

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1061 Nurse Licensure Compact

**SPONSOR(S):** Pigman

**TIED BILLS:** HB 1063 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Affordable Healthcare Access	12 Y, 0 N	Siples	Calamas
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The Nurse Licensure Compact (NLC or compact) is a multi-state agreement that establishes a mutual recognition system for the licensure of registered nurses and licensed practical or vocational nurses. In 2015, the National Council of State Boards of Nursing adopted revised model legislation for the NLC and required any state entering the NLC to adopt the revised model legislation. The bill authorizes Florida to enter into the revised NLC.

Under the NLC, a nurse who is issued a multistate license from a state that is a party to the compact is permitted to practice in any other state that is also a party to the compact. However, the nurse must comply with the practice laws of the state in which he or she is practicing or where the patient is located. A party state may continue to issue a single-state license, authorizing practice only in that state.

Pursuant to the bill, a nurse who applies for or renews a multistate license in Florida must meet the minimum requirements of the NLC and any other requirements set by the Florida Board of Nursing (board) within the Department of Health (DOH). The NLC does not change the current licensure requirements under ch. 464, F.S., the Nurse Practice Act.

Under the NLC, a state may take adverse action against the multistate licensure privilege of any nurse practicing in that state. The home state has the exclusive authority to take adverse action against the home state license, including revocation and suspension. The NLC requires all states to report to a coordinated licensure information system (CLIS), all adverse actions taken against a nurse's license or multistate licensure practice privilege, any current significant investigative information, and denials of applications. All party states may access the CLIS to see licensure and disciplinary information for all nurses licensed in the party states. A state may designate the information it contributes to the CLIS as confidential, prohibiting disclosure to nonparty states.

The NLC establishes the Interstate Commission of Nurse Licensure Compact Administrators (commission) to oversee the operation of the NLC. Each party state's compact administrator (the head of the state's licensing board or designee) must participate as a member of the commission. The NLC grants the commission authority to promulgate uniform rules to, among other things, facilitate and coordinate the implementation and administration of the NLC. The commission may also take any necessary action to secure the compliance of a party state that fails to meet the obligations of the NLC, including termination of membership after exhausting all means of securing compliance.

The NLC provides for the qualified immunity, defense, and indemnification of the administrators, officers, executive director, representatives, and employees of the commission in civil actions that arise under certain circumstances. The NLC does not abrogate or waive the sovereign immunity of its party states.

The bill also requires the DOH to conspicuously designate each nurse license as a multistate license or a single-state license. The bill requires the Florida Center for Nursing to analyze the impact of the state's participation in the NLC and authorizes the center to request certain information held by the board to determine such impact.

The bill will have an indeterminate, negative fiscal impact on the DOH.

The bill takes effect on December 31, 2018, or upon enactment of the revised NLC into law by 26 other states, whichever occurs first.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Health Care Professional Shortage

There is currently a health care provider shortage in the U.S.<sup>1</sup> This shortage is predicted to continue into the foreseeable future and will likely worsen with the aging and growth of the U.S. population<sup>2</sup> and the passage of the Patient Protection and Affordable Care Act.<sup>3</sup> Aging populations create a disproportionately higher health care demand.<sup>4</sup> Additionally, as more individuals qualify for health care benefits, there will necessarily be a greater demand for more health care professionals to provide these services.

According to a 2010 report prepared by the Florida Center for Nursing, Florida was projected to experience a shortage of more than 62,800 nurses by 2025.<sup>5</sup> In an effort to increase the number of students enrolled in nursing programs and address the projected shortage, the Legislature streamlined the process used by the board to approve and monitor nursing education programs.<sup>6</sup> As a result, the number of nursing education programs in this state has increase by 114%.<sup>7</sup> Due to the new capacity, overall student enrollment grew and the number of students graduating increased from 2012-2013-2013-2014.<sup>8</sup>

With an increasing number of new graduates who will enter the workforce, the long term shortage of nurses appears to be decreasing. It is projected that Florida will have a small surplus of RNs and LPNs in 2025.<sup>9</sup> The South, in general, is projected to continue to have a shortage of nurses. However, this may not be an accurate reflection of the need for nurses because the rapidly changing healthcare delivery system is redefining the role of the nursing workforce.<sup>10</sup>

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<sup>1</sup> For example, as of November 14, 2013, the U.S. Department of Health and Human Services has designated 6,100 Primary Care Health Professional Shortage Area (HPSA) (requiring 8,200 additional primary care physicians to eliminate the shortage), 4,900 Dental HPSAs (requiring 7,300 additional dentists to eliminate the shortage), and 4,000 Mental Health HPSAs (requiring 2,800 additional psychiatrists to eliminate the shortage). U.S. Department of Health and Human Services, Health Resources and Services Administration, available at <http://www.hrsa.gov/shortage/> (last visited January 4, 2016).

