

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1127 Pub. Rec. and Meetings/Interstate Teacher Mobility Compact
SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Smith and Hunschofsky
TIED BILLS: CS/HB 1125 **IDEN./SIM. BILLS:** SB 1448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education Quality Subcommittee	18 Y, 0 N	Wolff	Sanchez
2) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N, As CS	Shapiro	Toliver
3) Education & Employment Committee	18 Y, 0 N	Wolff	Hassell

SUMMARY ANALYSIS

The Interstate Teacher Mobility Compact (ITMC) is an interstate occupational licensure compact. Interstate compacts are constitutionally authorized, legislatively enacted, legally binding agreements among states. The ITMC will allow teachers with an eligible license held in a compact member state to be granted an equivalent license in another compact member state, lowering barriers to teacher mobility and getting teachers back into the classroom more seamlessly.

Under the ITMC, a teacher certified in one member state is entitled to receive the closest equivalent certification in another member state simply by presenting their originating state's certification and passing any background screening requirement implemented by the receiving state. Member states are required to share necessary information, such as certification or discipline history, when certificate holders move between states. Given the sensitive nature of some of these documents, the ITMC requires that information related to individual teachers shared between member states remain confidential.

In order to permit Florida to participate in the ITMC, the bill creates a public meeting exemption for portions of a meeting of the ITMC required to remain confidential under the Compact. It also creates a public record exemption for any recordings, minutes, or records generated at an exempt meeting, as well as any records relating to an investigation of a teacher received from another member state held by the commissioner or the Florida Department of Education pursuant to the ITMC.

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

The bill will become effective on the same date that CS/HB 1125 (2023) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Article I, section 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 a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Meetings

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 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 Minutes of a public meeting must be promptly recorded and open to public inspection.³

No resolution, rule, or formal action is considered binding unless action is taken or made at a public meeting.⁴ Acts taken by a board or commission in violation of this requirement are considered void,⁵ though a failure to comply with open meeting requirements may be cured by independent final action by the board or commission fully in compliance with public meeting requirements.⁶

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of art. 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.⁷

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(2), F.S.

⁴ Section 286.011(1), F.S.

⁵ *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010).

⁶ *Finch v. Seminole Cnty. Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).

⁷ Article I, s. 24(c), Fla. Const.

Furthermore, the Open Government Sunset Review Act⁸ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no broader than is necessary to meet one of the following purposes:⁹

- 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 information that would identify an individual may be exempted under this provision; or
- Protect trade or business secrets.

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.¹⁰

Public Record Exemption for Teacher Investigations and Discipline

Currently, complaints against a teacher or administrator and all information obtained pursuant to the investigation by the Department of Education (DOE) are confidential and exempt from disclosure until the conclusion of the preliminary investigation¹¹ or until such time as the preliminary investigation ceases to be active.¹² Upon the expiration of the exemption, the complaint and all associated materials are open for inspection pursuant to Florida's public records laws, except for any medical records submitted as part of a teacher's participation in a recovery network program for educators.¹³

The complaint and all material assembled during the investigation may be inspected and copied by the certificate holder or the certificate holder's designee, after the investigation is concluded, but prior to the determination of probable cause.¹⁴

Interstate Teacher Mobility Compact

The Interstate Teacher Mobility Compact (ITMC) is an interstate occupational licensure compact. Interstate compacts are constitutionally authorized, legislatively enacted, and legally binding agreements among states. The ITMC will allow teachers with an eligible license held in a compact member state to be granted an equivalent license in another compact member state, lowering barriers to teacher mobility and getting teachers back into the classroom more seamlessly.¹⁵

The ITMC utilizes a different model than other interstate occupational licensure compacts. Compact Member states submit licenses that are eligible for the compact and meet a set of criteria outlined in the legislation. To be eligible, a license must require a bachelor's degree and completion of a state-approved program for teacher licensure like a teacher preparation program at a college or university. Furthermore, for a license to be eligible under the compact it must be unencumbered (i.e., not restricted, probationary, provisional, substitute or temporary).¹⁶

Teachers holding a compact-eligible license can apply for licensure in another member state and receive the closest equivalent license without submitting additional materials, taking state-specific

⁸ Section 119.15, F.S.

⁹ Section 119.15(6)(b), F.S.

¹⁰ Section 119.15(3), F.S.

¹¹ The preliminary investigation is deemed concluded upon a determination of probable cause by the Commissioner of Education. Section 1012.796(4), F.S.

¹² Regarding these investigations, a preliminary investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. Section 1012.796(4), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ National Center for Interstate Compacts, *Interstate Teacher Mobility Compact*, available at <https://teachercompact.org/wp-content/uploads/sites/28/2022/11/ITMC-Overview.pdf>.

