

By the Committee on Health Care Standards & Regulatory Reform and Representative Wise

1 A bill to be entitled
2 An act relating to public records and meetings;
3 creating s. 468.854, 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 graduate 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 468.854, Florida Statutes, is
20 created to read:
21 468.854 Exemptions from public records and meetings
22 requirements.--The exemptions from s. 119.07(1) provided by
23 ss. 455.621(2) and (10) and 455.707(3)(e) and (5)(a) also
24 apply to information concerning a licensed graduate social
25 worker or a licensed bachelor social worker regulated by the
26 Agency for Health Care Administration and the department under
27 this part. The exemption from s. 286.011 provided by s.
28 455.621(4) also applies to the proceedings of a probable cause
29 panel with respect to an investigation concerning a licensed
30 graduate social worker or a licensed bachelor social worker
31 regulated by the department under this part. This section is

1 subject to the Open Government Sunset Review Act of 1995 in
2 accordance with s. 119.15 and shall stand repealed on October
3 2, 2003, unless reviewed and saved from repeal through
4 reenactment by the Legislature.

5 Section 2. Subsections (2), (4), and (10) of section
6 455.621, Florida Statutes, read:

7 455.621 Disciplinary proceedings.--Disciplinary
8 proceedings for each board shall be within the jurisdiction of
9 the department.

10 (2) The department shall allocate sufficient and
11 adequately trained staff to expeditiously and thoroughly
12 determine legal sufficiency and investigate all legally
13 sufficient complaints. For purposes of this section, it is the
14 intent of the Legislature that the term "expeditiously" means
15 that the department complete the report of its initial
16 investigative findings and recommendations concerning the
17 existence of probable cause within 6 months after its receipt
18 of the complaint. The failure of the department, for
19 disciplinary cases under its jurisdiction, to comply with the
20 time limits of this section while investigating a complaint
21 against a licensee constitutes harmless error in any
22 subsequent disciplinary action unless a court finds that
23 either the fairness of the proceeding or the correctness of
24 the action may have been impaired by a material error in
25 procedure or a failure to follow prescribed procedure. When
26 its investigation is complete and legally sufficient, the
27 department shall prepare and submit to the probable cause
28 panel of the appropriate regulatory board the investigative
29 report of the department. The report shall contain the
30 investigative findings and the recommendations of the
31 department concerning the existence of probable cause. At any

1 time after legal sufficiency is found, the department may
2 dismiss any case, or any part thereof, if the department
3 determines that there is insufficient evidence to support the
4 prosecution of allegations contained therein. The department
5 shall provide a detailed report to the appropriate probable
6 cause panel prior to dismissal of any case or part thereof,
7 and to the subject of the complaint after dismissal of any
8 case or part thereof, under this section. For cases dismissed
9 prior to a finding of probable cause, such report is
10 confidential and exempt from s. 119.07(1). The probable cause
11 panel shall have access, upon request, to the investigative
12 files pertaining to a case prior to dismissal of such case. If
13 the department dismisses a case, the probable cause panel may
14 retain independent legal counsel, employ investigators, and
15 continue the investigation and prosecution of the case as it
16 deems necessary.

17 (4) The determination as to whether probable cause
18 exists shall be made by majority vote of a probable cause
19 panel of the board, or by the department, as appropriate. Each
20 regulatory board shall provide by rule that the determination
21 of probable cause shall be made by a panel of its members or
22 by the department. Each board may provide by rule for multiple
23 probable cause panels composed of at least two members. Each
24 board may provide by rule that one or more members of the
25 panel or panels may be a former board member. The length of
26 term or repetition of service of any such former board member
27 on a probable cause panel may vary according to the direction
28 of the board when authorized by board rule. Any probable cause
29 panel must include one of the board's former or present
30 consumer members, if one is available, is willing to serve,
31 and is authorized to do so by the board chairman. Any probable

1 cause panel must include a present board member. Any probable
2 cause panel must include a former or present professional
3 board member. However, any former professional board member
4 serving on the probable cause panel must hold an active valid
5 license for that profession. All proceedings of the panel are
6 exempt from s. 286.011 until 10 days after probable cause has
7 been found to exist by the panel or until the subject of the
8 investigation waives his privilege of confidentiality. The
9 probable cause panel may make a reasonable request, and upon
10 such request the department shall provide such additional
11 investigative information as is necessary to the determination
12 of probable cause. A request for additional investigative
13 information shall be made within 15 days from the date of
14 receipt by the probable cause panel of the investigative
15 report of the department or the agency. The probable cause
16 panel or the department, as may be appropriate, shall make its
17 determination of probable cause within 30 days after receipt
18 by it of the final investigative report of the department. The
19 secretary may grant extensions of the 15-day and the 30-day
20 time limits. In lieu of a finding of probable cause, the
21 probable cause panel, or the department if there is no board,
22 may issue a letter of guidance to the subject. If, within the
23 30-day time limit, as may be extended, the probable cause
24 panel does not make a determination regarding the existence of
25 probable cause or does not issue a letter of guidance in lieu
26 of a finding of probable cause, the department must make a
27 determination regarding the existence of probable cause within
28 10 days after the expiration of the time limit. If the
29 probable cause panel finds that probable cause exists, it
30 shall direct the department to file a formal complaint against
31 the licensee. The department shall follow the directions of

