

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1063 Public Records and Meetings/Nurse Licensure Compact

**SPONSOR(S):** Pigman

**TIED BILLS:** HB 1061 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Affordable Healthcare Access	11 Y, 0 N	Siples	Calamas
2) Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
3) Health & Human Services Committee	16 Y, 1 N	Siples	Calamas

### SUMMARY ANALYSIS

HB 1063 authorizes Florida to become a party state to the Nurse Licensure Compact (NLC or compact), which is a multistate compact that establishes a mutual recognition system for the licensure of registered nurses and licensed practical or vocational nurses. The NLC requires states to submit nurse licensure and regulation records, including any actions taken against the ability to practice, to a coordinated licensure information system. The NLC also requires a commission to be formed to oversee the implementation and administration of the compact and the coordinated licensure information system.

The bill, which is linked to passage of HB 1061, creates public record and public meeting exemptions for certain records and meetings relating to the NLC.

The bill makes personal identifying information of nurses obtained pursuant to the compact and held by the Department of Health or Board of Nursing confidential and exempt from public record requirements, unless the laws of the state that originally reported the information authorizes its disclosure.

The bill also creates a public meeting exemption for commission meetings, at which any of the following is discussed:

- Noncompliance of a party state with its obligations under the NLC;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusing a person of a crime or formally censuring a person;
- Trade secrets or commercial or financial information that is privileged or confidential;
- Information of a personal nature which the commission determines would constitute a clearly unwarranted invasion of personal privacy if disclosed to the public;
- Active investigatory records compiled for law enforcement purposes;
- Information related to reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the NLC;
- Information made confidential or exempt pursuant to federal law or the laws of any party state; and
- Information made exempt pursuant to the rules or bylaws of the commission, which would protect the public's interest, the privacy of individuals, and proprietary information.

The bill provides that the exemptions will stand repealed on October 2, 2021, unless saved from repeal by reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

The bill will have an indeterminate, negative fiscal impact on the Department of Health.

The bill will be effective on the same date that HB 1061 or similar legislation takes effect.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### Public Records Law

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.

Public policy regarding access to government records is addressed further 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.

###### 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.<sup>1</sup> The board or commission must provide reasonable notice of all public meetings.<sup>2</sup> 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.<sup>3</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>4</sup>

###### Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) 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.<sup>5</sup>

Furthermore, the Open Government Sunset Review Act<sup>6</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

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<sup>1</sup> Section 286.011(1), F.S.

<sup>2</sup> *Ibid.*

<sup>3</sup> Section 286.011(6), F.S.

<sup>4</sup> Section 286.011(2), F.S.

<sup>5</sup> Art. I, s. 24(c), Fla. Const.

<sup>6</sup> Section 119.15, F.S.

- Protects trade or business secrets.<sup>7</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>8</sup>

### Nurse Licensure Compact

HB 1061 authorizes Florida to become a party to the Nurse Licensure Compact (NLC or compact) by enacting its provisions into Florida law. The NLC is a multistate compact that establishes a mutual recognition system for the licensure of registered nurses (RNs) and licensed practical or vocational nurses (LPN/LVN). The primary purposes of the NLC is to address the expanded mobility of nurses and the use of advanced communication technologies, such as telemedicine.

The Department of Health (DOH) licenses nurses and the Board of Nursing regulates the practice of nursing in this state. The NLC establishes uniform requirements for the issuance of a multistate license. States retain the right to establish additional qualifications for licensure and to issue single-state licenses, which allows the holder to practice only in the state of issuance. The state in which a nurse is a permanent resident is considered the nurse's home state and the nurse is subject to the home state's licensure and regulation.

Under the compact, a nurse who holds a multistate license issued by one of the party states is permitted to practice in any other party state, without obtaining a license from that state. A nurse practicing under the multistate licensure practice privilege must comply with the practice laws of the state in which he or she is practicing or where the patient is located.

Under the NLC, the party states are required to report all adverse actions<sup>9</sup> taken against a nurse's license or a nurse's multistate licensure practice privilege; any current, significant investigative information that has not yet been acted upon; and denials of applications and reasons for such denials; and nurse participation in alternative programs<sup>10</sup> to a coordinated licensure information system. Only party states have access to information related to ongoing investigations and participation in alternative programs. A party state may designate information it reports as confidential and therefore, cannot be shared with nonparty states or other entities without the express permission of the reporting state.

The compact also creates the Interstate Commission of Nurse Licensure Compact Administrators (commission) to oversee and administer the provisions of the NLC. Each party state has one administrator, the head of the licensing board, who is a member of the commission. The compact details the authority and responsibilities of the commission, such as the promulgation of rules, the oversight of fiscal matters, the mediation of conflict between party states, and the management of noncompliant party states.

### **Effect of Proposed Changes**

The bill creates public record and public meeting exemptions related to the Nurse Licensure Compact.

Specifically, the bill provides that personal identifying information of nurses obtained from the coordinated licensure information system held by the DOH or Board of Nursing is confidential and exempt<sup>11</sup> from public record requirements, unless the laws of the state that originally reported the

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<sup>7</sup> Section 119.15(6)(b), F.S.

<sup>8</sup> Section 119.15(3), F.S.

<sup>9</sup> Adverse action is any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege, such as revocation, suspension, probation, monitoring of the license, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

<sup>10</sup> An alternative program is a non-disciplinary monitoring program approved by a licensing board.

<sup>11</sup> There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.

See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature

information authorizes its 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 those portions of commission meetings during which the following is discussed:

- Noncompliance of a party state with its obligations under the NLC;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusing a person of a crime or formally censuring a person;
- Trade secrets<sup>12</sup> or commercial or financial information required by the commission's bylaws or rules to be kept privileged or confidential;
- Information of a personal nature that the commission determines by majority vote would constitute a clearly unwarranted invasion of personal privacy if disclosed to the public;
- Active<sup>13</sup> investigatory records compiled for law enforcement purposes;
- Information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the NLC;
- Information that is confidential or exempt pursuant to federal law or the laws of any party state; and
- Information made exempt pursuant to the rules or bylaws of the commission, which would protect the public's interest, the privacy of individuals, and proprietary information.

This bill provides that any recordings, minutes, and records are confidential and exempt from public record requirements. HB 1061, which is linked to this bill, provides that the minutes and documents of the closed meeting may be disclosed pursuant to a majority vote of the commission or pursuant to a court order.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless saved from repeal by reenactment by the Legislature.

The bill provides a public necessity statement as required by the State Constitution, which states the exemptions are necessary for the state's effective and efficient implementation and administration of the provisions of the Nurse Licensure Compact, which requires such exemptions.

## B. SECTION DIRECTORY:

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designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

<sup>12</sup> The bill provides that the term "trade secrets" has the same meaning as provided in the Uniform Trade Secrets Act (ch. 688, F.S.) Section 688.002, F.S., defines "trade secrets" as information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

<sup>13</sup> The bill provides that "active" has the same meaning as provided in s. 119.011(3)(d), F.S., which provides that "active" has the following meaning:

- Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
- Criminal investigative information is considered "active" as long as it is related to an ongoing investigation that is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information is considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" does not apply to information in cases that are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

**STORAGE NAME:** h1063e.HHSC

**DATE:** 1/27/2016

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**Section 1:** Creates s. 464.0096, F.S., relating to public records and meetings exemptions associated with the Nurse Licensure Compact.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may create an insignificant, negative impact on the DOH because staff responsible for complying with public record requests may require training related to the public record exemption.

### 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 State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption Bills

Article I, s. 24(a) of the State Constitution guarantees every person the right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Further, Art. I, s. 24(b) of the State Constitution provides 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. However, Art. I, s. 24(c) of the State Constitution authorizes the legislature to provide by general law for the exemption of public records and public meetings from this constitutional requirement provided that certain requirements are met, including that the exemption be no broader than necessary to accomplish the stated purpose of the law. It is unclear whether the exemptions created by the bill meet this 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**

None.