<sup>2</sup> According to the U.S. Census Bureau, the U.S population is expected to increase by almost 100 million between 2014 and 2060, and by 2030, one in five Americans is projected to be 65 and over. Sandra L. Colby & Jennifer M. Ortman, U.S. Census Bureau, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060* (March 2015), available at <http://webcache.googleusercontent.com/search?q=cache:N9N3mfOmlzYJ:https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf+&cd=1&hl=en&ct=clnk&gl=us> (last visited January 4, 2016).

<sup>3</sup> *Department of Health and Human Services Strategic Plan: Goal 1: Strengthen Health Care*, U.S. Department of Health and Human Services, available at <http://www.hhs.gov/secretary/about/goal5.html> (last visited on January 4, 2016).

<sup>4</sup> One analysis measured current primary care utilization (office visits) and projected the impact of population increases, aging, and insured status changes. The study found that the total number of office visits to primary care physicians will increase from 462 million in 2008 to 565 million in 2025, and (because of aging) the average number of visits will increase from 1.60 to 1.66. The study concluded that the U.S. will require 51,880 additional primary care physicians by 2025. Petterson, Stephen M., et al., "Projecting U.S. Primary Care Physician Workforce Needs: 2010-2025", *Annals of Family Medicine*, vol. 10, No. 6 (November/December 2012), available at <http://www.annfammed.org/content/10/6/503.full.pdf+html> (last visited on January 4, 2016).

<sup>5</sup> Florida Center for Nursing, *RN and LPN Supply and Demand Forecasts, 2010-2025: Florida's Projected Nursing Shortage in View of the Recession and Healthcare Reform* (Oct. 2010), available at <https://www.flcenterfornursing.org/ForecastsStrategies/FCNForecasts.aspx> (last visited January 4, 2016).

<sup>6</sup> Chapter 2009-168, Laws of Fla. Additional statutory amendments were made pursuant to chs. 2010-37 and 2014-92, Laws of Fla.

<sup>7</sup> OPPAGA, *Florida's Nursing Education Programs Continue to Expand in 2014*, Report No. 15-04 (Jan. 2015, rev. Aug. 2015), available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=15-04> (last visited January 4, 2016).

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

<sup>9</sup> U.S. Dep't of Health and Human Services, Health Resources and Services Administration, Bureau of Health Workforce, National Center for Health Workforce Analysis, *The Future of the Nursing Workforce: National- and State-Level Projections, 2012-2025*, (December 2014), available at <http://bhpr.hrsa.gov/healthworkforce/supplydemand/nursing/workforceprojections/> (last visited January 4, 2016).

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

Currently, Florida healthcare providers rely on temporary nurses when sufficient nursing staff is not available to meet the demand or there is a temporary need for specialty nursing.<sup>11</sup> Due to its popularity as a tourist destination, Florida experiences a cyclical need for additional nursing resources in winter months. For example, a temporary nursing agency has indicated that in November the request for temporary nurses increases by more than 200 percent for nurses to work the winter months.<sup>12</sup>

### Nurse Licensure in Florida

The Nurse Practice Act, chapter 464, F.S., governs the licensure and regulation of nurses in Florida. The Department of Health (DOH) is the licensing agency and the Board of Nursing (BON or board) is the regulatory authority. The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate.<sup>13</sup>

Applicants may apply to the DOH to be licensed as a registered nurse (RN) or a licensed practical nurse (LPN). An RN is licensed to practice “professional nursing,” and an LPN is licensed to practice “practical nursing.”<sup>14</sup> Florida provides two paths to licensure – licensure by examination and licensure by endorsement. There are currently 253,338 RNs and 73,942 LPNs actively licensed to practice in the state.<sup>15</sup>

To be licensed by examination, an individual must:

- Submit an application with the appropriate fee;
- Satisfactorily complete a criminal background screening;
- Demonstrate English competency;
- Successfully complete an approved nursing educational program; and
- Pass a licensure exam.<sup>16</sup>

Licensure by endorsement is the process by which a nurse validly licensed in another state may be licensed in Florida without having to sit for an examination. To be licensed by endorsement, a nurse must:

