

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: Pub. Rec. & Meetings HB 7041 PCB SHI 24-01 Public Records and Meetings Exemptions

SPONSOR(S): Select Committee on Health Innovation, Andrade

TIED BILLS: HB 1549 **IDEN./SIM. BILLS:** SB 322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Select Committee on Health Innovation	11 Y, 0 N	McElroy	Calamas
1) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N	Rando	Toliver
2) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1549, to which this bill is linked, requires Florida to join the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact and the Physical Therapy Licensure Compact.

Each of these compacts require compact member states to share certain licensure and personal identifying information concerning physicians, speech-language pathologists, audiologists, and physical therapists authorized to practice under their respective compact. The compacts further require that certain meetings be closed to the public.

The bill creates a public record exemption for certain licensure and personal identifying information, other than the name, licensure information, or licensure number, for providers authorized to practice under each compact, obtained from the data system and held by the Department of Health (DOH) or the applicable board from public record requirements, unless the laws of the state that originally reported the information authorizes disclosure.

The bill creates a public meeting exemption to allow the commission of each compact to convene in a closed meeting if the meeting is held to discuss certain specified matters. The bill also creates a public meeting exemption for commission meetings of each compact, or portions of such meetings, at which matters exempt from public disclosure by federal or state law are discussed. The bill provides that any recordings, minutes, and records generated from such a meeting, or portions of such meeting, are also exempt from public record requirements.

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the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless saved from repeal through reenactment by the Legislature.

This bill may have a, negative, but likely insignificant, fiscal impact on DOH and other boards, and no fiscal impact on local governments.

The bill will become effective on the same date that HB 1549 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Article I, s. 24(c) of the Florida 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 exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government

The Florida Constitution sets forth the state's public policy regarding access to government records and meetings. Every person is guaranteed a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ All meetings of any collegial public body of the executive branch of state government or 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, must be open and noticed to the public.² The Legislature, however, may provide by general law an exemption³ from public record or meeting requirements provided that the exemption passes by a 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.⁴

Pursuant to the Open Government Sunset Review Act,⁵ a new public record or meeting exemption or substantial amendment of an existing exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.⁶

Public Records

Current law also addresses the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.⁷ Furthermore, the Open Government Sunset Review Act provides that a public record exemption may be created, revised, 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."⁸ An identifiable public purpose is served if the exemption meets one of the following purposes:

- 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; or
- Protect trade or business secrets.⁹

Public Meetings

Current law also addresses public policy regarding access to government meetings, further requiring all meetings of any board or commission of any state agency or authority, or of any agency or authority of any county, municipality, or political subdivision, at which official acts are to be taken to be open to the public at all times, unless the meeting is exempt.¹⁰ The board or commission must provide reasonable

¹ Art. I, s. 24(a), FLA. CONST.

² Art. I, s. 24(b), FLA. CONST.

³ A public record exemption means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

⁴ Art. I, s. 24(c), FLA. CONST.

⁵ Section 119.15, F.S.

⁶ Section 119.15(3), F.S.

⁷ See s. 119.01, F.S.

⁸ Section 119.15(6)(b), F.S.

⁹ *Id.*

¹⁰ Section 286.011(1), F.S.

notice of all public meetings.¹¹ 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 that operates in a manner that unreasonably restricts the public's access to the facility.¹² Minutes of a public meeting must be promptly recorded and open to public inspection.¹³ Failure to abide by public meeting requirements will invalidate any resolution, rule, or formal action adopted at a meeting.¹⁴ A public officer or member of a governmental entity who violates public meeting requirements is subject to civil and criminal penalties.¹⁵

Health Care Licensure Compacts

HB 1549, to which this bill is linked, requires Florida to join the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact, and the Physical Therapy Licensure Compact. The compacts were created to facilitate multistate practice of licensed physicians, speech-language pathologists, audiologists, and physical therapists.

Under their respective compact, an eligible licensed physician, speech-language pathologist, audiologist, physical therapist or a physical therapist assistant is authorized to practice within the scope of his or her license in all compact member states. Each health care provider practicing under this compact privilege must comply with the practice laws of the state in which he or she is providing service or where the patient is located.

Under each compact, member states are also required to report certain licensure information on licensees in compact member states to a shared data system, including identifying information, licensure data, and any adverse actions taken against the health care providers license or compact privilege. Investigative information pertaining to a licensee in any compact member state must be available to other member states. Compact member states may designate information submitted to the data system that may not be shared with the public without the express permission of that member state.