1 the probable cause panel regarding the filing of a formal
2 complaint. If directed to do so, the department shall file a
3 formal complaint against the subject of the investigation and
4 prosecute that complaint pursuant to chapter 120. However, the
5 department may decide not to prosecute the complaint if it
6 finds that probable cause has been improvidently found by the
7 panel. In such cases, the department shall refer the matter to
8 the board. The board may then file a formal complaint and
9 prosecute the complaint pursuant to chapter 120. The
10 department shall also refer to the board any investigation or
11 disciplinary proceeding not before the Division of
12 Administrative Hearings pursuant to chapter 120 or otherwise
13 completed by the department within 1 year after the filing of
14 a complaint. The department, for disciplinary cases under its
15 jurisdiction, must establish a uniform reporting system to
16 quarterly refer to each board the status of any investigation
17 or disciplinary proceeding that is not before the Division of
18 Administrative Hearings or otherwise completed by the
19 department within 1 year after the filing of the complaint.
20 Annually, the department if there is no board, or each board
21 must establish a plan to reduce or otherwise close any
22 investigation or disciplinary proceeding that is not before
23 the Division of Administrative Hearings or otherwise completed
24 by the department within 1 year after the filing of the
25 complaint. A probable cause panel or a board may retain
26 independent legal counsel, employ investigators, and continue
27 the investigation as it deems necessary; all costs thereof
28 shall be paid from a trust fund used by the department to
29 implement this part. All proceedings of the probable cause
30 panel are exempt from s. 120.525.
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1 (10) The complaint and all information obtained
2 pursuant to the investigation by the department are
3 confidential and exempt from s. 119.07(1) until 10 days after
4 probable cause has been found to exist by the probable cause
5 panel or by the department, or until the regulated
6 professional or subject of the investigation waives his
7 privilege of confidentiality, whichever occurs first. Upon
8 completion of the investigation and pursuant to a written
9 request by the subject, the department shall provide the
10 subject an opportunity to inspect the investigative file or,
11 at the subject's expense, forward to the subject a copy of the
12 investigative file. Notwithstanding s. 455.667, the subject
13 may inspect or receive a copy of any expert witness report or
14 patient record connected with the investigation if the subject
15 agrees in writing to maintain the confidentiality of any
16 information received under this subsection until 10 days after
17 probable cause is found and to maintain the confidentiality of
18 patient records pursuant to s. 455.667. The subject may file a
19 written response to the information contained in the
20 investigative file. Such response must be filed within 20
21 days, unless an extension of time has been granted by the
22 department. This subsection does not prohibit the department
23 from providing such information to any law enforcement agency
24 or to any other regulatory agency.

25 Section 3. Paragraph (e) of subsection (3) and
26 paragraph (a) of subsection (5) of section 455.707, Florida
27 Statutes, read:

28 455.707 Treatment programs for impaired
29 practitioners.--

30 (3)

31

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

8 (5)(a) An approved treatment provider shall, upon
9 request, disclose to the consultant all information in its
10 possession regarding the issue of a licensee's impairment and
11 participation in the treatment program. All information
12 obtained by the consultant and department pursuant to this
13 section is confidential and exempt from the provisions of s.
14 119.07(1), subject to the provisions of this subsection and
15 subsection (6). Failure to provide such information to the
16 consultant is grounds for withdrawal of approval of such
17 program or provider.

18 Section 4. The Legislature finds that the disclosure
19 of information concerning an investigation of a practitioner
20 regulated under part XV of chapter 468, Florida Statutes, and
21 the disclosure of information concerning an impaired
22 practitioner regulated under part XV of chapter 468, Florida
23 Statutes, would constitute an unwarranted invasion into the
24 personal privacy of the practitioner. In addition, the
25 Legislature finds that it is necessary that the meetings of a
26 probable cause panel investigating a practitioner regulated
27 under part XV of chapter 468, Florida Statutes, be exempt from
28 s. 286.011, Florida Statutes, until 10 days after probable
29 cause has been found to exist by the panel or until the
30 subject of the investigation waives his or her privilege of
31 confidentiality. Therefore, the Legislature finds that it is a

1 public necessity that certain information of the Agency for
2 Health Care Administration and the Department of Health with
3 respect to a licensed graduate social worker or a licensed
4 bachelor social worker be kept confidential and exempt from
5 disclosure under the public records law. The Legislature
6 further finds that it is a public necessity that proceedings
7 of a probable cause panel with respect to a licensed graduate
8 social worker or a licensed bachelor social worker be exempt
9 for a certain period from the public meetings law.

10 Section 5. This act shall take effect on the same date
11 that Committee Substitute for House Bill 3207 or similar
12 legislation creating part XV of chapter 468, Florida Statutes,
13 and establishing the categories of practitioners specified in
14 this act, takes effect, if such legislation is adopted in the
15 same legislative session or an extension thereof.

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