

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7001 PCB GOS 21-01 OGSR/Nurse Licensure Compact  
**SPONSOR(S):** Government Operations Subcommittee, Garrison  
**TIED BILLS:** IDEN./SIM. BILLS: SB 7000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	15 Y, 0 N	Roth	Smith
1) Professions & Public Health Subcommittee	18 Y, 0 N	Guzzo	McElroy
2) State Affairs Committee			

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Nurse Licensure Compact (NLC) allows a nurse to have one license, issued by the primary state of licensure, with the privilege to practice in other compact states. The NLC applies to registered nurses and licensed practical or vocational nurses. The NLC was enacted into Florida law in 2016.

Current law provides a public record exemption for a nurse's personal identifying information, other than the nurse's name, licensure status, or licensure number held by the Department of Health or the Board of Nursing pursuant to the NLC. A nurse's personal identifying information may be disclosed, however, by the state that originally reported the information to the coordinated licensure information system, to the extent permitted by the reporting state's law. Current law also provides a public meeting exemption for portions of a meeting of the Interstate Commission of Nurse Licensure Compact Administrators at which matters specifically exempted from disclosure are discussed.

The bill saves from repeal the public record exemption and public meeting exemption, which will repeal on October 2, 2021, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of October 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet 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.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

##### Access to Public Records and Meetings

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>5</sup> The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.<sup>6</sup> The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.<sup>7</sup>

In addition to the Florida Constitution, Florida law specifies conditions under which public access must be provided to government records and meetings. The Public Records Act<sup>8</sup> guarantees every person's

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

<sup>5</sup> FLA. CONST. art. I, s. 24(a).

<sup>6</sup> FLA. CONST. art. I, s. 24(b).

<sup>7</sup> *Id.*

<sup>8</sup> Chapter 119, F.S.

right to inspect and copy any state or local government public record.<sup>9</sup> The Sunshine Law<sup>10</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.<sup>11</sup>

The Legislature may create an exemption to public records or open meetings requirements. An exemption must specifically state the public necessity justifying the exemption<sup>12</sup> and must be tailored to accomplish the stated purpose of the law.<sup>13</sup>

### Nurse Licensure Compact

The Nurse Licensure Compact (NLC) was designed as a multistate agreement establishing a mutual recognition system between states for the licensure of registered nurses (RNs) and licensed practical or vocational nurses (LPN/LVN). Prior to the compact's enactment, the National Council of State Boards of Nursing (NCSBN) produced a model bill for state legislatures to enact in order for their respective states to join the compact.<sup>14</sup> The compact was revised and expanded and was enacted into Florida law in 2016,<sup>15</sup> and implemented statewide on January 19, 2018.<sup>16</sup>

A nurse who is issued a multi-state license<sup>17</sup> from a state that is party to the NLC is permitted to practice in any state that is also party to the compact. A nurse with a multistate license privilege must comply with the practice laws of the state in which he or she is practicing or where the patient is located.<sup>18</sup> A party state may continue to issue a single-state license<sup>19</sup> and authorize practice only in that state.

The NLC permits a state to take adverse action against the multistate licensure privilege of any nurse practicing in that state.<sup>20</sup> The home state has the exclusive authority to take adverse action against the

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<sup>9</sup> Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

<sup>10</sup> Section 286.011, F.S.

<sup>11</sup> Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

<sup>12</sup> FLA. CONST. art. I, s. 24(c).

<sup>13</sup> *Id.*

<sup>14</sup> National Council of State Boards of Nursing (NCSBN), *Licensure Compacts*, available at <https://www.ncsbn.org/compacts.htm> (last visited February 5, 2021). The NCSBN arose out of the recognition that in order to guard the safety of the public, the organization involved in the regulation of nurses needed to be a separate entity from the American Nurses Association and Council on State Boards of Nursing, which represents professional nurses. NCSBN's membership is now comprised of boards of nursing and other nursing regulatory bodies that are charged with the responsibility of providing regulatory excellence for public health, safety and welfare, and protecting the public by ensuring that safe and competent nursing care is provided by licensed nurses. The NCSBN is the vehicle through which these entities act and counsel together on matters of common interest.

<sup>15</sup> Chapter 2016-139, L.O.F.; codified as s. 464.0095, F.S.