- Submit an application with the appropriate application fee;
- Hold a valid license in another state or territory of the U.S., provided that the licensure of such state or territory has licensure requirements that are substantially equivalent to or more stringent than those in Florida;
- Meet the qualifications for licensure by examination;
- Successfully pass a licensure exam that is substantially equivalent to or more stringent than the exam required by Florida;
- Have practiced in another state or territory of the U.S., for two of the proceeding three years without having any action taken against his or her license; and

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<sup>11</sup> Presentation by Lori Scheidt, Vice-Chair, Nurse Licensure Compact Administrators, before the House of Representative Select Committee on Affordable Healthcare Access in Tallahassee, Florida (Dec. 1, 2015), *available at* <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&Committeed=2883&Session=2016&DocumentType=Meeting%20Packets&FileName=scaha%2012-1-15.pdf> (last visited January 4, 2016).

<sup>12</sup> Telephone call with Dwight Cooper, Co-Founder and Chief Executive Officer of PPR Healthcare Staffing on December 21, 2015. Mr. Cooper indicated that in November 2015, his company received approximately 1700 requests for immediate placement of temporary nurses to work the winter months; however, during non-winter months, placement requests average between 300 and 400. Mr. Cooper cautions that healthcare facilities generally request temporary nurses once they have reached critical status and have redeployed local nursing staff as efficiently as possible, due to the expense associated with the use of temporary nurses.

<sup>13</sup> Section 464.004(1), F.S.

<sup>14</sup> Section 464.003(20), F.S., defines the “practice of professional nursing” as the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principals of psychological, biological, physical, and social sciences. Section 464.003(19), F.S., defines the “practice of practical nursing” as the performance of selected acts, including the administration of treatments and medications, under the direction of a registered nurse, licensed physician, or a licensed dentist, and is responsible and accountable for making decision that are based upon the individual’s educational preparation and experience in nursing.

<sup>15</sup> E-mail with staff of the DOH (on file with the Health Quality Subcommittee).

<sup>16</sup> Section 464.008, F.S. For its licensure examination, the DOH uses the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing.

- Satisfactorily complete a criminal background screening.<sup>17</sup>

Licenses are renewed biennially.<sup>18</sup> Each renewal period, an RN or LPN must document completion of one contact hour of continuing education for each calendar month of the licensure cycle.<sup>19</sup> As a part of the total continuing education hours required, all licensees must complete a two-hour course on the prevention of medical errors and a two-hour course in Florida laws and rules.<sup>20</sup> Effective August 1, 2017, all licensees must also complete a two-hour course in recognizing impairment in the workplace.<sup>21</sup>

### Interstate Compacts

An interstate compact is an agreement between two or more states to address common problems or issues, create an independent, multistate governmental authority, or establish uniform guidelines, standards or procedures for the compact's member states.<sup>22</sup> Article 1, Section 10, Clause 3 (Compact Clause) of the U.S. Constitution authorizes states to enter into agreements with each other, without the consent of Congress. However, the case law has provided that not all interstate agreements are subject to congressional approval, but only those that may encroach on the federal government's power.<sup>23</sup> Florida is a party to 25 interstate compacts, including the Driver's License Compact, Compact on Adoption and Medical Assistance, and the Interstate Compact on Educational Opportunity for Military Children.<sup>24</sup>

### Nurse Licensure Compact

In 2000, the National Council of State Boards of Nursing (NCSBN) established model legislation for the Nurse Licensure Compact (NLC), which allows a nurse to have one license, issued by the primary state of licensure, with the privilege to practice in other compact states. The NLC applies to registered nurses (RNs) and licensed practical or vocational nurses (LPN/LVN).<sup>25</sup> In 2015, the NCSBN revised the model legislation for the NLC to address concerns related to uniform licensure requirements, governance, and rule-making.<sup>26</sup>

The NLC was modeled after the Driver's License Compact, which permits a person holding a license in one state to drive in other states without applying for a driver's license in each state through which he or she may drive.<sup>27</sup> The NLC uses the same system of mutual recognition, which allows a nurse holding a multistate license to practice in any other party state.

Since its initial inception, the original NLC has been adopted by 25 states. According to the NCSBN, an additional five states has NLC legislation pending.<sup>28</sup> States that adopted the prior NLC must adopt the

<sup>17</sup> Section 446.009, F.S. For spouses of active duty military personnel who relocate to Florida pursuant to official military orders, the spouse is deemed to meet the requirements of licensure by endorsement if he or she is licensed by a state that is a member of the Nurse Licensure Compact, and will be issued a license upon submission of an application for licensure with the appropriate fee and satisfactory completion of the required criminal background screening.

