267 property who wish to remain anonymous or any information
268 identifying such donors or prospective donors. The anonymity of
269 these donors or prospective donors must be maintained in the
270 auditor's report; or

271 12. Any information received by the not-for-profit
272 corporation or its subsidiaries from an agency in this or
273 another state or nation or the Federal Government which is
274 otherwise exempt or confidential pursuant to the laws of this or
275 another state or nation or pursuant to federal law.

276

277 As used in this paragraph, the term "managed care" means systems
278 or techniques generally used by third-party payors or their
279 agents to affect access to and control payment for health care
280 services. Managed-care techniques most often include one or more
281 of the following: prior, concurrent, and retrospective review of
282 the medical necessity and appropriateness of services or site of
283 services; contracts with selected health care providers;
284 financial incentives or disincentives related to the use of
285 specific providers, services, or service sites; controlled
286 access to and coordination of services by a case manager; and
287 payor efforts to identify treatment alternatives and modify
288 benefit restrictions for high-cost patient care.

289 (9) Meetings of the governing board of the not-for-profit
290 corporation and meetings of the subsidiaries of the not-for-

20-00754B-13

20131642__

291 profit corporation at which the expenditure of dollars
292 appropriated to the not-for-profit corporation by the state are
293 discussed or reported must remain open to the public in
294 accordance with s. 286.011 and s. 24(b), Art. I of the State
295 Constitution, unless made confidential or exempt by law. Other
296 meetings of the governing board of the not-for-profit
297 corporation and of the subsidiaries of the not-for-profit
298 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
299 the State Constitution.

300 (10) In addition to the continuing appropriation to the
301 institute provided in s. 210.20(2), any appropriation to the
302 institute provided in a general appropriations act shall be paid
303 directly to the board of directors of the not-for-profit
304 corporation by warrant drawn by the Chief Financial Officer from
305 the State Treasury.

306 Section 2. This act shall take effect July 1, 2013.