

By the Committee on Health Care and Senator Meadows

317-1943-98

1                                   A bill to be entitled  
 2           An act relating to public records and meetings;  
 3           creating s. 468.854, 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 graduate 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 468.854, Florida Statutes, is  
 20          created to read:  
 21                   468.854 Exemptions from public records and meetings  
 22          requirements.--The exemptions from s. 119.07(1) provided by  
 23          ss. 455.621(2) and (10) and 455.707(3)(e) and (5)(a) also  
 24          apply to information concerning a licensed graduate social  
 25          worker or a licensed bachelor social worker regulated by the  
 26          department or its agents under this part. The exemption from  
 27          s. 286.011 provided by s. 455.621(4) also applies to the  
 28          proceedings of a probable cause panel with respect to an  
 29          investigation concerning a licensed graduate social worker or  
 30          a licensed bachelor social worker regulated by the department  
 31          under this part. This section is subject to the Open

1 Government Sunset Review Act of 1995 in accordance with s.  
2 119.15 and shall stand repealed on October 2, 2003, unless  
3 reviewed and saved from repeal through reenactment by the  
4 Legislature.

5 Section 2. Subsections (2), (4), and (10) of section  
6 455.621, Florida Statutes, read:

7 455.621 Disciplinary proceedings.--Disciplinary  
8 proceedings for each board shall be within the jurisdiction of  
9 the department.

10 (2) The department shall allocate sufficient and  
11 adequately trained staff to expeditiously and thoroughly  
12 determine legal sufficiency and investigate all legally  
13 sufficient complaints. For purposes of this section, it is the  
14 intent of the Legislature that the term "expeditiously" means  
15 that the department complete the report of its initial  
16 investigative findings and recommendations concerning the  
17 existence of probable cause within 6 months after its receipt  
18 of the complaint. The failure of the department, for  
19 disciplinary cases under its jurisdiction, to comply with the  
20 time limits of this section while investigating a complaint  
21 against a licensee constitutes harmless error in any  
22 subsequent disciplinary action unless a court finds that  
23 either the fairness of the proceeding or the correctness of  
24 the action may have been impaired by a material error in  
25 procedure or a failure to follow prescribed procedure. When  
26 its investigation is complete and legally sufficient, the  
27 department shall prepare and submit to the probable cause  
28 panel of the appropriate regulatory board the investigative  
29 report of the department. The report shall contain the  
30 investigative findings and the recommendations of the  
31 department concerning the existence of probable cause. At any

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

17 (4) The determination as to whether probable cause  
18 exists shall be made by majority vote of a probable cause  
19 panel of the board, or by the department, as appropriate. Each  
20 regulatory board shall provide by rule that the determination  
21 of probable cause shall be made by a panel of its members or  
22 by the department. Each board may provide by rule for multiple  
23 probable cause panels composed of at least two members. Each  
24 board may provide by rule that one or more members of the  
25 panel or panels may be a former board member. The length of  
26 term or repetition of service of any such former board member  
27 on a probable cause panel may vary according to the direction  
28 of the board when authorized by board rule. Any probable cause  
29 panel must include one of the board's former or present  
30 consumer members, if one is available, is willing to serve,  
31 and is authorized to do so by the board chairman. Any probable

1 cause panel must include a present board member. Any probable  
2 cause panel must include a former or present professional  
3 board member. However, any former professional board member  
4 serving on the probable cause panel must hold an active valid  
5 license for that profession. All proceedings of the panel are  
6 exempt from s. 286.011 until 10 days after probable cause has  
7 been found to exist by the panel or until the subject of the  
8 investigation waives his privilege of confidentiality. The  
9 probable cause panel may make a reasonable request, and upon  
10 such request the department shall provide such additional  
11 investigative information as is necessary to the determination  
12 of probable cause. A request for additional investigative  
13 information shall be made within 15 days from the date of  
14 receipt by the probable cause panel of the investigative  
15 report of the department or the agency. The probable cause  
16 panel or the department, as may be appropriate, shall make its  
17 determination of probable cause within 30 days after receipt  
18 by it of the final investigative report of the department. The  
19 secretary may grant extensions of the 15-day and the 30-day  
20 time limits. In lieu of a finding of probable cause, the  
21 probable cause panel, or the department if there is no board,  
22 may issue a letter of guidance to the subject. If, within the  
23 30-day time limit, as may be extended, the probable cause  
24 panel does not make a determination regarding the existence of  
25 probable cause or does not issue a letter of guidance in lieu  
26 of a finding of probable cause, the department must make a  
27 determination regarding the existence of probable cause within  
28 10 days after the expiration of the time limit. If the  
29 probable cause panel finds that probable cause exists, it  
30 shall direct the department to file a formal complaint against  
31 the licensee. The department shall follow the directions of

