

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 101 Pub. Rec. & Meetings/Social Work Licensure Interstate Compact

**SPONSOR(S):** Health & Human Services Committee, Healthcare Regulation Subcommittee, Hunschofsky and others

**TIED BILLS:** CS/HB 99 **IDEN./SIM. BILLS:** SB 70

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	14 Y, 1 N, As CS	Curry	McElroy
2) Ethics, Elections & Open Government Subcommittee	15 Y, 0 N	Robinson	Toliver
3) Health & Human Services Committee	18 Y, 0 N, As CS	Curry	Calamas

### SUMMARY ANALYSIS

CS/HB 99, with which this bill is linked, authorizes Florida to enter into the Social Work Licensure Interstate Compact (Social Work Compact or compact) by enacting its provisions into Florida law. The Social Work Compact is an interstate compact that facilitates multistate practice of social work both in-person and through telehealth to patients in other compact states. The compact requires member states to submit each social worker's licensure records, including, any adverse actions taken against a social worker's ability to practice, to a coordinated data system. The compact creates the Social Work Licensure Interstate Compact Commission (Commission), which is responsible for creating and enforcing the rules and regulations that administer and govern the compact.

CS/HB 101 creates a public records exemption for a social worker's personal identifying information, other than the name, licensure information, or licensure number, obtained from the data system and held by the Department of Health (DOH) or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling from public record requirements, unless the laws of the state that originally reported the information authorizes disclosure.

The bill allows the Commission to convene in a closed meeting if the meeting is held to receive legal advice or to discuss certain specified items. The bill also creates a public meeting exemption for Commission meetings in which a matter discussed is specifically exempted from disclosure by federal or state statute. The bill provides that any recordings, minutes, and records generated from such a meeting, or portions of such meeting, are also exempt from public record requirements.

The bill provides that the public records and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless saved from repeal by reenactment by the Legislature. The bill also includes the constitutionally required public necessity statements.

The bill will become effective on the same date as CS/HB 99 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

This bill will have a significant, negative fiscal impact on DOH and no fiscal impact on local governments. See Fiscal Analysis.

**Article I, s. 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.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### **Open Government**

The Florida Constitution sets forth the state's public policy regarding access to government records and meetings. Every person is guaranteed a right to inspect or copy any public record of the legislative, executive, and judicial branches of government and all meetings 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, must be open and noticed to the public.<sup>1</sup> The Legislature, however, may provide by general law for an exemption<sup>2</sup> from public record or meeting requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>3</sup>

Pursuant to the Open Government Sunset Review Act (OGSR Act),<sup>4</sup> a new public record or meeting exemption or substantial amendment of an existing exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.<sup>5</sup>

#### Public Records

The Florida Statutes also address the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>6</sup> Furthermore, the OGSR Act provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the Legislature finds that purpose to be "sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>7</sup> An identifiable public purpose is served if the exemption meets 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 an individual may be exempted under this provision; or
- Protect trade or business secrets.<sup>8</sup>

#### Public Meetings

The Florida Statutes also address public policy regarding access to government meetings, further requiring all meetings of any board or commission of any state agency or authority, or of any agency or authority of any county, municipality, or political subdivision, at which official acts are to be taken be open to the public at all times, unless the meeting is exempt.<sup>9</sup> The board or commission must provide

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<sup>1</sup> Art. I, s. 24(a) and (b), FLA. CONST.

<sup>2</sup> An "exemption" means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, or s. 24, Art. I of the State Constitution. See s. 119.011(8), F.S.

<sup>3</sup> Art. I, s. 24(c), FLA. CONST.

<sup>4</sup> S. 119.15, F.S.

<sup>5</sup> S. 119.15(3), F.S.

<sup>6</sup> See s. 119.01, F.S.

