

By Senator Meadows

30-876A-98

See HB 3209

1                                   A bill to be entitled  
 2           An act relating to public records and meetings;  
 3           amending s. 491.106, F.S.; providing for  
 4           application of public records exemptions in ss.  
 5           455.621(2) and (10) and 455.707(3)(e) and  
 6           (5)(a), F.S., to certain information concerning  
 7           licensed master social workers and licensed  
 8           bachelor social workers; providing for  
 9           application of the public meetings exemption in  
 10          s. 455.621(4), F.S., to proceedings of a  
 11          probable cause panel with respect to  
 12          investigations concerning such practitioners;  
 13          providing for future review and repeal;  
 14          providing a finding of public necessity;  
 15          providing a contingent effective date.

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

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 19           Section 1. Section 491.106, Florida Statutes, as  
 20          created by House Bill           , 1998 Regular Session, is amended  
 21          to read:

22           491.106 Exemptions from public records and meetings  
 23          requirements.--

24           (1) The exemptions from s. 119.07(1) provided by ss.  
 25          455.621(2) and (10) and 455.707(3)(e) and (5)(a) also apply to  
 26          information concerning a registered clinical social worker  
 27          intern or a provisional clinical social worker regulated by  
 28          the Agency for Health Care Administration and the department  
 29          under this part. The exemption from s. 286.011 provided by s.  
 30          455.225(4) also applies to the proceedings of a probable cause  
 31          panel with respect to an investigation concerning a registered

1 clinical social worker intern or a provisional clinical social  
2 worker regulated by the agency and department under this part.  
3 This subsection ~~section~~ is subject to the Open Government  
4 Sunset Review Act of 1995 in accordance with s. 119.15 and  
5 shall stand repealed on October 2, 2002, unless reviewed and  
6 saved from repeal through reenactment by the Legislature.

7       (2) The exemptions from s. 119.07(1) provided by ss.  
8 455.621(2) and (10) and 455.707(3)(e) and (5)(a) also apply to  
9 information concerning a licensed master social worker or a  
10 licensed bachelor social worker regulated by the Agency for  
11 Health Care Administration and the department under this part.  
12 The exemption from s. 286.011 provided by s. 455.621(4) also  
13 applies to the proceedings of a probable cause panel with  
14 respect to an investigation concerning a licensed master  
15 social worker or a licensed bachelor social worker regulated  
16 by the agency and department under this part. This subsection  
17 is subject to the Open Government Sunset Review Act of 1995 in  
18 accordance with s. 119.15 and shall stand repealed on October  
19 2, 2003, unless reviewed and saved from repeal through  
20 reenactment by the Legislature.

21           Section 2. Subsections (2), (4), and (10) of section  
22 455.621, Florida Statutes, read:

23           455.621 Disciplinary proceedings.--Disciplinary  
24 proceedings for each board shall be within the jurisdiction of  
25 the department.

26           (2) The department shall allocate sufficient and  
27 adequately trained staff to expeditiously and thoroughly  
28 determine legal sufficiency and investigate all legally  
29 sufficient complaints. For purposes of this section, it is the  
30 intent of the Legislature that the term "expeditiously" means  
31 that the department complete the report of its initial

1 | investigative findings and recommendations concerning the  
2 | existence of probable cause within 6 months after its receipt  
3 | of the complaint. The failure of the department, for  
4 | disciplinary cases under its jurisdiction, to comply with the  
5 | time limits of this section while investigating a complaint  
6 | against a licensee constitutes harmless error in any  
7 | subsequent disciplinary action unless a court finds that  
8 | either the fairness of the proceeding or the correctness of  
9 | the action may have been impaired by a material error in  
10 | procedure or a failure to follow prescribed procedure. When  
11 | its investigation is complete and legally sufficient, the  
12 | department shall prepare and submit to the probable cause  
13 | panel of the appropriate regulatory board the investigative  
14 | report of the department. The report shall contain the  
15 | investigative findings and the recommendations of the  
16 | department concerning the existence of probable cause. At any  
17 | time after legal sufficiency is found, the department may  
18 | dismiss any case, or any part thereof, if the department  
19 | determines that there is insufficient evidence to support the  
20 | prosecution of allegations contained therein. The department  
21 | shall provide a detailed report to the appropriate probable  
22 | cause panel prior to dismissal of any case or part thereof,  
23 | and to the subject of the complaint after dismissal of any  
24 | case or part thereof, under this section. For cases dismissed  
25 | prior to a finding of probable cause, such report is  
26 | confidential and exempt from s. 119.07(1). The probable cause  
27 | panel shall have access, upon request, to the investigative  
28 | files pertaining to a case prior to dismissal of such case. If  
29 | the department dismisses a case, the probable cause panel may  
30 | retain independent legal counsel, employ investigators, and  
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1 continue the investigation and prosecution of the case as it  
2 deems necessary.

