

By Representative Wise

1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 amending s. 491.106, F.S.; providing for
 4 application of public records exemptions in ss.
 5 455.621(2) and (10) and 455.707(3)(e) and
 6 (5)(a), F.S., to certain information concerning
 7 licensed master social workers and licensed
 8 bachelor social workers; providing for
 9 application of the public meetings exemption in
 10 s. 455.621(4), F.S., to proceedings of a
 11 probable cause panel with respect to
 12 investigations concerning such practitioners;
 13 providing for future review and repeal;
 14 providing a finding of public necessity;
 15 providing a contingent effective date.

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

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 19 Section 1. Section 491.106, Florida Statutes, as
 20 created by House Bill , 1998 Regular Session, is amended
 21 to read:

22 491.106 Exemptions from public records and meetings
 23 requirements.--

24 (1) The exemptions from s. 119.07(1) provided by ss.
 25 455.621(2) and (10) and 455.707(3)(e) and (5)(a) also apply to
 26 information concerning a registered clinical social worker
 27 intern or a provisional clinical social worker regulated by
 28 the Agency for Health Care Administration and the department
 29 under this part. The exemption from s. 286.011 provided by s.
 30 455.225(4) also applies to the proceedings of a probable cause
 31 panel with respect to an investigation concerning a registered

1 clinical social worker intern or a provisional clinical social
2 worker regulated by the agency and department under this part.
3 This subsection ~~section~~ is subject to the Open Government
4 Sunset Review Act of 1995 in accordance with s. 119.15 and
5 shall stand repealed on October 2, 2002, unless reviewed and
6 saved from repeal through reenactment by the Legislature.

7 (2) The exemptions from s. 119.07(1) provided by ss.
8 455.621(2) and (10) and 455.707(3)(e) and (5)(a) also apply to
9 information concerning a licensed master social worker or a
10 licensed bachelor social worker regulated by the Agency for
11 Health Care Administration and the department under this part.
12 The exemption from s. 286.011 provided by s. 455.621(4) also
13 applies to the proceedings of a probable cause panel with
14 respect to an investigation concerning a licensed master
15 social worker or a licensed bachelor social worker regulated
16 by the agency and department under this part. This subsection
17 is subject to the Open Government Sunset Review Act of 1995 in
18 accordance with s. 119.15 and shall stand repealed on October
19 2, 2003, unless reviewed and saved from repeal through
20 reenactment by the Legislature.

21 Section 2. Subsections (2), (4), and (10) of section
22 455.621, Florida Statutes, read:

23 455.621 Disciplinary proceedings.--Disciplinary
24 proceedings for each board shall be within the jurisdiction of
25 the department.

26 (2) The department shall allocate sufficient and
27 adequately trained staff to expeditiously and thoroughly
28 determine legal sufficiency and investigate all legally
29 sufficient complaints. For purposes of this section, it is the
30 intent of the Legislature that the term "expeditiously" means
31 that the department complete the report of its initial

1 investigative findings and recommendations concerning the
2 existence of probable cause within 6 months after its receipt
3 of the complaint. The failure of the department, for
4 disciplinary cases under its jurisdiction, to comply with the
5 time limits of this section while investigating a complaint
6 against a licensee constitutes harmless error in any
7 subsequent disciplinary action unless a court finds that
8 either the fairness of the proceeding or the correctness of
9 the action may have been impaired by a material error in
10 procedure or a failure to follow prescribed procedure. When
11 its investigation is complete and legally sufficient, the
12 department shall prepare and submit to the probable cause
13 panel of the appropriate regulatory board the investigative
14 report of the department. The report shall contain the
15 investigative findings and the recommendations of the
16 department concerning the existence of probable cause. At any
17 time after legal sufficiency is found, the department may
18 dismiss any case, or any part thereof, if the department
19 determines that there is insufficient evidence to support the
20 prosecution of allegations contained therein. The department
21 shall provide a detailed report to the appropriate probable
22 cause panel prior to dismissal of any case or part thereof,
23 and to the subject of the complaint after dismissal of any
24 case or part thereof, under this section. For cases dismissed
25 prior to a finding of probable cause, such report is
26 confidential and exempt from s. 119.07(1). The probable cause
27 panel shall have access, upon request, to the investigative
28 files pertaining to a case prior to dismissal of such case. If
29 the department dismisses a case, the probable cause panel may
30 retain independent legal counsel, employ investigators, and
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1 continue the investigation and prosecution of the case as it
2 deems necessary.

