

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1171 Interstate Compact on Educational Opportunity for Military Children

**SPONSOR(S):** Perry and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 7016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education Appropriations Subcommittee	13 Y, 0 N	Dobson	Heflin
2) Education Committee	17 Y, 0 N	Cherry	Mizereck

### SUMMARY ANALYSIS

In 2008, the Florida Legislature enacted the Interstate Compact on Educational Opportunity for Military Children. (Compact) The purpose of the Compact is to enable member states to uniformly address educational transition issues faced by military families. The Compact governs member states in several areas, including school placement, enrollment, records transfer and graduation for children of active-duty military families. All 50 states and the District of Columbia are Compact members.

The Compact establishes an Interstate Commission on Educational Opportunity for Military Children (Commission) to provide national-level oversight of the Compact. The Commission is comprised of one voting representative, or Compact Commissioner, from each member state. Among other things, the Commission may adopt and enforce compact rules which govern member states in the areas addressed by the Compact. Compact rules supersede conflicting member state laws to the extent necessary to accomplish the purposes of the compact.

Since enactment in 2008, Florida's Compact legislation has included a repeal provision which requires automatic repeal of the compact after a period of time, unless reauthorized by the Legislature. Because Compact membership entails an agreement to be bound by rules promulgated by a non-legislative entity, i.e., the Commission, the repeal provision allows the Legislature to periodically review Compact rules and determine whether it agrees with any new rules or rule amendments adopted during the period. The Legislature last reauthorized the Compact in 2013 and provided for repeal of the compact on April 11, 2016.

The bill reauthorizes Florida's compact legislation and adds a new automatic repeal provision, effective three years after the bill becomes law. The bill also specifies that compact dues are to be paid from existing resources within the Department of Education (DOE).

The bill does not appear to have a fiscal impact on local governments. (See Fiscal Comments).

The bill takes effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### **Background**

Children in active-duty military families face unique educational challenges. The average military child transfers to a different state or school district six to nine times during kindergarten through grade 12. When a parent is reassigned, military children may be impacted by:

- Record transfer issues;
- Varied course sequencing and academic placement policies;
- Varied graduation requirements;
- Exclusion from extracurricular activities;
- Redundant or missed entrance or exit testing;
- Varied kindergarten and first grade entrance ages; and
- The need to appoint temporary guardians while the child's parent is deployed.<sup>1</sup>

The Interstate Compact on Educational Opportunity for Military Children assists member states in uniformly addressing educational transition issues faced by active-duty military families. The compact governs member states in several areas, including school placement, enrollment, records transfer, participation in academic programs and extracurricular activities, and graduation. The compact was developed by the Council of State Governments, in cooperation with the U.S. Department of Defense.<sup>2</sup>

States join the compact by enacting it into law, which Florida did during the 2008 General Session.<sup>3</sup> Ten states must enact the compact before it can take effect and be binding on member states. This occurred on Delaware became the tenth state to adopt the compact on July 9, 2008.<sup>4</sup> Currently, all 50 states and the District of Columbia are Compact members.<sup>5</sup>

The compact establishes an Interstate Commission on Educational Opportunity for Military Children (Commission) to provide national-level oversight of the compact. The Commission may adopt and enforce rules and bylaws and perform various administrative functions necessary for day-to-day operation.<sup>6</sup> The Commission is comprised of one voting representative, or Compact Commissioner, from each member state. Each state is entitled to one vote on compact rule adoption or other business matters.<sup>7</sup> The Commission must meet at least once per year.<sup>8</sup>

##### **Compact Rule Adoption**

The Commission is authorized to promulgate compact rules which govern member states in areas addressed by the compact. Compact rules have the force and effect of statutory law in member states and supersede conflicting member state laws to the extent of the conflict.<sup>9</sup> Compact rules must not exceed the scope of authority granted by Compact. A majority of member state legislatures may

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<sup>1</sup> Council of State Governments, *Interstate Compact on Educational Opportunity for Military Children: Legislative Resource Kit*, available at <http://www.mic3.net/pages/commissioners/documents/2011LegislativeResourceKit-Final.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 2008-225, L.O.F.; CS/HB 1203 (2008); ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S.

<sup>4</sup> Article XV, s. B. of the Compact, s. 1000.36, F.S.; 76 Del. Laws 327 (2008).

<sup>5</sup> Military Interstate Children's Compact Commission, *Member States Map* (2016), available at [http://mic3.net/pages/contact/documents/MIC3\\_50states.pdf](http://mic3.net/pages/contact/documents/MIC3_50states.pdf).

<sup>6</sup> Article X, of the Compact, s. 1000.36, F.S.

<sup>7</sup> Article IX, s. B. of the Compact, s. 1000.36, F.S.

<sup>8</sup> Article IX, s. D. of the Compact, s. 1000.36, F.S.

<sup>9</sup> Article X, s. B. and XVIII, s. B. of the Compact, s. 1000.36, F.S.

invalidate a compact rule by legislative action.<sup>10</sup>

Since enactment in 2008, Florida's Compact legislation has included a repeal provision which requires automatic repeal of the compact after a period of time, unless reauthorized by the Legislature.<sup>11</sup> The repeal provision addresses concerns regarding unconstitutional delegation of legislative authority under Article II, s. 3, of the Florida Constitution.<sup>12</sup> Because membership in the compact entails an agreement to be bound by rules promulgated by a non-legislative entity, i.e., the Commission, the repeal provision allows the Legislature to periodically review Compact rules and determine whether it agrees with any new rules or rule amendments adopted during the intervening period.

The Legislature last reauthorized the compact in 2013, and provided for repeal of the compact three years after enactment, on April 11, 2016.<sup>13</sup> The compact has not amended any of its rules since the last time the legislature reauthorized the Compact in 2013.

## **Effect of Proposed Changes**

The bill reauthorizes Florida's compact legislation and adds a new automatic repeal provision, effective July 1, 2019. The bill also creates s. 1000.361, F.S., which specifies that the annual dues assessment for the compact shall be paid within existing resources by the Department of Education.

### **B. SECTION DIRECTORY:**

**Section 1.** Creates s. 1000.361, F.S., providing that Compact dues will be paid with existing resources from the Department of Education.

**Section 2.** Repeals ss. 1000.36, 1000.361, 1000.38, and 1000.39, F.S., the "Interstate Compact on Educational Opportunity for Military Children, on July 1, 2019, unless reviewed and reenacted by the Legislature.

**Section 3.** Repeals s. 2, ch. 2013-20, L.O.F., which provides for automatic repeal of the compact legislation.

**Section 4.** Provides that the bill takes effect on April 9, 2016, or, if enacted thereafter, applies retroactively from that 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:**

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<sup>10</sup> Article XII of the Compact, s. 1000.36, F.S.

<sup>11</sup> See, e.g., s. 3, ch. 2010-52, L.O.F.

<sup>12</sup> Article II, s. 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches of state government. Courts construing this provision have held that the Legislature, when delegating the administration of legislative programs to executive agencies or other entities, must establish minimal standards and guidelines ascertainable by reference to the legislation creating the program. See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

<sup>13</sup> Sections 3 and 4, ch. 2010-152, L.O.F.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The compact requires the Commission to levy membership dues from each member state to finance Commission operations and staffing.<sup>14</sup> Membership dues are based upon \$1 per dependent child of active-duty military personnel residing in a member state. There is a minimum dues obligation of \$2,000 and a maximum of \$60,000.<sup>15</sup> In 2012-2013, the legislature included a recurring appropriation of \$42,813 within the GAA to pay Compact dues.<sup>16</sup> According to the DOD, the projected number of children of active-duty military personnel living in Florida in 2017 is 39,985.<sup>17</sup>

The Commission has authority to impose sanctions against member states that fail to pay annual membership dues, including suspending or terminating a state's membership or imposing reasonable damages or costs. The Commission, by majority vote, may sue a member state in federal court for failure to pay membership dues. Costs and attorney fees must be awarded to the prevailing party.<sup>18</sup>

### 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:

The Florida Supreme Court has held that prospectively adopting rules not yet promulgated by federal administrative bodies is an unconstitutional delegation of legislative authority.<sup>19</sup> However, there is no binding Florida case law that addresses this issue in the context of interstate compacts.<sup>20</sup>

To address concerns regarding delegation of legislative authority, the bill provides for automatic repeal of Florida's compact legislation three years after the bill takes effect, unless reauthorized by the Legislature. The repeal provision allows the Legislature to determine whether it agrees with any new compact rules or rule amendments adopted during the three year period and consider reauthorization of the compact. Periodic Reauthorization accounts for any new compact rules and amendments adopted by the Commission since the last reauthorization, thereby avoiding a claim that the Legislature has agreed to be bound by compact rules not yet

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<sup>14</sup> Article XIV of the Compact, s. 1000.36, F.S.

<sup>15</sup> Section 2.102, Interstate Commission Rules.

<sup>16</sup> Ch. 2015-232, Laws of Florida.

<sup>17</sup> Email from DOE dated 12/01/2015, on file with House Education Appropriations Committee Staff.

<sup>18</sup> Article XIII, s. D.-I. of the Compact, s. 1000.36, F.S.

<sup>19</sup> *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).

<sup>20</sup> A First District Court of Appeals opinion construing the provisions of the Interstate Compact on the Placement of Children mentions this issue in a footnote 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).

promulgated.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.