3 (4) The determination as to whether probable cause  
4 exists shall be made by majority vote of a probable cause  
5 panel of the board, or by the department, as appropriate. Each  
6 regulatory board shall provide by rule that the determination  
7 of probable cause shall be made by a panel of its members or  
8 by the department. Each board may provide by rule for multiple  
9 probable cause panels composed of at least two members. Each  
10 board may provide by rule that one or more members of the  
11 panel or panels may be a former board member. The length of  
12 term or repetition of service of any such former board member  
13 on a probable cause panel may vary according to the direction  
14 of the board when authorized by board rule. Any probable cause  
15 panel must include one of the board's former or present  
16 consumer members, if one is available, is willing to serve,  
17 and is authorized to do so by the board chairman. Any probable  
18 cause panel must include a present board member. Any probable  
19 cause panel must include a former or present professional  
20 board member. However, any former professional board member  
21 serving on the probable cause panel must hold an active valid  
22 license for that profession. All proceedings of the panel are  
23 exempt from s. 286.011 until 10 days after probable cause has  
24 been found to exist by the panel or until the subject of the  
25 investigation waives his privilege of confidentiality. The  
26 probable cause panel may make a reasonable request, and upon  
27 such request the department shall provide such additional  
28 investigative information as is necessary to the determination  
29 of probable cause. A request for additional investigative  
30 information shall be made within 15 days from the date of  
31 receipt by the probable cause panel of the investigative

1 report of the department or the agency. The probable cause  
2 panel or the department, as may be appropriate, shall make its  
3 determination of probable cause within 30 days after receipt  
4 by it of the final investigative report of the department. The  
5 secretary may grant extensions of the 15-day and the 30-day  
6 time limits. In lieu of a finding of probable cause, the  
7 probable cause panel, or the department if there is no board,  
8 may issue a letter of guidance to the subject. If, within the  
9 30-day time limit, as may be extended, the probable cause  
10 panel does not make a determination regarding the existence of  
11 probable cause or does not issue a letter of guidance in lieu  
12 of a finding of probable cause, the department must make a  
13 determination regarding the existence of probable cause within  
14 10 days after the expiration of the time limit. If the  
15 probable cause panel finds that probable cause exists, it  
16 shall direct the department to file a formal complaint against  
17 the licensee. The department shall follow the directions of  
18 the probable cause panel regarding the filing of a formal  
19 complaint. If directed to do so, the department shall file a  
20 formal complaint against the subject of the investigation and  
21 prosecute that complaint pursuant to chapter 120. However, the  
22 department may decide not to prosecute the complaint if it  
23 finds that probable cause has been improvidently found by the  
24 panel. In such cases, the department shall refer the matter to  
25 the board. The board may then file a formal complaint and  
26 prosecute the complaint pursuant to chapter 120. The  
27 department shall also refer to the board any investigation or  
28 disciplinary proceeding not before the Division of  
29 Administrative Hearings pursuant to chapter 120 or otherwise  
30 completed by the department within 1 year after the filing of  
31 a complaint. The department, for disciplinary cases under its

1 jurisdiction, must establish a uniform reporting system to  
2 quarterly refer to each board the status of any investigation  
3 or disciplinary proceeding that is not before the Division of  
4 Administrative Hearings or otherwise completed by the  
5 department within 1 year after the filing of the complaint.  
6 Annually, the department if there is no board, or each board  
7 must establish a plan to reduce or otherwise close any  
8 investigation or disciplinary proceeding that is not before  
9 the Division of Administrative Hearings or otherwise completed  
10 by the department within 1 year after the filing of the  
11 complaint. A probable cause panel or a board may retain  
12 independent legal counsel, employ investigators, and continue  
13 the investigation as it deems necessary; all costs thereof  
14 shall be paid from a trust fund used by the department to  
15 implement this part. All proceedings of the probable cause  
16 panel are exempt from s. 120.525.

