

By Representative Kelly

1 A bill to be entitled
2 An act relating to public records and meetings;
3 providing for application of public records
4 exemptions in ss. 455.225(2) and (10) and
5 455.261(3)(e) and (5)(a), F.S., to certain
6 information concerning provisional
7 psychologists, registered clinical social
8 worker interns, registered marriage and family
9 therapist interns, registered mental health
10 counselor interns, provisional clinical social
11 workers, provisional marriage and family
12 therapists, and provisional mental health
13 counselors; providing for application of the
14 public meetings exemption in s. 455.225(4),
15 F.S., to proceedings of a probable cause panel
16 with respect to investigations concerning such
17 practitioners; providing for future review and
18 repeal; providing a finding of public
19 necessity; providing a contingent effective
20 date.

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

24 Section 1. The exemptions from s. 119.07(2), Florida
25 Statutes, provided by ss. 455.225(2) and (10) and
26 455.261(3)(e) and (5)(a), Florida Statutes, also apply to
27 information concerning a provisional psychologist regulated by
28 the Agency for Health Care Administration and the Department
29 of Health under chapter 490, Florida Statutes, a registered
30 clinical social worker intern, a registered marriage and
31 family therapist intern, a registered mental health counselor

1 intern, a provisional clinical social worker, a provisional
2 marriage and family therapist, or a provisional mental health
3 counselor regulated by the Agency for Health Care
4 Administration and the Department of Health under chapter 491,
5 Florida Statutes. The exemption from s. 286.011, Florida
6 Statutes, provided by s. 455.225(4), Florida Statutes, also
7 applies to the proceedings of a probable cause panel with
8 respect to an investigation concerning a provisional
9 psychologist, a registered clinical social worker intern, a
10 registered marriage and family therapist intern, a registered
11 mental health counselor intern, a provisional clinical social
12 worker, a provisional marriage and family therapist, or a
13 provisional mental health counselor regulated by the agency
14 and department under chapter 490 or chapter 491, Florida
15 Statutes. This section is subject to the Open Government
16 Sunset Review Act of 1995 in accordance with s. 119.15,
17 Florida Statutes, and shall stand repealed on October 2, 2002,
18 unless reviewed and saved from repeal through reenactment by
19 the Legislature.

20 Section 2. Subsections (2), (4), and (10) of section
21 455.225, Florida Statutes, 1996 Supplement, read:

22 455.225 Disciplinary proceedings.--Disciplinary
23 proceedings for each board shall be within the jurisdiction of
24 the department or the Agency for Health Care Administration,
25 as appropriate.

26 (2) The department and the Agency for Health Care
27 Administration shall allocate sufficient and adequately
28 trained staff to expeditiously and thoroughly determine legal
29 sufficiency and investigate all legally sufficient complaints.
30 When its investigation is complete and legally sufficient, the
31 department or the agency shall prepare and submit to the

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

23 (4) The determination as to whether probable cause
24 exists shall be made by majority vote of a probable cause
25 panel of the board, or by the department or the Agency for
26 Health Care Administration, as appropriate. Each regulatory
27 board shall provide by rule that the determination of probable
28 cause shall be made by a panel of its members or by the
29 department or the agency. Each board may provide by rule for
30 multiple probable cause panels composed of at least two
31 members. Each board may provide by rule that one or more

1 members of the panel or panels may be a former board member.
2 The length of term or repetition of service of any such former
3 board member on a probable cause panel may vary according to
4 the direction of the board when authorized by board rule. Any
5 probable cause panel must include one of the board's former or
6 present consumer members, if one is available, willing to
7 serve, and is authorized to do so by the board chairman. Any
8 probable cause panel must include a present board member. Any
9 probable cause panel must include a former or present
10 professional board member. However, any former professional
11 board member serving on the probable cause panel must hold an
12 active valid license for that profession. All proceedings of
13 the panel are exempt from s. 286.011 until 10 days after
14 probable cause has been found to exist by the panel or until
15 the subject of the investigation waives his privilege of
16 confidentiality. The probable cause panel may make a
17 reasonable request, and upon such request the department or
18 the agency shall provide such additional investigative
19 information as is necessary to the determination of probable
20 cause. A request for additional investigative information
21 shall be made within 15 days from the date of receipt by the
22 probable cause panel of the investigative report of the
23 department or the agency. The probable cause panel or the
24 department or the agency, as may be appropriate, shall make
25 its determination of probable cause within 30 days after
26 receipt by it of the final investigative report of the
27 department or the agency. The secretary may grant extensions
28 of the 15-day and the 30-day time limits. If the probable
29 cause panel does not find probable cause within the 30-day
30 time limit, as may be extended, or if the probable cause panel
31 finds no probable cause, the department or the agency may

