

By the Committee on Governmental Operations and
Representative Fasano

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 which 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 a public meeting
11 and notice regarding strategic plans; providing
12 for future review and repeal; providing
13 conditions for the early release of transcripts
14 of meetings at which such plans are discussed;
15 providing a finding of public necessity;
16 providing an effective date.

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

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20 Section 1. Subsection (4) of section 395.3035, Florida
21 Statutes, is amended, subsection (6) is renumbered as
22 subsection (8), and new subsections (6) and (7) are added to
23 said section, to read:

24 395.3035 Confidentiality of public hospital records
25 and meetings.--

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

29 (b) A public hospital's strategic plans, including
30 plans for marketing its services, which services are or may
31 reasonably be expected by the hospital's governing board to be

1 provided by competitors of the hospital. However, documents
2 that are submitted to the hospital's governing board as part
3 of the board's approval of the hospital's budget, and the
4 budget itself, are not confidential and exempt.

5 (4)(a) Those portions of a board meeting at which ~~the~~
6 written strategic plans, including written plans for marketing
7 its services, are discussed or reported on are exempt from the
8 provisions of s. 286.011 and s. 24(b), Art. I of the State
9 Constitution.

10 (b) Those portions of a board meeting at which written
11 strategic plans, including written plans for marketing its
12 services, are modified or approved by the governing board are
13 exempt from the provisions of s. 286.011 and s. 24(b), Art. I
14 of the State Constitution. This paragraph is subject to the
15 Open Government Sunset Review Act of 1995 in accordance with
16 s. 119.15 and shall stand repealed on October 2, 2003, unless
17 reviewed and saved from repeal through reenactment by the
18 Legislature.

19 (c) All portions of any board meeting which are closed
20 to the public shall be recorded by a certified court reporter.
21 The reporter shall record the times of commencement and
22 termination of the meeting, all discussion and proceedings,
23 the names of all persons present at any time, and the names of
24 all persons speaking. No portion of the meeting shall be off
25 the record. The court reporter's notes shall be fully
26 transcribed and maintained by the hospital records custodian
27 within a reasonable time after the meeting. The transcript
28 shall become public 3 years after the date of the board
29 meeting or at an earlier date if the governing board
30 determines that the strategic plan discussed, reported on,
31 modified, or approved at the meeting has been fully

1 implemented or the circumstances do not require the transcript
2 of the meeting to remain confidential.

3 (6) For purposes of this section, the term "strategic
4 plan" means any record which describes actions or activities
5 to:

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

7 (b) Expand an existing health service;

8 (c) Acquire additional facilities;

9 (d) Expand existing facilities;

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

12 (f) Acquire, merge, or consolidate with another health
13 care facility or health care provider;

14 (g) Enter into a shared service arrangement with
15 another health care provider;

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

17 (i) Market the services of the hospital and its
18 ancillary facilities; or

19 (j) Any combination of paragraphs (a)-(i);

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21 The term "strategic plan" does not include records that
22 describe the existing operations of a public hospital or other
23 public health care facility which implement or execute the
24 provisions of a strategic plan, unless disclosure of any such
25 document would disclose any part of a strategic plan which has
26 not been fully implemented or is a record that is otherwise
27 exempt from the public records laws. Existing operations
28 include, but are not limited to, the hiring of employees, the
29 purchase of equipment, the placement of advertisement,
30 entering into contracts with physicians to perform medical
31 services, and other types of expenditures for the purpose of

1 implementing a strategic plan. Records that describe
2 operations are not exempt, except as specifically provided
3 herein.

4 (7) If the governing board of the entity that owns the
5 hospital or other health care facility closes a portion of any
6 board meeting pursuant to subsection (4), then, prior to
7 placing the strategic plan or any discrete component thereof
8 into operations, the governing board must notice and conduct a
9 meeting in accordance with s. 286.011. The notice of such
10 meeting shall specify that the implementation of all or a part
11 of a strategic plan will be discussed at the meeting.

12 Section 2. (1) The Legislature finds that it is a
13 public necessity that all contracts for managed care
14 arrangements under which a public hospital provides health
15 care services be held confidential and exempt. This exemption
16 is needed because, as with preferred provider organization
17 contracts and health maintenance organization contracts which
18 are currently confidential and exempt, other managed care
19 contracts, including exclusive provider organization contracts
20 and alliance network arrangements, contain, among other
21 things, payment methodologies and rates the disclosure of
22 which would negatively affect a public hospital in the
23 marketplace. Additionally, documents relating to the
24 negotiation, performance, and implementation of contracts,
25 including managed care arrangements, would also reveal such
26 proprietary and trade secret information. Furthermore, it is a
27 public necessity that portions of a public hospital's
28 governing board meetings be closed when contracts, contract
29 negotiations, or strategic plans that are exempt from the
30 public records laws are discussed. If such meetings are not
31 closed, information contained in the confidential contracts,

1 contract negotiations, and strategic plans would be revealed.
2 The disclosure of any such confidential contracts, contract
3 negotiations, and strategic plans would make it exceptionally
4 difficult, if not impossible, for a public hospital to
5 effectively compete in the marketplace against private
6 hospitals, whose records and meeting are not required to be
7 open to the public.

8 (2) It is also a public necessity that any records
9 generated at closed public hospital board meetings, such as
10 tape recordings, notes, and minutes, memorializing the
11 discussions regarding such confidential contracts, documents,
12 and strategic plans, including marketing plans, also be held
13 confidential for a limited time as provided; otherwise,
14 confidential proprietary and trade secret information would
15 become public and impair a public hospital's ability to
16 effectively and efficiently compete in the marketplace.

17 (3) The necessity for the strategic planning exemption
18 from public records and public meeting laws is critical to the
19 survival of Florida's public hospital delivery system, which
20 is often the last safety net for our less advantaged citizens
21 and visitors. "Strategic plan," as defined in this act, is
22 limited to plans for: the initiation or expansion of health
23 services; the acquisition, expansion, or change in use of
24 health care facilities; team-up with another health care
25 facility; sale or lease of the facility to a private entity;
26 and marketing of the facility's services. Disclosure of
27 information on any or all of these subjects would place a
28 public hospital at a competitive disadvantage with respect to
29 its privately owned competitors and could allow those
30 competitors to disrupt the implementation of any strategic
31 plan or marketing plan.

1 Section 3. This act shall take effect upon becoming a
2 law.
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