

Bill No. CS for SB 1012

Amendment No. ____

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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| 11 | Senator Carlton moved the following amendment: | | |
| 12 | | | |
| 13 | Senate Amendment (with title amendment) | | |
| 14 | Delete everything after the enacting clause | | |
| 15 | | | |
| 16 | and insert: | | |
| 17 | Section 1. Paragraph (b) of subsection (2) and | | |
| 18 | subsection (4) of section 395.3035, Florida Statutes, are | | |
| 19 | amended, present subsection (6) is renumbered as subsection | | |
| 20 | (9), and new subsections (6), (7), and (8) are added to that | | |
| 21 | section, to read: | | |
| 22 | 395.3035 Confidentiality of public hospital records | | |
| 23 | and meetings.-- | | |
| 24 | (2) The following public hospital records and | | |
| 25 | information <u>of any hospital that is subject to chapter 119 and</u> | | |
| 26 | <u>s. 24(a), Art. I of the State Constitution</u> are confidential | | |
| 27 | and exempt from the provisions of s. 119.07(1) and s. 24(a), | | |
| 28 | Art. I of the State Constitution: | | |
| 29 | (b) A public hospital's <u>strategic plan the disclosure</u> | | |
| 30 | <u>of which would be reasonably likely to be used by a competitor</u> | | |
| 31 | <u>to frustrate, circumvent, or exploit the purpose of the plan</u> | | |

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1 before it is implemented and which is not otherwise known or
2 cannot otherwise be legally obtained by the competitor plans,
3 including plans for marketing its services, which services are
4 or may reasonably be expected by the hospital's governing
5 board to be provided by competitors of the hospital. However,
6 documents that are submitted to the hospital's governing board
7 as part of the board's approval of the hospital's budget, and
8 the budget itself, are not confidential and exempt.

9 (4)(a) Those portions of a board meeting at which one
10 or more the written strategic plans that are confidential
11 pursuant to subsection (2), including written plans for
12 marketing its services, are discussed, or reported on,
13 modified, or approved by the governing board are exempt from
14 the provisions of s. 286.011 and s. 24(b), Art. I of the State
15 Constitution. This paragraph is subject to the Open Government
16 Sunset Review Act of 1995 in accordance with s. 119.15 and
17 shall stand repealed on October 2, 2004, unless reviewed and
18 saved from repeal through reenactment by the Legislature.

19 (b) All portions of any board meeting which are closed
20 to the public pursuant to this subsection shall be recorded by
21 a certified court reporter. The reporter shall record the
22 times of commencement and termination of the meeting, all
23 discussion and proceedings, the names of all persons present
24 at any time, and the names of all persons speaking. No portion
25 of the meeting shall be off the record. The court reporter's
26 notes shall be fully transcribed and maintained by the
27 hospital records custodian within a reasonable time after the
28 meeting. The closed meeting shall be restricted to discussion,
29 reports, modification, or approval of a written strategic
30 plan. The transcript shall become public 3 years after the
31 date of the board meeting or at an earlier date if the

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1 strategic plan discussed, reported on, modified, or approved
2 at the meeting has been publicly disclosed by the hospital or
3 implemented to the extent that confidentiality of the
4 strategic plan is no longer necessary. If a discrete part of a
5 strategic plan has been publicly disclosed by the hospital or
6 has been implemented to the extent that confidentiality of
7 that portion of the plan is no longer necessary, then the
8 hospital shall redact the transcript and release only that
9 part which records discussion of the nonconfidential part of
10 the strategic plan, unless such disclosure would divulge any
11 part of the strategic plan that remains confidential.

12 (c) This subsection does not allow the boards of two
13 separate public entities to meet together in a closed meeting
14 to discuss, report on, modify, or approve the implementation
15 of a strategic plan that affects both public entities.

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

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

20 (b) Materially expand an existing health service;

21 (c) Acquire additional facilities by purchase or by
22 lease;

23 (d) Materially expand existing facilities;

24 (e) Change all or a material part of the use of an
25 existing facility or a newly acquired facility;

26 (f) Acquire another health care facility or health
27 care provider;

28 (g) Merge or consolidate with another health care
29 facility when the surviving entity is an entity that is
30 subject to s. 24, Art. I of the State Constitution;

31 (h) Enter into a shared service arrangement with

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1 another health care provider; or

2 (i) Any combination of paragraphs (a)-(h).

