

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates a public records and public meetings exemption for records and meetings of a private hospital.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Boca Raton Community Hospital, Inc.

Boca Raton Community Hospital, Inc., is a 394 bed not-for-profit health care organization with more than 750 primary and specialty physicians on staff who provide preventative and acute hospital care. According to the hospital's website, in 2011, it is scheduled to open a new 530 private-bed teaching hospital that "is designed to become one of the safest teaching hospitals in America."¹ The hospital is part of a program alliance to become the teaching hospital for the University of Miami Miller School of Medicine at Florida Atlantic University (FAU). As part of the agreement, the hospital will lease 38 acres of FAU land for the development and operation of a community-university affiliated teaching hospital.²

Public Records and Public Meetings Laws

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government to be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24 of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record,³ and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public.

Furthermore, the Open Government Sunset Review Act⁴ 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:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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

¹ http://www.brch.com/index.php?src=gendocs&link=ath_info&category=Main (last visited April 6, 2007).

² *Id.*

³ Chapter 119, F.S., is the Public Records Act.

⁴ Section 119.15, F.S.

- Protecting trade or business secrets.

Records and Meetings of Private Hospitals

The records and meetings of the board of a private hospital are not subject to public records and public meetings requirements. Further, current law provides that the records of a private corporation that leases a public hospital or other public health care facility are confidential and exempt from public records requirements and are exempt from public meetings requirements provided certain requirements are met.⁵ The public lessor must comply with the public finance accountability provisions of s. 155.40(5), F.S.,⁶ with respect to the transfer of any public funds to the private lessee. Also, the private lessee must meet at least three of the following criteria:

- The public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility.
- The public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds.
- Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decision making process of the public lessor.
- The lease agreement does not expressly require the lessee to comply with the requirements of ss. 119.07(1) and 286.011, F.S.
- The public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.⁷

EFFECT OF BILL

The bill creates a public records exemption for all records and information in the possession of Boca Raton Community Hospital, Inc., in its official capacity as lessee. The exemption does not apply to records or information related to the undergraduate and graduate medical programs of the University of Miami Miller School of Medicine at FAU.

The bill also creates a public meetings exemption for the board of directors of the hospital in its capacity as lessee at which information made confidential and exempt by the bill is discussed. The exemption does not apply to meetings of the board of directors at which information is discussed that is related to the undergraduate and graduate medical programs. In addition, any records generated during an exempt meeting are confidential and exempt from public records requirements.

The bill defines "lessee" to mean "the Boca Raton Community Hospital, Inc., pursuant to the agreement signed June 28, 2006, and approved by the Board of Governors of the State University System, in the implementation of a land lease for the development and operation of a community-university affiliated teaching hospital which will serve as the primary teaching hospital for the regional campus of the University of Miami Miller School of Medicine at Florida Atlantic University."

The bill provides for future review and repeal of the exemption on October 2, 2012.

⁵ Section 395.3036, F.S.

⁶ Section 155.40(5), F.S., provides that in the event a hospital operated by a for-profit or not-for-profit Florida corporation receives annually more than \$100,000 in revenues from the county, district, or municipality that owns the hospital, the Florida corporation must be accountable to the county, district, or municipality with respect to the manner in which the funds are expended by either: having the revenues subject to annual appropriations by the county, district, or municipality; or where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital. A not-for-profit corporation that is subject to these requirements and that does not currently comply with the accountability requirements must have 12 months after the effective date of this act to modify any contracts with the county, district, or municipality in a manner that is consistent with these requirements.

⁷ Section 395.3036(1) – (5), F.S.

C. SECTION DIRECTORY:

Section 1 creates s. 1004.433, F.S., to create a public records and public meetings exemption for the Boca Raton Community Hospital, Inc.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill likely could create a minimal fiscal impact on the Boca Raton Community Hospital, Inc., because staff responsible for complying with public records requests will require training related to the creation of the public records exemption. In addition, the hospital could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, should be absorbed as they would be part of the day-to-day responsibilities for the hospital.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records and public meetings exemption; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records and public meetings exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The hospital presumably will remain a private corporation. As such, it is unclear why the public records and public meetings exemptions are necessary. Only those records and meetings associated with the medical programs would appear to be subject to the public records and public meetings laws. This bill does not protect the records or meetings associated with the medical programs at FAU.

The proponents of the bill have stated the hospital anticipates naming the president of FAU to the hospital's board of directors. They believe that the board might need a public records and public meetings exemption because of the presence of the FAU president on the board. The service of a university president on a private board would not, by itself, make the private corporation subject to the public records and public meetings laws. Records sent to the president of the state university in his capacity as president of FAU would be public records unless they were otherwise confidential or exempt from public records requirements; however, records related to his capacity as a member of the hospital's board of directors would not appear to be subject to the public records law. The same would apply to meetings of the board of directors.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.