

1 A bill to be entitled
2 An act relating to public records and meetings;
3 creating s. 395.3036, F.S.; providing that when
4 a public lessor complies with the public
5 finance accountability provisions of s.
6 155.40(5), F.S., with respect to the transfer
7 of any public funds to a private lessee, the
8 records of a private corporation that leases a
9 public hospital or other public health care
10 facility are confidential and exempt from
11 public records requirements, and the meetings
12 of the governing board of such corporation are
13 exempt from public meeting requirements if the
14 corporation meets specified criteria; providing
15 for future review and repeal; providing a
16 finding of public necessity; providing for the
17 continued applicability of the Florida Rules of
18 Civil Procedure and statutory provisions
19 relating to discoverability in civil actions to
20 records and information made exempt in the act;
21 providing an effective date.

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

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25 Section 1. Section 395.3036, Florida Statutes, is
26 created to read:

27 395.3036 Confidentiality of records and meetings of
28 corporations that lease public hospitals or other public
29 health care facilities.--The records of a private corporation
30 that leases a public hospital or other public health care
31 facility are confidential and exempt from the provisions of s.

1 119.07(1) and s. 24(a), Art. I of the State Constitution, and
2 the meetings of the governing board of a private corporation
3 are exempt from s. 286.011 and s. 24(b), Art. I of the State
4 Constitution when the public lessor complies with the public
5 finance accountability provisions of s. 155.40(5) with respect
6 to the transfer of any public funds to the private lessee and
7 when the private lessee meets at least three of the five
8 following criteria:

9 (1) The public lessor that owns the public hospital or
10 other public health care facility was not the incorporator of
11 the private corporation that leases the public hospital or
12 other health care facility.

13 (2) The public lessor and the private lessee do not
14 commingle any of their funds in any account maintained by
15 either of them, other than the payment of the rent and
16 administrative fees or the transfer of funds pursuant to
17 subsection (2).

18 (3) Except as otherwise provided by law, the private
19 lessee is not allowed to participate, except as a member of
20 the public, in the decisionmaking process of the public
21 lessor.

22 (4) The lease agreement does not expressly require the
23 lessee to comply with the requirements of s. 119.07(1) and s.
24 286.011.

25 (5) The public lessor is not entitled to receive any
26 revenues from the lessee, except for rental or administrative
27 fees due under the lease, and the lessor is not responsible
28 for the debts or other obligations of the lessee.

29 Section 2. (1) The Legislature finds that it is a
30 public necessity that all records of a private corporation and
31 all meetings of the governing board of the private corporation

1 be confidential and exempt from the public records and public
2 meeting laws of this state when the private corporation leases
3 a public hospital or other public health care facility from a
4 public entity in accordance with the terms of this act. The
5 Legislature further finds that private corporations have
6 entered into such leases in reliance on the legal standard
7 governing the application of the public records and open
8 meeting laws to such lease agreements which was set forth in
9 case law existing at the time of the transaction. That
10 standard provided that such private lessees were not "acting
11 on behalf of" the public entity and, therefore, not subject to
12 the state's public records laws so long as the public entity
13 did not retain control over the private lessee. No one factor
14 was used to determine whether the public entity exerted
15 control; instead a "totality of factors" was analyzed and the
16 decision made on the balance of those factors. In a recent
17 decision, however, the Fifth District Court of Appeal has now
18 applied the standard in a manner that may cause more lessees
19 to be subject to public records and meetings requirements. The
20 Legislature finds that the effect of the decision has been:
21 (a) To create uncertainty with respect to the status
22 of records and meetings under existing lease arrangements; and
23 (b) To create a disincentive for private corporations
24 to enter into such lease agreements in the future.
25 (2) Public entities have chosen to privatize the
26 operations of their public hospitals and public health care
27 facilities in order to alleviate three problems that pose a
28 significant threat to the continued viability of Florida's
29 public hospitals:
30 (a) A financial drain on the facilities from their
31 forced participation in the Florida Retirement System;

1 (b) The competitive disadvantage placed on these
2 facilities vis a vis their private competitors resulting from
3 their required compliance with the state's public records and
4 public meeting laws; and

5 (c) State constitutional restrictions on public
6 facility participation in partnerships with private
7 corporations as a result of the limitations contained in the
8 State Constitution. For years, the Legislature has approved
9 and encouraged these leases, first through special acts that
10 it has adopted authorizing the lease agreements and, more
11 recently, through the adoption of section 155.40, Florida
12 Statutes, which provides for the conversion of public hospital
13 facilities to private operation by lease, as a means to
14 provide public entities with the necessary flexibility to use
15 these public assets in a manner that best serves the interests
16 of the public. Through such lease arrangement, public entities
17 have been able to obtain substantial and oftentimes
18 desperately needed private capital investment into these
19 facilities and to relieve the oftentimes burdensome drain on
20 public tax revenues which resulted from public operation.

21 (3) In the absence of a defined and, therefore,
22 predictable statewide standard for determining when the public
23 records and public meetings laws apply to future lease
24 agreements, public entities may find it difficult, if not
25 impossible, to find a private corporation that is willing to
26 enter into a lease to operate the public hospital or other
27 public health care facility. This, in turn, could force the
28 public entity:

29 (a) To close the hospital or other health care
30 facility, which would result in a reduction in health care
31 services to the public;

1 (b) To sell the hospital or other health care
2 facility, which sale, if the facility has deteriorated because
3 of inadequate capital investments over time, will likely be at
4 a loss; or

5 (c) To continue operating the hospital or other health
6 care facility using public tax dollars to subsidize recurring
7 losses. None of these options is in the best interest of the
8 public.

9 (3) The Legislature, therefore, finds that it is a
10 public necessity for it, through this act, to clarify when the
11 public records and public meeting laws apply to private
12 lessees of public hospital or other public health care
13 facilities. The Legislature further finds that it is a public
14 necessity for these private lessees to be exempt from the
15 public records and public meetings laws of the state so long
16 as, applying the standard codified by this act, the public
17 entity does not retain control over the private entity.

18 Section 3. This act does not change existing law
19 relating to discovery of records and information that are
20 otherwise discoverable under the Florida Rules of Civil
21 Procedure or any statutory provision allowing discovery or
22 pre-suit disclosure of such records and information for the
23 purpose of civil actions.

24 Section 4. This act shall take effect upon becoming
25 law and shall apply to existing leases and future leases of
26 public hospitals and other health care facilities.