

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 Committee on Education Pre-K -12

BILL: SB 1448

INTRODUCER: Senator Wright

SUBJECT: Public Records and Meetings/Interstate Teacher Mobility Compact Commission

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sagues</u>	<u>Bouck</u>	<u>ED</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AED</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

In order to permit Florida to participate in the Interstate Teacher Mobility Compact (ITMC), SB 1448 creates a public record and public meeting exemption covering specified documents and meetings of the Interstate Teacher Mobility Compact Commission, of which the Commissioner of Education, or his or her designee, will be a member.

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.

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

The bill does not have an impact on state revenues or expenditures.

The bill will become effective on the same date that SB 1446 (2023) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

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

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article 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.⁴

Furthermore, the Open Government Sunset Review Act⁵ 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:⁶

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(2), F.S.

⁴ FLA. CONST. Art. I, s. 24(c),

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

- 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 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁷

Public Record Exemption for Teacher Investigations and Discipline

Complaints against a teacher or administrator and all information obtained in an investigation by the Department of Education (DOE) is confidential and exempt until the conclusion of the preliminary investigation⁸ or until such time as the preliminary investigation ceases to be active.⁹ Upon the expiration of the exemption, the complaint and all associated materials must be open to 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.¹⁰

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.¹¹

Interstate Teacher Mobility Compact

The Interstate Teacher Mobility Compact (ITMC or Compact) 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.¹²

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).¹³

⁷ Section 119.15(3), F.S.

⁸ The preliminary investigation is deemed concluded upon a determination of probable cause by the Commissioner of Education. Section 1012.796(4), F.S.

⁹ A preliminary investigation must 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.

¹⁰ *Id.*

¹¹ *Id.*

¹² National Center for Interstate Compacts, *Interstate Teacher Mobility Compact*, available at <https://teachercompact.org/wp-content/uploads/sites/28/2022/11/ITMC-Overview.pdf>.

¹³ National Center for Interstate Compacts, *Interstate Teacher Mobility Compact*, available at <https://teachercompact.org/wp-content/uploads/sites/28/2022/11/ITMC-Overview.pdf>.

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 exams or completing additional coursework. Special exceptions 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.¹⁴

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.

SB 1446 (2023)

SB 1446 (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, will have access to teacher discipline and other records. In order for Florida to be compliant with the provisions of the ITMC, as proposed to be adopted in SB 1446 (2023), these records and meetings must remain confidential, necessitating a public record and public meeting exemption.

III. Effect of Proposed Changes:

SB 1448, which is linked to the passage of SB 1446 (2023), creates a public records exemption for files and information regarding an investigation and discipline of teachers in other Interstate Teacher Mobility Compact (ITMC or Compact) member states. This public records exemption is aligned to the existing public records exemption for Florida's teacher investigation and discipline records. As set forth in the ITMC, the bill requires that before disclosing any disciplinary or investigatory information received from another member state, the disclosing state must 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;

¹⁴ National Center for Interstate Compacts, *Interstate Teacher Mobility Compact*, available at <https://teachercompact.org/wp-content/uploads/sites/28/2022/11/ITMC-Overview.pdf>.

- 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
- 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 that public records and public meeting exemptions are a public necessity because without these protections for records received by the Commissioner or for Commission meetings Florida would be unable to participate in the ITMC.

This 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 SB 1446 (2023) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for records pertaining to judicial assistants; therefore, the bill requires a two-thirds vote of each chamber for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect information relating to teachers in other states who are members of the Interstate Teacher Mobility Compact, without such exemption Florida would be ineligible for membership. This bill exempts only records pertaining to investigations and discipline for teachers in Compact member states, and for meetings where such information is discussed. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1012.9931 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.