¹⁶ *Id.*

exams or completing additional coursework. Special carveouts were created for some populations in the compact to support equitable access. Due to the mobility patterns of military spouses, the barriers to receiving a license that would be considered unencumbered under the compact are much higher. Teachers meeting the definition of an eligible military spouse will be able to use a temporary or provisional license for the purposes of the compact. Career and Technical Education Teaching Licenses often do not require a bachelor's degree as a requirement for licensure, so the compact allows these licenses to be considered eligible without that requirement.¹⁷

The ITMC will be administered by the Interstate Teacher Mobility Compact Commission (Commission), whose membership will be made up of the head of each member state's State Licensing Agency for educators (in Florida this is the DOE), or her or his designee.

The ITMC model legislation requires that member states share teacher discipline and other records with other member states, upon request, to facilitate the movement of teachers and compliance with individual state background screening requirements. To protect the privacy of teachers, the ITMC model legislation requires that such records and any meetings of the Commission at which such records are discussed be kept confidential.

CS/HB 1125 (2023)

CS/HB 1125 (2023), to which this bill is linked, ratifies the ITMC by adopting the model legislation into Florida statute. Once the ITMC is effective, following ratification by the tenth state, the designated commissioner of each member state will coordinate implementation of the policies and procedures necessary to effectuate the ITMC. As such, the DOE, through the Commissioner of Education, will begin to have access to teacher investigatory and disciplinary records. In order for Florida to be compliant with the provisions of the ITMC, as proposed to be adopted in CS/HB 1125 (2023), these records and meetings must remain confidential, necessitating a public record and public meeting exemption.

Effect of Proposed Changes

The bill, which is linked to the passage of CS/HB 1125 (2023), creates a public records exemption for records relating to an investigation of a teacher received from another member state held by the commissioner, as defined in CS/HB 1125 (2023), or the Florida Department of Education pursuant to the ITMC. As set forth in the ITMC, the bill requires that before disclosing any investigatory or disciplinary information received from another member state, the disclosing state shall communicate its intention and purpose for such disclosure to the member state that originally provided that information.

The bill creates a public meeting exemption for any portion of a meeting of the Commission, or its executive committee, in which any of the following information is discussed:

- noncompliance of a member state with its obligations under the compact;
- the employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;
- current, threatened, or reasonably anticipated litigation;
- negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
- accusing any person of a crime or formally censuring any person;
- trade secrets or commercial or financial information that is privileged or confidential;
- information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
- investigative records compiled for law enforcement purposes;
- information relating to any investigative reports prepared by or on behalf of or for use by the commission or executive committee when investigating or determining compliance with the compact;
- matters specifically exempted from disclosure by federal or state practice laws; or

¹⁷ *Id.*

- other matters as set forth by the commission's bylaws and rules.

Additionally, the bill provides that recordings, minutes, and records generated during any portion of an exempt meeting are also exempt from disclosure.

The bill provides statements of public necessity as required by the Florida Constitution. The bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that CS/HB 1125 (2023) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

B. SECTION DIRECTORY:

Section 1: Creates s. 1012.9931, F.S.; providing an exemption from public meetings requirements for certain portions of meetings of the Interstate Teacher Mobility Compact Commission and its executive committee; providing an exemption from public records requirements for recordings, minutes, and records generated during exempt portions of such meetings and for certain files and information relating to specified investigations; providing for future legislative review and repeal of the exemptions.

Section 2: Provides statement of public necessity.

Section 3: Provides a contingent effective date.

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 a minimal fiscal impact on DOE because agency staff responsible for complying with public record requests may require training relating to the creation of the public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 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 a public record and public meeting exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 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 a public record and public meeting exemption; thus, it includes the required public necessity statements. The statements provide, in part, that that without these protections for records received by the Commissioner or for Commission meetings Florida would be unable to participate in the ITMC.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record and public meeting exemption mirroring the language from the ITMC model legislation as required for Florida to participate in the ITMC. The public record exemption is similar in scope to the existing public records exemption for teacher investigations. The public meeting exemption specifically enumerates the topics, as set forth in the ITMC model legislation, that are to be exempt and limits the exemption to only the portions of a meeting that deal with those topics. The exemptions do not appear to be broader than necessary to accomplish the purpose of the exemptions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Ethics, Elections & Open Government Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment altered the bill in the following ways:

- Removed references to “files and information” and replaced that term with “records”;
- Specified that the Commissioner and Florida Department of Education are the custodians of the information;
- Provided that information received from other member states remains exempt from disclosure until the teacher investigation is no longer active, or until probable cause is found; and
- Made technical and conforming changes to the public necessity statement.

This analysis is drafted to the committee substitute as approved by the Ethics, Elections & Open Government Subcommittee.

