

## CHAMBER ACTION

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1 The Health Care Regulation Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

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6 A bill to be entitled

7 An act relating to public records and public meetings;  
8 amending s. 155.40, F.S.; clarifying construction with  
9 respect to actions of a lessee or purchaser of a county,  
10 district, or municipal hospital; providing an exemption  
11 from public records requirements for the records of a  
12 private corporation that purchases or leases a public  
13 hospital; providing for retroactive effect of the  
14 exemption; providing an exemption from public meetings  
15 requirements for that portion of a meeting of the  
16 governing board of a private corporation that leases or  
17 purchases a public hospital at which confidential and  
18 exempt information is presented or discussed; providing an  
19 exemption from public records requirements for any records  
20 generated during a meeting of the governing board of the  
21 private corporation that leases or purchases a public  
22 hospital which are closed to the public; providing for  
23 retroactive effect of the exemption; providing for future

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24 review and repeal; providing a finding of public  
25 necessity; clarifying operation of the act; providing an  
26 effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30 Section 1. Subsection (7) of section 155.40, Florida  
31 Statutes, is amended, and subsection (8) is added to that  
32 section, to read:

33 155.40 Sale or lease of county, district, or municipal  
34 hospital; confidentiality of records; exemption from public  
35 meetings requirements.--

36 (7) The lessee or purchaser of a hospital, pursuant to  
37 this section or any special act of the Legislature, ~~operating~~  
38 ~~under a lease~~ shall not be construed to be "acting on behalf of"  
39 the lessor or seller as that term is used in statute, unless the  
40 lease or purchase document expressly provides to the contrary.

41 (8) (a) The records of a private corporation that leases or  
42 purchases a public hospital pursuant to this section are  
43 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
44 of the State Constitution. This paragraph applies to records  
45 held by a private corporation that leases or purchases a public  
46 hospital pursuant to this section before, on, or after the  
47 effective date of this exemption.

48 (b) That portion of a meeting of the governing board of a  
49 private corporation that leases or purchases a public hospital  
50 pursuant to this section at which information is presented or  
51 discussed that is confidential and exempt under paragraph (a) is

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52 closed to the public and exempt from s. 286.011 and s. 24(b),  
53 Art. I of the State Constitution.

54 (c) Any records generated during a meeting of the  
55 governing board of the private corporation that leases or  
56 purchases a public hospital pursuant to this section that are  
57 closed to the public under paragraph (b), such as minutes, tape  
58 recordings, videotapes, transcriptions, or notes, are  
59 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
60 of the State Constitution. This paragraph applies to records  
61 generated during a meeting of the governing board of a private  
62 corporation that leases or purchases a public hospital pursuant  
63 to this section before, on, or after the effective date of this  
64 exemption.

65 (d) This subsection is subject to the Open Government  
66 Sunset Review Act in accordance with s. 119.15 and shall stand  
67 repealed on October 2, 2011, unless reviewed and saved from  
68 repeal through reenactment by the Legislature.

69 Section 2. The Legislature finds that it is a public  
70 necessity that the records of a private corporation that  
71 purchases a public hospital pursuant to s. 155.40, Florida  
72 Statutes, be made confidential and exempt from public records  
73 requirements. It is the further finding of the Legislature that  
74 that portion of a meeting of the governing board of a private  
75 corporation that leases or purchases a public hospital pursuant  
76 to s. 155.40, Florida Statutes, at which confidential and exempt  
77 information is presented or discussed be closed to the public  
78 and exempt from public meetings requirements. It is the further  
79 finding of the Legislature that any records generated during a

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80 meeting of the governing board of the private corporation that  
81 leases or purchases a public hospital pursuant to s. 155.40,  
82 Florida Statutes, that are closed to the public be made  
83 confidential and exempt from public records requirements. The  
84 Legislature has always intended that private entities that  
85 purchase public hospitals are not subject to the public records  
86 and public meetings laws of the state because the private  
87 entities do not act on behalf of the public entities from whom  
88 they purchase a public hospital. Some recent court decisions,  
89 however, have found that private entities that purchase public  
90 hospitals are subject to public records and public meetings laws  
91 and have failed to recognize that the public entity does not  
92 retain any control over the private entity or the formerly  
93 public hospital following the sale of a public hospital to a  
94 private entity. Therefore, the Legislature finds that it is a  
95 public necessity to confirm its intent that private entities  
96 that purchase formerly public hospitals are not subject to the  
97 public records laws or public meetings laws of the state. With  
98 respect to lessees of public hospitals, such lessees also do not  
99 act on behalf of the public entity except as provided in this  
100 section and are not subject to the public records or public  
101 meetings laws of the state. To find otherwise would place  
102 private entities that purchase or lease public hospitals at a  
103 competitive disadvantage compared to other private entities that  
104 own or lease private hospitals that were not formerly public  
105 hospitals and would serve as a disincentive to private entities  
106 considering the purchase or lease of a public hospital. Public  
107 entities choose to sell or lease their public hospitals to

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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108 private corporations when the public entity is no longer able to  
109 operate the hospital in a fiscally responsible manner and where  
110 taxpayers would otherwise be required to finance the operations  
111 of the hospital beyond indigent care. If the public records laws  
112 and public meetings laws apply to private corporations that  
113 purchase or lease public hospitals, public entities may find it  
114 difficult, if not impossible, to find a private corporation that  
115 is willing to purchase or lease a public hospital. This could  
116 force the public entity to close the hospital, which would  
117 result in a reduction in health care services to the public, or  
118 continue operating the hospital using public tax dollars to  
119 subsidize recurring losses. Neither of these options is in the  
120 best interest of the public. The Legislature, therefore, finds  
121 that it is a public necessity to confirm that the state's public  
122 records laws and public meetings laws do not apply to private  
123 corporations that lease public hospitals where the lessee does  
124 not act on behalf of the public entity. The Legislature further  
125 finds that any private corporation that purchases a public  
126 hospital, regardless of whether the corporation had previously  
127 leased that public hospital, does not act on behalf of the  
128 public entity.

129       Section 3. This act does not operate to change existing  
130 law relating to discovery of records and information that are  
131 otherwise discoverable under the Florida Rules of Civil  
132 Procedure or any statutory provision allowing discovery or  
133 presuit disclosure of such records and information for the  
134 purpose of civil actions.

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