

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 521

Interstate Compact on Educational Opportunity for Military Children

**SPONSOR(S):** Proctor

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1060

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>PreK-12 Policy Committee</u>	<u>8 Y, 0 N</u>	<u>Beagle</u>	<u>Ahearn</u>
2)	<u>Military &amp; Local Affairs Policy Committee</u>	<u>10 Y, 0 N</u>	<u>Fudge</u>	<u>Hoagland</u>
3)	<u>Education Policy Council</u>		<u>White</u>	<u>Lowell</u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

In 2008, the Florida Legislature enacted the Interstate Compact on Educational Opportunity for Military Children. The purpose of the compact is to enable member states to uniformly address educational transition issues faced by military families. The compact governs member states in several areas, including school placement, enrollment, records transfer, and graduation for children of active-duty military families. Currently, 26 states are members of the compact.

The compact establishes an Interstate Commission on Educational Opportunity for Military Children (Commission) to provide national-level oversight of the compact. The Commission is comprised of one voting representative, or Compact Commissioner (Commissioner), from each member state. The Commission may adopt and enforce compact rules which govern member states in the areas addressed by the compact. The compact rules supersede conflicting member state laws to the extent necessary to accomplish the purposes of the compact.

Florida's compact legislation was enacted prior to the promulgation of compact rules by the Commission. The legislation included a repeal provision which requires automatic repeal of the compact two years after its effective date, which is July 9, 2010. The Legislature can save the compact from repeal by reenacting the compact prior to the repeal date. The repeal provision allows the Legislature to evaluate the newly promulgated compact rules and reevaluate Florida's continued participation in the compact.

House Bill 521 reenacts Florida's compact legislation and repeals the automatic repeal provision in the original compact legislation. The bill adds a new provision automatically repealing the compact legislation three years after the bill takes effect.

The current compact authorizes the Commission to close meetings under specified circumstances, seal closed meeting records, and adopt bylaws governing disclosure of Commission records. These provisions, as applied to Florida's Commissioner, conflict with provisions in the Florida Constitution which require that public access be granted to governmental records and meetings. House Bill 521 removes these provisions from Florida's compact statute.

The bill will have an insignificant fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments. (See Fiscal Comments).

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

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**DATE:** 3/11/2010

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Children in active-duty military families face unique educational challenges. The average military child transfers to a different school district six to nine times during kindergarten through grade 12. When a parent is reassigned, military children may be impacted by:

- Record transfer issues;
- Varied course sequencing and academic placement policies;
- Varied graduation requirements;
- Exclusion from extracurricular activities;
- Redundant or missed entrance or exit testing;
- Varied kindergarten and first grade entrance ages; and
- The need to appoint temporary guardians while the child's parent is deployed.<sup>1</sup>

In 2008, the Florida Legislature enacted the Interstate Compact on Educational Opportunity for Military Children.<sup>2</sup> The compact was developed by the Council of State Governments (CSG), in cooperation with the U.S. Department of Defense. The purpose of the compact is to enable member states to uniformly address educational transition issues faced by active-duty military families. The compact governs member states in several areas, including school placement, enrollment, records transfer, participation in academic programs and extracurricular activities, and graduation for children of active-duty military families.<sup>3</sup>

The compact takes effect upon enactment by nine other states.<sup>4</sup> Delaware became the tenth state to adopt the compact on July 9, 2008.<sup>5</sup> Currently, 27 states are members of the compact.<sup>6</sup>

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<sup>1</sup> Council of State Governments, *Interstate Compact on Educational Opportunity for Military Children: Legislative Resource Kit* (January 2008) available at <http://www.csg.org/programs/ncic/documents/RESOURCEKIT-January2008final.pdf>.

<sup>2</sup> Sections 1000.36, 1000.37, 1000.38, and 1000.39, F.S.

<sup>3</sup> Chapter 2008-225, L.O.F.; CS/HB 1203 (2008); § 1000.36, F.S.; See Council of State Governments *supra* note 1.

