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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
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	.	

Appropriations Subcommittee on Education (Legg) recommended the following:

Senate Amendment (with title amendment)

Between lines 823 and 824
insert:

Section 8. Section 1004.43, Florida Statutes, is 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, a statewide resource for basic and clinical research and multidisciplinary approaches to patient care.

(1) The Board of Trustees of the University of South



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13 Florida ~~Governors~~ shall enter into a lease ~~an~~ agreement for the
14 use utilization of the lands and facilities on the campus of the
15 University of South Florida ~~to be~~ known as the H. Lee Moffitt
16 Cancer Center and Research Institute, including all furnishings,
17 equipment, and other chattels used in the operation of such
18 facilities, with a Florida not-for-profit corporation organized
19 solely for the purpose of governing and operating the H. Lee
20 Moffitt Cancer Center and Research Institute. The lease
21 agreement with the not-for-profit corporation must be rent free
22 so long as the not-for-profit corporation and its subsidiaries
23 use the lands and facilities primarily for research, education,
24 treatment, prevention, and the early detection of cancer or for
25 teaching and research programs conducted by the state
26 universities or other accredited medical schools or research
27 institutes. The lease agreement must provide for review of
28 construction plans and specifications by the university for
29 consistency with the university's campus master plan, impact on
30 the university's utilities infrastructure, and compliance with
31 applicable building code and general design characteristics and
32 compatibility with university architecture, as appropriate. The
33 not-for-profit corporation may, with the prior approval of the
34 Board of Governors, create ~~either~~ for-profit or not-for-profit
35 corporate subsidiaries, or both, to fulfill its mission. The
36 not-for-profit corporation and any approved not-for-profit
37 subsidiary are ~~shall be~~ conclusively deemed corporations
38 primarily acting as instrumentalities of the state, pursuant to
39 s. 768.28(2), for purposes of sovereign immunity. For-profit
40 subsidiaries of the not-for-profit corporation may not compete
41 with for-profit health care providers in the delivery of



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42 radiation therapy services to patients. The not-for-profit
43 corporation and its subsidiaries may ~~are authorized to~~ receive,
44 hold, invest, and administer property and any moneys received
45 from private, local, state, and federal sources, as well as
46 technical and professional income generated or derived from
47 practice activities of the institute, for the benefit of the
48 institute and the fulfillment of its mission. The affairs of the
49 corporation shall be managed by a board of directors who shall
50 serve without compensation. The President of the University of
51 South Florida and the chair of the Board of Governors, or his or
52 her designee, shall be directors of the not-for-profit
53 corporation, ~~together with 5 representatives of the state~~
54 ~~universities and no more than 14 nor fewer than 10 directors who~~
55 ~~are not medical doctors or state employees.~~ Each director has
56 ~~shall have~~ only one vote, serves ~~shall serve~~ a term of 3 years,
57 and may be reelected to the board. Other than the President of
58 the University of South Florida and the chair of the Board of
59 Governors, directors shall be elected by a majority vote of the
60 board. The chair of the board of directors shall be selected by
61 majority vote of the directors.

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

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

66 ~~(b) Approval of the articles of incorporation of any not-~~
67 ~~for-profit corporate subsidiary created by the not-for-profit~~
68 ~~corporation.~~

69 ~~(c) Utilization of lands, facilities, and personnel by the~~
70 ~~not-for-profit corporation and its subsidiaries for research,~~



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71 ~~education, treatment, prevention, and the early detection of~~
72 ~~cancer and for mutually approved teaching and research programs~~
73 ~~conducted by the state universities or other accredited medical~~
74 ~~schools or research institutes.~~

75 (2)(d) The not-for-profit corporation shall cause the
76 ~~Preparation of an annual financial audits audit~~ of the not-for-
77 profit corporation's accounts and records to be prepared and the
78 accounts and records of any subsidiaries to be conducted by an
79 independent certified public accountant. Each ~~The~~ annual
80 financial audit report must ~~shall~~ include a management letter,
81 as defined in s. 11.45, and must ~~shall~~ be submitted to the
82 Auditor General and the Board of Governors. The Board of
83 Governors, the Auditor General, and the Office of Program Policy
84 Analysis and Government Accountability may ~~shall have the~~
85 ~~authority to~~ require and receive from the not-for-profit
86 corporation and any subsidiaries or from their independent
87 auditor any detail or supplemental data relative to the
88 operation of the not-for-profit corporation or subsidiary.