<sup>16</sup> Florida Department of Health, *Florida's Enhanced Nurse Licensure Compact to be Implemented Statewide January 19, 2018*, available at <http://www.floridahealth.gov/newsroom/2018/01/011818-nursing-compact.html#:~:text=Florida's%20Enhanced%20Nurse%20Licensure%20Compact%20to%20be%20Implemented%20Statewide%20January%2019%2C%202018,-Contact%3A&text=Tallahassee%2C%20Fla.,Nurse%20Licensure%20Compact%2C%20or%20eNLC>. (last visited February 25, 2021).

<sup>17</sup> "Multistate license" means a license to practice as a registered nurse (RN) or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board which authorizes the licensed nurse to practice in all party states under a multistate licensure privilege. Section 464.0095, Art. II, (10), F.S.

<sup>18</sup> Section 464.0095, Art. III, (5), F.S.

<sup>19</sup> "Single-state license" means a nurse license issued by a party state which authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state. Section 464.0095, Art. II, (15), F.S.

<sup>20</sup> Section 464.0095, Art. III, (4), F.S.

home state license, including revocation and suspension.<sup>21</sup> The NLC requires all participating states to report to the coordinated licensure information system (CLIS)<sup>22</sup> all adverse actions taken against a nurse's license or multistate licensure practice privilege, any current significant investigative information, and denials of information.<sup>23</sup>

The Department of Health (DOH) licenses nurses while the Board of Nursing regulates the practice of nursing in Florida. DOH collects and provides certain information to the NCSBN CLIS system on all RNs and LPN/LVNs with NLC multistate licenses practicing in Florida. Some of the information collected by DOH are the NCSBN ID numbers, mothers' maiden names, dates of birth, social security numbers, race, and home phone number of the RNs and LPN/LVNs.

All party states may access the CLIS to see licensure and disciplinary information for nurses licensed in the party states.<sup>24</sup> The CLIS includes a nurse's personal identifying information, licensure classification information and statuses, public emergency and final disciplinary action information, and status information about multistate licensure privileges from all party states. A party state may designate the information it contributes to the CLIS as confidential, prohibiting its disclosure to nonparty states.<sup>25</sup> State licensing boards must report disciplinary information, significant investigative information, and denials of applications to the CLIS promptly.<sup>26</sup>

The NLC established the Interstate Commission of Nurse Licensure Compact Administrators (commission)<sup>27</sup> to oversee and administer the operation and provisions of the NLC.<sup>28</sup> The head of each state's licensing board,<sup>29</sup> or his or her designee, must serve as the state's delegate to the commission. The NLC grants the commission authority to promulgate uniform rules relating to the implementation and administration of the NLC.<sup>30</sup> The commission may also take action against a party state if a party state fails to meet its obligations under the NLC, including termination of membership after exhausting all other means of compliance.<sup>31</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws which is administered by a nonprofit organization composed of and controlled by licensing boards. Section 464.0095, Art. II, (5), F.S.

<sup>23</sup> Section 464.0095, Art. III, (4), F.S.

<sup>24</sup> Section 464.0095, Art. IV, (1), F.S.

<sup>25</sup> Section 464.0095, Art. VI, (4), F.S.

<sup>26</sup> Section 464.0095, Art. VI, (3), F.S.

<sup>27</sup> "Commission" means the Interstate Commission of Nurse Licensure Compact Administrators established by this compact. Section 464.0095, Art. II, (3), F.S.

<sup>28</sup> NCSBN, *The Interstate Commission of Nurse Licensure Compact Administrators: Final Rules* (January 1, 2019), available at <https://www.ncsbn.org/finalrules.pdf> (last visited February 25, 2021).

<sup>29</sup> "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses. Section 464.0095, Art. II, (9), F.S.

<sup>30</sup> Section 464.0095, Art. VII, (7)(a), F.S.

<sup>31</sup> Section 464.0095, Art. IX, (4), F.S.

All commission meetings are open to the public and must be publicly noticed.<sup>32</sup> Both meetings and hearings for proposed rules must be noticed at least 60 days prior to each meeting on the NLC's website and on the website of each party state's licensing board or published in the publication in which each state would otherwise post proposed rules.<sup>33</sup> The NLC also provides for public comment opportunities through both oral and written testimony.<sup>34</sup> Closed meetings are permitted if the commission is discussing:<sup>35</sup>

- A party state's noncompliance with its obligations under the NLC;
- The employment, compensation, discipline, or other personnel matters, practices, or procedures related to a specific employee 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;
- Accusations against a person of a crime or formal 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;
- 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 investigating compliance with the NLC; or
- Matters specifically exempted from disclosure by federal or state law.

