

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SPB 7000

INTRODUCER: For consideration by the Health Policy Committee

SUBJECT: OGSR/Nurse Licensure Compact/Department of Health

DATE: January 27, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown		HP Submitted as Comm. Bill/Fav
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____

I. Summary:

SPB 7000 amends s. 464.0096, F.S., to save from repeal the following public records and meeting exemptions relating to the Expanded Nurse License Compact (eNLC or compact):

- The personal identifying information of a registered nurse (RN) or licensed practical nurse (LPN),¹ holding a multistate license under the eNLC, other than the nurse’s name, licensure status, or licensure number, that is held by the Department of Health (DOH) or the Board of Nursing (BON), and was received from the Coordinated Licensure Information System (CLIS);
- The recordings, minutes, and records generated during an exempt meeting of the Interstate Commission of Nurse Licensure Compact Administrators (the commission); and
- A public meeting, or portion of a meeting, of the commission at which matters specifically exempt from disclosure under the Florida Constitution, or under federal or state statute, are discussed.

The public record and meeting exemptions in s. 464.0096, F.S., stand repealed on October 2, 2021, unless reviewed and reenacted by the Legislature.

The bill takes effect on October 1, 2021.

¹ The eNLC can apply to an LPN or a “vocational nurse” (VN), which is substantially equivalent to an LPN in some states. The compact’s language often refers to such a practitioner as an “LPN/VN.” This analysis refers to such practitioners as LPNs.

II. Present Situation:

Access to Public Records and Meetings – Generally

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.² The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.³ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.⁴

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁵ guarantees every person's right to inspect and copy any state or local government public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

The Legislature may create an exemption to public records or open meetings requirements.⁹ An exemption must specifically state the public necessity justifying the exemption¹⁰ and must be tailored to accomplish the stated purpose of the law.¹¹

² FLA. CONST. art. I, s. 24(a).

³ FLA. CONST. art. I, s. 24(b).

⁴ *Id.*

⁵ Chapter 119, F.S.

⁶ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ FLA. CONST. art. I, s. 24(c).

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person and that providing access to public records is a duty of each agency.¹²

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.¹³ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”¹⁴

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁵ A violation of the Public Records Act may result in civil or criminal liability.¹⁶

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁷ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁸

General exemptions from the public records requirements are contained in the Public Records Act.¹⁹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.²⁰

¹² Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

¹³ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

¹⁴ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

¹⁵ Section 119.07(1)(a), F.S.

¹⁶ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁷ FLA. CONST. art. I, s. 24(c).

¹⁸ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So.2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹⁹ See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

²⁰ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.²¹ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.²²

Executive Agency Meetings – The Sunshine Law

The Florida Constitution provides that the public has the right to access government meetings. The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.²³ The Legislature’s meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.²⁴ The Sunshine Law²⁵ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.²⁶

The Legislature may create an exemption to public open meetings requirements.²⁷ An exemption must specifically state the public necessity justifying the exemption²⁸ and must be tailored to accomplish the stated purpose of the law.²⁹

Open Government Sunset Review Act

The Act³⁰ prescribes a legislative review process for newly created or substantially amended³¹ public records or open meetings exemptions, with specified exceptions.³² It requires the

²¹ See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).

²² *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

²³ FLA. CONST. art. I, s. 24(b).

²⁴ FLA. CONST. art. I, s. 24(b).

²⁵ Section 286.011, F.S.

²⁶ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

²⁷ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

²⁸ FLA. CONST. art. I, s. 24(c).

²⁹ FLA. CONST. art. I, s. 24(c).

³⁰ Section 119.15, F.S.

³¹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings, as well as records. Section 119.15(4)(b), F.S.

³² Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Courts System are not subject to the Open Government Sunset Review Act.

automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment unless the Legislature reenacts the exemption.³³

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁴ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- The exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program and such administration would be significantly impaired without the exemption;³⁵
- The exemption protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁶ or
- The exemption protects information of a confidential nature concerning entities, such as trade or business secrets.³⁷

The Act also requires specified questions to be considered during the review process.³⁸ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁹ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, then records created before the sunset date may not be made public unless otherwise provided by law.⁴⁰

³³ Section 119.15(3), F.S.

³⁴ Section 119.15(6)(b), F.S.

³⁵ Section 119.15(6)(b)1., F.S.

³⁶ Section 119.15(6)(b)2., F.S.

³⁷ Section 119.15(6)(b)3., F.S.

³⁸ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁹ See *generally* s. 119.15, F.S.

⁴⁰ Section 119.15(7), F.S.

