

CHAPTER 2010-85

Committee Substitute for House Bill No. 341

An act relating to the H. Lee Moffitt Cancer Center and Research Institute; amending s. 1004.43, F.S.; revising provisions relating to the establishment of the institute and specifying primary responsibilities of the institute; conforming provisions relating to the agreement by the Board of Governors and the not-for-profit corporation for the use of facilities on the campus of the University of South Florida; specifying that the not-for-profit corporation and its not-for-profit subsidiaries shall conclusively act as instrumentalities of the state for purposes of sovereign immunity; authorizing the use of land, facilities, and personnel for teaching and research programs conducted by state universities; revising provisions relating to the control and sharing of certain income; providing an effective date.

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

Section 1. 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 at the University of South Florida.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The chief executive officer shall have control over the budget and the dollars appropriated or donated to the institute from private, local, state, and federal sources, as well as technical and professional income generated or derived from practice activities of the not-for-profit corporation and its subsidiaries institute. Technical and professional income generated from practice activities may be shared between the not-for-profit corporation and its subsidiaries as determined by the chief executive officer. However, professional income generated by state university employees faculty from practice activities at the not-for-profit corporation and its subsidiaries institute shall be shared between the institute and the university and the not-for-profit corporation and its subsidiaries only as determined by the chief executive officer and the appropriate university dean or vice president.

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

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

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

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

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

(6) The board of directors of the not-for-profit corporation shall create a council of scientific advisers to the chief executive officer comprised of leading researchers, physicians, and scientists. This council shall review programs and recommend research priorities and initiatives so as to maximize the state’s investment in the institute. The council shall be appointed by the board of directors of the not-for-profit corporation. Each member of the council shall be appointed to serve a 2-year term and may be reappointed to the council.

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

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

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

1. Internal auditing controls and reports of internal auditors;
2. Matters reasonably encompassed in privileged attorney-client communications;
3. Contracts for managed-care arrangements, including preferred provider organization contracts, health maintenance organization contracts, and exclusive provider organization contracts, and any documents directly relating to the negotiation, performance, and implementation of any such contracts for managed-care arrangements;
4. Bids or other contractual data, banking records, and credit agreements the disclosure of which would impair the efforts of the not-for-profit corporation or its subsidiaries to contract for goods or services on favorable terms;

5. Information relating to private contractual data, the disclosure of which would impair the competitive interest of the provider of the information;
6. Corporate officer and employee personnel information;
7. Information relating to the proceedings and records of credentialing panels and committees and of the governing board of the not-for-profit corporation or its subsidiaries relating to credentialing;
8. Minutes of meetings of the governing board of the not-for-profit corporation and its subsidiaries, except minutes of meetings open to the public pursuant to subsection (9);
9. Information that reveals plans for marketing services that the corporation or its subsidiaries reasonably expect to be provided by competitors;
10. Trade secrets as defined in s. 688.002, including:
 - a. Information relating to methods of manufacture or production, potential trade secrets, potentially patentable materials, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the not-for-profit corporation or its subsidiaries; and
 - b. Reimbursement methodologies or rates;
11. The identity of donors or prospective donors of property who wish to remain anonymous or any information identifying such donors or prospective donors. The anonymity of these donors or prospective donors must be maintained in the auditor’s report; or
12. Any information received by the not-for-profit corporation or its subsidiaries from an agency in this or another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of this or another state or nation or pursuant to federal law.

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

(c) Subparagraphs 10. and 12. of paragraph (b) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand

repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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

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

Approved by the Governor May 14, 2010.

Filed in Office Secretary of State May 14, 2010.