

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2202

SPONSOR: Senator Sullivan

SUBJECT: H. Lee Moffitt Cancer Center and Research Institute/University of South Florida

DATE: February 20, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	O'Farrell	ED	Favorable
2.	_____	_____	AED	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes the not-for-profit corporation governing the H. Lee Moffitt Cancer and Research Center to create for-profit subsidiaries with the approval of the Florida Board of Education. The bill extends sovereign immunity to the for-profit subsidiaries. The bill exempts the not-for-profit corporation and its subsidiaries from the property coverage under the State Risk Management Trust Fund if the entities maintain comparable property insurance coverage. The bill authorizes the creation of an oncology program. The bill expands the public records exemption to include materials and information exempted under s. 240.241(2), F.S. The bill provides that any appropriation to the institute shall be paid directly to the board of directors of the not-for-profit corporation and shall not be subject to ss. 216.052(7) and 216.301, F.S. The bill creates the H. Lee Moffitt Cancer Center and Research Institute Challenge Grant Program. The bill provides for a state matching appropriation for private gifts to be held in the university foundation subject to the General Appropriations Act.

This bill substantially amends s. 240.512, F.S.

II. Present Situation:

The H. Lee Moffitt Cancer Center and Research Institute was established at the University of South Florida pursuant to s. 240.512, F.S. A not-for profit corporation governs the institute in accordance with agreements with the Board of Regents (now Florida Board of Education pursuant to s. 229.003, F.S.) for the use of facilities on the campus of the University of South Florida. Subject to approval of the Board of Regents (Florida Board of Education), the not-for-profit corporation may create not-for-profit corporate subsidiaries. The not-for-profit corporation is an instrumentality of the state and not a state agency under s. 20.03(11), F.S.; however, there is no explicit statutory reference extending sovereign immunity to the not-for-

profit corporation. There is judicial precedent establishing that the not-for-profit corporation is entitled to sovereign immunity as a corporation acting primarily as an instrumentality of the State of Florida.

The corporation is managed by a board of directors consisting of the President of the University of South Florida and the chair of the Board of Regents (Florida Board of Education), or his or her designee, 5 representatives of the state university system, and between 10-14 additional directors who are not medical doctors or state employees.

The Board of Regents (Florida Board of Education) shall provide in the agreement with the not-for-profit corporation the following:

- Approval of the articles of incorporation of the not-for-profit corporation and any not-for-profit subsidiary;
- Use of hospital facilities and personnel for mutually approved teaching and research programs conducted by the University of South Florida or other accredited medical schools or research institutes;
- Preparation of an annual post-audit of the not-for-profit corporation and its not-for-profit subsidiaries by an independent certified accountant;
- The annual audit report shall be submitted to the Auditor General and the Board of Regents (Florida Board of Education) for review;
- The Auditor General, Board of Regents (Florida Board of Education), and the Office of Program Policy Analysis and Government Accountability are authorized to review any details or supplemental data relative to operations of the corporation and its subsidiaries
- Provision for non-discrimination;
- The Board of Regents (Florida Board of Education) may secure comprehensive general liability protection, including professional liability protection, for the corporation and its subsidiaries pursuant to s. 240.213, F.S.; and
- Provision for Board of Regents (Florida Board of Education) to assume governance and operation of the facilities if agreement is terminated.

The institute shall be administered by a center director, who serves at the pleasure of the board of directors. The center director is charged with the following responsibilities:

- Establishing programs with the exception of degree conferring programs unless approved by the Board of Regents (Florida Board of Education);
- Controlling the budget, and appropriations and donations to the institute with the exception of practice income, which is shared between the institute and the university;
- Appointing members to conduct research, patient care, and educational activities, and determining compensation;
- Controlling the use of space and equipment within the facilities;
- Creating the administrative structure; and
- Reporting to the Governor, the Legislature, the Board of Regents (Florida Board of Education), and the Chancellor of the State University System.

The board of directors is directed to create a council of scientific advisors to review programs and research priorities. The board of directors appoints the members of the council, which includes 5 appointees of the Board of Regents (Florida Board of Education).

Section 240.512, F.S., provides a public records and public meeting exemption for proprietary confidential business information and for meetings of the board, in which the expenditure of appropriated dollars is not discussed. Proprietary confidential business information is defined as information the disclosure of which would harm the entities and relates to the following:

- Internal auditing controls;
- Matters protected by attorney-client privilege;
- Contracts for managed-care arrangements, including documents relating to the negotiation, performance and implementation of the contracts;
- Bids or other contractual data, banking records, and credit agreements;
- Private contractual data;
- Personnel information;
- Credentialing information;
- Minutes of meetings except for those meetings where the expenditure of appropriated dollars is discussed;
- Plans for marketing services;
- Trade secrets as defined in s. 668.002, F.S., including reimbursement methodologies or rates; or
- Identities of donors or prospective donors who wish to remain anonymous.

Finally, s. 240.512, F.S., provides that all meetings, with the exception of meetings in which the expenditure of appropriated dollars is discussed, are exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

III. Effect of Proposed Changes:

This bill amends the powers and duties of the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida. The bill expands the purposes of the not-for-profit corporation and its subsidiaries to include use of lands, facilities, and personnel for research, education, treatment, prevention, and the early detection of cancer.