1 | the probable cause panel regarding the filing of a formal  
2 | complaint. If directed to do so, the department shall file a  
3 | formal complaint against the subject of the investigation and  
4 | prosecute that complaint pursuant to chapter 120. However, the  
5 | department may decide not to prosecute the complaint if it  
6 | finds that probable cause has been improvidently found by the  
7 | panel. In such cases, the department shall refer the matter to  
8 | the board. The board may then file a formal complaint and  
9 | prosecute the complaint pursuant to chapter 120. The  
10 | department shall also refer to the board any investigation or  
11 | disciplinary proceeding not before the Division of  
12 | Administrative Hearings pursuant to chapter 120 or otherwise  
13 | completed by the department within 1 year after the filing of  
14 | a complaint. The department, for disciplinary cases under its  
15 | jurisdiction, must establish a uniform reporting system to  
16 | quarterly refer to each board the status of any investigation  
17 | or disciplinary proceeding that is not before the Division of  
18 | Administrative Hearings or otherwise completed by the  
19 | department within 1 year after the filing of the complaint.  
20 | Annually, the department if there is no board, or each board  
21 | must establish a plan to reduce or otherwise close any  
22 | investigation or disciplinary proceeding that is not before  
23 | the Division of Administrative Hearings or otherwise completed  
24 | by the department within 1 year after the filing of the  
25 | complaint. A probable cause panel or a board may retain  
26 | independent legal counsel, employ investigators, and continue  
27 | the investigation as it deems necessary; all costs thereof  
28 | shall be paid from a trust fund used by the department to  
29 | implement this part. All proceedings of the probable cause  
30 | panel are exempt from s. 120.525.  
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1           (10) The complaint and all information obtained  
2 pursuant to the investigation by the department are  
3 confidential and exempt from s. 119.07(1) until 10 days after  
4 probable cause has been found to exist by the probable cause  
5 panel or by the department, or until the regulated  
6 professional or subject of the investigation waives his  
7 privilege of confidentiality, whichever occurs first. Upon  
8 completion of the investigation and pursuant to a written  
9 request by the subject, the department shall provide the  
10 subject an opportunity to inspect the investigative file or,  
11 at the subject's expense, forward to the subject a copy of the  
12 investigative file. Notwithstanding s. 455.667, the subject  
13 may inspect or receive a copy of any expert witness report or  
14 patient record connected with the investigation if the subject  
15 agrees in writing to maintain the confidentiality of any  
16 information received under this subsection until 10 days after  
17 probable cause is found and to maintain the confidentiality of  
18 patient records pursuant to s. 455.667. The subject may file a  
19 written response to the information contained in the  
20 investigative file. Such response must be filed within 20  
21 days, unless an extension of time has been granted by the  
22 department. This subsection does not prohibit the department  
23 from providing such information to any law enforcement agency  
24 or to any other regulatory agency.

25           Section 3. Paragraph (e) of subsection (3) and  
26 paragraph (a) of subsection (5) of section 455.707, Florida  
27 Statutes, read:

28           455.707 Treatment programs for impaired  
29 practitioners.--

30           (3)

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

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

18           Section 4. The Legislature finds that the disclosure  
19 of information concerning an investigation of a practitioner  
20 regulated under part XV of chapter 468, Florida Statutes, and  
21 the disclosure of information concerning an impaired  
22 practitioner regulated under part XV of chapter 468, Florida  
23 Statutes, would constitute an unwarranted invasion into the  
24 personal privacy of the practitioner. In addition, the  
25 Legislature finds that it is necessary that the meetings of a  
26 probable cause panel investigating a practitioner regulated  
27 under part XV of chapter 468, Florida Statutes, be exempt from  
28 s. 286.011, Florida Statutes, until 10 days after probable  
29 cause has been found to exist by the panel or until the  
30 subject of the investigation waives his or her privilege of  
31 confidentiality. Therefore, the Legislature finds that it is a

1 public necessity that certain information of the Department of  
2 Health or its agents with respect to a licensed graduate  
3 social worker or a licensed bachelor social worker be kept  
4 confidential and exempt from disclosure under the public  
5 records law. The Legislature further finds that it is a public  
6 necessity that proceedings of a probable cause panel with  
7 respect to a licensed graduate social worker or a licensed  
8 bachelor social worker be exempt for a certain period from the  
9 public meetings law.

10 Section 5. This act shall take effect on the same date  
11 that Committee Substitute for Senate Bill 402 or similar  
12 legislation creating part XV of chapter 468, Florida Statutes,  
13 and establishing the categories of practitioners specified in  
14 this act, takes effect, if such legislation is adopted in the  
15 same legislative session or an extension thereof.

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17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
18 COMMITTEE SUBSTITUTE FOR  
19 Senate Bill 870

20 The committee substitute deletes references to the Agency for  
21 Health Care Administration and makes other minor technical and  
22 conforming changes to the public records and meetings  
23 exemptions requirements specified in the committee substitute.  
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