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

93 (3) The Board of Governors may ~~is authorized to~~ secure
94 comprehensive general liability protection, including
95 professional liability protection, for the not-for-profit
96 corporation and its subsidiaries pursuant to s. 1004.24. The
97 not-for-profit corporation and its subsidiaries are ~~shall be~~
98 exempt from ~~any~~ participation in any property insurance trust
99 fund established by law, including any property insurance trust



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100 fund established pursuant to chapter 284, so long as the not-
101 for-profit corporation and its subsidiaries maintain property
102 insurance protection with comparable or greater coverage limits.

103 (4) ~~If In the event that~~ the agreement between the not-for-
104 profit corporation and the Board of Trustees of the University
105 of South Florida ~~Governors~~ is terminated for any reason, the
106 Board of Governors shall resume governance and operation of such
107 facilities.

108 (5) The institute shall be administered by a chief
109 executive officer who serves ~~shall serve~~ at the pleasure of the
110 board of directors of the not-for-profit corporation and who has
111 ~~shall have~~ the following powers and duties subject to the
112 approval of the board of directors:

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

120 (b) The chief executive officer has ~~shall have~~ control over
121 the budget and the dollars appropriated or donated to the
122 institute from private, local, state, and federal sources, as
123 well as technical and professional income generated or derived
124 from practice activities of the not-for-profit corporation and
125 its subsidiaries. Technical and professional income generated
126 from practice activities may be shared between the not-for-
127 profit corporation and its subsidiaries as determined by the
128 chief executive officer. However, professional income generated



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129 by state university employees from practice activities at the
130 not-for-profit corporation and its subsidiaries must ~~shall~~ be
131 shared between the university and the not-for-profit corporation
132 and its subsidiaries only as determined by the chief executive
133 officer and the appropriate university dean or vice president.

134 (c) The chief executive officer shall appoint members to
135 carry out the research, patient care, and educational activities
136 of the institute and determine compensation, benefits, and terms
137 of service. Members of the institute are ~~shall be~~ eligible to
138 hold concurrent appointments at affiliated academic
139 institutions. State university faculty are ~~shall be~~ eligible to
140 hold concurrent appointments at the institute.

141 (d) The chief executive officer has ~~shall have~~ control over
142 the use and assignment of space and equipment within the
143 facilities.

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

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

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

155 (6) The board of directors of the not-for-profit
156 corporation shall create an external advisory board ~~a council~~ of
157 scientific advisers to the chief executive officer comprised of



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158 leading researchers, physicians, and scientists. This board
159 ~~council~~ shall review programs and recommend research priorities
160 and initiatives so as to maximize the state's investment in the
161 institute. The board ~~council~~ shall be appointed by the board of
162 directors of the not-for-profit corporation. Each member of the
163 board ~~council~~ shall be appointed to serve a 2-year term and may
164 be reappointed to the council.

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

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

171 (b) Proprietary confidential business information is
172 confidential and exempt from the provisions of s. 119.07(1) and
173 s. 24(a), Art. I of the State Constitution. However, the Auditor
174 General, the Office of Program Policy Analysis and Government
175 Accountability, and the Board of Governors, pursuant to their
176 oversight and auditing functions, must be given access to all
177 proprietary confidential business information upon request and
178 without subpoena and must maintain the confidentiality of
179 information so received. As used in this paragraph, the term
180 "proprietary confidential business information" means
181 information, regardless of its form or characteristics, which is
182 owned or controlled by the not-for-profit corporation or its
183 subsidiaries; is intended to be and is treated by the not-for-
184 profit corporation or its subsidiaries as private and the
185 disclosure of which would harm the business operations of the
186 not-for-profit corporation or its subsidiaries; has not been