<sup>18</sup> Section 464.013, F.S.

<sup>19</sup> Rule 64B9-5.002, F.A.C. A course in HIV/AIDS is required in the first biennium only and a domestic violence course is required every third biennium.

<sup>20</sup> Rule 64B9-5.011, F.A.C.

<sup>21</sup> *Supra* note 18 and Rule 64B9-5.014, F.A.C.

<sup>22</sup> Council of State Governments, Capitol Research, *Special Edition – Interstate Compacts*, available at <http://knowledgecenter.csg.org/kc/content/interstate-compacts-background-and-history> (last visited January 4, 2016).

<sup>23</sup> For example, see *Virginia v. Tennessee*, 148 U.S. 503 (1893), *New Hampshire v. Maine*, 426 U.S. 363 (1976).

<sup>24</sup> OPPAGA, 2015 *Nurse Licensure Compact Revisions Address Some Barriers and Disadvantages in 2006 OPPAGA Report*, available at [floridasnursing.gov/forms/2015-oppaga-research-memo.pdf](http://floridasnursing.gov/forms/2015-oppaga-research-memo.pdf) (last visited January 4, 2016).

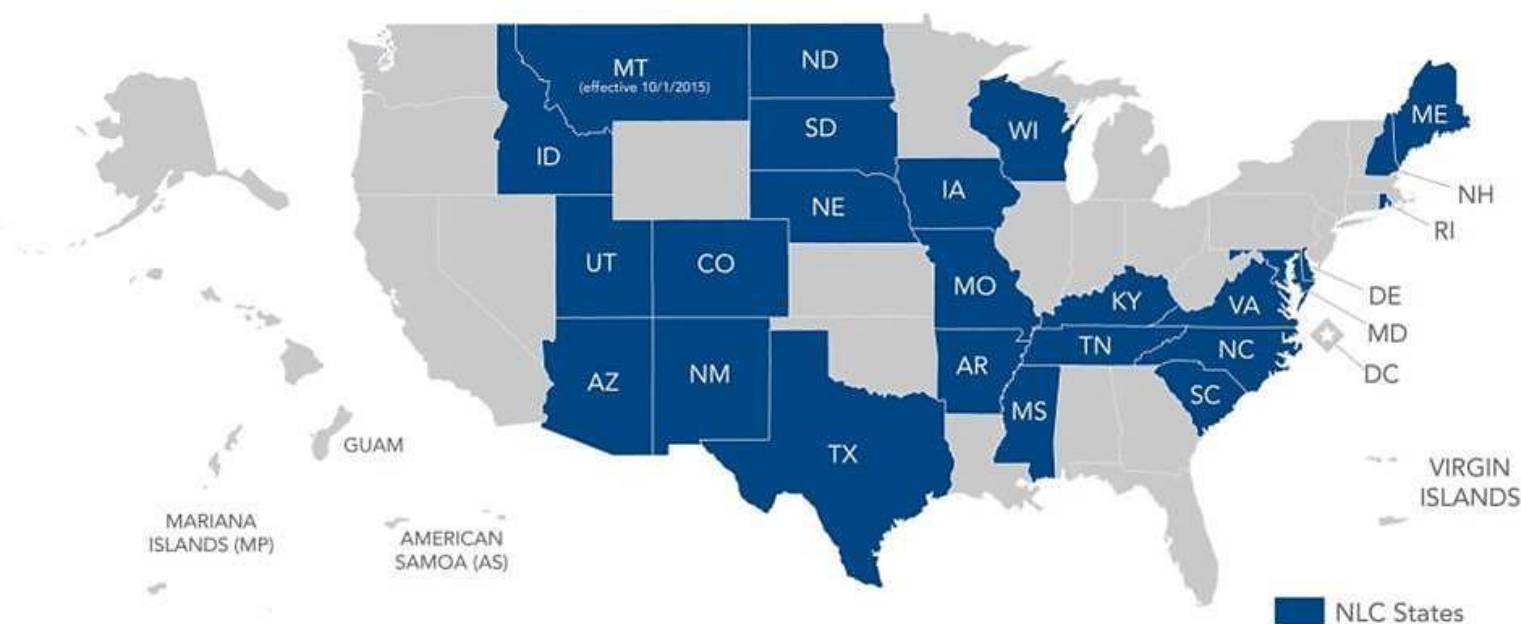
<sup>25</sup> Another NCSBN licensure compact, the Advanced Practice Registered Nurse Compact, is a multi-state agreement that establishes a mutual recognition system for the licensure of advanced practice registered nurses (APRNs). Florida is not eligible to enter the Advanced Practice Nurse Compact because that compact requires APRNs to be able to provide patient care independent of a supervisory or collaborative relationship with a physician and Florida law requires such nurses to be supervised under a physician protocol. The APRN Compact is available at <https://www.ncsbn.org/aprn-compact.htm> (last visited January 4, 2016), and Florida's current supervision requirement for APRNs is in s. 464.012(3), F.S.

<sup>26</sup> The revised model legislation may be found at <https://www.ncsbn.org/95.htm> (last visited January 4, 2016).

<sup>27</sup> NCSBN, *Nurse Licensure Compact: What Policymakers Need to Know*, available at <https://www.ncsbn.org/6183.htm> (last visited January 4, 2016).

<sup>28</sup> NCSBN, *Pending Legislation*, available at <https://www.ncsbn.org/96.htm> (last visited January 4, 2016). The states with pending NLC Legislation in 2015 included Illinois, Massachusetts, Minnesota, New York, and Oklahoma.

revised NLC to become members of the new compact. Those states that are members of the original compact are indicated in the map below.<sup>29</sup>



To join the NLC, a state must pass the NLC model legislation, the state board of nursing must implement the compact, and the state licensing agency must pay an annual fee of \$6,000.<sup>30</sup>

The model language of the NLC provides the framework under which party states must operate. The model language must be adopted in its entirety and any modifications must be approved by the NCSBN.<sup>31</sup> The compact is arranged in 11 articles and addresses the following issues:

#### *Findings and Purpose (Article I)*

The primary purpose of the NLC is to facilitate the cross-state practice of nursing by promoting compliance with the practice laws of each party state, facilitating the exchange of information between party states, and ensuring and encouraging the cooperation of party states<sup>32</sup> in the licensure and regulation of nurses.

#### *Definitions (Article II)*

The NLC provides definitions for terms used in the model legislation.

#### *General Provisions and Jurisdiction (Article III)*

Under the NLC, an applicant for a license to practice as an RN or LPN/LVN has to apply in his or her home state for a multistate license.<sup>33</sup> The home state is the applicant's primary state of residence.<sup>34</sup>

<sup>29</sup> NCSBN, *NLC Member States (Download Map)*, available at <https://www.ncsbn.org/nurse-licensure-compact.htm> (last visited January 4, 2016).

<sup>30</sup> NCSBN, *Pending Legislation*, available at <https://www.ncsbn.org/96.htm> (last visited January 4, 2016).

<sup>31</sup> See generally NCSBN, *Charter Documents*, available at <https://www.ncsbn.org/95.htm> (last visited January 4, 2016).

<sup>32</sup> A party state is a state that has adopted the NLC.

<sup>33</sup> A multistate license is a license to practice as an RN or LPN/LVN issued by a home state licensing board that authorizes the license holder to practice in all party states under a multistate licensure privilege.

<sup>34</sup> Pursuant to the model rules developed under the prior NLC, a nurse's home state may be evidenced by a driver's license with a home address, voter registration card with a home address, federal income tax return, military documentation of state of legal residence, or a W2 from the U.S. government or any bureau, division, or agency thereof. See Nurse Licensure Compact Administrators, *Nurse Licensure Compact Model Rules and Regulations*, (Rev. Nov. 13, 2012, Aug. 4, 2008, Sept. 16, 2004), available at [https://www.ncsbn.org/NLC\\_Model\\_Rules.pdf](https://www.ncsbn.org/NLC_Model_Rules.pdf) (last visited January 4, 2016).



The NLC's uniform licensing standards require an applicant for a multistate license to:

- Undergo a criminal history records investigation which includes the submission of fingerprints or other biometric-based information for the purpose of obtaining criminal history records from the Federal Bureau of Investigations and the state agency responsible for retaining criminal records;
- Graduate or be eligible to graduate from a board approved RN or LPN/LVN educational program or an educational program approved by an authorized accrediting body in the applicable country and verified by a board approved independent credentials review agency as a comparable educational program;
- For a graduate of a foreign educational program, successfully pass an English proficiency examination that includes reading, speaking, listening, and writing;
- Successfully complete the NCLEX-RN® or NCLEX-PN® Exam or recognized predecessor;
- Possess or be eligible for an active, unencumbered license;
- Not have been convicted or found guilty, or entered into an agreed disposition of a felony offense;
- Not have been convicted or found guilty, or entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;
- Not be currently enrolled in an alternative program or nondisciplinary monitoring program approved by the state board of nursing;
- Be subject to self-disclosure requirements regarding the current participation in an alternative program; and
- Have a valid social security number.

