

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 35 Pub. Rec. and Meetings/Psychology Interjurisdictional Compact

SPONSOR(S): Hunschofsky

TIED BILLS: HB 33 **IDEN./SIM. BILLS:** SB 58

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee		Curry	McElroy
2) Ethics, Elections & Open Government Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 33 authorizes Florida to enter into the Psychology Interjurisdictional Compact (PSYPACT or compact) enacting its provisions into the laws of the state. PSYPACT is an interstate compact that facilitates the practice of psychology using telepsychology and in-person, face-to-face psychological practice to patients in other states. The compact requires compact states to submit psychologists' licensure and regulation records, including any actions taken against a psychologist's ability to practice, to a coordinated licensure information system (CLIS). The compact creates the Psychology Interjurisdictional Compact Commission (Commission) to oversee and administer the provisions of PSYPACT and the CLIS.

This bill, which is linked to the passage of HB 33, creates public records and public meetings exemptions for certain records and meetings relating to PSYPACT.

HB 33 creates a public records exemption for a psychologist's personal identifying information, other than his or her name, licensure status, or licensure number, obtained from the CLIS and held by the Department of Health (DOH) or the Board of Psychology, unless the laws of the state that originally reported the information authorizes its disclosure.

The bill also creates a public meeting exemption for Commission meetings, or portions of such 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 are also exempt from public records requirements.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2028, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill has an insignificant, negative fiscal impact on DOH and no fiscal impact on local governments. See Fiscal Comments.

The bill will become effective on the same date that HB 33 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of art. I, s. 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no broader than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act⁴ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes:⁵

- 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.

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Psychology Interjurisdictional Compact

HB 33 authorizes Florida to enter into the Psychological Interjurisdictional Compact (PSYPACT or compact) by enacting its provisions into Florida law. PSYPACT was created by the Association of State and Provincial Psychology Boards (ASPPB) and is an interstate compact that facilitates the practice of telepsychology and temporary in-person, face-to-face practice of psychology across state boundaries.⁷

Under the compact, a psychologist licensed in a compact state may practice telepsychology if the psychologist is authorized to do so by the Commission and holds an E.Passport Certificate⁸ issued by the ASPPB. A psychologist licensed in a compact state may also conduct temporary, in-person face-to-face practice in other compact states if the psychologist obtains an interjurisdictional practice certificate

¹ Article I, s. 24(c), Fla. Const.

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ Article I, s. 24(c), FLA. CONST.

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ Section 119.15(3), F.S.

⁷ PSYPACT, About Us, <https://psypact.site-ym.com/page/About> (last visited Jan. 23, 2023).

⁸ Under the compact, an E.Passport is a certificate issued by the Association for State and Provincial Psychology Boards that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

for temporary authority to practice another compact state from the Commission. Such temporary practice is limited 30 days a year.⁹

Under the compact, a psychologist who is licensed in a compact state is permitted to practice in any other compact state without obtaining a license from that state. A psychologist 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 PSYPACT, compact states are required to report a psychologist's identifying information; licensure data; significant investigatory information; adverse actions¹⁰ against a psychologist's license; indicators that a psychologist's authority to practice under the compact is revoked; nonconfidential information related to participation in alternative programs; denials of applications and reasons for such denials; and other information, determined by Commission rule, which may facilitate the administration of the compact to a coordinated licensure information system. A compact state may designate information it reports as confidential and therefore, cannot be shared with noncompact states or other entities without the express permission of the reporting state.

Coordinated Licensure Information System

PSYPACT requires all compact states to share licensee information.¹¹ Compact states must submit a uniform dataset to a coordinated licensure information system on all psychologists to whom the compact is applicable. The database allows for expedited sharing of information, and 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:¹²

- Identifying information;
- Licensure data;
- Significant investigatory information;
- Adverse actions against a psychologist's license;
- Indicators that a psychologist's authority to practice under the compact is revoked;
- Nonconfidential information related to participation in alternative programs;
- Any licensure application denials and reasons for such denial; and
- Other information, determined by Commission rule, which may facilitate the administration of the compact.

Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the Compact State reporting the information, shall be removed from the coordinated database.¹³

Effect of the Bill

The bill provides that personal identifying information of a psychologist, other than the psychologist's name, licensure status, or licensure number, obtained from the coordinated database required under PSYPACT and held by the Department of Health or the Board of Psychology is exempt¹⁴ from public

⁹ *Supra*, note 7.

¹⁰ Adverse action is any disciplinary action that is a matter of public record which is taken by a state's psychology regulatory authority against a psychologist's license to practice in that state.

¹¹ Psychology Interjurisdictional Compact (PSYPACT), https://cdn.ymaws.com/psypact.site-ym.com/resource/resmgr/psychology_interjurisdiction.pdf (last visited Jan. 23, 2023).

¹² *Id.*

¹³ *Id.*

¹⁴ 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).

records requirements, unless the laws of the state that originally reported the information authorizes its disclosure. Disclosure under such circumstance is limited to the extent permitted under the laws of the reporting state.

The bill also creates a public meeting exemption for Commission meetings, or portions of such 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 are also exempt from public disclosure.

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, 2028, unless saved from repeal by reenactment by the Legislature.

The bill provides a public necessity statement for the public records exemption, as required by the State Constitution, and states that the protection of such information is required under the compact, which the state must adopt in order to become a party state to the compact. Without the public records exemption, the state would be unable to effectively and efficiently implement and administer the compact.

Additionally, the bill provides a statement of public necessity for the public meeting exemption, as required by the State Constitution, and states that PSYPACT requires any meeting in which matters that are exempt from disclosure by federal or state statute are discussed to be closed to the public. Without the public meeting 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 bill further provides that without the public records exemption for the recordings, minutes, and records generated during an exempt meeting, the release of such information would negate the public meeting exemption.

The effective date of this bill is the same date that HB 33 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof becomes law.

B. SECTION DIRECTORY:

- Section 1:** Creates s. 490.0076, F.S., relating to Psychology Interjurisdictional Compact; public records and meeting exemptions.
- Section 2:** Provides a public necessity statement as required by the State Constitution.
- Section 3:** Provides that the bill is effective on the same date that HB 33 (2023) or similar legislation takes effect.

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:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on the Department of Health and the Board of Psychology because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of agencies.

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 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 exemption; thus, it includes a public necessity statement.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES