

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 Governmental Oversight and Accountability Committee

BILL: SB 1060

INTRODUCER: Senator Storms

SUBJECT: Compact/Educational Opportunity/Military Children

DATE: March 31, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>Matthews</u>	<u>ED</u>	Favorable
2.	<u>Pardue</u>	<u>Pardue</u>	<u>MS</u>	Favorable
3.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	Favorable
4.	_____	_____	<u>EA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1060 reenacts provisions of law establishing and implementing the Compact on Educational Opportunity for Military Children. The bill also deletes provisions in current law which codify the authority of the Interstate Commission on Educational Opportunity for Military Children to exempt Commission records from disclosure, close Commission meetings under certain circumstances, seal closed meeting records, and adopt bylaws and rules related to the disclosure of records.

The bill provides for future legislative review and repeal of the act three years following the effective date of the act, which is upon becoming a law.

This bill amends section 1000.36 and repeals section 5, chapter 2008-225, Laws of Florida, which provides for a future repeal of sections 1006.36, 1000.37, 1000.38, and 1000.39 of the Florida Statutes.

II. Present Situation:

According to the Council of State Governments (CSG), the average military student faces transition challenges more than twice during high school, and most military children will have six to nine different school systems in their lives from kindergarten to 12th grade.¹ With more than half of all military personnel supporting families, the challenges of reassignment and long

¹ Council of State Governments, *See* http://www.csg.org/programs/policyprograms/NCIC/interstatecompact_militarychildren_edop.aspx, last viewed on February 23, 2010.

deployments are key considerations when making long-term life choices for military children and include the following:²

- Transfer of records;
- Course sequencing;
- Graduation requirements;
- Exclusion from extracurricular activities;
- Redundant or missed entrance/exit tests;
- Kindergarten and first grade entrance age variations; and
- Power of custodial parents while parents are deployed.

The CSG, in cooperation with the U.S. Department of Defense's Office of Personnel and Readiness, has drafted an interstate compact that addresses the educational transition issues of children of military families, including eligibility, enrollment, placement, and graduation.³ In addition, the compact provides for a detailed governance structure at both the state and national levels with enforcement and compliance mechanisms.⁴ According to the CSG, 27 states, including Florida, have enacted legislation to effectuate the compact.⁵

In 2008, Florida enacted legislation to codify provisions of the compact in law for educational records and enrollment, placement and attendance, and graduation.⁶ The law provides that the compact applies to school districts as well as children of the following:⁷

- Active duty members of the uniformed services, including members of the National Guard and Reserve on active duty orders;
- Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and
- Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

The compact does not apply to children of the following:

- Inactive members of the National Guard and military reserves;
- Members of the uniformed services now retired not covered above;
- Veterans of the uniformed services not covered above; and
- Other U.S. Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

² *Id.*

³ *Update to the Report on Assistance to Local Educational Agencies for Defense Dependents Education*, U.S. Department of Defense, September 2009. The update to the report is available at:

<http://www.nga.org/Files/pdf/0803DODEEDUCATION.PDF> and <http://www.csg.org/knowledgecenter/docs/sn0802MilitaryMoves.pdf> last viewed on February 23, 2010.

⁴ See <http://www.csg.org/knowledgecenter/docs/ncic/FinalCompactLanguage011108.pdf> last viewed on February 23, 2010.

⁵ Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Texas, Virginia, and Washington. Council of State Government, *State-by-State Status Chart*, January 25, 2010, available at <http://www.csg.org/programs/policyprograms/NCIC/documents/DODState-by-statechart--1-25-10.pdf> last viewed on February 23, 2010.

⁶ ch. 2008-225, L.O.F., codified as ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S.

⁷ s. 1000.36, F.S.

The Interstate Commission on Educational Opportunity for Military Children provides general oversight of the agreement, creates and enforces rules governing the compact's operation, and provides a venue for solving interstate issues and disputes.⁸ The Commission is comprised of one voting representative, (the compact commissioner) from each member state.⁹ Each state is entitled to one vote on compact rule adoption or other business matters.

Under the terms of the compact, the executive, legislative, and judicial branches of state government are compelled to enforce the agreement.¹⁰ Any amendment to the compact is not effective or binding on the commission and the member states until it is enacted into law by unanimous consent of the member states.¹¹ A member state may withdraw from the compact by repealing the statute that enacted the compact.¹² A state's withdrawal does not take effect until one year after the effective date of the repealed statute and until the Governor of each member state has received written notice.

The Commission is required to adopt rules which govern member states in the areas addressed by the compact.¹³ Compact rules have the force and effect of statutory law in compact member states.¹⁴ The rules may not exceed the scope of authority granted by the compact.¹⁵ The Commission adopted rules, which were effective January 1, 2010.¹⁶

The compact permits the Interstate Commission to close certain meetings¹⁷ and to exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.¹⁸ The Commission's bylaws also govern the closure of meetings and the disclosure of Commission records.¹⁹

III. Effect of Proposed Changes:

Senate Bill 1060 sunsets in three years the provisions of Florida law that codify and implement the Compact on Educational Opportunity for Military Children, including the following:²⁰

⁸ See <http://www.csg.org/knowledgecenter/docs/ncic/FinalCompactLanguage011108.pdf> last viewed on February 23, 2010.

⁹ s. 1000.36, F.S., Article IX, section B

¹⁰ s. 1000.36, F.S., Article XIII, section A.

¹¹ s. 1000.36, F.S., Article XV, section C.

¹² s. 1000.36, F.S., Article XVI, section A.1.

¹³ s. 1000.36, F.S., Article X, section B and Article XII.