Practitioner Profiles

Pursuant to s. 456.041, F.S., the DOH operates a database of Florida's healthcare practitioners, which includes nurses. The practitioner profile database is online and searchable.⁴¹ A profile may include information that is public record and relates to the practitioner's profession.⁴² Practitioners and the DOH are required to update profiles.⁴³ Information exempt from public disclosure and submitted by another governmental entity that the DOH uses for practitioner profiles continues to maintain its exempt status.⁴⁴

Expanded Nurse Licensure Compact (eNLC)

The original Nurse Licensure Compact was designed as a multistate agreement establishing a mutual recognition system between states for the licensure of an RN or LPN. Prior to the compact's enactment, the National Council of State Boards of Nursing (NCSBN) produced a model bill for state legislatures to enact in order for their respective states to join the compact.⁴⁵

The compact was revised and expanded prior to adoption in Florida. These revisions resulted in the eNLC, which is set out in s. 464.0095, F.S., the enactment of which authorized Florida to enter into the eNLC. Florida's entry took effect on January 19, 2018, upon the enactment of the eNLC⁴⁶ by a total of 26 states.⁴⁷

A nurse who is issued a multi-state license from a state that is party to the eNLC is permitted to practice in any state that is also party to the compact. A nurse with a multistate license privilege must comply with the practice laws of the state in which he or she is practicing or where the patient is located. A party state may continue to issue a single-state license and authorize practice only in that state.

The eNLC permits a state to take adverse action against the multistate licensure privilege of any nurse practicing in that state. The home state has the exclusive authority to take adverse action

⁴¹ Section 456.041(8), F.S. Department of Health Practitioner Profile Search, *available at* <https://appsmqa.doh.state.fl.us/MQASearchServices/HealthCareProviders/PractitionerProfileSearch> (last visited Jan. 20, 2021).

⁴² Section 456.041(7), F.S.

⁴³ Section 456.042, F.S.

⁴⁴ Section 456.046, F.S.

⁴⁵ National Council of State Boards of Nursing (NCSBN), *Licensure Compacts*, *available at* <https://www.ncsbn.org/compacts.htm> (last visited Jan. 20, 2021). The NCSBN arose out of the recognition that in order to guard the safety of the public, the organization involved in the regulation of nurses needed to be a separate entity from the American Nurses Association (ANA) and Council on State Boards of Nursing, which represents professional nurses. NCSBN's membership is now comprised of boards of nursing and other nursing regulatory bodies that are charged with the responsibility of providing regulatory excellence for public health, safety and welfare, and protecting the public by ensuring that safe and competent nursing care is provided by licensed nurses. The NCSBN is the vehicle through which these entities act and counsel together on matters of common interest.

⁴⁶ National Council of State Boards of Nursing, *Enhanced Nurse Licensure Compact (eNLC) Interstate Commission Sets Jan. 19, 2018, as Implementation Date for eNLC*, *available at* <https://www.ncsbn.org> (last visited Jan. 20, 2021). The eNLC, is an updated version of the original NLC. The Interstate Commission of Nurse Licensure Compact Administrators set Friday, January 19, 2018, as the implementation date for the enhanced Nurse Licensure Compact (eNLC). There are 26 states in the eNLC.

⁴⁷ Section 464.0095, art. X, F.S.

against the home state license, including revocation and suspension. The eNLC requires all participating states to report to the CLIS all adverse actions taken against a nurse's license or multistate licensure practice privilege, any current significant investigative information, and denials of information.

The DOH collects and provides the following information to the NCSBN CLIS system on all RNs and LPN/VNs with eNLC multistate licenses practicing in Florida:

- NCSBN ID;
- Name (first, middle, last and suffix);
- Mother's maiden name (needed for exam purposes);
- Date of birth;
- Social security number;
- Race;
- Home phone number;
- Work phone number;
- Mailing address;
- License number;
- License rank (RN, PN);
- License status;
- Basis for licensure (e.g. exam or endorsement);
- Current license issue date;
- License expiration date;
- Education program code;
- Education program name;
- Degree;
- Education program address information;
- Graduation date;
- Date of exam;
- Original date of licensure;
- Date license record was last updated;
- Death status indicator;
- Date of death;
- Other names the licensee has been known by;
- License status effective date;
- Level of education;
- License discipline indicator;
- eNLC indicator (multistate or single state);
- eNLC state of primary residence indicator;
- Administrative complaint filed indicator;
- Endorsed from Puerto Rico indicator;
- Null and void indicator; and
- Military active indicator.⁴⁸

⁴⁸ Health Policy Committee, The Florida Senate, Fla. Bd. of Nursing, Dept. of Health, *Open Government Sunset Review of s. 464.0096(3), Section 119.15, F.S., Questionnaire*, response (Oct. 5, 2020) (on file with the Senate Health Policy Committee).