A nurse practicing in a party state under the multistate licensure privilege subjects himself or herself to the practice laws of that state, as well as the jurisdiction of that state's licensing board, courts, and other laws. The NLC vests with each party state the authority to take adverse action<sup>35</sup> against a multistate licensure privilege<sup>36</sup> in accordance with the state's due process laws. Adverse actions may include cease and desist orders or any other action that affects the nurse's ability to practice under a multistate licensure privilege. Upon taking adverse action against a multistate licensure privilege, the party state taking the adverse action must promptly notify the administrator of the coordinated licensure information system.<sup>37</sup> The administrator of the system will notify the home state of any adverse actions taken by a remote state.<sup>38</sup>

A party state may also issue single-state licenses for those individuals that meet the party state's requirements for a single-state license. The NLC does not govern the requirements for a single-state license issued by a party state or a single-state license issued by a nonparty state. A single-state license does not authorize the holder to practice nursing in any other state but the state of issuance.

The revised NLC grandfathers those licenses issued under the prior NLC. However, if a nurse changes home states after the effective date of the revised NLC, the nurse must meet all the uniform licensure requirements of the revised NLC. If a nurse fails to satisfy the uniform licensure requirements due to a disqualifying event occurring after the effective date of the NLC, the nurse will be ineligible to retain or renew his or her multistate license.

#### *Applications for Licensure in a Party State (Article IV)*

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<sup>35</sup> Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse.

<sup>36</sup> Multistate licensing privilege refers to the legal authorization associated with a multistate license permitting the practice of nursing as either an RN or LPN/LVN in a remote state or party state other than the nurse's home state.

<sup>37</sup> The coordinated licensure information system is an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that are administered by a nonprofit organization composed of and controlled by licensing boards. Currently, the NCSBN operates the Nursys® system, which is a national database for verification of nurse licensure, discipline and practice privileges for RNs and LPN/LVNs licensed in participating boards of nursing, including all the states in the NLC. See <https://www.nursys.com/About.aspx> (last visited January 4, 2016).

<sup>38</sup> A remote state is a party state, other than the home state.

In reviewing an application for licensure, the licensing board of each party state must:

- Determine if the applicant currently holds or has ever held a license issued by any other state;
- Determine if there is any encumbrance on any single-state or multistate license;<sup>39</sup>
- Determine if any adverse action has been taken against any license;
- Determine whether the applicant is currently participating in an alternative program;<sup>40</sup> and
- Verify licensure information through the coordinated licensure information system.

A nurse may hold only one multistate license, which is issued by his or her home state. If a nurse changes his or her primary state of residence, the nurse must apply for licensure in the new home state and meet that state's licensure requirements.<sup>41</sup> Prior to issuing a multistate license under the NLC, the applicant must submit a Declaration of Primary State of Residence Form and any other documentation required by the licensing board to satisfactorily establish the change in the primary state of residence.<sup>42</sup> The multistate license issued by the prior home state must be deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators. If a nurse moves his or her primary state of residence from a party state to a non-party state, the multistate license issued in the previous home state will convert to a single-state license, valid only in that state.

#### *Additional Authority of the Party State Licensing Boards (Article V)*

A state licensing board or state agency has the authority to:

- Take adverse action against a nurse's multistate licensure privilege to practice within that party state, but only a nurse's home state has the power to take action against the nurse's license issued in the home state.<sup>43</sup>
- Issue cease and desist orders or impose an encumbrance to practice within that party state.
- Complete any pending investigation of a nurse who changes his or her primary state of residence during the course of such investigation. The licensing board is authorized to take any appropriate action and must promptly report the findings of such investigations to the administrator of the coordinated licensure information system. The administrator will promptly report such actions to the new home state.
- Issue subpoenas for hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Party states will enforce, by a court of competent jurisdiction, such subpoenas issued by other party states. The party state issuing the subpoena must pay any fees or costs required by the service statutes of the state in which the witness or evidence is located.
- Obtain and submit fingerprints or other biometric information for federal and state criminal background checks and use the results to make licensure decisions.
- If permitted by state law, the licensing board may recover the costs of investigations and disposition of cases resulting from any adverse action taken against a license.
- Take adverse action based on the factual findings of a remote state.