¹⁴ s. 1000.36, F.S., Article X, section B.

¹⁵ s. 1000.36, F.S., Article XII, section A.

¹⁶ DOE correspondence, February 11, 2010, on file with the Education Pre-K – 12 Committee.

¹⁷ s. 1000.36, F.S., Article IX, sections G. and H. A meeting may be closed in order to prevent disclosure of: personnel matters; matters exempt from disclosure under state and federal law; trade secrets or commercial or financial information; personal privacy information; law enforcement investigations; the formal censure or criminal accusation of a person by the Commission; or information regarding the Commission's participation in litigation. All records considered in a closed meeting must be sealed and may only be released by majority vote of the Commission.

¹⁸ s. 1000.36, F.S., Article IX, section F.

¹⁹ Interstate Commission Bylaws, Article VIII, s. 3., which exempts the Commission's audit work papers and internal account records, and Article VI, section 1., which restates the compact's requirement that Commission meetings are open to the public, but may be closed by a two-thirds vote of the Commissioners.

²⁰ ss. 1000.36 and 1000.37, F.S.

- The Florida Compact Council, which coordinates government agencies, school districts, and military installations and makes recommendations for complying with the compact;²¹
- The Compact Commissioner who administers and manages the state's participation in the compact and serves as the voting representative on the Interstate Commission; and²²
- The Military Family Education Liaison who assists military families and the state.²³

The bill also deletes those provisions in current law which codify the authority of the Interstate Commission to exempt Commission records from disclosure, close Commission meetings under certain circumstances, seal closed meeting records, and adopt bylaws and rules related to the disclosure of records.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

See Other Constitutional Issues, below.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill codifies articles in the compact which provide that all Commission actions, rules, and bylaws are binding on member states and that the laws of member states are superseded to the extent they conflict with the compact.²⁴

Compacts are considered to be formal agreements or contracts that bind two or more states for formal cooperation between states.²⁵ States may enter into agreements or compacts with other states, provided that Congress gives its consent.²⁶

Courts consistently derive the principle that the constitution prohibits the unlawful delegation of legislative authority from art. II, s. 3., of the State Constitution, which provides, in part:

No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

²¹ s. 1000.39, F.S.

²² s. 1000.38, F.S.

²³ *Id.*

²⁴ s. 1000.36, F.S., Article XVIII.

²⁵ 72 Am Jur. 2d States etc. § 10.

²⁶ U.S. Const. Art. I § 10.

Generally, this provision prohibits the Legislature from delegating its own legislative power to other entities. It is well settled that the courts consider this constitutional principle to have been violated when the Legislature incorporates a future federal act or ruling of a federal administrative body into a statute.²⁷ For example, the court held suspect a statute which included legislative intent that drugs identified by both current and future drug abuse laws in the United States, are intended to be included as prohibited drugs in statute.²⁸ Cross-referencing current federal law or rules in statute is permissible, however. The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies.²⁹ There does not appear to be any binding Florida case law that squarely addresses this issue in the context of interstate compacts.³⁰

In this bill, the Legislature validates future compact rules adopted by the Commission. Although these rules are not federal rules but rather rules of an interstate compact, it is unclear whether through reenactment of this compact, an unlawful delegation of legislative authority challenge may be sustained.

The compact holds ineffective any compact provision which conflicts with a member state's constitution to the extent of the conflict.³¹ The compact provisions conflict with article I, s. 24 of the State Constitution, which requires public access to governmental records and meetings.³² Only the Legislature is authorized to create exemptions to open government requirements.³³ There is no specific exemption for Florida's Compact Commissioner when he or she is transacting business pursuant to the compact. The bill eliminates the conflict by repealing the exemption from disclosure for certain records and meetings.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁷ *Abbott Laboratories v. Mylan Pharmaceuticals*, 15 So.3d 642, 654 (Fla. 1st DCA 2009).

²⁸ *State v. Welch*, 279 So.2d 11 (Fla. 1973).

²⁹ *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

³⁰ A First District Court of Appeals opinion construing the provisions of the Interstate Compact on the Placement of Children mentions this issue but the court did not rule on the merits. *Department of Children and Family Services v. L.G.*, 801 So.2d 1047, 1052 (Fla. 1st DCA 2001).

³¹ s. 1000.36, F.S., Article XVIII, section E.

³² Article I, s. 24 of the State Constitution.

³³ *Id.*

C. Government Sector Impact:

The compact grants the Interstate Commission the authority to levy and collect an annual assessment from each member state to cover the cost of operations and activities.³⁴ The compact further authorizes the commission to develop an assessment formula by rule.³⁵ Current rules of the Commission establish a formula based upon \$1 per dependent child of military families eligible for transfer under the compact.³⁶ According to the DOE, there are approximately 56,000 school-aged dependent children of armed forces personnel living in Florida (33,304 children of active duty personnel and approximately 22,700 children of reservists).³⁷

The DOE submitted a legislative budget request for \$66,604 to the State Board of Education on September 15, 2009, to fund the CSG's annual membership dues for 2009-2010 and 2010-2011 related to the Interstate Compact.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁴ Section 1000.36, F.S., article XIV, section B

³⁵ *Id.*

³⁶ Interstate Commission Rule 2.102

³⁷ DOE, *2010-2011 Operating Legislative Budget Request*, pp. 208-209 (September 2009) See http://www.fldoe.org/board/meetings/2009_09_15/2010-11OperatingLegislativeBudgetRequest.pdf. See also <http://www.csg.org/programs/policyprograms/NCIC/documents/MIC3DocketBookFinal--SecondAnnualMeeting.pdf>.

³⁸ *Id.*