The following other state and federal laws also protect the personal identifying information of a RN or LPN/VN holding a multistate license under the eNLC:

- 42 CFR Part 2 – Drug, Alcohol and Mental Health;
- 45 CFR 160, 162, and 164 – Health Insurance Portability and Accountability Act (HIPAA);
- Section 456.013(13), Florida Statutes – General Licensing Provisions;
- Section 456.014, Florida Statutes – Public Inspection of Information; and
- Section 119.071, Florida Statutes – General Exemptions from Public Record Inspection.⁴⁹

All party states may access the CLIS to see licensure and disciplinary information for nurses licensed in the party states. The CLIS includes a nurse’s personal identifying information, licensure classification information and statuses, public emergency and final disciplinary action information, and status information about multistate licensure privileges from all party states. A party state may designate the information it contributes to the CLIS as confidential, prohibiting its disclosure to nonparty states. State licensing boards must report disciplinary information, significant investigative information, and denials of applications to the CLIS promptly.

The eNLC established the commission to oversee the operation of the eNLC. The head of each state’s licensing board, or his or her designee, must serve as the state’s delegate to the commission. The eNLC grants the commission authority to promulgate uniform rules relating to the implementation and administration of eNLC. The commission may also take action against a party state if a party state fails to meet its obligations under the eNLC, including termination of membership after exhausting all other means of compliance.⁵⁰

All commission meetings are open to the public and must be publicly noticed. Both meetings and hearings for proposed rules must be noticed at least 60 days prior to each meeting on the eNLC’s website and on the website of each party state’s licensing board or published in the publication in which each state would otherwise post proposed rules. The compact also provides for public comment opportunities through both oral and written testimony. Closed meetings are permitted if the commission is discussing:

- A party state’s noncompliance with its obligations under the compact;
- The employment, compensation, discipline, or other personnel matters, practices, or procedures related to a specific employee 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;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigatory records compiled for law enforcement purposes;
- Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigating compliance with the eNLC; or

⁴⁹ *Id.*

⁵⁰ Section 464.0095, art. VII, F.S.

- Matters specifically exempted from disclosure by federal or state law.⁵¹

The commission must keep comprehensive minutes of matters discussed in its meetings and provide a full and accurate summary of actions taken, and the reasons. Minutes of a closed meeting will be sealed; however, such minutes may be released pursuant to a majority vote of the commission or an order of a court of competent jurisdiction.⁵²

Staff Survey Regarding Exemptions Under Review

Legislative staff received a response from the DOH to a joint survey of the House Oversight, Transparency and Public Management Subcommittee and the Senate Committee on Health Policy regarding the public records submitted to the DOH under the eNLC and the public meeting exemptions of the commission under s. 464.0096, F.S., for the following:

- The personal identifying information of an RN or LPN/VN holding a multistate license under the eNLC, other than the nurse's name, licensure status, or licensure number, that is held by the DOH or the BON, and was received from the CLIS;
- The recordings, minutes, and records generated during an exempt meeting of the commission; and
- The public meeting, or portion of a meeting, of the commission at which matters specifically exempt from disclosure under the Florida Constitution, or under federal or state statute, are discussed.

The DOH recommends retaining the exemption in its current form as it is a uniform law.

III. Effect of Proposed Changes:

The bill saves from repeal the public records and public meeting exemptions in s. 464.0096, F.S., relating to the following:

- The personal identifying information of RNs and LPNs holding a multistate license under the eNLC, other than the nurse's name, licensure status, or licensure number, that is held by the DOH or the Board of Nursing (BON), and was received from the CLIS;
- The recordings, minutes, and records generated during an exempt meeting of the commission; and
- The public meeting, or portion of a meeting, at which the commission discusses matters specifically exempt from disclosure under the Florida Constitution, or under federal or state statute, are discussed.

The bill takes effect on October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵¹ Section 464.0095, art. VII, (2),(e), F.S.

⁵² Section 464.0095, art. VII (2),(f), F.S.

B. Public Records/Open Meetings Issues:**Voting 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 or expanded public record or public meeting exemptions. The bill continues the current public records and public meeting exemptions under sunset review. The bill does not expand the exemptions or create new ones. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records and public meeting exemptions under sunset review. The bill does not expand these exemptions or create new ones. Therefore, the bill does not require a public necessity statement.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records and public meeting requirements to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts the information, records and commission meetings, or portion of a meeting, at which matters specifically exempted from disclosure under the Florida Constitution, or under federal or state statute, are discussed. So unless the state that originally reported the information to the CLIS authorizes the disclosure of such information by law, such information may only be disclosed by the department to the extent permitted by the reporting state's law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 464.0096 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.