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187 intentionally disclosed by the corporation or its subsidiaries
188 unless pursuant to law, an order of a court or administrative
189 body, a legislative proceeding pursuant to s. 5, Art. III of the
190 State Constitution, or a private agreement that provides that
191 the information may be released to the public; and ~~which~~ is
192 information concerning:

193 1. Internal auditing controls and reports of internal
194 auditors;

195 2. Matters reasonably encompassed in privileged attorney-
196 client communications;

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

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

207 5. Information relating to private contractual data, the
208 disclosure of which would impair the competitive interest of the
209 provider of the information;

210 6. Corporate officer and employee personnel information;

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

215 8. Minutes of meetings of the governing board of the not-



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216 for-profit corporation and its subsidiaries, except minutes of
217 meetings open to the public pursuant to subsection (9);

218 9. Information that reveals plans for marketing services
219 that the corporation or its subsidiaries reasonably expect to be
220 provided by competitors;

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

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

228 b. Reimbursement methodologies or rates;

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

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

239
240 As used in this paragraph, the term "managed care" means systems
241 or techniques generally used by third-party payors or their
242 agents to affect access to and control payment for health care
243 services. Managed-care techniques most often include one or more
244 of the following: prior, concurrent, and retrospective review of



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

252 (9) Meetings of the governing board of the not-for-profit
253 corporation and meetings of the subsidiaries of the not-for-
254 profit corporation at which the expenditure of dollars
255 appropriated to the not-for-profit corporation by the state are
256 discussed or reported must remain open to the public in
257 accordance with s. 286.011 and s. 24(b), Art. I of the State
258 Constitution, unless made confidential or exempt by law. Other
259 meetings of the governing board of the not-for-profit
260 corporation and of the subsidiaries of the not-for-profit
261 corporation are exempt from s. 286.011 and s. 24(b), Art. I of
262 the State Constitution.

263 (10) In addition to the continuing appropriation to the
264 institute provided in s. 210.20(2), any appropriation to the
265 institute provided in a general appropriations act shall be paid
266 directly to the board of directors of the not-for-profit
267 corporation by warrant drawn by the Chief Financial Officer from
268 the State Treasury.

269
270 ===== T I T L E A M E N D M E N T =====

271 And the title is amended as follows:

272 Delete line 122

273 and insert:



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274 education; amending s. 1004.43, F.S.; transferring
275 oversight of the H. Lee Moffitt Cancer Center and
276 Research Institute to the Board of Trustees of the
277 University of South Florida; requiring the Board of
278 Trustees to enter into a lease agreement for use of
279 certain land and facilities; providing for the terms
280 of the lease; requiring the University of South
281 Florida and the Florida not-for-profit corporation
282 that governs and operates the H. Lee Moffitt Cancer
283 Center and Research Institute to enter into an
284 agreement to review construction plans and
285 specifications for consistency of certain criteria;
286 revising the membership of the board of directors for
287 the not-for-profit corporation; deleting the
288 requirement that the Board of Governors provide for
289 certain approvals of the articles of incorporation of
290 the not-for-profit corporation and use of land and
291 facilities for certain purposes; requiring the not-
292 for-profit corporation to cause to be prepared annual
293 financial audits; requiring the not-for-profit
294 corporation to provide equal employment opportunities;
295 providing for the governance and operation of the
296 facilities if the agreement between the not-for-profit
297 corporation and the Board of Trustees of the
298 University of South Florida, rather than the Board of
299 Governors, is terminated; requiring the chief
300 executive officer to report annually to the Board of
301 Governors on the educational activities of the not-
302 for-profit corporation; providing for the creation and



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duties of an external advisory board; repealing s.
1004.58, F.S., relating to the