<sup>4</sup> Section 6, ch. 2008-225, L.O.F.

<sup>5</sup> 76 Del. Laws 327 (2008).

<sup>6</sup> Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Texas, Virginia, and Washington. Council of State Governments, *State-by-State Status Chart* (March 11, 2010) available at <http://www.csg.org/programs/policyprograms/NCIC/MIC3ResourcesandPublications.aspx>.

The compact establishes an Interstate Commission on Educational Opportunity for Military Children (Commission) to provide national-level oversight of the compact. The Commission may adopt and enforce bylaws and compact rules and perform various administrative functions necessary to day-to-day operations.<sup>7</sup> The Commission is comprised of one voting representative, or Compact Commissioner (Commissioner), from each member state. Each state is entitled to one vote on compact rule adoption or other business matters.<sup>8</sup> The Commission must meet at least once per year.<sup>9</sup>

### **Compact Rule Adoption**

The Commission is authorized to promulgate compact rules which govern member states in the areas addressed by the compact. Compact rules have the force and effect of statutory law in compact member states.<sup>10</sup> Compact rules supersede conflicting member state laws to the extent of the conflict.<sup>11</sup> Compact rules must not exceed the scope of authority granted by the compact. A majority of member state legislatures may invalidate a compact rule by legislative action.<sup>12</sup>

At the time the compact was enacted in 2008, the compact rules had not yet been promulgated. Because the compact rules would have the force and effect of statutory law and would supersede conflicting member state laws, concerns were raised regarding unconstitutional delegation of legislative authority under Article II, § 3, of the Florida Constitution.<sup>13</sup> To address these concerns, Florida's compact legislation includes a repeal provision which requires automatic repeal of the compact two years after its effective date, which is July 9, 2010.<sup>14</sup> The Legislature can save the compact from automatic repeal if, prior to the repeal date, the Legislature reviews and reenacts the compact. This allows the Legislature time to evaluate the promulgated rules, and reevaluate the compact provisions, to determine if the state still agrees with the compact provisions and concurs with the compact rules. If the Legislature reenacts the compact as is, or makes modifications to the compact (agreed upon by the CSG) and then reenacts it, this independent, later-in-time action by the legislative body in support of the rules and the compact nullifies the concerns that a non-legislative entity (i.e., the Commission) has in effect legislated Florida law. (See Constitutional Issues).

The Commission unanimously adopted the compact rules in November 2009.<sup>15</sup> The compact rules appear to be within the scope of authority granted by the compact. In most cases, the compact rule and authorizing compact provision are identical. In some cases, the compact rule provides additional details to better guide member states. Most obligations under the compact may be achieved within policies already established in Florida Statutes and State Board of Education rules.

### **Public Records and Meetings**

The compact authorizes the Commission to adopt bylaws governing disclosure of Commission records in order to protect personal privacy and proprietary interests.<sup>16</sup> The Commission adopted one bylaw exempting from disclosure Commission audit work papers and internal account records.<sup>17</sup>

Commission meetings must be noticed and open to the public. The compact authorizes the Commission to close meetings in order to prevent disclosure of:

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<sup>7</sup> Article X, of the Compact, § 1000.36, F.S.

<sup>8</sup> Article IX, § B. of the Compact, § 1000.36, F.S.

<sup>9</sup> Article IX, § D. of the Compact, § 1000.36, F.S.

<sup>10</sup> Article X, § B. of the Compact, § 1000.36, F.S.

<sup>11</sup> Article XVIII, § B. of the Compact, § 1000.36, F.S.

<sup>12</sup> Article XII of the Compact, § 1000.36, F.S.

<sup>13</sup> Article II, § 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches of state government. Courts construing this provision have held that the Legislature, when delegating the administration of legislative programs to executive agencies or other entities, must establish minimal standards and guidelines ascertainable by reference to the legislation creating the program. *See Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

<sup>14</sup> Section 5, ch. 2008-225, L.O.F.