Under each compact, HB 1549 requires Florida to share information that is not currently exempt from public record requirements under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Interstate Medical Licensure Compact

The Interstate Medical Licensure Compact (Medical Compact) requires states to share licensee information for all licensed physicians, or physicians who have applied for licensure, to a coordinated data system. Information that will be shared that is not currently exempt from public record requirements under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, includes:

- Identifying information;
- Licensure data;
- Public action taken against a licensed physician who has applied for or received an expedited license through the compact; and
- Public and confidential complaint, disciplinary, or investigatory information.

Audiology and Speech-Language Pathology Compact

The Audiology and Speech-Language Pathology Compact (ASLP Compact) requires member states to report the following licensure information and other non-exempt information for all licensed audiologists and speech-language pathologists practicing under the ASLP Compact:

- Identifying information;

¹¹ *Id.*

¹² Section 286.011(6), F.S.

¹³ Section 286.011(2), F.S.

¹⁴ Section 286.011(1), F.S.

¹⁵ Section 286.011(3), F.S.

- Licensure data;
- Adverse actions against the audiologist's or speech-language pathologist'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.

Physical Therapy Licensure Compact

The Physical Therapy Licensure Compact (PT Compact) requires each member state to report the following licensure information and other non-exempt information for all licensed physical therapists and physical therapist assistants practicing under the compact:

- Identifying information;
- Licensure data;
- Investigative information;
- Adverse actions against the physical therapists or physical therapist assistant's license or compact privilege;
- Any licensure application denials and reasons for such denial; and
- Other information, determined by commission rule, which may facilitate the administration of the compact.

Commission Meetings

The Medical Compact, ASLP Compact, and the PT Compact each require their respective compact commission to conduct meetings. The commission meetings must be open to the public, and public notice must be given. However, for the discussion of certain specified topics, each compact requires the commission to conduct a closed meeting. To close a public meeting in Florida, a specific exemption from public meeting requirements under s. 24(b), Art. I of the Florida Constitution and s. 286.011, F.S., is required. Current law does not provide a public meeting exemption for commission meetings.

The effective date of the bill is the same date that HB 1549 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof and becomes law.

Effect of the Bill

The bill makes personal identifying information, other than the name, licensure status, or licensure number, of a physician, speech-language pathologist, audiologist, or physical therapist authorized to practice under their respective compact, obtained from the coordinated data system and held by the DOH or the applicable board exempt from public record requirements, unless the laws of the state that originally reported the information authorizes 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 of each compact, or portions of such meetings, where matters exempt from public disclosure by federal or state law are discussed. Recordings, minutes, and records generated during an exempt portion of a commission meeting are also exempt from public disclosure.

The bill provides statements of public necessity for the public record exemptions, as required by the Florida Constitution, and states that the protection of such information is required under the Medical Compact, ASLP Compact, and the PT Compact, which the state must adopt in order to become a party state to each compact. Without the public record exemptions, the state would be unable to effectively and efficiently implement and administer the compacts.

Additionally, the bill provides a statement of public necessity for the public meeting exemption, as

required by the Florida Constitution, and states that the compacts require any meeting where matters exempt from public disclosure by federal or state law are discussed to be closed to the public. Without the public meeting exemption, the state will be prohibited from becoming a party to the compacts and would be unable to effectively and efficiently administer the compacts. The bill further provides that it is a public necessity for the recordings, minutes, and records generated during an exempt meeting be made exempt, as the release of such information would negate the public meeting exemption.

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, 2029, unless saved from repeal through reenactment by the Legislature.

The effective date of the bill is the same date that HB 1549 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law, which is July 1, 2024.

B. SECTION DIRECTORY:

- Section 1:** Creates s. 456.4503, F.S., relating to Interstate Medical Licensure Compact Commission; public records and meetings exemption.
- Section 2:** Creates s. 468.1336, F.S., relating to Audiology and Speech-language Pathology; public records and meetings exemption.
- Section 3:** Creates s. 486.113, F.S., relating to Physical Therapy Licensure Compact Commission; public records and meetings exemption.
- Section 4:** Provides statements of public necessity as required by the Florida Constitution.
- Section 5:** Provides that the bill is effective on the same date as HB 1549 (2024) or similar legislation takes effect.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative, but likely insignificant, fiscal impact on DOH and applicable boards because staff responsible for complying with public record requests may require training related to the implementation of the new public record exemption. The costs, however, would likely be absorbed as they are part of the day-to-day responsibilities of agencies.

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 Florida 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 exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it includes statements of public necessity. The statements of public necessity provide that the Legislature finds, in part, that the protection of the exempt information and closure of certain meetings are required under each compact, and without the exemptions, the state would be unable to effectively and efficiently implement and administer the compacts.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution provides that an exemption must be created by general law and the law must contain only exemptions from public record or public meeting requirements. The exemption does not appear to be in conflict with the constitutional 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