

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

**SPONSOR(S):** Hunschofsky and others

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

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**FINAL HOUSE FLOOR ACTION:** 116 Y's 0 N's **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

HB 35 passed the House on April 20, 2023, and subsequently passed the Senate on May 1, 2023.

CS/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.

HB 35, which is linked to the passage of CS/HB 33, creates public record and public meeting exemptions for certain records and meetings relating to PSYPACT.

The bill creates a public record 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 record requirements.

The bill specifies 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.

Subject to the Governor's veto powers, the bill provides the same effective date as CS/HB 33 which is July 1, 2023.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### Public Records

Article I, section 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.<sup>1</sup> The Legislature, however, may provide by general law for exemption from public record 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>2</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>3</sup> Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record exemption may be created 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>5</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 maybe exempted under this provision; or
- Protect trade or business secrets.<sup>6</sup>

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Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2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

#### Psychology Interjurisdictional Compact

CS/HB 33 authorizes Florida to enter into the Psychology 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)<sup>7</sup> and is an interstate compact that facilitates the practice of telepsychology and the temporary in-person practice of psychology across state boundaries.<sup>8</sup> PSYPACT is governed by the PSYPACT Commission (Commission), which is responsible for creating and finalizing the Bylaws and Rules and Regulations, as well as granting psychologists the authority to practice under the compact.<sup>9</sup>

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

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

<sup>3</sup> A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. See s. 119.011(8), F.S.

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

<sup>5</sup> Section 119.15(6)(b), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> ASPPB is the alliance of state, provincial, and territorial agencies responsible for the licensure and certification of psychologists throughout the United States and Canada. ASPPB, <https://www.asppb.net/> (last visited May 9, 2023).

<sup>8</sup> PSYPACT, About Us, <https://psypact.site-ym.com/page/About> (last visited May 9, 2023).

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

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 Certificate<sup>10</sup> issued by the ASPPB. A psychologist licensed in a compact state may also conduct temporary, in-person practice in other compact states if the psychologist obtains an interjurisdictional practice certificate for temporary authority to practice in another compact state from the Commission. Such temporary practice is limited 30 days a year.<sup>11</sup>

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 actions<sup>12</sup> 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. A compact state may designate information it reports as confidential and therefore, cannot be shared with noncompact states, other entities, or the public without the express permission of the reporting state.

#### *Coordinated Licensure Information System*

PSYPACT requires all compact states to share licensee information.<sup>13</sup> Compact states must submit a uniform data set to a coordinated licensure information system (Coordinated Database) on all psychologists to whom the compact is applicable. The Coordinated 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:<sup>14</sup>

- 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.

The Coordinated Database administrator must promptly notify all compact states of any adverse action taken against, or significant investigatory information on, any licensee in a compact state. Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the compact state reporting the information must be removed from the coordinated database.<sup>15</sup>

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<sup>10</sup> Under the compact, an E-Passport is a certificate issued by the Association of 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.

<sup>11</sup> *Supra*, note 14.

<sup>12</sup> 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.

<sup>13</sup> Psychology Interjurisdictional Compact (PSYPACT), [https://cdn.ymaws.com/psypact.site-ym.com/resource/resmgr/psychology\\_interjurisdiction.pdf](https://cdn.ymaws.com/psypact.site-ym.com/resource/resmgr/psychology_interjurisdiction.pdf) (last visited May 9, 2023).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Commission meetings must be open to the public and public notice must be given. However, the Commission may convene in a closed, nonpublic meeting if the Commission must discuss certain items, including:

- Information disclosing trade secrets or commercial or financial information which is privileged or confidential;
- Investigatory records compiled for law enforcement purposes;
- Information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the compact; or
- Matters specifically exempted from disclosure by federal or state statute.

If a meeting, or portion of a meeting, is closed, the Commission's legal counsel or designee must certify that the meeting may be closed and reference each relevant exempting provision. The Commission must keep minutes that fully and clearly describe all matters discussed in a meeting and must provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

### **Effect of the Bill**

The bill makes 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, exempt<sup>16</sup> from public 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.

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<sup>16</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).

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 it is a public necessity for the recordings, minutes, and records generated during an exempt meeting be made exempt, as the release of such information would negate the public meeting exemption.

The effective date of this bill is the same date that CS/HB 33 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, 2023.

## 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.