The commission must keep comprehensive minutes of matters discussed in its meetings and provide a full and accurate summary of actions taken. Minutes of a closed meeting will be sealed; however, such minutes may be released pursuant to a majority vote of the commission or an order of a court of competent jurisdiction.<sup>36</sup>

#### Public Record and Public Meeting Exemptions under Review

In 2016, the Legislature created a public record exemption for a nurse's personal identifying information, other than the nurse's name, licensure status, or licensure number held by DOH or the Board of Nursing pursuant to the NLC.<sup>37</sup> Such information is exempt<sup>38</sup> from public record requirements. However, a nurse's personal identifying information may be disclosed by the state that originally reported the information to the coordinated licensure information system, to the extent permitted by the reporting state's law.<sup>39</sup> The Legislature also created a public meeting exemption for portions of a meeting of the commission, at which matters specifically exempted from disclosure are discussed, including recordings, minutes, and records generated during an exempt meeting.<sup>40</sup>

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<sup>32</sup> Section 464.0095, Art. VII, (2)(d), F.S.

<sup>33</sup> Section 464.0095, Art. VIII, (3), F.S.

<sup>34</sup> Section 464.0095, Art. VIII, (7)(a), F.S.

<sup>35</sup> Section 464.0095, Art. VII, (2)(e), F.S.

<sup>36</sup> Section 464.0095, Art. VII (2)(f), F.S.

<sup>37</sup> Chapter 2016-97, L.O.F.; codified as s. 464.0096(1), F.S.

<sup>38</sup> There is a difference between records the Legislature designates as 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. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 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 Attorney General Opinion 85-62 (August 1, 1985).

<sup>39</sup> Section 464.0096(1), F.S.

<sup>40</sup> Chapter 2016-97, L.O.F.; codified as s. 464.0096(2), F.S.

The 2016 public necessity statement<sup>41</sup> for the exemptions provides that:

The Legislature finds that the public record and public meeting exemptions are necessary because protection of such information is required under the NLC, which the state must adopt in order to become a party state to the compact. Without the public records exemption, this state will be unable to effectively and efficiently implement and administer the compact. Furthermore, without the public meeting exemption, the state will be prohibited from becoming a party state to the NLC.<sup>42</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2021, unless reenacted by the Legislature.<sup>43</sup>

During the 2020 interim, the House Government Operations Subcommittee sent DOH a questionnaire as part of its review under the Open Government Sunset Review Act.<sup>44</sup> According to DOH, 18,458 RNs and 2,744 LPN/LVNs, who received their initial nursing license in Florida, currently hold NLC multistate licenses.<sup>45</sup> Additionally, 12,988 RNs and 2,375 LPN/LVNs, received their initial nursing license in a state other than Florida, and currently hold NLC multistate licenses permitting them to practice in Florida.<sup>46</sup> DOH staff recommends that the exemption be reenacted, noting the exemption language is uniform throughout the United States.<sup>47</sup>

### **Effect of the Bill**

The bill removes the scheduled repeal date of the public record exemption and public meeting exemption. Thereby maintaining the public record exemption for a nurse's personal identifying information, other than the nurse's name, licensure status, or licensure number held by DOH or the Board of Nursing pursuant to the NLC; and maintaining the public meeting exemption for portions of a meeting of the commission at which matters specifically exempted from disclosure are discussed.

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

**Section 1:** Amends s. 464.0096, F.S., to save from repeal the public record exemption and public meeting exemption for certain personal identifying information held by DOH or the Board of Nursing pursuant to the NLC as well as recordings, minutes, and records generated during an exempt meeting.

**Section 2:** Provides an effective date of October 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>41</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

<sup>42</sup> Section 2, ch. 2016-97, L.O.F.

<sup>43</sup> Section 381.82(3)(d)4., F.S.

<sup>44</sup> Open Government Sunset Review Questionnaire, DOH Response, October 5, 2020, on file with the House Government Operations Subcommittee.

<sup>45</sup> *Id.* at p. 2.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at p. 8.

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. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.