

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; prohibiting public hospitals
11 from taking certain specified actions at closed
12 meetings; authorizing the governing board of a
13 public hospital to study issues relating to
14 reduction or termination of a health service;
15 requiring a public meeting for presentation of
16 proposals; providing for public comment;
17 restricting governing board adoption to
18 proposals presented; providing for a public
19 meeting and notice regarding strategic plans;
20 providing for future review and repeal;
21 providing conditions for the early release of
22 transcripts of meetings at which such plans are
23 discussed; providing a finding of public
24 necessity; providing an effective date.

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

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28 Section 1. Subsection (4) of section 395.3035, Florida
29 Statutes, is amended, subsection (6) is renumbered as
30 subsection (10), and new subsections (6), (7), (8), and (9)
31 are added to said section, to read:

1 395.3035 Confidentiality of public hospital records
2 and meetings.--

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

6 (b) A public hospital's strategic plans, including
7 plans for marketing its services, which services are or may
8 reasonably be expected by the hospital's governing board to be
9 provided by competitors of the hospital. However, documents
10 that are submitted to the hospital's governing board as part
11 of the board's approval of the hospital's budget, and the
12 budget itself, are not confidential and exempt.

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

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24 s. 119.15 and shall stand repealed on October 2, 2003, unless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

27 (c) All portions of any board meeting which are closed
28 to the public shall be recorded by a certified court reporter.
29 The reporter shall record the times of commencement and
30 termination of the meeting, all discussion and proceedings,
31 the names of all persons present at any time, and the names of

1 all persons speaking. No portion of the meeting shall be off
2 the record. The court reporter's notes shall be fully
3 transcribed and maintained by the hospital records custodian
4 within a reasonable time after the meeting. The transcript
5 shall become public 3 years after the date of the board
6 meeting or at an earlier date if the governing board
7 determines that the strategic plan discussed, reported on,
8 modified, or approved at the meeting has been fully
9 implemented or the circumstances do not require the transcript
10 of the meeting to remain confidential.

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

14 (a) Initiate or acquire an new health service;

15 (b) Expand an existing health service;

16 (c) Acquire additional facilities;

17 (d) Expand existing facilities;

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

20 (f) Acquire, merge, or consolidate with another health
21 care facility or health care provider;

22 (g) Enter into a shared service arrangement with
23 another health care provider;

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

25 (i) Market the services of the hospital and its
26 ancillary facilities; or

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

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29 The term "strategic plan" does not include records that
30 describe the existing operations of a public hospital or other
31 public health care facility which implement or execute the

1 provisions of a strategic plan, unless disclosure of any such
2 document would disclose any part of a strategic plan which has
3 not been fully implemented or is a record that is otherwise
4 exempt from the public records laws. Existing operations
5 include, but are not limited to, the hiring of employees, the
6 purchase of equipment, the placement of advertisement,
7 entering into contracts with physicians to perform medical
8 services, and other types of expenditures for the purpose of
9 implementing a strategic plan. Records that describe
10 operations are not exempt, except as specifically provided
11 herein.

12 (7) A public hospital may not approve a binding
13 agreement to sell, lease, merge, or consolidate the hospital
14 at any closed meeting of the board. Any such approval must be
15 made at a meeting open to the public and noticed in accordance
16 with s. 286.011.

17 (8) The governing board of a public hospital, in
18 developing a strategic plan that may result in a substantial
19 reduction or termination of a health service, may conduct
20 studies and engage in other fact-finding activities and may
21 discuss such studies and fact-finding reports, as provided in
22 subsection (4). However, prior to the governing board adopting
23 any proposal that would result in the termination or a
24 substantial reduction of a health service that is not
25 available from any other provider within 30-minutes driving
26 time, the governing board must present all proposals under
27 consideration relating to the health service to the public at
28 a public meeting noticed and conducted in accordance with
29 chapter 286. The public may comment on all proposed
30 alternatives. The governing board may not adopt any proposal

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1 other than a proposal or any combination of proposals
2 presented to the public as required under this subsection.

3 (9) If the governing board of the entity that owns the
4 hospital or other health care facility closes a portion of any
5 board meeting pursuant to subsection (4), then, prior to
6 placing the strategic plan or any discrete component of the
7 strategic plan into operations, the governing board must
8 notice and conduct a meeting in accordance with s. 286.011.
9 The notice of such meeting shall be given not less than 15
10 days in advance of the meeting and shall specify that the
11 implementation of all or a part of a strategic plan will be
12 discussed at the meeting. The written materials which are
13 furnished to the board in preparation for the noticed meeting
14 which describe or support the proposed actions of the board
15 will be furnished to any member of the public, upon request,
16 at least 7 days prior to the meeting.

17 Section 2. (1) The Legislature finds that it is a
18 public necessity that portions of a public hospital's
19 governing board meetings be closed when strategic plans that
20 are exempt from the Public Records Law are discussed. If such
21 meetings are not closed, information contained in confidential
22 strategic plans would be revealed. The disclosure of any such
23 confidential plans would make it exceptionally difficult, if
24 not impossible, for a public hospital to effectively compete
25 in the marketplace against private hospitals, whose records
26 and meetings are not required to be open to the public.

27 (2) It is also a public necessity that any records
28 generated at closed public hospital board meetings, such as
29 tape recordings, notes, and minutes, memorializing the
30 discussions regarding such confidential strategic plans,
31 including marketing plans, also be held confidential for a

1 limited time as provided; otherwise, confidential proprietary
2 and trade secret information would become public and impair a
3 public hospital's ability to effectively and efficiently
4 compete in the marketplace.

5 (3) The necessity for the strategic planning exemption
6 from public records and public meeting laws is critical to the
7 survival of Florida's public hospital delivery system, which
8 is often the last safety net for our less advantaged citizens
9 and visitors. Disclosure of information contained in a
10 strategic plan, as defined in this act, would place a public
11 hospital at a competitive disadvantage with respect to its
12 privately owned competitors and could allow those competitors
13 to disrupt the implementation of any strategic plan or
14 marketing plan.

15 Section 3. This act shall take effect upon becoming a
16 law.