

By Senator Carlton

24-834B-99

See HB

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 the term "strategic plan" for purposes of
 5 provisions which provide for the
 6 confidentiality of such plans and of meetings
 7 relating thereto; providing an exemption from
 8 open meetings requirements for meetings at
 9 which such plans are modified or approved by
 10 the hospital's governing board; providing for
 11 future review and repeal; providing conditions
 12 for the early release of transcripts of
 13 meetings at which such plans are discussed;
 14 prohibiting public hospitals from taking
 15 certain specified actions at closed meetings;
 16 requiring certain notice; providing a finding
 17 of public necessity; providing an effective
 18 date.

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

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 22 Section 1. Subsections (2) and (4) of section
 23 395.3035, Florida Statutes, are amended, present subsection
 24 (6) is renumbered as subsection (8), and new subsections (6)
 25 and (7) are added to that section, to read:

26 395.3035 Confidentiality of public hospital records
 27 and meetings.--

28 (2) The following public hospital records and
 29 information are confidential and exempt from the provisions of
 30 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
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1 (b) A public hospital's strategic plans, ~~including~~
2 ~~plans for marketing its services, which services are or may~~
3 ~~reasonably be expected by the hospital's governing board to be~~
4 ~~provided by competitors of the hospital.~~ However, documents
5 that are submitted to the hospital's governing board as part
6 of the board's approval of the hospital's budget, and the
7 budget itself, are not confidential and exempt.

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

13 (b) Those portions of a board meeting at which written
14 strategic plans are modified or approved by the governing
15 board are exempt from the provisions of s. 286.011 and s.
16 24(b), Art. I of the State Constitution. This paragraph is
17 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, 2004, unless reviewed and saved from repeal through
20 reenactment by the Legislature.

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

1 reported on, modified, or approved at the meeting has been
2 implemented to the extent that confidentiality of the
3 strategic plan is no longer necessary.

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

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

8 (b) Expand an existing health service;

9 (c) Acquire additional facilities;

10 (d) Expand existing facilities;

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

13 (f) Acquire, merge, or consolidate with another health
14 care facility or health care provider;

15 (g) Enter into a shared service arrangement with
16 another health care provider;

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

18 or

19 (i) Any combination of paragraphs (a)-(i);

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21 The term "strategic plan" does not include records that
22 describe the existing operations of a public hospital or other
23 public health care facility which implement or execute the
24 provisions of a strategic plan, unless disclosure of any such
25 document would divulge any part of a strategic plan which has
26 not been fully implemented or is a record that is otherwise
27 exempt from the public records laws. Records that describe
28 operations are not exempt, except as specifically provided in
29 this section.

30 (7) A public hospital may not approve a binding
31 agreement to sell, lease, merge, or consolidate the hospital

1 at any closed meeting of the board. Any such approval must be
2 made at a meeting open to the public and noticed in accordance
3 with s. 286.011.

4 Section 2. The Legislature finds that it is a public
5 necessity that strategic plans of public hospitals, and notes
6 and transcripts which are recorded pursuant to section
7 395.3035(4)(c), Florida Statutes, be confidential and exempt
8 from the public records laws of this state. The Legislature
9 further finds that it is a public necessity that those
10 portions of a public hospital's governing board meeting during
11 which a strategic plan is discussed, reported on, modified, or
12 approved be confidential and exempt from the public meeting
13 laws of this state. The public hospitals in this state are
14 often the safety-net providers of health care to our less
15 advantaged residents and visitors. Yet public hospitals,
16 unlike most agencies that provide services to the public, must
17 compete directly with their private-sector counterparts.
18 Because the economic survival of Florida's public hospitals
19 depends on their ability to obtain revenues from services they
20 provide in competition with their private-sector counterparts,
21 disclosure of information that puts public hospitals at a
22 competitive disadvantage will reduce their revenues and, thus,
23 their ability to provide medical services to the indigent. A
24 strategic plan, as that term is defined in section
25 395.3035(6), Florida Statutes, if released before the plan is
26 implemented or circumstances no longer require it to remain
27 confidential, would make it exceptionally difficult, if not
28 impossible, for a public hospital to compete effectively in
29 the marketplace against private hospitals whose records are
30 not required to be open to the public. Therefore, it is a
31 public necessity that strategic plans of public hospitals,

1 governing board discussions of their strategic plans, and
2 records memorializing those discussions be confidential and
3 exempt from the public records and public meeting laws of this
4 state.

5 Section 3. This act shall take effect upon becoming a
6 law.

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9 LEGISLATIVE SUMMARY

10 Defines the term "strategic plan" for purposes of
11 provisions that provide for the confidentiality of a
12 public hospital's strategic plans and its meetings
13 concerning them. Exempts from open meetings requirements
14 those meetings at which such plans are modified or
15 approved by the hospital's governing board. Provides for
16 future review and repeal of the exemption. Specifies
17 circumstances under which transcripts of such meetings
18 may be kept confidential for less than 3 years from the
19 date of the meeting. Requires that approval of a binding
20 agreement to sell, lease, merge, or consolidate a public
21 hospital be made at a meeting that is open to the public
22 and for which public notice has been given.
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