

**STORAGE NAME:** h3585s1.go

**DATE:** March 13, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 3585

**RELATING TO:** Public Hospital Lease

**SPONSOR(S):** Committee on Governmental Operations, Representative Peaden and others

**COMPANION BILL(S):** SB 1044(s) and SB 748(s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill creates a public records and public meetings exemption for all records and meetings of a private corporation which leases a public hospital or other public health care facility unless

- (1) The governing board of the entity that owns the public hospital or other public health care facility was the incorporator of the private corporation; **and**
- (2) A majority of the members of the governing board of the private corporation are also members of the governing board of the entity that owns the public hospital or other public health care facility.

If a private corporation meets the above criteria, then it does not benefit from the blanket public records and public meetings exemption. (It would have to rely on existing, limited public records and meetings exemptions currently applicable to public hospitals.)

A public necessity statement for the exemption is provided as is required by Art. I, s. 24 of the State Constitution.

This bill makes the exemption subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2003, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill does not appear to have a direct fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Public Records Law**

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

### **Public Meetings Law**

Article I, s. 24(b), Florida Constitution, provides that

[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public

... .

Article I, s. 24(c), Florida Constitution, states that public meetings exemptions may be provided for by general law, if such law states with specificity the public necessity justifying the exemption and is no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding public meetings is also addressed in the Florida Statutes. Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

The provisions of s. 119.15, F.S., the Open Government Sunset Review Act of 1995, as discussed above regarding public records exemptions are equally applicable to public meetings exemptions.

### **Private Entity Leasing Hospital**

In *News-Journal Corporation v. Memorial Hospital-West Volusia*, 695 So.2d 418 (Fla. 5th DCA 1997), the Fifth District Court of Appeal, reversing the lower court opinion, determined that Memorial Hospital-West Volusia, Inc., a private not-for-profit corporation ("Private Corporation"), was "acting on behalf of" a governmental entity, when it entered into a Lease and Transfer Agreement with the West Volusia Hospital Authority to operate the West Volusia Memorial Hospital. Because the court so held, the Private Corporation was therefore subject to the public records and public meetings laws, and

existing exemptions thereto.<sup>1</sup> (The case is currently on appeal to the Florida Supreme Court.)

The court in *Memorial Hospital* utilized the “totality of factors” approach<sup>2</sup>, set forth by the Florida Supreme Court in *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992), to reach its conclusion. In deciding whether some of the factors were present, the court appeared to stretch in order to reach its preferred conclusion. It is, however, beyond the scope of this analysis to debate the court’s opinion, that is left to the affected parties on appeal.

CS/CS/HB 3585 is in response to the Fifth District’s opinion in *Memorial Hospital*.

**B. EFFECT OF PROPOSED CHANGES:**

This bill creates a public records and public meetings exemption for all records and meetings of a private corporation which leases a public hospital or other public health care facility unless

- (1) The governing board of the entity that owns the public hospital or other public health care facility was the incorporator of the private corporation; **and**
- (2) A majority of the members of the governing board of the private corporation are also members of the governing board of the entity that owns the public hospital or other public health care facility.

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<sup>1</sup>Section 395.3035, F.S., sets forth the public records and public meetings exemptions for public hospitals. A private entity “acting on behalf of” a public hospital would be an “agency” for purposes of the public records and public meetings law. See definition of “agency”, s. 119.011(2), F.S. An “agency” is subject to the open records and open meetings laws and would also be subject to any applicable exemptions thereto. See *Stanfield v. Salvation Army*, 695 So.2d 501 (Fla. 5th DCA 1997), more particularly, concurring opinion by Judge Cobb. Accordingly, a private entity leasing a public hospital or public health care facility that did not meet the requirements of the blanket exemption set forth in this bill would still be afforded the exemptions in s. 395.3035, F.S.

<sup>2</sup>Recognizing that “the statute provides no clear criteria for determining when a private entity is, ‘acting on behalf of’ a public agency,” the Florida Supreme Court adopted a “totality of factors” approach to use as a guide for evaluating whether a private entity is subject to Chapter 119, F.S. The factors listed by the Florida Supreme Court include the following:

- 1) the level of public funding;
- 2) commingling of funds;
- 3) whether the activity was conducted on publicly-owned property;
- 4) whether services contracted for are in integral part of the public agency’s chosen decision-making process;
- 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
- 6) the extent of the public agency’s involvement with, regulation of, or control over the private entity;
- 7) whether the private entity was created by the public agency;
- 8) whether the public agency has a substantial financial interest in the private entity;
- 9) for whose benefit the private entity is functioning.

Government in the Sunshine Manual, 1998 ed., Vol. 20, at 75.

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If a private corporation meets the above criteria, then it does not benefit from the blanket public records and public meetings exemption. It will, however, be able to avail itself of existing public records and public meetings exemptions for public hospitals as set forth in the Florida Statutes. See s. 395.3035, F.S.

A public necessity statement for the exemption is provided as is required by Art. I, s. 24 of the State Constitution.

This bill makes the exemption subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2003, unless reviewed and saved from repeal through reenactment by the Legislature.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

It would eliminate, in certain circumstances, the public's access to a private entities' records and meetings.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Certain private entity records and meetings would no longer be accessible to the public.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

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(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

creates s. 395.3036

E. SECTION-BY-SECTION RESEARCH:

See "Effect of Proposed Changes"

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Governmental Operations adopted one "remove everything after the enacting clause" amendment. The bill was reported out as a committee substitute.

The original bill provided that a private corporation that leases a public hospital or other public health care facility is not "acting on behalf" of the entity that owns the public hospital or other public health care facility, for purposes of s. 119.011(2) [defines "agency"] and s. 24(a), Art. I, Fla. Const., unless

- (1) The governing board of the entity that owns the public hospital or other public health care facility was the incorporator of the private corporation; **and**
- (2) A majority of the members of the governing board of the private corporation are also members of the governing board of the entity that owns the public hospital or other public health care facility.

This means that such a private corporation would not be subject to the public records law or the public meetings law.

The committee substitute apparently acknowledges the fact that private entities leasing public hospitals are subject to the public records and public meetings laws, and creates an exemption for all records and meetings held by the private entity. However, if the governing board of the private entity that owns the public hospital or other public health care facility was the incorporator of the private corporation; and, a majority of the members of the governing board of the private corporation are also members of the governing board of the entity that owns the public hospital or other public health care facility, then the private entity does not get the in to-to exemption. Instead, it must rely on the limited public records and public meetings exemptions which currently exist for public hospitals.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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