If adverse action is taken by a home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice is deactivated until all encumbrances of his or her multistate license has

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<sup>39</sup> An encumbrance is any revocation, suspension, or limitation on the full and unrestricted practice of nursing imposed by a licensing board.

<sup>40</sup> An alternative program is a non-disciplinary monitoring program approved by a licensing board.

<sup>41</sup> The nurse may apply for licensure in advance of the change of his or her primary state of residence.

<sup>42</sup> See NCSBN, *Nurse Licensure Compact Frequently Asked Questions*, available at <https://www.ncsbn.org/94.htm> (last visited January 4, 2016). Currently, each party state has its own Declaration of Primary State of Residence Form. For examples, see Texas' form, available at [https://www.bon.texas.gov/forms\\_primary\\_state\\_of\\_residence\\_sworn\\_declaration.asp](https://www.bon.texas.gov/forms_primary_state_of_residence_sworn_declaration.asp); New Mexico's form, available at <http://nmbon.sks.com/primary-state-of-residence-declaration.aspx>; Maryland's form, available at <http://mbon.maryland.gov/Pages/msl-index.aspx>; et al. (last visited each website on January 4, 2016).

<sup>43</sup> The home state must give the same priority and effect to conduct reported from a remote state as it would to conduct that occurred within the home state. The home state applies its own state laws to determine appropriate conduct. For example, if the nurse committed an offense in a remote state that would result in an emergency suspension of his or her license had it been committed in the home state, the home state should treat the offense as if it occurred in its state and suspend the license.

been removed. In any disciplinary order issued by a home state that imposes adverse actions, a statement that the nurse's multistate licensure privilege has been deactivated must be included. If, in lieu of adverse action, a home state allows the nurse to participate in an alternative program, the multistate licensure privilege must be deactivated for the duration of such program.

#### *Coordinated Licensure Information System and Exchange Information (Article VI)*

All party states must participate in the coordinated licensure information system, which includes information on the licensure and disciplinary history of each nurse. Any adverse action, current significant investigative information, licensure denials and reason for denial, and nurse participation in alternative programs known to the licensure board, whether such participation is deemed nonpublic or confidential under state law, must be reported to the coordinated licensure information system. Although nonparty states may have access to licensure and disciplinary information in the coordinated licensure information system, information regarding current significant investigations and participation in nonpublic or confidential alternative programs is only available to the licensure boards of party states.

A party state may indicate that information it has submitted may not be shared with non-party states or other entities without express permission of that state. A party state may not share information obtained from the system that includes personally identifiable information except to the extent allowed by the laws of the party state contributing the information. Information on the system must be expunged in accordance with the laws of the contributing state.

The compact administrator of each state must submit a uniform data set to each party state, which includes:

- Identifying information;
- Licensure data;
- Information related to alternative program participation; and
- Other information that may facilitate the administration of the Compact, as determined by commission rules.

Upon request from another party state, a party state must provide all investigative documents and information.

#### *Interstate Commission of Nurse Licensure Compact Administrators (Article VII)*

The NLC creates the Interstate Commission of Nurse Licensure Compact Administrators (commission). The NLC contains a choice of forum provision that requires legal action to be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located, unless waived by the commission.<sup>44</sup>

The head of the licensing board or his or her designee is designated as the compact administrator for each party state and is required to be a member of the commission. If a state removes or suspends a compact administrator from his or her office, such administrator's vacancy on the commission will be filled in accordance with the laws of the party state.

Each compact administrator is entitled to an equal vote on the promulgation of rules and the creation of bylaws, and is afforded the opportunity to participate in the business and affairs of the commission.

The commission is required to meet once a year; however, it may have additional meetings in accordance with the commission bylaws. All meetings are open to the public and publicly noticed. The notice must be posted on the commission's website and include the time, date, and location of the meeting and each party state must provide notice of the meeting on the licensing board's website or in accordance with its respective public notice requirements.

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<sup>44</sup> The principal office of the commission is located in Chicago, Illinois.



The NLC allows the commission to participate in closed, nonpublic meetings to discuss certain topics. Prior to a meeting being closed, legal counsel for the commission has to certify that the meeting may be closed for discussion involving the following topics:

- A party state's noncompliance with its obligations under the compact;
- The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusing a person of a crime or formally censuring a person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigatory records compiled for law enforcement purposes;
- Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the NLC; or
- Matters specifically exempted from disclosure by federal or state law.