The bill authorizes the not-for-profit corporation to create subsidiaries that are for-profit corporations with approval of the Florida Board of Education.

The bill extends sovereign immunity to the institute's subsidiaries. Accordingly, the bill would extend sovereign immunity to for-profit entities. There is no judicial precedent addressing the extension of sovereign immunity to for-profit entities. However, ss. 768.28 (10) and (11), F.S., provide that certain providers or vendors are extended sovereign immunity when they contractually agree to serve as agents of certain agencies of the state. It is likely that these providers or vendors encompass for-profit entities.

The bill authorizes the University of South Florida Health Sciences Center self-insurance program to secure professional liability protection. The bill provides an opt-out provision from the property insurance coverage under the State Risk Management Trust Fund if the entities maintain property insurance protection with comparable or greater coverage limits. Currently,

the not-for-profit corporation maintains property insurance coverage greater than the fire insurance trust fund.

The bill further provides that the not-for-profit corporation and its subsidiaries may enter into an affiliation agreement with the University of South Florida to create an interdisciplinary oncology program to include joint financial and administrative support and revenue sharing.

The bill may expand the public records exemption to include materials and information exempted under s. 240.241(2), F.S., which provides an exemption for materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, or proprietary information received or generated during the course of research conducted within the state universities. The general counsel's office of the not-for-profit corporation has opined that the cross-reference to s. 240.241(2), F.S., merely clarifies the existing public records exemption. The general counsel's office of the University of South Florida has opined that the cross-reference is an expansion of the public records exemption and is needed to ensure that any exempted information transmitted from the division on sponsored research maintains its protected status when delivered to the institute. The division's concern is that the public records exemption afforded the division of sponsored research extends to cover research agreements with a third party. The institute's current exemption may not extend to such agreements.

The bill provides that any appropriation to the institute shall be paid directly to the board of directors of the not-for-profit corporation by warrant drawn by the Comptroller upon the State Treasury and is exempt from ss. 216.052(7) and 216.301, F.S. Accordingly, that the not-for-profit corporation and its subsidiaries would keep interest on any appropriation and any unexpended funds would not revert to the General Revenue Fund.

The bill creates the H. Lee Moffitt Cancer Center and Research Institute Challenge Grant Program. The bill creates a challenge grant account within the university foundation. The bill provides for a state matching appropriation for private gifts for eligible projects subject to the General Appropriations Act.

The Council of Scientific Advisors approves a list of projects that have raised a private contribution equal to one-half of the total cost of the project. A project is defined to encompass the construction of facilities or the support of clinical, research, and teaching programs. The contribution may not include federal, state or local government funds. The list of eligible projects may be submitted to the Legislature with a budget request that includes the recommended schedule necessary to complete each project.

The not-for-profit corporation or its designated beneficiary transfers the private gifts approved for state matching into the challenge grant account of the university foundation. The university foundation receives, holds, and disburses any appropriated state matching funds to the board of directors of the not-for-profit corporation. Interest accruing to the account shall remain in the challenge grant account. Funds in the challenge grant account do not revert. If the state's share is insufficient to meet the requirements of the approved project, the not-for-profit corporation or its designated subsidiary may renegotiate with the donors the terms of the contributions.

The bill provides that the matching fund program does not prohibit the Legislature from providing matching funds for gifts pursuant to s. 240.2601 and 240.2605, F.S., for the construction of facilities and support of research at the H. Lee Moffitt Cancer Center and Research Institute.

The bill makes technical changes to delete obsolete references to the Board of Regents. The bill also renames the center director to chief executive officer.

The bill takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

It has not been determined whether the bill creates a public record expansion. If the bill expands the public records exemption, it may violate the single subject requirement of s. 24(c), Art. I of the State Constitution. In addition, the bill does not provide a statement of public necessity for the possible expansion of the public records exemption, thereby violating s. 24(c), Art. I of the State Constitution and s. 119.15, F.S. Finally, if the amendment of the public records expansion were determined to be substantial, a sunset provision would be required pursuant to s. 119.15, F.S.

C. Trust Funds Restrictions:

An argument could be made that this bill creates a trust fund by segregating funds in a specific account for a specific purpose. An equally availing argument could be made that a trust fund is not created because the funds may be commingled in the university challenge grant program. There is no judicial precedent directly on point. If the bill is determined to have created a trust fund, the matching grant program would require a separate bill with passage by three-fifths vote of each house of the Legislature pursuant to s. 19(f)(1), Art. III of the State Constitution.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would extend sovereign immunity protection to for-profit subsidiaries of the not-for-profit corporation.

C. Government Sector Impact:

The bill provides that the state shall match the contribution from private sources by appropriating one-half of the project cost subject to the General Appropriations Act. Two private gifts, totaling \$476,332, are currently eligible for state matching.

The bill provides that interest on any appropriation remains with the not-for-profit corporation. The bill further provides that any unexpended funds to the institute would not revert to the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the chief executive officer of the not-for-profit corporation may establish academic programs that terminate with the conferring of a degree with the approval of the University of South Florida Board of Trustees based on criteria established by the Florida Board of Education. However, s. 229.0081, F.S., provides that a university board of trustees may only approve new programs up to the master's level. Creation of a doctoral program would require approval of the Florida Board of Education.

VIII. Amendments:

None.