

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 7041      PCB SHI 24-01      Pub. Rec. and Meetings/Interstate Compacts  
**SPONSOR(S):** Health & Human Services Committee and Select Committee on Health Innovation, Andrade and others  
**TIED BILLS:** CS/CS/HB 1549      **IDEN./SIM. BILLS:** SB 322

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**FINAL HOUSE FLOOR ACTION:** 118 Y's      0 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 7041 passed the House on February 22, 2024, as SB 322.

CS/SB 7016, to which this bill is linked, adopts the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact and the Physical Therapy Licensure Compact.

Each of the compacts require compact member states to share certain licensure and personal identifying information concerning applicable practitioners and to protect certain information from public disclosure. The compacts further require that certain meetings or portions of compact commission meetings be closed to the public.

Florida law guarantees a right to inspect and copy any state county or municipal record, and access to government meetings, unless a statutory exemption exists. Current law does not provide a public records or public meetings exemption for any of these compacts. Thus, confidential information submitted to the coordinated databases and held by the Department of Health (DOH) or the applicable board would not be protected from public disclosure as required by each of the compacts. Likewise, the compact commissions could not close meetings or portions of meetings. Failure to protect confidential information or to close certain meetings or portions of meetings to the public may result in a compact suspending or terminating Florida's membership.

SB 322 creates public record and public meeting exemptions for each compact. The bill creates a public record exemption for certain licensure and personal identifying information, other than the name, licensure information, or licensure number, for providers authorized to practice under the compacts, obtained from the coordinated data system under each compact and held by DOH or the applicable board, unless the state that originally reported the information to the coordinated data system authorizes disclosure by law.

The bill creates a public meeting exemption to allow compact commissions to convene in a closed meeting if the meeting or a portion of the meeting is held to discuss items that are exempt from disclosure by federal or state law or to discuss matters specified in the compact as topics of discussion that must be closed to the public. The bill also exempts any recordings, minutes, and records generated from such meetings, or portions of such meeting, from public record requirements.

The bill provides that the public record 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 through reenactment by the Legislature.

This bill has an insignificant, negative fiscal impact on DOH and its boards, and no fiscal impact on local governments.

The bill was approved by the Governor on March 21, 2024, ch. 2024-13, L.O.F., and became effective on that date. The bill provides the same effective date as CS/SB 7016, which is July 1, 2024.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF 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.<sup>1</sup> All meetings of any collegial public body of the executive branch of state government or 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>2</sup> The Legislature, however, may provide by general law an exemption<sup>3</sup> from public record or meeting requirements provided that the exemption passes by a 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>4</sup>

Pursuant to the Open Government Sunset Review Act,<sup>5</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>6</sup>

#### Public Records

Current law addresses 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>7</sup> Furthermore, the Open Government Sunset Review 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 the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>8</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 the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.<sup>9</sup>

#### Public Meetings

Current law also addresses 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 to be open to the

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

<sup>2</sup> Art. I, s. 24(b), FLA. CONST.

<sup>3</sup> A public record 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, F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

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

<sup>5</sup> Section 119.15, F.S.

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

<sup>7</sup> See s. 119.01, F.S.

<sup>8</sup> Section 119.15(6)(b), F.S.

<sup>9</sup> *Id.*

public at all times, unless the meeting is exempt.<sup>10</sup> The board or commission must provide reasonable notice of all public meetings.<sup>11</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>12</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>13</sup> Failure to abide by public meeting requirements will invalidate any resolution, rule, or formal action adopted at a meeting.<sup>14</sup> A public officer or member of a governmental entity who violates public meeting requirements is subject to civil and criminal penalties.<sup>15</sup>

## **Health Care Licensure Compacts**

CS/SB 7016, to which this bill is linked, adopts the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact, and the Physical Therapy Licensure Compact. The compacts were created to facilitate multistate practice of licensed physicians, speech-language pathologists, audiologists, physical therapists and physical therapist assistants.

Under their respective compact, an eligible licensed physician, speech-language pathologist, audiologist, physical therapist or a physical therapist assistant is authorized to practice within the scope of his or her license in all compact member states. Each health care provider practicing under this compact privilege must comply with the practice laws of the state in which he or she is providing service or where the patient is located.