17 (10) The complaint and all information obtained  
18 pursuant to the investigation by the department are  
19 confidential and exempt from s. 119.07(1) until 10 days after  
20 probable cause has been found to exist by the probable cause  
21 panel or by the department, or until the regulated  
22 professional or subject of the investigation waives his  
23 privilege of confidentiality, whichever occurs first. Upon  
24 completion of the investigation and pursuant to a written  
25 request by the subject, the department shall provide the  
26 subject an opportunity to inspect the investigative file or,  
27 at the subject's expense, forward to the subject a copy of the  
28 investigative file. Notwithstanding s. 455.667, the subject  
29 may inspect or receive a copy of any expert witness report or  
30 patient record connected with the investigation if the subject  
31 agrees in writing to maintain the confidentiality of any

1 information received under this subsection until 10 days after  
2 probable cause is found and to maintain the confidentiality of  
3 patient records pursuant to s. 455.667. The subject may file a  
4 written response to the information contained in the  
5 investigative file. Such response must be filed within 20  
6 days, unless an extension of time has been granted by the  
7 department. This subsection does not prohibit the department  
8 from providing such information to any law enforcement agency  
9 or to any other regulatory agency.

10 Section 3. Paragraph (e) of subsection (3) and  
11 paragraph (a) of subsection (5) of section 455.707, Florida  
12 Statutes, read:

13 455.707 Treatment programs for impaired  
14 practitioners.--

15 (3)

16 (e) The probable cause panel, or the department when  
17 there is no board, shall work directly with the consultant,  
18 and all information concerning a practitioner obtained from  
19 the consultant by the panel, or the department when there is  
20 no board, shall remain confidential and exempt from the  
21 provisions of s. 119.07(1), subject to the provisions of  
22 subsections (5) and (6).

23 (5)(a) An approved treatment provider shall, upon  
24 request, disclose to the consultant all information in its  
25 possession regarding the issue of a licensee's impairment and  
26 participation in the treatment program. All information  
27 obtained by the consultant and department pursuant to this  
28 section is confidential and exempt from the provisions of s.  
29 119.07(1), subject to the provisions of this subsection and  
30 subsection (6). Failure to provide such information to the  
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1 consultant is grounds for withdrawal of approval of such  
2 program or provider.

3           Section 4. The Legislature finds that the disclosure  
4 of information concerning an investigation of a practitioner  
5 regulated under chapter 491, Florida Statutes, and the  
6 disclosure of information concerning an impaired practitioner  
7 regulated under chapter 491, Florida Statutes, would  
8 constitute an unwarranted invasion into the personal privacy  
9 of the practitioner. In addition, the Legislature finds that  
10 it is necessary that the meetings of a probable cause panel  
11 investigating a practitioner regulated under chapter 491,  
12 Florida Statutes, be exempt from s. 286.011, Florida Statutes,  
13 until 10 days after probable cause has been found to exist by  
14 the panel or until the subject of the investigation waives his  
15 or her privilege of confidentiality. Therefore, the  
16 Legislature finds that it is a public necessity that certain  
17 information of the Agency for Health Care Administration and  
18 the Department of Health with respect to a licensed master  
19 social worker or a licensed bachelor social worker be kept  
20 confidential and exempt from disclosure under the public  
21 records law. The Legislature further finds that it is a public  
22 necessity that proceedings of a probable cause panel with  
23 respect to a licensed master social worker or a licensed  
24 bachelor social worker be exempt for a certain period from the  
25 public meetings law.

26           Section 5. This act shall take effect on the same date  
27 that House Bill        or similar legislation revising chapter  
28 491, Florida Statutes, to create the categories of social  
29 workers specified in this act takes effect, if such  
30 legislation is adopted in the same legislative session or an  
31 extension thereof.



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HOUSE SUMMARY

Provides for application of public records exemptions in ss. 455.621(2) and (10) and 455.707(3)(e) and (5)(a), F.S., to certain information concerning licensed master social workers and licensed bachelor social workers. Provides for application of the public meetings exemption in s. 455.621(4), F.S., to proceedings of a probable cause panel with respect to investigations concerning such practitioners. Provides for future review and repeal. Provides a finding of public necessity.