<sup>15</sup> Telephone interview with Compact Coordinator, Council of State Governments (December 9, 2009).

<sup>16</sup> Article IX, § F. of the Compact, § 1000.36, F.S.

<sup>17</sup> Article VIII, § 3. of the Interstate Commission Bylaws.

- Personnel matters;
- Matters exempt from disclosure under state and federal law;
- Trade secrets or commercial or financial information;
- Personal privacy information;
- Law enforcement investigations;
- The formal censure or criminal accusation of a person by the Commission; or
- Information regarding the Commission's participation in litigation.

A two-thirds vote of the Commissioners is required to close a meeting.<sup>18</sup> The Commission is required to seal all records considered in a closed meeting.<sup>19</sup> Sealed records of closed meetings may only be released by majority vote of the Commission.<sup>19</sup>

The compact holds ineffective any compact provision which conflicts with a member state's constitution, to the extent of the conflict.<sup>20</sup> Compact provisions which authorize the Commission to close meetings and exempt records from disclosure conflict with Article I, § 24 of the Florida Constitution, which requires that public access be granted to governmental records and meetings.<sup>21</sup> Accordingly, these compact provisions are not effective with respect to Florida's Commissioner.<sup>22</sup> Florida's Commissioner must comply with Florida's public records and meetings laws regardless of what the compact and Commission bylaws provide regarding Commission records and meetings.<sup>23</sup> Florida's Commissioner must not participate in a closed Commission meeting.<sup>24</sup> Commission records, if held by Florida's Commissioner, are public records subject to disclosure, unless a public records exemption exists in the Florida Statutes for that record.<sup>25</sup>

Public records and meetings experts were consulted and they recommended the removal of the public records and meetings provisions from Florida's compact statute.<sup>26</sup> Proposed legislation removing the compact's public records and meetings provisions was presented to CSG staff for review. They agreed that these provisions should be removed from Florida's compact statute.<sup>27</sup>

### **Effect of Proposed Changes**

House Bill 521 reenacts Florida's compact legislation and eliminates the existing repeal provision. The bill adds a new automatic repeal provision effective three years after the bill becomes effective.

The bill removes compact provisions authorizing the Commission to close meetings, seal closed meeting records, and adopt bylaws exempting records from disclosure.

<sup>18</sup> Article IX, § G. of the Compact, § 1000.36, F.S. The Commission has also adopted a bylaw which is identical to the compact provision. Article VI, § 1. of the Interstate Commission Bylaws.

<sup>19</sup> Article IX, § H. of the Compact, § 1000.36, F.S.

<sup>20</sup> Article XVIII, § E. of the Compact, § 1000.36, F.S.

<sup>21</sup> Article I, § 24 of the Florida Constitution. *See also* §§ 286.011(1) & (2), 119.01(1), & 119.011(12), F.S. In an informal opinion, the Florida Attorney General states that Florida's Sunshine Laws are applicable to Florida officials who transact business pursuant to an interstate compact. Op. Att'y Gen. Fla. Informal (1998)(regarding the Appalachian-Chattahoochee-Flint River Basin Compact, § 373.71, F.S.).

<sup>22</sup> Email from General Counsel, Council of State Governments (Dec. 7, 2009, 2:02 PM EST).

<sup>23</sup> Article I, § 24 of the Florida Constitution; § 119.011(2), F.S.; § 286.011(1), F.S. In the event a member state's Commissioner is unable to attend a meeting, the compact authorizes states to delegate voting authority to another person. Article IX, § B., § 1000.36, F.S.

<sup>24</sup> *See* Section 286.011(3), F.S.

<sup>25</sup> Generally, public records exemptions must be narrowly tailored to the specific agency and type of record to be exempted. Article I, § 24(c) of the Florida Constitution; *Krischer v. D'Amato*, 674 So. 2d 909, 911 (Fla. 4th D.C.A. 1996).