3 (4) The determination as to whether probable cause
4 exists shall be made by majority vote of a probable cause
5 panel of the board, or by the department, as appropriate. Each
6 regulatory board shall provide by rule that the determination
7 of probable cause shall be made by a panel of its members or
8 by the department. Each board may provide by rule for multiple
9 probable cause panels composed of at least two members. Each
10 board may provide by rule that one or more members of the
11 panel or panels may be a former board member. The length of
12 term or repetition of service of any such former board member
13 on a probable cause panel may vary according to the direction
14 of the board when authorized by board rule. Any probable cause
15 panel must include one of the board's former or present
16 consumer members, if one is available, is willing to serve,
17 and is authorized to do so by the board chairman. Any probable
18 cause panel must include a present board member. Any probable
19 cause panel must include a former or present professional
20 board member. However, any former professional board member
21 serving on the probable cause panel must hold an active valid
22 license for that profession. All proceedings of the panel are
23 exempt from s. 286.011 until 10 days after probable cause has
24 been found to exist by the panel or until the subject of the
25 investigation waives his privilege of confidentiality. The
26 probable cause panel may make a reasonable request, and upon
27 such request the department shall provide such additional
28 investigative information as is necessary to the determination
29 of probable cause. A request for additional investigative
30 information shall be made within 15 days from the date of
31 receipt by the probable cause panel of the investigative

1 report of the department or the agency. The probable cause
2 panel or the department, as may be appropriate, shall make its
3 determination of probable cause within 30 days after receipt
4 by it of the final investigative report of the department. The
5 secretary may grant extensions of the 15-day and the 30-day
6 time limits. In lieu of a finding of probable cause, the
7 probable cause panel, or the department if there is no board,
8 may issue a letter of guidance to the subject. If, within the
9 30-day time limit, as may be extended, the probable cause
10 panel does not make a determination regarding the existence of
11 probable cause or does not issue a letter of guidance in lieu
12 of a finding of probable cause, the department must make a
13 determination regarding the existence of probable cause within
14 10 days after the expiration of the time limit. If the
15 probable cause panel finds that probable cause exists, it
16 shall direct the department to file a formal complaint against
17 the licensee. The department shall follow the directions of
18 the probable cause panel regarding the filing of a formal
19 complaint. If directed to do so, the department shall file a
20 formal complaint against the subject of the investigation and
21 prosecute that complaint pursuant to chapter 120. However, the
22 department may decide not to prosecute the complaint if it
23 finds that probable cause has been improvidently found by the
24 panel. In such cases, the department shall refer the matter to
25 the board. The board may then file a formal complaint and
26 prosecute the complaint pursuant to chapter 120. The
27 department shall also refer to the board any investigation or
28 disciplinary proceeding not before the Division of
29 Administrative Hearings pursuant to chapter 120 or otherwise
30 completed by the department within 1 year after the filing of
31 a complaint. The department, for disciplinary cases under its

1 jurisdiction, must establish a uniform reporting system to
2 quarterly refer to each board the status of any investigation
3 or disciplinary proceeding that is not before the Division of
4 Administrative Hearings or otherwise completed by the
5 department within 1 year after the filing of the complaint.
6 Annually, the department if there is no board, or each board
7 must establish a plan to reduce or otherwise close any
8 investigation or disciplinary proceeding that is not before
9 the Division of Administrative Hearings or otherwise completed
10 by the department within 1 year after the filing of the
11 complaint. A probable cause panel or a board may retain
12 independent legal counsel, employ investigators, and continue
13 the investigation as it deems necessary; all costs thereof
14 shall be paid from a trust fund used by the department to
15 implement this part. All proceedings of the probable cause
16 panel are exempt from s. 120.525.

