

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 Fiscal Policy

BILL: CS/CS/SB 58

INTRODUCER: Appropriations Committee on Health and Human Services; Health Policy Committee; and Senator Harrell

SUBJECT: Public Records and Meetings/Psychology Interjurisdictional Compact

DATE: April 24, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|------------|------------------|
| 1. | <u>Stovall</u> | <u>Brown</u> | <u>HP</u> | <u>Fav/CS</u> |
| 2. | <u>Barr</u> | <u>Money</u> | <u>AHS</u> | <u>Fav/CS</u> |
| 3. | <u>Stovall</u> | <u>Yeatman</u> | <u>FP</u> | <u>Favorable</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 58 creates public record and public meeting exemptions for the Psychology Interjurisdictional Compact (PSYPACT).

The bill protects from public disclosure a psychologist's personal identifying information, other than the psychologist's name, licensure status, or license number, obtained from the coordinated licensure information system (coordinated system) and held by the Department of Health (department) or Board of Psychology (board), unless the state that originally reported the information to the coordinated system authorizes the disclosure by law.

The bill exempts a meeting or a portion of a meeting of the PSYPACT Commission (commission) if the commission must discuss:

- A compact 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 in which disclosure 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.
- Matters specifically exempted from disclosure by federal or state statute.

Recordings, minutes, and records generated during an exempt commission meeting are exempted from the public records provisions in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill provides the effective date is the same date that CS/SB 56, or similar legislation, if adopted, takes effect. The effective date provided in CS/SB 56 is July 1, 2023.

II. Present Situation:

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s.11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹³ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Meetings Laws

The State Constitution provides that the public has a right to access governmental meetings.¹⁵ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁶ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁷

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”¹⁸ or the “Sunshine Law,”¹⁹ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²⁰ The board or commission must provide the public reasonable notice of such meetings.²¹ 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 which operates in a manner that unreasonably restricts the public’s access to the facility.²² Minutes of a public meeting must be promptly recorded and open to public inspection.²³ Failure to abide by open meetings requirements will invalidate any resolution, rule

¹¹ See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ FLA. CONST., art. I, s. 24(b).

¹⁶ *Id.*

¹⁷ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁸ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁹ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²⁰ Section 286.011(1)-(2), F.S.

²¹ *Id.*

²² Section 286.011(6), F.S.

²³ Section 286.011(2), F.S.

or formal action adopted at a meeting.²⁴ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁵

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.²⁶ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁷ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁸

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act²⁹ (the Act), prescribe a legislative review process for newly created or substantially amended³⁰ public records or open meetings exemptions, with specified exceptions.³¹ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³²

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³⁴
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁵ or

²⁴ Section 286.011(1), F.S.

²⁵ Section 286.011(3), F.S.

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ *Id.*

²⁸ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

²⁹ Section 119.15, F.S.

³⁰ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³¹ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³² Section 119.15(3), F.S.

³³ Section 119.15(6)(b), F.S.

³⁴ Section 119.15(6)(b)1., F.S.

³⁵ Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁶

The Act also requires specified questions to be considered during the review process. In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

Public Necessity Statement and Two-thirds Vote Requirement

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁷ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.³⁸

Psychology Interjurisdictional Compact

CS/SB 56 establishes Florida as a member state in the Psychology Interjurisdictional Compact (PSYPACT). Pursuant to the compact and with appropriate authorizations, a licensed psychologist may engage in the practice of interjurisdictional telepsychology and obtain a temporary authorization to practice psychology in-person, face-to-face for up to 30 days with clients and patients in member states other than the one in which he or she is licensed. Thirty-six states and territories have enacted the PSYPACT.³⁹

If a psychologist wants to practice through telepsychology, the psychologist must obtain an Authority to Practice Interjurisdictional Telepsychology (APIT) from the commission. It also requires an active Association of State and Provincial Psychology Boards e-passport.⁴⁰ If a psychologist wants to practice in a temporary in-person, face-to-face mode, the psychologist must obtain a Temporary Authorization to Practice (TAP) from the commission and an Interjurisdictional Practice Certificate (IPC).⁴¹

Article IX of the compact requires the commission to develop and maintain a coordinated licensure information system (coordinated database) and a reporting system containing licensure and disciplinary action for all psychologists practicing under the compact.

The compact overrides a compact state's laws to the contrary and requires the submission of a uniform data set on all licensees containing:

- Identifying information;

³⁶ Section 119.15(6)(b)3., F.S.

³⁷ *See generally* s. 119.15, F.S.

³⁸ Section 119.15(7), F.S.

³⁹ PSYPACT Map, available at: <https://psypact.org/mpage/psypactmap> (last visited March 29, 2023). The 36 states include Alabama, Arizona, Arkansas, Colorado, Commonwealth of the Northern Mariana Islands, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Rhode Island has enacted the PSYPACT but it is not yet effective).

