

565-144BX-08

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Fasano offered the following:

**Amendment (with title amendment)**

Remove from the bill: Everything after the enacting clause  
and insert in lieu thereof:

Section 1. Paragraph (b) of subsection (2) and  
subsection (4) of section 395.3035, Florida Statutes, are  
amended, present subsection (6) is renumbered as subsection  
(9), and new subsections (6), (7), and (8) are added to that  
section, to read:

395.3035 Confidentiality of ~~public~~ hospital records  
and meetings.--

(2) The following ~~public hospital~~ records and  
information of any hospital that is subject to chapter 119 and  
s. 24(a), Art. I of the State Constitution are confidential  
and exempt from the provisions of s. 119.07(1) and s. 24(a),  
Art. I of the State Constitution:

(b) A ~~public hospital's~~ strategic plan the disclosure  
of which, in the judgment of the hospital, could be used by a  
competitor to frustrate, circumvent, or exploit the purpose of

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

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17 repealed on October 2, 2004, unless reviewed and saved from  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

1 strategic plan discussed, reported on, modified, or approved  
2 at the meeting has been implemented to the extent that  
3 confidentiality of the 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 or terminate a joint venture, subject  
18 to the provisions of s. 155.40 relating to selling or leasing  
19 a health care facility; or

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

21  
22 The term "strategic plan" does not include records that  
23 describe the existing operations of a hospital or other health  
24 care facility which implement or execute the provisions of a  
25 strategic plan, unless disclosure of any such document would  
26 divulge any part of a strategic plan which has not been fully  
27 implemented or is a record that is otherwise exempt from the  
28 public records laws. Such existing operations include, without  
29 limitation, the hiring of employees, the purchase of  
30 equipment, the placement of advertisements, and the entering  
31 into contracts with physicians to perform medical services.

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1 Records that describe operations are not exempt, except as  
2 specifically provided in this section.

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

10 (8) A hospital may not approve a binding agreement to  
11 sell, lease, merge, or consolidate the hospital at any closed  
12 meeting of the board. Any such approval must be made at a  
13 meeting open to the public and noticed in accordance with s.  
14 286.011.

15 Section 2. The Legislature finds that community  
16 hospitals in this state are often the safety-net providers of  
17 health care to our less advantaged residents and visitors. Yet  
18 community hospitals that are subject to the public records and  
19 open meeting laws of the state, unlike most agencies that  
20 provide services to the public, must compete directly with  
21 their private-sector counterparts. The economic survival of  
22 Florida's community hospitals depends on their ability to  
23 obtain revenues from services they provide in competition with  
24 their private-sector counterparts. The Legislature further  
25 finds that the governing boards of these hospitals do not  
26 discuss, debate, or participate in the modification or  
27 approval of their written strategic plans because the  
28 governing boards' discussions and the records are open to the  
29 public, thereby giving private-sector competitor hospitals  
30 advance disclosure of the hospitals' planned strategic moves.  
31 The Legislature finds that it is a public necessity that the

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1 governing boards of these hospitals be involved in the  
2 modification and approval of the hospitals' strategic plans.  
3 Consequently, the Legislature finds that it is a public  
4 necessity that the written strategic plan of any hospital  
5 which is subject to the public records laws of the state, and  
6 notes and transcripts that 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 hospital's governing board meeting involving the  
11 hospital's strategic plans or during which the written  
12 strategic plan is discussed, reported on, modified, or  
13 approved be confidential and exempt from the public meeting  
14 laws of this state. The Legislature further finds that it is a  
15 public necessity to clarify that the records and meetings of  
16 any privately operated hospital which are subject to the  
17 public records law and open meetings law of this state are  
18 exempt from both in the same manner and to the same extent as  
19 are records and meetings of publicly operated hospitals and as  
20 otherwise provided by law.

21           Section 3. The stated purpose of the exemption  
22 provided in section 1 is to allow hospital boards to fully  
23 discuss adoption or modification of and to receive reports  
24 concerning their strategic plans without the strategic plans  
25 being disclosed in advance to private-sector competitor  
26 hospitals.

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

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1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3 remove from the title of the bill:  the entire title

4

5 and insert in lieu thereof:

6                   A bill to be entitled

7       An act relating to hospital meetings and  
8       records; amending s. 395.3035, F.S.; defining  
9       the term "strategic plan" for purposes of  
10       provisions which provide for the  
11       confidentiality of such plans and of meetings  
12       relating thereto; providing an exemption from  
13       open meetings requirements for meetings at  
14       which such plans are modified or approved by  
15       the hospital's governing board; providing for  
16       future review and repeal; providing conditions  
17       for the early release of transcripts of  
18       meetings at which such plans are discussed;  
19       prohibiting public hospitals from taking  
20       certain specified actions at closed meetings;  
21       requiring certain notice; providing a finding  
22       of public necessity; providing an effective  
23       date.

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