1 determine, within 10 days after the panel fails to determine
2 probable cause or 10 days after the time limit has elapsed,
3 that probable cause exists. In lieu of a finding of probable
4 cause, the probable cause panel, or the department or the
5 agency when there is no board, may issue a letter of guidance
6 to the subject. If the probable cause panel finds that
7 probable cause exists, it shall direct the department or the
8 agency to file a formal complaint against the licensee. The
9 department or the agency shall follow the directions of the
10 probable cause panel regarding the filing of a formal
11 complaint. If directed to do so, the department or the agency
12 shall file a formal complaint against the subject of the
13 investigation and prosecute that complaint pursuant to chapter
14 120. However, the department or the agency may decide not to
15 prosecute the complaint if it finds that probable cause had
16 been improvidently found by the panel. In such cases, the
17 department or the agency shall refer the matter to the board.
18 The board may then file a formal complaint and prosecute the
19 complaint pursuant to chapter 120. The department or the
20 agency shall also refer to the board any investigation or
21 disciplinary proceeding not before the Division of
22 Administrative Hearings pursuant to chapter 120 or otherwise
23 completed by the department or the agency within 1 year after
24 the filing of a complaint. A probable cause panel or a board
25 may retain independent legal counsel, employ investigators,
26 and continue the investigation as it deems necessary; all
27 costs thereof shall be paid from the Health Care Trust Fund or
28 the Professional Regulation Trust Fund, as appropriate. All
29 proceedings of the probable cause panel are exempt from s.
30 120.525.
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1 (10) The complaint and all information obtained
2 pursuant to the investigation by the department or the Agency
3 for Health Care Administration are confidential and exempt
4 from s. 119.07(1) until 10 days after probable cause has been
5 found to exist by the probable cause panel or by the
6 department or the agency, or until the regulated professional
7 or subject of the investigation waives his privilege of
8 confidentiality, whichever occurs first. Upon completion of
9 the investigation and pursuant to a written request by the
10 subject, the department or the agency shall provide the
11 subject an opportunity to inspect the investigative file or,
12 at the subject's expense, forward to the subject a copy of the
13 investigative file. Notwithstanding s. 455.241, the subject
14 may inspect or receive a copy of any expert witness report or
15 patient record connected with the investigation, if the
16 subject agrees in writing to maintain the confidentiality of
17 any information received under this subsection until 10 days
18 after probable cause is found and to maintain the
19 confidentiality of patient records pursuant to s. 455.241. The
20 subject may file a written response to the information
21 contained in the investigative file. Such response must be
22 filed within 20 days, unless an extension of time has been
23 granted by the department or the agency. This subsection does
24 not prohibit the department or the Agency for Health Care
25 Administration from providing such information to any law
26 enforcement agency or to any other regulatory agency.

27 Section 3. Paragraph (e) of subsection (3) and
28 paragraph (a) of subsection (5) of section 455.261, Florida
29 Statutes, 1996 Supplement, read:

30 455.261 Treatment programs for impaired
31 practitioners.--

1 (3)

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

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

19 Section 4. The Legislature finds that the disclosure
20 of information concerning an investigation of a practitioner
21 regulated under chapter 490 or chapter 491, Florida Statutes,
22 and the disclosure of information concerning an impaired
23 practitioner regulated under chapter 490 or chapter 491,
24 Florida Statutes, would constitute an unwarranted invasion
25 into the personal privacy of the practitioner. In addition,
26 the Legislature finds that it is necessary that the meetings
27 of a probable cause panel investigating a practitioner
28 regulated under chapter 490 or chapter 491, Florida Statutes,
29 be exempt from s. 286.011, Florida Statutes, until 10 days
30 after probable cause has been found to exist by the panel or
31 until the subject of the investigation waives his or her

1 privilege of confidentiality. Therefore, the Legislature
2 finds that it is a public necessity that certain information
3 of the Agency for Health Care Administration and the
4 Department of Health with respect to a provisional
5 psychologist, a registered clinical social worker intern, a
6 registered marriage and family therapist intern, a registered
7 mental health counselor intern, a provisional clinical social
8 worker, a provisional marriage and family therapist, or a
9 provisional mental health counselor be kept confidential and
10 exempt from disclosure under the public records law. The
11 Legislature further finds that it is a public necessity that
12 proceedings of a probable cause panel with respect to a
13 provisional psychologist, a registered clinical social worker
14 intern, a registered marriage and family therapist intern, a
15 registered mental health counselor intern, a provisional
16 clinical social worker, a provisional marriage and family
17 therapist, or a provisional mental health counselor be exempt
18 for a certain period from the public meetings law.

19 Section 5. This act shall take effect on the same date
20 that House Bill or similar legislation revising chapters
21 490 and 491, Florida Statutes, to create the categories of
22 practitioners specified in this act, takes effect, if such
23 legislation is adopted in the same legislative session or an
24 extension thereof.

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HOUSE SUMMARY

Provides for application of public records and public meetings exemptions which presently exist for mental health practitioners with respect to disciplinary proceedings and treatment of impaired practitioners to provisional psychologists, registered clinical social worker interns, registered marriage and family therapist interns, registered mental health counselor interns, provisional clinical social workers, provisional marriage and family therapists, and provisional mental health counselors. Provides for future review and repeal. Takes effect contingent upon the adoption of legislation creating those categories of practitioners.