

By the Committee on Health, Aging and Long-Term Care; and
 Senator Carlton

317-1734A-99

1 A bill to be entitled
 2 An act relating to 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. Paragraph (b) of subsection (2) and
 23 subsection (4) of section 395.3035, Florida Statutes, are
 24 amended, present subsection (6) is renumbered as subsection
 25 (9), and new subsections (6), (7), and (8) are added to that
 26 section, to read:

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

29 (2) The following ~~public hospital~~ records and
 30 information of any hospital that is subject to chapter 119 and
 31 s. 24(a), Art. I of the State Constitution are confidential

1 and exempt from the provisions of s. 119.07(1) and s. 24(a),
2 Art. I of the State Constitution:

3 (b) A ~~public hospital's~~ strategic plan the disclosure
4 of which in the judgment of the hospital could be used by a
5 competitor to frustrate, circumvent, or exploit the purpose of
6 the plan before it is implemented and which is not otherwise
7 known or is not discoverable by the competitor by any means
8 other than legal process plans, including plans for marketing
9 its services, which services are or may reasonably be expected
10 by the hospital's governing board to be provided by
11 competitors of the hospital. However, documents that are
12 submitted to the hospital's governing board as part of the
13 board's approval of the hospital's budget, and the budget
14 itself, are not confidential and exempt.

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22 repealed on October 2, 2004, unless reviewed and saved from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

24 (b) All portions of any board meeting which are closed
25 to the public pursuant to this subsection shall be recorded by
26 a certified court reporter. The reporter shall record the
27 times of commencement and termination of the meeting, all
28 discussion and proceedings, the names of all persons present
29 at any time, and the names of all persons speaking. No portion
30 of the meeting shall be off the record. The court reporter's
31 notes shall be fully transcribed and maintained by the

1 hospital records custodian within a reasonable time after the
2 meeting. The closed meeting shall be restricted to discussion,
3 reports, modification, or approval of a written strategic
4 plan. The transcript shall become public 3 years after the
5 date of the board meeting or at an earlier date if the
6 strategic plan discussed, reported on, modified, or approved
7 at the meeting has been implemented to the extent that
8 confidentiality of the strategic plan is no longer necessary.

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

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

13 (b) Expand an existing health service;

14 (c) Acquire additional facilities;

15 (d) Expand existing facilities;

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

18 (f) Acquire, merge, or consolidate with another health
19 care facility or health care provider;

20 (g) Enter into a shared service arrangement with
21 another health care provider;

22 (h) Enter into or terminate a joint venture, subject
23 to the provisions of s. 155.40 relating to selling or leasing
24 a health care facility; or

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

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27 The term "strategic plan" does not include records that
28 describe the existing operations of a hospital or other health
29 care facility which implement or execute the provisions of a
30 strategic plan, unless disclosure of any such document would
31 divulge any part of a strategic plan which has not been fully

1 implemented or is a record that is otherwise exempt from the
2 public records laws. Such existing operations include, without
3 limitation, the hiring of employees, the purchase of
4 equipment, the placement of advertisements, and the entering
5 into contracts with physicians to perform medical services.
6 Records that describe operations are not exempt, except as
7 specifically provided in this section.

8 (7) If the governing board of the hospital closes a
9 portion of any board meeting pursuant to subsection (4) before
10 placing the strategic plan or any separate component of the
11 strategic plan into operation, the governing board must give
12 notice of an open meeting in accordance with s. 286.011, and
13 conduct the meeting to inform the public, generally, of the
14 business activity that is to be implemented.

15 (8) A hospital may not approve a binding agreement to
16 sell, lease, merge, or consolidate the hospital at any closed
17 meeting of the board. Any such approval must be made at a
18 meeting open to the public and noticed in accordance with s.
19 286.011.

20 Section 2. The Legislature finds that community
21 hospitals in this state are often the safety-net providers of
22 health care to our less advantaged residents and visitors. Yet
23 community hospitals that are subject to the public records and
24 open meeting laws of the state, unlike most agencies that
25 provide services to the public, must compete directly with
26 their private-sector counterparts. The economic survival of
27 Florida's community hospitals depends on their ability to
28 obtain revenues from services they provide in competition with
29 their private-sector counterparts. The Legislature further
30 finds that the governing boards of these hospitals do not
31 discuss, debate, or participate in the modification or

1 approval of their written strategic plans because the
2 governing boards' discussions and the records are open to the
3 public, thereby giving private-sector competitor hospitals
4 advance disclosure of the hospitals' planned strategic moves.
5 The Legislature finds that it is a public necessity that the
6 governing boards of these hospitals be involved in the
7 modification and approval of the hospitals' strategic plans.
8 Consequently, the Legislature finds that it is a public
9 necessity that the written strategic plan of any hospital
10 which is subject to the public records laws of the state, and
11 notes and transcripts that are recorded pursuant to section
12 395.3035(4)(c), Florida Statutes, be confidential and exempt
13 from the public records laws of this state. The Legislature
14 further finds that it is a public necessity that those
15 portions of a hospital's governing board meeting involving the
16 hospital's strategic plans or during which the written
17 strategic plan is discussed, reported on, modified, or
18 approved be confidential and exempt from the public meeting
19 laws of this state. The Legislature further finds that it is a
20 public necessity to clarify that the records and meetings of
21 any privately operated hospital which are subject to the
22 public records law and open meetings law of this state are
23 exempt from both in the same manner and to the same extent as
24 are records and meetings of publicly operated hospitals and as
25 otherwise provided by law.

26 Section 3. The stated purpose of the exemption
27 provided in section 1 is to allow hospital boards to fully
28 discuss adoption or modification of and to receive reports
29 concerning their written strategic plans without the strategic
30 plans and unimplemented portions of the written strategic

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1 plans being disclosed in advance to private-sector competitor
2 hospitals.

3 Section 4. This act shall take effect upon becoming a
4 law.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 SB 1012

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9 Makes certain records and information of any hospital that is
10 subject to the Public Records Law confidential and exempt from
11 the Public Records Law. Describes and limits which strategic
12 plans are exempted from the Public Records Law. Explicitly
13 restricts permissible activities during a closed portion of a
14 public meeting relating to written strategic plans. Clarifies
15 the meaning of "existing operations." Requires a hospital
16 governing board that closes a portion of a public meeting for
17 consideration of a strategic plan to give notice of and
18 conduct a public meeting before implementing the strategic
19 plan or any component of the strategic plan. Revises the
20 statement of public necessity.

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