

By Representative Fasano

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

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsection (4) of section 395.3035, Florida
 22 Statutes, is amended, subsection (6) is renumbered as
 23 subsection (8), and new subsections (6) and (7) are added to
 24 said section, to read:

25 395.3035 Confidentiality of public hospital records
 26 and meetings.--

27 (2) The following public hospital records and
 28 information are confidential and exempt from the provisions of
 29 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

30 (b) A public hospital's strategic plans, including
 31 plans for marketing its services, which services are or may

1 reasonably be expected by the hospital's governing board to be
2 provided by competitors of the hospital. However, documents
3 that are submitted to the hospital's governing board as part
4 of the board's approval of the hospital's budget, and the
5 budget itself, are not confidential and exempt.

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

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17 s. 119.15 and shall stand repealed on October 2, 2004, unless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

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

1 modified, or approved at the meeting has been fully
2 implemented or the circumstances do not require the transcript
3 of the meeting to remain confidential.

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 (i) Market the services of the hospital and its
19 ancillary facilities; or

20 (j) Any combination of paragraphs (a)-(i);

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

31

1 (7) A public hospital may not approve a binding
2 agreement to sell, lease, merge, or consolidate the hospital
3 at any closed meeting of the board. Any such approval must be
4 made at a meeting open to the public and noticed in accordance
5 with s. 286.011.

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

1 against private hospitals whose records are not required to be
2 open to the public. Therefore, it is a public necessity that
3 strategic plans of public hospitals, governing board
4 discussions of their strategic plans, and records
5 memorializing those discussions be confidential and exempt
6 from the public records and public meeting laws of this state.

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

9
10 *****

11 HOUSE SUMMARY

12 Defines "strategic plan" for purposes of provisions which
13 provide for the confidentiality of a public hospital's
14 strategic plans and of meetings relating thereto.
15 Provides an exemption from open meetings requirements for
16 meetings at which such plans are modified or approved by
17 the hospital's governing board. Provides for future
18 review and repeal of said exemption. Specifies
19 circumstances under which transcripts of such meetings
20 may be kept confidential for less than 3 years from the
21 date of the meeting. Requires that approval of a binding
22 agreement to sell, lease, merge, or consolidate a public
23 hospital be made at a meeting that is open to the public
24 and noticed according to public meeting requirements.
25
26
27
28
29
30
31