

By the Committee on Health Care and Senator Myers

317-2208-98

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 that 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 public meeting
11 and notice regarding strategic plans; providing
12 for future review and repeal; authorizing the
13 governing board of a public hospital to study
14 issues relating to reduction or termination of
15 a health service; requiring a public meeting
16 for presentation of proposals; providing for
17 public comment; restricting governing board
18 adoption to proposals presented; providing
19 conditions for the early release of transcripts
20 of meetings at which such plans are discussed;
21 prohibiting public hospitals from taking
22 certain specified actions at closed meetings;
23 requiring a public meeting prior to
24 implementation of a strategic plan; requiring
25 notice and access to certain materials upon
26 request; providing a finding of public
27 necessity; providing an effective date.
28
29 Be It Enacted by the Legislature of the State of Florida:
30
31

1 Section 1. Paragraph (b) of subsection (2) and
2 subsection (4) of section 395.3035, Florida Statutes, are
3 amended, present subsection (6) is renumbered as subsection
4 (10), and new subsections (6), (7), (8), and (9) are added to
5 that section to read:

6 395.3035 Confidentiality of public hospital records
7 and meetings.--

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

11 (b) A public hospital's strategic plans, including
12 plans for marketing its services, which services are or may
13 reasonably be expected by the hospital's governing board to be
14 provided by competitors of the hospital. However, documents
15 that are submitted to the hospital's governing board as part
16 of the board's approval of the hospital's budget, and the
17 budget itself, are not confidential and exempt.

18 (4)(a) Those portions of a board meeting at which the
19 written strategic plans, including written plans for marketing
20 its services, are discussed or reported on are exempt from the
21 provisions of s. 286.011 and s. 24(b), Art. I of the State
22 Constitution.

23 **(b) Those portions of a board meeting at which written**
24 **strategic plans, including written plans for marketing its**
25 **services, are modified or approved by the governing board are**
26 **exempt from the provisions of s. 286.011 and s. 24(b), Art. I**
27 **of the State Constitution. This paragraph is subject to the**
28 **Open Government Sunset Review Act of 1995 in accordance with**
29 **s. 119.15 and shall stand repealed on October 2, 2003, unless**
30 **reviewed and saved from repeal through reenactment by the**
31 **Legislature.**

1 (c) All portions of any board meeting which are closed
2 to the public shall be recorded by a certified court reporter.
3 The reporter shall record the times of commencement and
4 termination of the meeting, all discussion and proceedings,
5 the names of all persons present at any time, and the names of
6 all persons speaking. No portion of the meeting shall be off
7 the record. The court reporter's notes shall be fully
8 transcribed and maintained by the hospital records custodian
9 within a reasonable time after the meeting. The transcript
10 shall become public 3 years after the date of the board
11 meeting or at an earlier date if the strategic plan that was
12 discussed, reported on, modified, or approved at the meeting
13 has been fully implemented.

14 (6) For purposes of this section, the term "strategic
15 plan" means any record that describes actions or activities
16 to:

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

18 (b) Expand an existing health service;

19 (c) Acquire additional facilities;

20 (d) Expand existing facilities;

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

23 (f) Acquire, merge, or consolidate with another health
24 care facility or health care provider;

25 (g) Enter into a shared-service arrangement with
26 another health care provider;

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

28 (i) Market the services of the hospital and its
29 ancillary facilities; or

30 (j) Any combination of activities specified in
31 paragraphs (a)-(i).

1
2 The term "strategic plan" does not include records that
3 describe the existing operations of a public hospital or other
4 public health care facility which implement or execute the
5 provisions of a strategic plan, unless disclosure of any such
6 document would disclose any part of a strategic plan which has
7 not been fully implemented or such document is a record that
8 is otherwise exempt from the Public Records Law. Existing
9 operations include, but are not limited to, the hiring of
10 employees, the purchase of equipment, the placement of
11 advertisement, entering into contracts with physicians to
12 perform medical services, and other types of expenditures for
13 the purpose of implementing a strategic plan. Records that
14 describe operations are not exempt, except as specifically
15 provided by this section.

16 (7) The governing board of a public hospital may not
17 approve at any closed meeting a binding agreement to sell,
18 lease, merge, or consolidate the hospital. Any such approval
19 must be made at a meeting open to the public and noticed in
20 accordance with s. 286.011.

21 (8) The governing board of a public hospital, in
22 developing a strategic plan that may result in a substantial
23 reduction or termination of a health service, may conduct
24 studies and engage in other fact-finding activities and may
25 discuss such studies and fact-finding reports, as provided in
26 subsection (4). However, prior to the governing board adopting
27 any proposal that would result in the termination or a
28 substantial reduction of a health service that is not
29 available from any other provider within 30-minutes' driving
30 time, the governing board must present all proposals under
31 consideration relating to the health service to the public at

1 a public meeting noticed and conducted in accordance with
2 chapter 286. The public may comment on all proposed
3 alternatives. The governing board may not adopt any proposal
4 other than a proposal or any combination of proposals
5 presented to the public as required under this subsection.

6 (9) If the governing board of the entity that owns the
7 hospital or other health care facility closes a portion of any
8 board meeting pursuant to subsection (4), the governing board,
9 prior to placing the strategic plan or any discrete component
10 of the strategic plan into operations, must notice and conduct
11 a meeting in accordance with s. 286.011. The notice of the
12 meeting must be given not less than 15 days in advance of the
13 meeting and must specify that the implementation of all or a
14 part of a strategic plan will be discussed at the meeting. The
15 written materials that are furnished to the board in
16 preparation for the noticed meeting which describe or support
17 the proposed actions of the board will be furnished to any
18 member of the public, upon request, at least 7 days prior to
19 the meeting.

20 Section 2. (1) The Legislature finds that it is a
21 public necessity that portions of a public hospital's
22 governing board meetings be closed when strategic plans that
23 are exempt from the Public Records Law are discussed. If such
24 meetings are not closed, information contained in confidential
25 strategic plans would be revealed. The disclosure of any such
26 confidential plans would make it exceptionally difficult, if
27 not impossible, for a public hospital to effectively compete
28 in the marketplace against private hospitals, whose records
29 and meetings are not required to be open to the public.

30 (2) It is also a public necessity that any records
31 generated at closed public hospital board meetings, such as

1 tape recordings, notes, and minutes, memorializing the
2 discussions regarding such confidential strategic plans,
3 including marketing plans, also be held confidential for a
4 limited time as provided; otherwise, confidential proprietary
5 and trade secret information would become public and impair a
6 public hospital's ability to effectively and efficiently
7 compete in the marketplace.

8 (3) The necessity for the strategic planning exemption
9 from public records and public meeting laws is critical to the
10 survival of Florida's public-hospital delivery system, which
11 is often the last safety net for our less advantaged citizens
12 and visitors. Disclosure of information contained in a
13 strategic plan, as defined in this act, would place a public
14 hospital at a competitive disadvantage with respect to its
15 privately owned competitors and could allow those competitors
16 to disrupt the implementation of any strategic plan or
17 marketing plan.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1170

Language is added to the bill that: (1) clarifies the meaning of the term "strategic plan;" (2) prohibits a public hospital governing board from entering into a binding agreement to sell, lease, merge, or consolidate the hospital in any setting other than a public meeting that has been noticed as required under the Public Meetings Law; (3) authorizes the governing boards of public hospitals to conduct studies and fact-finding relating to reduction or termination of health services, but requires them to allow the public an opportunity to comment on any proposals that would result in substantial reduction or termination of a health service that would be unavailable to consumers from another health care provider within 30-minutes driving time and prohibits such governing boards from adopting any proposal other than a proposal or a combination of proposals presented to the public for comment; and (4) for those strategic plans or portions of such plans, discussed during governing board meetings that were closed to the public, requires public hospital governing boards to give 15-days notice and conduct a public meeting for presentation of such plans prior to placing the plans into operation and to make written materials describing or supporting the board's proposed actions available to the public 7 days in advance of the meeting, upon request. The statement of public necessity is modified.