

Bill No. HB 357, 1st Eng.

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Carlton moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
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 <del>public</del> hospital records		
23	and meetings.--		
24	(2) The following <del>public hospital</del> 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 <del>public hospital's</del> <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17 shall stand repealed on October 2, 2004, unless reviewed and  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.

9  
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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  
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