17 (10) The complaint and all information obtained
18 pursuant to the investigation by the department are
19 confidential and exempt from s. 119.07(1) until 10 days after
20 probable cause has been found to exist by the probable cause
21 panel or by the department, or until the regulated
22 professional or subject of the investigation waives his
23 privilege of confidentiality, whichever occurs first. Upon
24 completion of the investigation and pursuant to a written
25 request by the subject, the department shall provide the
26 subject an opportunity to inspect the investigative file or,
27 at the subject's expense, forward to the subject a copy of the
28 investigative file. Notwithstanding s. 455.667, the subject
29 may inspect or receive a copy of any expert witness report or
30 patient record connected with the investigation if the subject
31 agrees in writing to maintain the confidentiality of any

1 information received under this subsection until 10 days after
2 probable cause is found and to maintain the confidentiality of
3 patient records pursuant to s. 455.667. The subject may file a
4 written response to the information contained in the
5 investigative file. Such response must be filed within 20
6 days, unless an extension of time has been granted by the
7 department. This subsection does not prohibit the department
8 from providing such information to any law enforcement agency
9 or to any other regulatory agency.

10 Section 3. Paragraph (e) of subsection (3) and
11 paragraph (a) of subsection (5) of section 455.707, Florida
12 Statutes, read:

13 455.707 Treatment programs for impaired
14 practitioners.--

15 (3)

16 (e) The probable cause panel, or the department when
17 there is no board, shall work directly with the consultant,
18 and all information concerning a practitioner obtained from
19 the consultant by the panel, or the department when there is
20 no board, shall remain confidential and exempt from the
21 provisions of s. 119.07(1), subject to the provisions of
22 subsections (5) and (6).

23 (5)(a) An approved treatment provider shall, upon
24 request, disclose to the consultant all information in its
25 possession regarding the issue of a licensee's impairment and
26 participation in the treatment program. All information
27 obtained by the consultant and department pursuant to this
28 section is confidential and exempt from the provisions of s.
29 119.07(1), subject to the provisions of this subsection and
30 subsection (6). Failure to provide such information to the
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1 consultant is grounds for withdrawal of approval of such
2 program or provider.

3 Section 4. The Legislature finds that the disclosure
4 of information concerning an investigation of a practitioner
5 regulated under chapter 491, Florida Statutes, and the
6 disclosure of information concerning an impaired practitioner
7 regulated under chapter 491, Florida Statutes, would
8 constitute an unwarranted invasion into the personal privacy
9 of the practitioner. In addition, the Legislature finds that
10 it is necessary that the meetings of a probable cause panel
11 investigating a practitioner regulated under chapter 491,
12 Florida Statutes, be exempt from s. 286.011, Florida Statutes,
13 until 10 days after probable cause has been found to exist by
14 the panel or until the subject of the investigation waives his
15 or her privilege of confidentiality. Therefore, the
16 Legislature finds that it is a public necessity that certain
17 information of the Agency for Health Care Administration and
18 the Department of Health with respect to a licensed master
19 social worker or a licensed bachelor social worker be kept
20 confidential and exempt from disclosure under the public
21 records law. The Legislature further finds that it is a public
22 necessity that proceedings of a probable cause panel with
23 respect to a licensed master social worker or a licensed
24 bachelor social worker be exempt for a certain period from the
25 public meetings law.

26 Section 5. This act shall take effect on the same date
27 that House Bill or similar legislation revising chapter
28 491, Florida Statutes, to create the categories of social
29 workers specified in this act takes effect, if such
30 legislation is adopted in the same legislative session or an
31 extension thereof.

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HOUSE SUMMARY

Provides for application of public records exemptions in ss. 455.621(2) and (10) and 455.707(3)(e) and (5)(a), F.S., to certain information concerning licensed master social workers and licensed bachelor social workers. Provides for application of the public meetings exemption in s. 455.621(4), F.S., to proceedings of a probable cause panel with respect to investigations concerning such practitioners. Provides for future review and repeal. Provides a finding of public necessity.