

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 147                      Public Records/Moffitt Cancer Center  
**SPONSOR(S):** Ambler  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** None

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration		Williamson	Everhart
2)			
3)			
4)			
5)			

---

### SUMMARY ANALYSIS

Florida law establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer Center) at the University of South Florida. The law also requires a Florida not-for-profit corporation (corporation) to govern and operate the Cancer Center. Records of the corporation and its subsidiaries are public records, though some of the records are confidential and exempt from public disclosure.

This bill expands the corporation's public records exemption to conform it to the public records exemption afforded state university divisions of sponsored research. It provides for future review and repeal of the exemption and provides a statement of public necessity.

This bill requires a two-thirds vote of the members present and voting for passage.

This bill appears to have a minimal fiscal impact on state government. See "FISCAL COMMENTS" section.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Florida law establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer Center) at the University of South Florida (USF). The law requires the organization of a Florida not-for-profit corporation (corporation) for the sole purpose of governing and operating the Cancer Center. Records of the corporation and its subsidiaries are public records.<sup>1</sup>

Current law provides a public records exemption for proprietary confidential business information owned or controlled by the corporation or its subsidiaries. "Proprietary confidential business information" (CBI) means information that 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".<sup>2</sup>

The public records exemptions for the corporation and USF's division of sponsored research differ. Because the corporation's affiliation with USF includes "significant coordination and joint development research discoveries", the differing public records exemptions have created confusion regarding the "scope of the protections of intellectual property enjoyed by" the corporation and USF.<sup>3</sup> According to the Cancer Center, conforming the corporation's exemption to USF's division of sponsored research exemption would allow the Cancer Center to more effectively fulfill its legislative mandate in the area of cancer research.

##### Effect of Bill

This bill expands the corporation's exemption to include:

- Information relating to methods of manufacture or production, potential trade secrets, potentially patentable material, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the corporation or its subsidiaries.
- Business transactions resulting from such research.
- Information received by the corporation or its subsidiaries from a person in this or another state or nation or the Federal Government which is otherwise exempt or confidential.

<sup>1</sup> Section 1004.43, F.S.

<sup>2</sup> Section 1004.43(8)(b), F.S.

<sup>3</sup> Letter to Representative Haridopolos from the Cancer Center's Director of Governmental Relations, January 22, 2003.

This bill provides for future review and repeal of the exemption, and provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 amends s. 1004.43(8), F.S., expanding a current public records exemption for the H. Lee Moffitt Cancer Center and Research Institute.

Section 2 provides for future review and repeal of the exemption.

Section 3 provides a statement of public necessity.

Section 4 provides an effective date of "upon becoming a law."

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, or eliminate a revenue source.

2. Expenditures:

Unknown and likely minimal. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Public Records Law**

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995<sup>4</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

---

<sup>4</sup> Section 119.15, F.S.