

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1731 (PCB SA 04-04) Hospital Board Meeting/OGSR  
**SPONSOR(S):** State Administration and Benson  
**TIED BILLS:** none **IDEN./SIM. BILLS:** SB 468 (i)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration	3 Y, 1 N	Bond	Everhart
2)			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

The Open Government Sunset Review Act of 1995 requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

This bill reenacts without change the public meetings exemption for meetings of a public hospital board to discuss a strategic plan of the hospitals, which exemption will repeal on October 2, 2004 if this bill does not become law.

This bill does not appear to have a fiscal impact on state government. This bill may have a minimal non-recurring positive fiscal impact on local government expenditures.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1731.sa.doc  
**DATE:** March 8, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Article I, s. 24, Fla.Const., provides that all records held by a public entity are public records, open to inspection and copying by any person, unless the legislature, by general law, provides that such record is exempt from public disclosure. The section also provides that all meetings of a public collegial body are open to the public, unless the legislature, by general law, provides that a meeting may be closed to the public. Section 395.3035, F.S., provides public record and public meeting exemptions applicable to strategic plans of public hospitals.

Section 395.3035, F.S., was substantially amended in the 1999 session.<sup>1</sup> At the time, the previous version of the public meetings exemption for meetings to discuss a strategic plan had recently been declared unconstitutionally overbroad. *Halifax Hospital Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). The current version of s. 395.3035, F.S., was crafted to meet the issues raised in the opinion finding the predecessor version unconstitutional.

Section 395.3035(2)(b), F.S., exempts and makes confidential a strategic plan the disclosure of which would be reasonably likely to be used by a competitor to frustrate, circumvent, or exploit the purpose of the plan before it is implemented and which is not otherwise known or cannot otherwise be legally obtained by the competitor, is confidential and exempt. However, documents that are submitted to the hospital's governing board as part of the board's approval of the hospital's budget, and the budget itself, are not confidential and exempt.

Section 395.3035(4)(a), F.S., provides that those portions of a public hospital board meeting at which one or more written strategic plans that are confidential pursuant to s. 395.3035(2), F.S., are discussed, reported on, modified, or approved by the governing board are exempt. A transcript of any such meeting must be made. Such transcripts lose their exempt status three years after the meeting, or upon the time that the strategic plan is otherwise disclosed by the hospital.

Current law provides for future review and repeal of the public meetings exemption regarding public hospital strategic plans. Pursuant to the Open Government Sunset Review Act of 1995, this exemption will repeal on October 2, 2004, unless otherwise reenacted by the Legislature.

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<sup>1</sup> Chapter 99-346, L.O.F.

## Effect of Bill

This bill amends s. 395.3035(4)(a), F.S., to delete the repeal language, thus saving the affected exemption from repeal.

### C. SECTION DIRECTORY:

Section 1 amends s. 395.3035(4)(a), F.S., to remove the review and repeal language.

Section 2 provides that this bill has an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

#### 2. Expenditures:

None. This bill does not create, modify, amend, or eliminate a state expenditure.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

#### 2. Expenditures:

This bill may represent a minimal non-recurring positive impact on local government expenditures. Any bill amending public meetings requirements causes a non-recurring negative fiscal impact in the year of enactment for training public officials who attend meetings, and employees to whom a request to appear at meetings of public officials would be addressed. In the case of bills being reviewed under the Open Government Sunset Review process, the cost of such training will be incurred if the bill does not pass, as public officials and employees would have to be informed that formerly exempt meetings are to be open. Because this bill eliminates the repeal, training activities will be avoided and local governments (public hospitals) may realize a minimal nonrecurring decrease in expenditures.

Public hospitals assert that maintaining the confidentiality of meetings at which a strategic plan is discussed assists such hospitals in lowering costs and maintaining their competitive business position related to competing private hospitals. If so, this bill may represent a recurring positive fiscal impact benefiting local public hospitals, although the extent of such impact cannot be quantified.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Open Government Sunset Review Act of 1995**

The Open Government Sunset Review Act of 1995,<sup>2</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (*e.g.*, allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>2</sup> Section 119.15, F.S.