

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 1523 Pub. Rec. and Meetings/Professional Counselors Licensure Compact

SPONSOR(S): Koster

TIED BILLS: CS/HB 1521 **IDEN./SIM. BILLS:** CS/CS/SB 590

FINAL HOUSE FLOOR ACTION: 114 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 1523 passed the House on February 24, 2022, and subsequently passed the Senate on March 9, 2022. CS/HB 1521 passed the House on February 24, 2022, and subsequently passed the Senate on March 9, 2022.

CS/HB 1521 authorizes Florida to enter into the Professional Counselors Licensure Compact (PCLC or compact) enacting its provisions into the laws of the state. The PCLC is an interstate compact that facilitates the interstate practice of licensed professional counseling in person and through telehealth. In Florida, licensed clinical social workers, marriage and family therapists, and mental health counselors (counselors, collectively) are able to apply for privileges to practice under the PCLC. The PCLC requires compact states to submit each counselor's licensure records, including any actions taken against a counselor's ability to practice, to a coordinated licensure information system. The compact creates the Counseling Compact Commission (Commission) to oversee and administer the provisions of the PCLC and a licensure information data system (data system).

The bill creates a public records exemption for a counselor's personal identifying information, other than name, licensure status, or licensure number, obtained from the data system and held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counselors, 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, or portions of such meetings, 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 public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2027, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill has an insignificant, negative fiscal impact on the Department of Health and no fiscal impact on local governments. See Fiscal Comments.

The bill was approved by the Governor on April 6, 2022, ch. 2022-64, L.O.F., and will become effective the same date that CS/HB 1521 takes effect.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records Law

Article I, s. 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. The Legislature, however, may provide by general law for exemption from public records 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.¹

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. Furthermore, the Open Government Sunset Review Act² 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."³ An identifiable public purpose is served if the exemption meets one of the following purposes:⁴

- 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 the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

Pursuant to s. 119.15(3), F.S., a new public records exemption or substantial amendment of an existing public records exemption is repealed on October 2 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.⁵ The board or commission must provide reasonable notice of all public meetings.⁶ Public meetings may not be held at any location that discriminates on the basis of

¹ Art. I, s. 24(c), Fla. Const.

² Section 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ Id.

⁵ Section 286.011(1), F.S.

⁶ Id.

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.⁷ Minutes of a public meeting must be promptly recorded and open to public inspection.⁸

Professional Counselors Licensure Compact

CS/HB 1521 authorizes Florida to enter into the Professional Counselors Licensure Compact (compact) by enacting its provisions into Florida law. The compact was created by the National Center for Interstate Compacts and is an interstate compact that facilitates the interstate practice of licensed professional counseling in person and through telehealth. Florida-licensed clinical social workers, marriage and family therapists, and mental health counselors (counselors, collectively) are eligible to apply for privileges to practice under the compact.

Under the compact, a counselor who is licensed in a compact state is permitted to practice in another compact state after obtaining a privilege to practice in that compact state. A counselor practicing under the compact practice privileges must comply with the practice laws of the state in which he or she is practicing or where the patient is located.

Under the compact, compact states are required to report a counselor's identifying information; licensure data; significant investigatory information; adverse actions⁹ against a counselor's license; nonconfidential information related to participation in alternative programs; denials of applications and reasons for such denials; and other information, determined by the Counseling Compact Commission (Commission) rule, which may facilitate the administration of the compact to a coordinated licensure information system (CLIS). A compact state may designate information it reports as confidential and therefore, cannot be shared with noncompact states or other entities without the express permission of the reporting state.

Coordinated Licensure Information System

The compact requires all compact states to share licensee information.¹⁰ To expedite this data-sharing, compact states must submit a uniform dataset to a CLIS on all counselors to whom the compact is applicable. Under the compact, Florida will be sharing information which is not currently exempt from disclosure requirements under s. 119.07(1), F.S. and s. 24(a), Art. 1 of the Florida Constitution, including:¹¹

- Identifying information;
- Licensure data;
- Significant investigatory information;
- Adverse actions against a counselor's license;
- Nonconfidential information related to participation in alternative programs;
- Any licensure application denials and reasons for such denial; and
- Other information, determined by Commission rule, which may facilitate the administration of the compact.

Under the compact, the data system information must be expunged according to laws of the reporting compact state.¹²

⁷ Section 286.011(6), F.S.

⁸ Section 286.011(2), F.S.

⁹ Adverse action is any disciplinary action that is a matter of public record which is taken by a state's counselor regulatory authority against a counselor's license to practice in that state.

¹⁰ Counseling Compact Model Legislation (Dec. 4, 2020), https://counselingcompact.org/wp-content/uploads/2021/06/Final_Counseling_Compact_With_Cover.pdf (last visited March 9, 2022).

¹¹ Id.

¹² Id.

Commission Meetings

The compact establishes the Commission. Each compact state has one delegate selected by that state's licensing board. All Commission meetings must be open to the public except for when the Commission must discuss:¹³

- Noncompliance of a compact state with its obligations under the compact;
- The 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;
- 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 if disclosed to the public;
- 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 investigation of compliance with the compact; and
- Matters specifically exempted from disclosure by federal law or the laws of any party state.

For discussion of the above topics, the compact requires the Commission to close the meeting. In order 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 an public meeting exemption for Commission meetings.

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

Effect of the Bill

Public Records and Public Meetings

The bill provides that personal identifying information of a counselor, other than the counselor's name, licensure status, or licensure number, obtained from the data system and held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counselors is exempt¹⁴ from public records requirements, unless the laws of the state that originally reported the information authorize 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 Commission meetings, or portions of such meetings, at which the Commission discusses matters specifically exempt from disclosure by state or federal law. Recordings, minutes, and records generated during an exempt portion of a Commission meeting are also exempt from public disclosure.

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

¹³ Id.

¹⁴ 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 *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature 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 Op. Att'y Gen. Fla. 04-09 (2004).

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 PCLC 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.

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, 2027, unless saved from repeal by reenactment by the Legislature.

The effective date of this bill is the same date that CS/HB 1521 takes effect, which was adopted in the same legislative session and takes effect upon enactment of the PCLC into law by 10 states.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant, negative fiscal impact on the Department of Health and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counselors because agency staff responsible for complying with public records requests may require training related to the creation of the bill's provisions. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of agencies.