<sup>7</sup> S. 119.15(6)(b), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> S. 286.011(1), F.S.

reasonable notice of all public meetings.<sup>10</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.<sup>11</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>12</sup> Failure to abide by public meeting requirements will invalidate any resolution, rule, or formal action adopted at a meeting.<sup>13</sup> A public officer or member of a governmental entity who violates public meeting requirements is subject to civil and criminal penalties.<sup>14</sup>

## **Social Work Licensure Interstate Compact**

CS/HB 99 authorizes Florida to enter into the Social Work Licensure Interstate Compact (Social Work Compact or compact) by enacting its provisions into Florida law. The Social Work Compact was created to facilitate multistate practice of licensed social work both in-person and through telehealth. The compact is governed by the Social Work Licensure Interstate Compact Commission (Commission), which is responsible for creating and enforcing the rules and regulations that administer and govern the compact.

Under the compact, a multistate license to practice as a regulated social worker is issued by the licensing authority in the applicant's home state and authorizes the social worker to practice in all compact member states. Compact states are required to accept multistate licenses from other compact member states as authorization to practice in each member state. A social worker practicing under the compact practice privileges must comply with the practice laws of the state in which he or she is practicing or where the patient is located.

Under the compact, member states are required to report a social worker's identifying information, licensure data, any adverse actions taken against a social worker's license,<sup>15</sup> nonconfidential information related to the social worker's participation in alternative programs, licensure application denials and the reason for such denials, current significant investigative information, and any other information that may facilitate the administration of the compact or the protection of the public, as determined by Commission rules. A member state may designate information submitted to the data system that may not be shared with the public without the express permission of that member state.<sup>16</sup>

### Coordinated Licensure Data System

The compact requires all compact states to share licensee information.<sup>17</sup> To expedite this data-sharing, compact member states must submit a uniform dataset to a coordinated data system on all social workers to whom the compact is applicable. Under the compact, Florida will be sharing information which is not currently exempt from disclosure requirements under s. 119.07(1), F.S. and s. 24(a), Art. 1 of the Florida Constitution, including:<sup>18</sup>

- Identifying information;
- Licensure data;
- Significant investigatory information;
- Adverse actions against a counselor's license;
- Nonconfidential information related to participation in alternative programs;
- Any licensure application denials and reasons for such denial; and

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<sup>10</sup> *Id.*

<sup>11</sup> S. 286.011(6), F.S.

<sup>12</sup> S. 286.011(2), F.S.

<sup>13</sup> S. 286.011(1), F.S.

<sup>14</sup> S. 286.011(3), F.S. Penalties include a fine of up to \$500 or a second degree misdemeanor.

<sup>15</sup> Adverse action is any disciplinary action that is a matter of public record which is taken by a state's counselor regulatory authority against a counselor's license to practice in that state.

<sup>16</sup> Social Work Licensure Compact Model Legislation, at <https://swcompact.org/wp-content/uploads/sites/30/2023/11/Social-Work-Licensure-Compact-Final-PDF.pdf> (last visited January 4, 2024).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

- Other information, determined by Commission rule, which may facilitate the administration of the compact.

Under the compact, data system information that is expunged according to federal law or the laws of the reporting compact state are removed from the data system.<sup>19</sup>

### Commission Meetings

Under the compact, Commission meetings must be open to the public and public notice must be given. However, for the discussion of certain specified topics, the compact does require that the Commission be allowed to conduct closed meetings in certain circumstances. To conduct closed meetings in Florida, a specific exemption from the public meeting requirements under s. 24, Art. I of the State Constitution and s. 286.011, F.S. is needed. Current law does not provide a public meeting exemption for Commission meetings.

### Effect of the Bill

CS/HB 101 allows the Commission or the executive committee or other committee of the Commission to convene in a closed meeting if the meeting is held to receive legal advice or if the Commission must discuss certain items including:

- Noncompliance of a compact member state with its obligations under the compact;
- The employment, compensation, discipline, or other matter, practices or procedures related to specific employees;
- Current or threatened discipline of a licensee by the Commission or by a member state's licensing authority;
- 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 related to any investigative reports prepared by, or on behalf of, or for use of the Commission or other committee charged with the responsibility of investigation or determination of compliance issues pursuant to the compact;
- Matters specifically exempted from disclosure by federal or member state law; or
- Other matters as adopted by the commission by rule.

Additionally, under CS/HB 101 recordings, minutes, and records generated during any portion of an exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

The bill exempts a social worker's personal identifying information, other than the social worker's name, licensure information, or licensure number, obtained from the data system and held by DOH or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling<sup>20</sup> from public records requirements, unless the laws of the state that originally reported the information authorize its disclosure. Disclosure under such circumstance is limited to the extent permitted under the laws of the reporting state.

<sup>19</sup> *Id.*

<sup>20</sup> There is a difference between records the Legislature designates *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. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 Op. Att'y Gen. Fla. 04-09 (2004).

The bill also creates a public meeting exemption for Commission meetings at which the Commission discusses matters specifically exempt from disclosure by state or federal law. Recordings, minutes, and records generated during an exempt portion of a Commission meeting, or portion of a meeting, are also exempt from public disclosure.

Additionally, the bill provides public necessity statements for the public meeting and public record exemptions, as required by the State Constitution. The public necessity statement for the public meeting exemption provides that, without the exemption, the state will be prohibited from becoming a party to the compact and would be unable to effectively and efficiently administer the compact. The public necessity statement for the public record exemption provides that, without the exemption for the recordings, minutes, and records generated during an exempt meeting, the release of such information would negate the public meeting exemption.

The bill provides that the public records and public meeting exemptions are subject to the OGSR Act and will stand repealed on October 2, 2029, unless saved from repeal by reenactment by the Legislature.

The effective date of the bill is the same date that CS/HB 99 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 section 491.023, F.S., relating to Social Work Licensure Interstate Compact Commission; public meetings and public records exemptions.
- Section 2:** Provides public necessity statements as required by the State Constitution.
- Section 3:** Provides that the bill is effective on the same date as HB 99 (2024) or similar legislation takes effect.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

1. Revenues:

None.

2. Expenditures:

DOH will experience a non-recurring increase in workload associated with updating the License Verification Search Site and data exchange services due to differences in exempt information for current licensees and those practicing under the compact. These costs cannot be absorbed by current budget authority, and the Department will need additional contractual services for set-up costs. Total estimated increase in workload and costs are \$116,340 in contracted services.<sup>21</sup>

Updates to fully integrate the bill are estimated to take six months. This reflects a minimum of 927 initial non-recurring contracted hours at a rate of \$120/hr for a total cost of \$111,240 (\$120/hr x 927) and annual recurring system maintenance costs of \$5,100, for a total estimated cost of \$116, 340.

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

1. Revenues:

None.

2. Expenditures:

None.

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<sup>21</sup> DOH, *Agency Bill Analysis*, HB 101 (2023) pgs. 4-5.

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

2. Other:

Vote Requirement

Article I, s. 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, s. 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 public necessity statement for the public meeting exemption provides that, without the exemption, the state will be prohibited from becoming a party to the compact and would be unable to effectively and efficiently administer the compact. The public necessity statement for the public record exemption provides that, without the exemption for the recordings, minutes, and records generated during an exempt meeting, the release of such information would negate the public meeting exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution provides that an exemption must be created by general law and the law must contain only exemptions from public record or public meeting requirements. The exemption does not appear to be in conflict with the constitutional requirement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rule-making or rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The statutory change in the bill does not state that it is exempting certain public meetings from s. 286.011 and s. 24(b), Art. I of the State Constitution. The bill also places a public record exemption in an uncodified section of law, this can be problematic as agencies are required to cite a statute — s. 119.07(1)(e), F.S. — when claiming a public record exemption.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 13, 2023, the Healthcare Regulation Subcommittee adopted an amendment and reported the bill favorable. The amendment exempts from public record certain personal identifying information of a social worker and certain closed meeting and closed records requirements of the compact.

On February 8, 2024, the Health and Human Services Committee adopted an amendment and reported the bill favorable. The amendment:

- Specifically exempts meetings or portions of meetings from the public meetings requirements for the Social Work Licensure Compact Commission, the Commission's executive committee, or other Commission committees wherein the Commission or its committees meet to receive legal advice or discuss certain issues specified in the compact; and
- Places the public records exemption for the social worker's identifying information into the codified section of law within the bill.

This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.