

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: Pub. Rec. & Meetings PCB SHI 24-01 Public Records and Meetings Exemptions

SPONSOR(S): Select Committee on Health Innovation

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Select Committee on Health Innovation		McElroy	Calamas

SUMMARY ANALYSIS

The bill requires Florida to join the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact and the Physical Therapy Licensure Compact.

Each of these compacts requires compact member states to share certain licensure and personal identifying information for physicians, speech-language pathologists, audiologists, and physical therapists authorized to practice under their respective compact.

The bill creates a public records exemption for certain licensure and personal identifying information, other than the name, licensure information, or licensure number, for providers authorized to practice under each compact, obtained from the data system and held by the Department of Health or the applicable board from public records requirements, unless the laws of the state that originally reported the information authorizes disclosure.

The bill allows the Commission of each compact to convene in a closed meeting if the meeting is held to discuss certain specified matters. The bill also creates a public meeting exemption for Commission meetings in which a matter discussed is specifically exempted from disclosure by federal or state law. The bill provides that any recordings, minutes, and records generated from such a meeting, or portions of such meeting, are also exempt from public records requirements.

The bill provides that the public records and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless saved from repeal by reenactment by the Legislature.

This bill will have a significant, negative fiscal impact on the Department of Health and no fiscal impact on local governments.

The bill will become effective on the same date that HB 1549 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.²

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.³ Furthermore, the Open Government Sunset Review Act⁴ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁵ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only an individual maybe exempted under this provision; or
- Protect trade or business secrets.⁶

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.⁷ The board or commission must provide reasonable notice of

¹ Art. I, s. 24(a), FLA. CONST.

² Art. I, s. 24(c), FLA. CONST.

³ A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. See s. 119.011(8), F.S.

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ *Id.*

⁷ Section 286.011(1), F.S.

all public meetings.⁸ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.⁹ Minutes of a public meeting must be promptly recorded and open to public inspection.¹⁰

Health Care Licensure Compacts

The bill requires Florida to join the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact and the Physical Therapy Licensure Compact. The compacts were created to facilitate multistate practice of licensed physicians, speech-language pathologists, audiologists, and physical therapists.

Under their respective compact, an eligible licensed physician, speech-language pathologist, audiologist, physical therapist or a physical therapist assistant is authorized to practice within the scope of his or her license in all compact member states. Each health care provider practicing under compact privilege must comply with the practice laws of the state in which he or she is providing service or where the patient is located.

Under each compact, member states are also required to report certain licensure information on all licensees in compact member states to a shared data system, including identifying information, licensure data, and any adverse actions taken against the health care providers license or compact privilege. Investigative information pertaining to a licensee in any compact member state must be available to other member states. Compact member states may designate information submitted to the data system that may not be shared with the public without the express permission of that member state.

Under each compact, Florida will be sharing information that is not currently exempt from disclosure requirements under s. 119.07(1), F.S. and s. 24(a), Art. 1 of the Florida Constitution.

Interstate Medical Licensure Compact

The Interstate Medical Licensure Compact (Medical Compact) requires states to share licensee information for all licensed physicians, or physicians who have applied for licensure, to a coordinated data system. Information that will be shared that is not currently exempt from disclosure under s. 119.07(1), F.S. and s. 24(a), Art. 1 of the Florida Constitution, includes:

- Identifying information;
- Licensure data;
- Public action taken against a licensed physician who has applied for or received an expedited license through the compact; and
- Public and confidential complaint, disciplinary, or investigatory information.

Audiology and Speech-Language Pathology Compact

The Audiology and Speech-Language Pathology Compact (ASLP Compact) requires member states to report the following licensure information and other non-exempt information for all licensed audiologists and speech-language pathologists practicing under the ASLP Compact:

- Identifying information;
- Licensure data;
- Adverse actions against the audiologist's or speech-language pathologist's license;
- Nonconfidential information related to participation in alternative programs;
- Any licensure application denials and reasons for such denial; and

⁸ Id.

⁹ Section 286.011(6), F.S.

¹⁰ Section 286.011(2), F.S.

- Other information, determined by Commission rule, which may facilitate the administration of the compact.

Physical Therapy Licensure Compact

The Physical Therapy Licensure Compact (PT Compact) requires each member state to report the following licensure information and other non-exempt information for all licensed physical therapists and physical therapist assistants practicing under the compact:

- Identifying information;
- Licensure data;
- Investigative information;
- Adverse actions against the physical therapists or physical therapist assistant's license or compact privilege;
- Any licensure application denials and reasons for such denial; and
- Other information, determined by Commission rule, which may facilitate the administration of the compact.

Commission Meetings

The Medical Compact, ASLP Compact, and the PT Compact each require their respective compact Commission to conduct meetings. The Commission meetings must be open to the public and public notice must be given. However, for the discussion of certain specified topics, each compact requires the Commission to conduct a closed meeting. To conduct closed meetings in Florida, a specific exemption from the public meeting requirements under s. 24, Art. I of the State Constitution and s. 286.011, F.S. is needed. Current law does not provide a public meeting exemption for Commission meetings.

A public meeting exemption is required in order to conduct closed meetings in Florida.

The effective date of the bill is the same date that HB____ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Effect of the Bill

The bill makes personal identifying information, other than the name, licensure status, or licensure number, of a physician, speech-language pathologist, audiologist, or physical therapist authorized to practice under their respective compact, obtained from the coordinated data system and held by the DOH or the applicable board exempt from public records requirements, unless the laws of the state that originally reported the information authorizes disclosure. Disclosure under such circumstance is limited to the extent permitted under the laws of the reporting state.

The bill also creates a public meeting exemption for Commission meetings of each compact, or portions of such meetings, at which a matter is discussed that is specifically exempted from disclosure by federal or state law. Recordings, minutes, and records generated during an exempt portion of a Commission meeting are also exempt from public disclosure.

The bill provides that the public records and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless saved from repeal by reenactment by the Legislature.

The bill provides a public necessity statement for the public records exemption, as required by the State Constitution, and states that the protection of such information is required under the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact and the Physical Therapy Licensure Compact in which the state must adopt in order to become a party state to each compact. Without the public records exemption, the state would be unable to effectively and efficiently implement and administer the compacts.

Additionally, the bill provides a statement of public necessity for the public meeting exemption, as required by the State Constitution, and states that each of the compacts requires any meeting in which matters that are exempt from disclosure by federal or state statute are discussed to be closed to the public. Without the public meeting exemption, the state will be prohibited from becoming a party to the compacts and would be unable to effectively and efficiently administer the compacts. The bill further provides that it is a public necessity for the recordings, minutes, and records generated during an exempt meeting be made exempt, as the release of such information would negate the public meeting exemption.

The effective date of this bill is the same date that HB1549 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law, which is July 1, 2024.

B. SECTION DIRECTORY:

- Section 1:** Creates s. 456.4503, F.S., relating to Interstate Medical Licensure Compact Commission; public records and meetings exemption.
- Section 2:** Creates s. 468.1336, F.S., relating to Audiology and Speech-language Pathology; public records and meetings exemption.
- Section 3:** Creates s. 486.113, F.S., relating to Physical Therapy Licensure Compact Commission; public records and meetings exemption.
- Section 4:** Provides public necessity statements as required by the State Constitution.
- Section 5:** Provides that the bill is effective on the same date as HB___ (2024) or similar legislation takes effect.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

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. This bill does not appear to affect county or municipal governments.

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 final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution provides that an exemption must be created by general law and the law must contain only exemptions from public record or public meeting requirements. The exemption does not appear to be in conflict with the constitutional requirement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rule-making or rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES