

By Senator Myers

27-1164-98

See HB

1 A bill to be entitled
2 An act relating to public hospital meetings and
3 records; amending s. 395.3035, F.S.; defining
4 "strategic plan" for purposes of provisions
5 which provide for the confidentiality of such
6 plans and of meetings relating thereto;
7 providing an exemption from open meetings
8 requirements for meetings at which such plans
9 are modified or approved by the hospital's
10 governing board; providing for future review
11 and repeal; providing conditions for the early
12 release of transcripts of meetings at which
13 such plans are discussed; providing a finding
14 of public necessity; providing an effective
15 date.

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

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19 Section 1. Subsection (4) of section 395.3035, Florida
20 Statutes, is amended, subsection (6) is renumbered as
21 subsection (7), and a new subsection (6) is added to that
22 section, to read:

23 395.3035 Confidentiality of public hospital records
24 and meetings.--

25 (2) The following public hospital records and
26 information are confidential and exempt from the provisions of
27 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

28 (b) A public hospital's strategic plans, including
29 plans for marketing its services, which services are or may
30 reasonably be expected by the hospital's governing board to be
31 provided by competitors of the hospital. However, documents

1 that are submitted to the hospital's governing board as part
2 of the board's approval of the hospital's budget, and the
3 budget itself, are not confidential and exempt.

4 (4)(a) Those portions of a board meeting at which ~~the~~
5 written strategic plans, including written plans for marketing
6 its services, are discussed or reported on are exempt from the
7 provisions of s. 286.011 and s. 24(b), Art. I of the State
8 Constitution.

9 (b) Those portions of a board meeting at which written
10 strategic plans, including written plans for marketing its
11 services, are modified or approved by the governing board are
12 exempt from the provisions of s. 286.011 and s. 24(b), Art. I
13 of the State Constitution. This paragraph is subject to the
14 Open Government Sunset Review Act of 1995 in accordance with
15 s. 119.15 and shall stand repealed on October 2, 2003, unless
16 reviewed and saved from repeal through reenactment by the
17 Legislature.

18 (c) All portions of any board meeting which are closed
19 to the public shall be recorded by a certified court reporter.
20 The reporter shall record the times of commencement and
21 termination of the meeting, all discussion and proceedings,
22 the names of all persons present at any time, and the names of
23 all persons speaking. No portion of the meeting shall be off
24 the record. The court reporter's notes shall be fully
25 transcribed and maintained by the hospital records custodian
26 within a reasonable time after the meeting. The transcript
27 shall become public 3 years after the date of the board
28 meeting or at an earlier date if the governing board
29 determines that the strategic plan discussed at the meeting
30 has been fully implemented or the circumstances do not require
31 the transcript of the meeting to remain confidential.

1 (6) For purposes of this section, the term "strategic
2 plan" means any plan to:

3 (a) Initiate or acquire a new health service;

4 (b) Expand an existing health service;

5 (c) Acquire additional facilities;

6 (d) Expand existing facilities;

7 (e) Change all or part of the use of an existing
8 facility or a newly acquired facility;

9 (f) Acquire, merge, or consolidate with another health
10 care facility or health care provider;

11 (g) Enter into a shared service arrangement with
12 another health care provider;

13 (h) Enter into a transaction permitted by s. 155.40;

14 (i) Market the services of the hospital and its
15 ancillary facilities; or

16 (j) Any combination of paragraphs (a)-(i).

17 Section 2. (1) The Legislature finds that it is a
18 public necessity that all contracts for managed care
19 arrangements under which a public hospital provides health
20 care services be held confidential and exempt. This exemption
21 is needed because, as with preferred provider organization
22 contracts and health maintenance organization contracts which
23 are currently confidential and exempt, other managed care
24 contracts, including exclusive provider organization contracts
25 and alliance network arrangements, contain, among other
26 things, payment methodologies and rates the disclosure of
27 which would negatively affect a public hospital in the
28 marketplace. Additionally, documents relating to the
29 negotiation, performance, and implementation of contracts,
30 including managed care arrangements, would also reveal such
31 proprietary and trade secret information. Furthermore, it is a

1 public necessity that portions of a public hospital's
2 governing board meetings be closed when contracts, contract
3 negotiations, or strategic plans that are exempt from the
4 public records laws are discussed. If such meetings ar not
5 closed, information contained in the confidential contracts,
6 contract negotiations, and strategic plans would be revealed.
7 The disclosure of any such confidential contracts, contract
8 negotiations, and strategic plans would make it exceptionally
9 difficult, if not impossible, for a public hospital to
10 effectively compete in the marketplace against private
11 hospitals, whose records and meeting are not required to be
12 open to the public.

13 (2) It is also a public necessity that any records
14 generated at closed public hospital board meetings, such as
15 tape recordings, notes, and minutes, memorializing the
16 discussions regarding such confidential contracts, documents,
17 and strategic plans, including marketing plans, also be held
18 confidential for a limited time as provided; otherwise,
19 confidential proprietary and trade secret information would
20 become public and impair a public hospital's ability to
21 effectively and efficiently compete in the marketplace.

22 (3) The necessity for the strategic planning exemption
23 from public records and public meeting laws is critical to the
24 survival of Florida's public hospital delivery system, which
25 is often the last safety net for our less advantaged citizens
26 and visitors. "Strategic plan," as defined in this act, is
27 limited to plans for: the initiation or expansion of health
28 services; the acquisition, expansion, or change in use of
29 health care facilities; team-up with another health care
30 facility; sale or lease of the facility to a private entity;
31 and marketing of the facility's services. Disclosure of

1 information on any or all of these subjects would place a
2 public hospital at a competitive disadvantage with respect to
3 its privately owned competitors and could allow those
4 competitors to disrupt the implementation of any strategic
5 plan or marketing plan.

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

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HOUSE SUMMARY

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12 Defines "strategic plan" for purposes of provisions which
13 provide for the confidentiality of a public hospital's
14 strategic plans and of meetings relating thereto.
15 Provides an exemption from open meetings requirements for
16 meetings at which such plans are modified or approved by
17 the hospital's governing board. Provides for future
18 review and repeal of said exemption. Specifies
19 circumstances under which transcripts of such meetings
20 may be kept confidential for less than 3 years from the
21 date of the meeting.

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