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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 1004.43, F.S., which
 4 provides an exemption from public records and public
 5 meetings requirements for the not-for-profit corporation
 6 or a subsidiary of the H. Lee Moffitt Cancer Center and
 7 Research Institute; providing a definition for the terms
 8 "managed care," "proprietary confidential business
 9 information," and "trade secret"; expanding the public
 10 record exemption to include the identity of a donor or
 11 prospective donor to the not-for-profit corporation or a
 12 subsidiary who wishes to remain anonymous; expanding the
 13 public record exemption to include patentable materials
 14 received, generated, ascertained, or discovered during the
 15 course of research; narrowing the public meetings
 16 exemption to include only those portions of meetings
 17 wherein confidential and exempt information is discussed;
 18 providing for future legislative review and repeal of the
 19 exemption under the Open Government Sunset Review Act;
 20 reorganizing the section; providing a statement of public
 21 necessity; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Subsections (8) and (9) of section 1004.43,
 26 Florida Statutes, are amended to read:

27 1004.43 H. Lee Moffitt Cancer Center and Research
 28 Institute.—There is established the H. Lee Moffitt Cancer Center

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29 | and Research Institute at the University of South Florida.

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

33 | (b) The following information is confidential and exempt
34 | from s. 119.07(1) and s. 24(a), Art. I of the State
35 | Constitution:

36 | 1. Information received by the not-for-profit corporation
37 | or a subsidiary from a person in another state or nation or the
38 | Federal Government that is otherwise exempt or confidential
39 | pursuant to the laws of that state or nation or pursuant to
40 | federal law.

41 | 2. Information received by the not-for-profit corporation
42 | or a subsidiary in the performance of its duties and
43 | responsibilities which is otherwise confidential or exempt by
44 | law.

45 | 3. Matters reasonably encompassed in privileged attorney-
46 | client communications.

47 | 4. Proprietary confidential business information~~is~~
48 | ~~confidential and exempt from the provisions of s. 119.07(1) and~~
49 | ~~s. 24(a), Art. I of the State Constitution.~~

50 | 5. Records of credentialing panels and committees and of
51 | the governing board of the not-for-profit corporation or its
52 | subsidiaries relating to credentialing.

53 | 6. The identity of a donor or prospective donor to the
54 | not-for-profit corporation or a subsidiary who wishes to remain
55 | anonymous.

56 | 7. Trade secrets.

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57 | (c) ~~However,~~ The Auditor General, the Office of Program
 58 | Policy Analysis and Government Accountability, and the Board of
 59 | Governors, pursuant to their oversight and auditing functions,
 60 | must be given access to all ~~proprietary confidential business~~
 61 | information made confidential and exempt under paragraph (b),
 62 | upon request and without subpoena and must maintain the
 63 | confidentiality of information so received.

64 | (d) As used in this subsection ~~paragraph,~~ the term:

65 | 1. "Managed care" means systems or techniques generally
 66 | used by third-party payors or their agents to affect access to
 67 | and control payment for health care services. Managed-care
 68 | techniques most often include one or more of the following:

69 | a. Prior, concurrent, and retrospective review of the
 70 | medical necessity and appropriateness of services or site of
 71 | services;

72 | b. Contracts with selected health care providers;

73 | c. Financial incentives or disincentives related to the
 74 | use of specific providers, services, or service sites;

75 | d. Controlled access to and coordination of services by a
 76 | case manager; and

77 | e. Payor efforts to identify treatment alternatives and
 78 | modify benefit restrictions for high-cost patient care.

79 | 2. "Proprietary confidential business information" means
 80 | information, regardless of its form or characteristics, that
 81 | ~~which~~ is owned or controlled by the not-for-profit corporation
 82 | or its subsidiaries; is intended to be and is treated by the
 83 | not-for-profit corporation or its subsidiaries as private and
 84 | the disclosure of which would harm the business operations of

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85 the not-for-profit corporation or its subsidiaries; has not been
 86 intentionally disclosed by the not-for-profit corporation or its
 87 subsidiaries unless pursuant to law, an order of a court or
 88 administrative body, a legislative proceeding pursuant to s. 5,
 89 Art. III of the State Constitution, or a private agreement that
 90 provides that the information may be released to the public; and
 91 that ~~which~~ is information concerning:

92 ~~a.1.~~ Internal auditing controls and reports of internal
 93 auditors;

94 ~~2. Matters reasonably encompassed in privileged attorney-~~
 95 ~~client communications;~~

96 ~~b.3.~~ Contracts for managed-care arrangements, including
 97 preferred provider organization contracts, health maintenance
 98 organization contracts, and exclusive provider organization
 99 contracts, and any records ~~documents~~ directly relating to the
 100 negotiation, performance, and implementation of any such
 101 contracts for managed-care arrangements;

102 ~~c.4.~~ Bids or other contractual data, banking records, and
 103 credit agreements the disclosure of which would impair the
 104 efforts of the not-for-profit corporation or its subsidiaries to
 105 contract for goods or services on favorable terms;

106 ~~d.5.~~ Information relating to private contractual data, the
 107 disclosure of which would impair the competitive interest of the
 108 provider of the information;

109 ~~e.6.~~ Corporate officer and employee personnel information;

110 ~~7. Information relating to the Proceedings and records of~~
 111 ~~credentialing panels and committees and of the governing board~~
 112 ~~of the not-for-profit corporation or its subsidiaries relating~~

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113 ~~to credentialing;~~
 114 ~~8. Minutes of meetings of the governing board of the not-~~
 115 ~~for-profit corporation and its subsidiaries, except minutes of~~
 116 ~~meetings open to the public pursuant to subsection (9);~~
 117 f.9. Information that reveals plans for marketing services
 118 that the not-for-profit corporation or its subsidiaries
 119 reasonably expect to be provided by competitors;
 120 ~~10. Trade secrets as defined in s. 688.002, including:~~
 121 g.a. Information relating to methods of manufacture or
 122 production, potential trade secrets, or patentable or
 123 ~~potentially patentable materials, or proprietary information~~
 124 ~~received, generated, ascertained, or discovered during the~~
 125 ~~course of research conducted by the not-for-profit corporation~~
 126 ~~or its subsidiaries;—and~~
 127 h.b. Reimbursement methodologies or rates.
 128 3. "Trade secret" means a trade secret as defined in s.
 129 688.002.
 130 ~~11. The identity of donors or prospective donors of~~
 131 ~~property who wish to remain anonymous or any information~~
 132 ~~identifying such donors or prospective donors. The anonymity of~~
 133 ~~these donors or prospective donors must be maintained in the~~
 134 ~~auditor's report; or~~
 135 ~~12. Any information received by the not for profit~~
 136 ~~corporation or its subsidiaries from an agency in this or~~
 137 ~~another state or nation or the Federal Government which is~~
 138 ~~otherwise exempt or confidential pursuant to the laws of this or~~
 139 ~~another state or nation or pursuant to federal law.~~
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141 ~~As used in this paragraph, the term "managed care" means systems~~
 142 ~~or techniques generally used by third-party payors or their~~
 143 ~~agents to affect access to and control payment for health care~~
 144 ~~services. Managed care techniques most often include one or more~~
 145 ~~of the following: prior, concurrent, and retrospective review of~~
 146 ~~the medical necessity and appropriateness of services or site of~~
 147 ~~services; contracts with selected health care providers;~~
 148 ~~financial incentives or disincentives related to the use of~~
 149 ~~specific providers, services, or service sites; controlled~~
 150 ~~access to and coordination of services by a case manager; and~~
 151 ~~payor efforts to identify treatment alternatives and modify~~
 152 ~~benefit restrictions for high-cost patient care.~~

153 (d)(e) ~~This subsection is Subparagraphs 10. and 12. of~~
 154 ~~paragraph (b)~~ are subject to the Open Government Sunset Review
 155 Act in accordance with s. 119.15 and shall stand repealed on
 156 October 2, 2015 ~~2010~~, unless reviewed and saved from repeal
 157 through reenactment by the Legislature.

158 (9)(a) ~~Those portions of meetings of the governing board~~
 159 ~~of the not-for-profit corporation and meetings of the~~
 160 ~~subsidiaries of the not-for-profit corporation at which~~
 161 information made confidential and exempt pursuant to subsection
 162 (8) are discussed are exempt from the expenditure of dollars
 163 ~~appropriated to the not-for-profit corporation by the state are~~
 164 ~~discussed or reported must remain open to the public in~~
 165 ~~accordance with s. 286.011 and s. 24(b), Art. I of the State~~
 166 ~~Constitution unless made confidential or exempt by law. Other~~
 167 ~~meetings of the governing board of the not-for-profit~~
 168 ~~corporation and of the subsidiaries of the not-for-profit~~

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169 ~~corporation are exempt from s. 286.011 and s. 24(b), Art. I of~~
 170 ~~the State Constitution.~~

171 (b) Minutes of closed meetings of the governing board of
 172 the not-for-profit corporation and its subsidiaries are
 173 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 174 of the State Constitution.

175 Section 2. The Legislature finds that it is a public
 176 necessity to make confidential and exempt from public records
 177 requirements the identity of a donor or prospective donor to the
 178 not-for-profit corporation or a subsidiary of the H. Lee Moffitt
 179 Cancer Center and Research Institute who wishes to remain
 180 anonymous. The Legislature finds that the identity of a donor or
 181 prospective donor who wishes to remain anonymous should be
 182 confidential and exempt from public disclosure in the same
 183 manner provided to the direct-support organizations at the state
 184 universities in s. 1004.28(5), Florida Statutes. This exemption
 185 is necessary because the disclosure of such confidential and
 186 exempt information may adversely impact the ability of the not-
 187 for-profit corporation or its subsidiaries to receive donations
 188 from individuals who request anonymity. In addition, the
 189 Legislature finds that patentable materials received, generated,
 190 ascertained, or discovered during the course of research
 191 conducted by or through the not-for-profit corporation or a
 192 subsidiary of the H. Lee Moffitt Cancer Center and Research
 193 Institute must be made confidential and exempt because the
 194 disclosure of such information would create an unfair
 195 competitive advantage for persons receiving such information and
 196 would adversely impact the not-for-profit corporation or its

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197 subsidiaries. If such confidential and exempt information was
 198 released pursuant to a public records request, others would be
 199 allowed to take the benefit of the research without compensation
 200 or reimbursement to the not-for-profit corporation or its
 201 subsidiaries. Without the exemptions provided for in this act,
 202 the disclosure of confidential and exempt information would
 203 place the not-for-profit corporation in an unequal footing in
 204 the marketplace as compared with its private research
 205 competitors that are not required to disclose confidential and
 206 exempt information. The Legislature finds that the disclosure of
 207 such confidential and exempt information would adversely impact
 208 the ability of the not-for-profit corporation or its
 209 subsidiaries to fulfill the mission of research and education.

210 Section 3. This act shall take effect upon becoming a law.