### Compact Records

Each compact requires member states, notwithstanding any other provision of the member state's law to the contrary, to share certain information of individuals practicing under the respective compact in a coordinated database, including health care provider identifying information, licensure data, and any adverse actions taken against a health care provider's license or compact privilege. Member states may designate information submitted to the database that may not be shared with the public without the express permission of that member state. For example, Florida law requires complaints filed against health care providers to remain confidential if the complaint is dismissed prior to a finding of probable cause by Department of Health.<sup>16</sup> Florida would designate that information as confidential when providing other states access to it via the compact database, and would expect other member states to maintain that confidentiality pursuant to the compact terms.

Section 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution guarantees every person a right to inspect and copy any state, county, or municipal record, including any information held by DOH or applicable board in a compact's coordinated database, unless a public records exemption applies. Current law does not provide a public records exemption for information held in a coordinated database related to the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact, or the Physical Therapy Licensure Compact. Thus, confidential information submitted to the coordinated databases and held by DOH or the applicable board would not be protected from public disclosure as required by each of the compacts. Failure to protect confidential information may result in a compact suspending or terminating Florida's membership in their respective compacts.

### Commission Meetings

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<sup>10</sup> Section 286.011(1), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 286.011(6), F.S.

<sup>13</sup> Section 286.011(2), F.S.

<sup>14</sup> Section 286.011(1), F.S.

<sup>15</sup> Section 286.011(3), F.S.

<sup>16</sup> Section 456.073(2), F.S.

The Medical Compact, ASLP Compact, and the PT Compact each require their respective compact commission, the executive committee or board, or other committees of the commission, to conduct meetings. The commission is comprised of delegates from each of the member states who act as public representatives of their respective states. The compacts require that meetings are open to the public, and that public notice is given. However, for the discussion of certain topics, each compact requires its respective commission to conduct a closed meeting.

Florida law requires all meetings of any board or commission of any state agency or authority at which official acts are to be taken, irrespective of whether the meeting takes place in Florida or not, to be open to the public at all times.<sup>17</sup> To close such a meeting, a specific exemption from public meeting requirements under s. 24(b), Art. I of the Florida Constitution and s. 286.011, F.S., is required. Current law does not provide a public meeting exemption for commission meetings of the Medical Compact, ASLP Compact, or the PT Compact.

#### *Interstate Medical Licensure Compact Commission Meetings*

The Medical Compact authorizes the compact commission to close meetings or portions of meetings to the public if, based on a two-thirds vote by the members present at the meeting, it is determined that the meeting will discuss the following topics.

- Personnel matters;
- Matters specifically exempted from disclosure by federal law;
- Trade secrets or commercial or financial information that is privileged or confidential;
- Information that involves accusing a person of a crime or formally censuring a person;
- Discussion of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- Investigative records compiled for law enforcement purposes; or
- Information that specifically relates to the participation in a civil action or other legal proceeding.<sup>18</sup>

The commission is required to keep detailed minutes of all actions taken by the commission and on all matters discussed during the meeting.

#### *Audiology and Speech-Language Pathology Compact Commission Meetings*

The ASLP Compact authorizes the compact commission, the executive committee, or other committees of the commission to conduct closed meetings to discuss:

- A member state's noncompliance;
- Matters related to the commission's internal personnel practices and procedures;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations;
- Accusation of any person of a crime or a formal censure of a person;
- Information disclosing trade secrets or commercial or financial information that is privileged or confidential;
- Personal information, which if disclosed would constitute a clearly unwarranted invasion of personal privacy;
- Investigatory records compiled for law enforcement purposes;
- Information related to investigatory reports for use by the commission regarding compliance issues pursuant to the compact; or

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<sup>17</sup> Section 286.011, F.S.

<sup>18</sup> IMLC, *Compact Law and Model Legislation*, pp. 12-13, available at <https://www.imlcc.org/wp-content/uploads/2021/02/IMLC-Compact-Law.pdf> (last visited March 15, 2024).