⁴⁰ PSYPACT Fees available at: <https://psypact.org/page/fees> (last visited March 29, 2023).

⁴¹ *Id.*

- Licensure data;
- Significant investigatory information;
- Adverse actions against a psychologist's license;
- Any indicator that a psychologist's APIT or TAP is revoked;
- Any denial of application for licensure and the reason for the denial;
- Other information determined by commission rules.

All home state disciplinary orders that take adverse action and adverse action taken by a compact state must be reported to the commission. The coordinated database administrator must promptly notify all compact states of adverse action taken against any licensee in a compact state.

A compact state may designate information that may not be shared with the public without the express permission of the compact state. Any information submitted to the coordinated database which is subsequently required to be expunged by law must be removed from the coordinated database.

Although most of the commission's meetings are required to be open to the public, Article X of the PSYPACT authorizes the commission to convene in a closed, nonpublic meeting to discuss:

- A compact 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 in which disclosure 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.
- 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 must identify each relevant exempting provision. 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.

III. Effect of Proposed Changes:

Section 1 creates s. 490.0076, F.S., to establish a public records and meetings exemption for activities related to the Psychology Interjurisdictional Compact (PSYPACT). The bill exempts a psychologist's personal identifying information, other than the psychologist's name, licensure status, or license number, obtained from the coordinated system and held by the department or board from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, unless the state that originally reported the information to the coordinated system authorizes the disclosure by law.

The bill exempts a meeting or a portion of a meeting of the PSYPACT Commission from s. 286.011, F.S., and s. 24(b), Art. I of the Statue Constitution if the commission must discuss:

- A compact 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 in which disclosure 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.
- Matters specifically exempted from disclosure by federal or state statute.

Recordings, minutes, and records generated during an exempt commission meeting are exempted from the public records provisions in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

Section 2 contains the Legislative findings justifying the necessity for these exemptions. The protection from public disclosure of a psychologists' personal identifying information, other than the name, licensure status, or license number, obtained from the coordinated system is required by the PSYPACT. Without this exemption, Florida would be unable to participate in the compact.

The PSYPACT requires that meetings in which specified sensitive and confidential information is discussed must be closed to the public. Without this exemption from the public meetings law, Florida would be unable to participate in the compact.

In addition, the PSYPACT requires that the mandatory recordings, minutes, and records generated during a closed meeting must not be disclosed publicly unless by majority vote of the commission or upon a court order. Release of this information would negate the public meeting exemption and as a result the bill provides that Legislature finds that the public records exemption is a public necessity.

Section 3 provides that the bill's effective date is the same date that CS/SB 56 or similar legislation takes effect, if adopted and becomes a law. CS/SB 56 provides an effective date of July 1, 2023.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, section 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 or open meetings requirements. This bill creates public records exemptions and a public meeting exemption; therefore, it requires a two-thirds vote.

Public Necessity Statement

Article I, section 24(a) of the State Constitution and Article I, section 24(b) of the State Constitution requires a bill creating or expanding an exemption to the public records or open meetings requirements to state with specificity the public necessity justifying the exemption. Section 2 includes a public necessity statement for the exemptions.

The public necessity statement for the public records exemption of certain personal identifying information and the exemption from the public meetings provisions when the commission discusses specified matters provides that the protection and closing are necessary otherwise the state will be unable to effectively and efficiently implement and administer the Psychology Interjurisdictional Compact and unable to become a member state of the compact. By enactment of the enabling legislation, and in particular the purpose of the compact as set forth in Article I, the Legislature has determined that becoming a member state of the compact is important to increase public access to professional psychological services.

Breadth of Exemption

Article I, section 24(c), of the State Constitution requires exemptions to the public records and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the bill is to protect personal identifying information of psychologists practicing under the compact, other than the psychologist's name, licensure status, or licensure number; commission meetings in which specifically identified confidential and sensitive information is discussed; and the recordings, minutes, and records generated during an exempt commission meeting. These protections are required of a member state through the compact and they do not appear to be broader than necessary to accomplish its purpose.

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:

One of the stated purposes in the legislation to establish the Psychology Interjurisdictional Compact in Florida is to increase public access to professional psychological services. This might be an appropriate justification to add to the public necessity statement.

VIII. Statutes Affected:

This bill creates section 490.0076 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Health and Human Services on April 12, 2023:

The committee substitute removes the reference to a Psychology Interjurisdictional Compact Commission meeting being closed to the public by a majority vote of commission members. This provision is not in the compact.

CS by Health Policy on April 4, 2023:

The CS incorporates a technical amendment to provide that the bill's effective date is the same date that CS/SB 56, or similar legislation, takes effect, if adopted in the same legislative session or an extension thereof and becomes a law.

B. Amendments:

None.