3
4 The term "strategic plan" does not include records that
5 describe the existing operations of a hospital or other health
6 care facility which implement or execute the provisions of a
7 strategic plan, unless disclosure of any such document would
8 divulge any part of a strategic plan which has not been fully
9 implemented or is a record that is otherwise exempt from the
10 public records laws. Such existing operations include, without
11 limitation, the hiring of employees, the purchase of
12 equipment, the placement of advertisements, and the entering
13 into contracts with physicians to perform medical services.
14 Records that describe operations are not exempt, except as
15 specifically provided in this section.

16 (7) If the governing board of the hospital closes a
17 portion of any board meeting pursuant to subsection (4) before
18 placing the strategic plan or any separate component of the
19 strategic plan into operation, the governing board must give
20 notice of an open meeting in accordance with s. 286.011, and
21 conduct the meeting to inform the public, in general terms, of
22 the business activity that is to be implemented. If a
23 strategic plan involves a substantial reduction in the level
24 of medical services provided to the public, the meeting notice
25 must be given at least 30 days prior to the meeting at which
26 the governing board considers the decision to implement the
27 strategic plan.

28 (8) A hospital may not approve a binding agreement to
29 implement a strategic plan at any closed meeting of the board.
30 Any such approval must be made at a meeting open to the public
31 and noticed in accordance with s. 286.011.

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1 Section 2. The Legislature finds that community
2 hospitals in this state are often the safety-net providers of
3 health care to our less advantaged residents and visitors. Yet
4 community hospitals that are subject to the public records and
5 open meeting laws of the state, unlike most agencies that
6 provide services to the public, must compete directly with
7 their private-sector counterparts. The economic survival of
8 Florida's community hospitals depends on their ability to
9 obtain revenues from services they provide in competition with
10 their private-sector counterparts. The Legislature further
11 finds that the governing boards of these hospitals do not
12 discuss, debate, or participate in the modification or
13 approval of their written strategic plans because the
14 governing boards' discussions and the records are open to the
15 public, thereby giving private-sector competitor hospitals
16 advance disclosure of the hospitals' planned strategic moves.
17 The Legislature finds that it is a public necessity that the
18 governing boards of these hospitals be involved in the
19 discussion, modification, and approval of the hospitals'
20 strategic plans. Consequently, the Legislature finds that it
21 is a public necessity that the written strategic plan of any
22 hospital which is subject to the public records laws of the
23 state, and notes and transcripts that are recorded pursuant to
24 section 395.3035(4)(c), Florida Statutes, be confidential and
25 exempt from the public records laws of this state as provided
26 in this act. The Legislature also finds that it is a public
27 necessity that those portions of a hospital's governing board
28 meeting during which one or more written strategic plans which
29 are exempt from the open records laws are discussed, reported
30 on, modified, or approved shall be confidential and exempt
31 from the public meeting laws of this state. The Legislature

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1 further finds that it is a public necessity to clarify that
 2 the records and meetings of any privately operated hospital
 3 which are subject to the public records law and open meetings
 4 law of this state are exempt from both in the same manner and
 5 to the same extent as are records and meetings of publicly
 6 operated hospitals and as otherwise provided by law.

7 Section 3. This act shall take effect upon becoming a
 8 law.

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 10

11 ===== T I T L E A M E N D M E N T =====
 12 And the title is amended as follows:

13 Delete everything before the enacting clause
 14
 15 and insert:

16 A bill to be entitled
 17 An act relating to hospital meetings and
 18 records; amending s. 395.3035, F.S.; defining
 19 the term "strategic plan" for purposes of
 20 provisions which provide for the
 21 confidentiality of such plans and of meetings
 22 relating thereto; providing an exemption from
 23 open meetings requirements for meetings at
 24 which such plans are modified or approved by
 25 the hospital's governing board; providing for
 26 future review and repeal; providing conditions
 27 for the early release of transcripts of
 28 meetings at which such plans are discussed;
 29 prohibiting public hospitals from taking
 30 certain specified actions at closed meetings;
 31 requiring certain notice; providing a finding

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1 of public necessity; providing an effective
2 date.
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