<sup>26</sup> Email from Florida House of Representatives Governmental Affairs Policy Committee Staff (Nov. 12, 2009, 1:08 PM EST); Telephone interview with Office of Open Government staff, Executive Office of the Governor (September 25, 2009). The Florida House of Representatives Governmental Affairs Policy Committee is the House committee in which legislation with public records and meetings issues is most commonly considered. The Governor established the Office of Open Government within the Executive Office of the Governor in December 2006.

<sup>27</sup> Email from General Counsel, Council of State Governments (Dec. 7, 2009, 2:02 PM EST).

**B. SECTION DIRECTORY:**

**Section 1.:** Repealing s. 5, ch. 2008-225, L.O.F., which provides for automatic repeal of the original compact legislation.

**Section 2.:** Amending s. 1000.36, F.S.; repealing provisions relating to the disclosure of records and the closure of meetings by the Interstate Commission on Educational Opportunity for Military Children.

**Section 3.:** Providing for repeal of ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S., the "Interstate Compact on Educational Opportunity for Military Children," three years after the effective date of the bill unless reviewed and reenacted by the Legislature.

**Section 4.:** Providing that the bill takes effect upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

The bill will have an insignificant fiscal impact on state expenditures. (See Fiscal Comments).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

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

The bill does not appear to have a direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

The compact requires the Commission to levy membership dues from each member state to finance Commission operations and staffing.<sup>28</sup> At the November 2009 annual meeting, the Commission adopted a rule which establishes a dues formula based upon \$1 per dependent child of active-duty military personnel residing in a member state.<sup>29</sup> According to the Department of Education (DOE), there are 33,304 children of active-duty military personnel living in Florida.<sup>30</sup>

At the September 15, 2009, meeting of the State Board of Education, the DOE submitted a Legislative Budget Request for \$66,604 to fund annual compact membership dues. The request specifies that \$33,302 will be used to reimburse fees paid for 2009-2010 membership dues and the remainder will fund dues for 2010-2011.<sup>31</sup> As of January 21, 2010, both year's membership dues are still outstanding.<sup>32</sup>

<sup>28</sup> Article XIV of the Compact, § 1000.36, F.S.

<sup>29</sup> Section 2.102, Interstate Commission Rules.

<sup>30</sup> Florida Department of Education, *2010-2011 Operating Legislative Budget Request*, 208 (Sept. 2009) available at [http://www.fldoe.org/board/meetings/2009\\_09\\_15/2010-11OperatingLegislativeBudgetRequest.pdf](http://www.fldoe.org/board/meetings/2009_09_15/2010-11OperatingLegislativeBudgetRequest.pdf).

<sup>31</sup> *Id.*

<sup>32</sup> Email from Compact Coordinator, Council of State Governments (Jan. 20, 2010, 1:52 PM EST).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The bill does not reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies.<sup>33</sup> There does not appear to be any binding Florida case law that squarely addresses this issue in the context of interstate compacts.<sup>34</sup> An argument could be made that the prospective adoption of rules not yet promulgated by the Commission is analogous to existing precedent regarding federal administrative rules.

To address concerns regarding unconstitutional delegation of legislative authority, the bill provides for automatic repeal of Florida's compact legislation three years after the bill takes effect, unless reenacted by the Legislature. This will allow the Legislature to evaluate any new compact rules or compact rule amendments which are adopted during this time. The Legislature may then consider reenactment of the compact. This avoids an argument that an unlawful delegation has been made because reenactment of the compact occurs after rule adoption.

#### B. RULE-MAKING AUTHORITY:

None.

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

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>33</sup> *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

<sup>34</sup> A First District Court of Appeals opinion construing the provisions of the Interstate Compact on the Placement of Children mentions this issue but the court did not rule on the merits. *Department of Children and Family Services v. L.G.*, 801 So.2d 1047, 1052 (Fla. 1st DCA 2001).