- Matters specifically exempted from disclosure by federal or state statute.<sup>19</sup>

### *Physical Therapy Licensure Compact Commission Meetings*

The PT Compact authorizes the commission, the executive board, or any other committee of the commission to close a meeting or a portion of a meeting to the public if the meeting is being held to discuss:

- A member state's noncompliance;
- Matters related to the commission's internal personnel practices and procedures;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations;
- Accusation of any person of a crime or a formal censure of a person;
- Information disclosing trade secrets or commercial or financial information that is privileged or confidential;
- Personal information, which if disclosed would constitute a clearly unwarranted invasion of personal privacy;
- Investigatory records compiled for law enforcement purposes;
- Information related to investigatory reports for use by the commission regarding compliance issues pursuant to the compact; or
- Matters specifically exempted from disclosure by federal or state statute.<sup>20</sup>

If a meeting or portion of a meeting is closed, the PT Compact commission's legal counsel must certify that the meeting may be closed and reference each relevant exempting provision.<sup>21</sup> The commission must keep detailed minutes about all matters discussed, actions taken, participants, views expressed, and documents considered. Under the compact, these minutes and documents must remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.<sup>22</sup>

## **Effect of the Bill**

### Commission Records

The bill makes personal identifying information, other than the name, licensure status, or licensure number, of a physician, speech-language pathologist, audiologist, physical therapist or physical therapist assistant authorized to practice under their respective compact, obtained from the coordinated data system and held by DOH or the applicable board exempt from public record requirements, unless the law of the state that originally reported the information to the data system authorize disclosure. Disclosure under such circumstance is limited to the extent permitted under the laws of the reporting state.

The bill provides statements of public necessity for the public record exemptions, as required by the Florida Constitution, and states that the protection of such information is required under the Medical Compact, ASLP Compact, and the PT Compact, which the state must adopt in order to become a party state to each compact. Without the public record exemptions, the state could not comply with the confidentiality requirements of each of the compacts and could be prohibited from becoming a member or remaining an active member of the respective compacts.

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<sup>19</sup> ASLP Compact, *Audiology and Speech-Language Pathology Interstate Compact (ASLP-IC)*, p. 14, available at [https://aslpcompact.com/wp-content/uploads/2021/01/Final\\_ASLP-IC\\_Legislation\\_Correct\\_1.6.21.pdf](https://aslpcompact.com/wp-content/uploads/2021/01/Final_ASLP-IC_Legislation_Correct_1.6.21.pdf), (last visited March 15, 2024).

<sup>20</sup> PT Compact, *Physical Therapy Compact Model Language*, pp. 14-15, available at [https://ptcompact.org/Portals/0/Images/PT\\_Compact\\_Language\\_Final%20with%20Cover%20Page1\\_11\\_2021.pdf](https://ptcompact.org/Portals/0/Images/PT_Compact_Language_Final%20with%20Cover%20Page1_11_2021.pdf), (last visited March 15, 2024).

<sup>21</sup> *Id.*, at 15.

<sup>22</sup> *Id.*

## Commission Meetings

The bill creates a public meeting exemption for commission meetings of each compact, or portions of such meetings, where matters exempt from public disclosure by federal or state law are discussed and where matters specified in each respective compact as exempt from public disclosure are discussed. Recordings, minutes, and records generated during an exempt portion of a commission meeting are also exempt from public disclosure.

Additionally, the bill provides a statement of public necessity for the public meeting exemption, as required by the Florida Constitution, and states that any meeting or portion of a meeting in which matters specifically exempt from disclosure by federal or state law are discussed and any meeting or portion of a meeting held to discuss matters that are specified in the compact as topics of discussion that should be closed to the public are exempt from public disclosure. Without the public meeting exemption, the state will be prohibited from becoming a party to the compacts and would be unable to effectively and efficiently administer the compacts. The bill further provides that it is a public necessity for the recordings, minutes, and records generated during an exempt meeting or portion of a meeting be made exempt, as the release of such information would negate the public meeting exemption.

Without the public meeting exemptions, the state could not comply with the confidentiality requirements of each of the compacts and could be prohibited from becoming a member or remaining an active member of the respective compacts.

## Open Government Sunset Review

The bill provides that the public record 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 through reenactment by the Legislature.

The effective date of the bill is the same date that CS/SB 7016 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law, which is July 1, 2024.

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

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

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have an insignificant, negative fiscal impact on DOH and applicable boards because staff responsible for complying with public record requests may require training related to the implementation of the new public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of agencies.

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

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.