

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 1063

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Pigman and others

112 Y's

2 N's

**COMPANION
BILLS:** CS/SB 1306

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 1063 passed the House on March 2, 2016, and subsequently passed the Senate on March 4, 2016.

HB 1061 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 disciplinary records, including any actions taken against a nurse's 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 a nurse, other than the nurse's name, licensure status, and licensure number, obtained pursuant to the compact and held by the Department of Health or Board of Nursing 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 a meeting or portion of a meeting of the Interstate Commission of Nurse Licensure Compact Administrators in which a matter discussed is specifically exempted from disclosure by federal or state statute. The bill provides that any recordings, minutes, and records generated from such a meeting are also exempt from public records requirements.

The bill provides that the exemptions will stand repealed on October 2, 2021, unless saved from repeal by reenactment by the Legislature.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 was approved by the Governor on March 24, 2016, ch. 2016-97, L.O.F., and will become effective on December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.¹ The board or commission must provide reasonable notice of all public meetings.² 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.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

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.⁵

Furthermore, the Open Government Sunset Review Act⁶ 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;

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Art. 1, s. 24(c), Fla. Const.

⁶ Section 119.15, F.S.

- 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
- Protects trade or business secrets.⁷

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.⁸

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 are 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 actions⁹ 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 programs¹⁰ 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 the Bill

The bill creates public record and public meeting exemptions related to the NLC.

⁷ Section 119.15(6)(b), F.S.

⁸ Section 119.15(3), F.S.

⁹ Adverse action is any administrative, civil, equitable, or criminal action permitted by a state's laws that 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.

¹⁰ An alternative program is a non-disciplinary monitoring program approved by a licensing board.

Specifically, the bill provides that personal identifying information of a nurse, other than the nurse's name, licensure status, and licensure number, obtained from the coordinated licensure information system and held by the DOH or Board of Nursing is exempt¹¹ from public records requirements, unless the laws of the state that originally reported the information authorizes its disclosure. Disclosure under such circumstance is limited to the extent permitted under the laws of the reporting state.

The bill creates a public meeting exemption for a meeting or a portion of a meeting of the commission at which matters specifically exempted from disclosure by federal or state law are discussed. Recordings, minutes, and records generated during an exempt 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, 2021, 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 compact, which the state must adopt in order to become a party state to the compact. Without the public records exemption, the state would be unable to effectively and efficiently implement and administer the compact.

Additionally, the bill provides a statement of public necessity for the public meeting exemption, as required by the State Constitution, and states that the NLC 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 compact and would be unable to effectively and efficiently administer the compact. The bill further provides that without the public records exemption for the recordings, minutes, and records generated during an exempt meeting, the release of such information would negate the public meeting exemption.

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.

¹¹ 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).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.