The commission must keep comprehensive minutes of matters discussed in its meetings and provide a full and accurate summary of actions taken, and the reasons therefor. Minutes of a closed meeting will be sealed; however, such minutes may be released pursuant to a majority vote of the commission or an order of a court of competent jurisdiction.

The NLC directs the commission to adopt and publish bylaws or rules to govern its conduct in carrying out the purposes and the exercise of its power under the compact, including bylaws or rules related to standards and procedures for recordkeeping, holding meetings, selecting officers, establishing personnel policies, and winding up the commission's operations.

The NLC vests the commission with the powers to:

- Promulgate rules to facilitate and coordinate implementation and administration of the compact;
- Bring and prosecute legal proceedings or actions in the name of the commission; as long as a party state's standing to sue or be sued under applicable law is not affected;
- Purchase and maintain insurance and bonds;
- Borrow, accept, or contract for services or personnel;
- Cooperate with other organizations that administer state compacts related to the regulation of nursing;
- Hire employees, elect or appoint officers, fix compensation, define duties, and grant such individuals appropriate authority to carry out the purposes of the compact;
- Establish personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
- Accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided the commission avoids any appearance of impropriety or conflict of interest;
- Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use any real, personal, or mixed property;
- Sell, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- Establish a budget and make expenditures;
- Pay its reasonable expenses;
- Levy, and collect an annual assessment from each state to cover the costs of operation, activities, and staff;
- Borrow money;

- Appoint committees;
- Provide and receive information from, and to cooperate with, law enforcement agencies;
- Adopt and use an official seal; and
- Perform any other lawful duties necessary or appropriate to achieve the purposes of the compact.

Pursuant to the NLC, the commission may not incur any financial obligation until it has secured adequate funds to meet such obligation. The commission may not pledge the credit of any party state, without the party state's explicit authority. The NLC requires the commission to maintain accurate fiscal records, which must be audited annually by a certified public accountant. The results of the audit must be included in the commission's annual report.

The NLC provides immunity to the administrators, executive director, employees, and representatives from suit and liability, either personally or in their official capacity, for claims arising out of their official duties and responsibilities, as long as the damage is not caused by intention, willful, or wanton misconduct. The NLC also provides that it will provide defense and indemnification in any such actions.

Nothing in the compact is to be construed as a waiver of sovereign immunity.

### *Rule-making (Article VIII)*

The NLC provides rule-making authority to the commission. Rules and amendments to the rules passed by the commission are binding on the party states as of the effective date specified in each rule or amendment.

Prior to the promulgation and adoption of a rule, the commission must provide notice of the meeting at which the rule is to be considered and voted upon, at least 60 days in advance. The notice must be posted on the commission's website and the website of the licensing board of each member state and include:

- The time, date, and location of the meeting;
- The text of the proposed rule or amendment,
- The reason for the proposed rule or amendment;
- A request for comment from interested persons; and
- The manner in which interested persons may submit comments.

The commission must provide an opportunity for a public hearing before the adoption of a rule or an amendment, and provide sufficient notice of the time, place, and date of the hearing. Final action on proposed rules is taken by a majority vote of all administrators. The commission may make technical revisions, such as typographical or grammatical errors, without engaging in the rule-making process, by posting such revisions to the commission's website. Members of the public may challenge a revision on grounds that the revision results in a material change to a rule. The challenge must be in writing and delivered to the commission within 30 days of the notice of the technical revision being posted. If the revision is challenged, the revision may not take effect without approval of the commission.

The commission has the authority to consider and adopt emergency rules, without prior notice, if there is an imminent threat to public health, safety, or welfare; to prevent a loss of funds of the commission or a party state; or to meet a deadline for the promulgation of an administrative rule that is required by federal law. The standard rule-making procedure is to be applied retroactively as soon as possible but no later than 90 days after the effective date of the emergency rule.

### *Oversight, Dispute Resolution, and Enforcement (Article IX)*

The commission is charged with enforcing the provisions and rules of the NLC. However, all party states are obligated to enforce the NLC and to take any necessary action to effectuate its purpose and intent. The commission is entitled to receive service of process relating to its powers, responsibilities, or actions, and may intervene in any proceeding affecting such.

If a party state defaults in the performance of its duties or responsibilities under the NLC, the commission will notify the defaulting state, as well as other party states, in writing of the nature of the default and proposed cure(s) of the default. The commission will also provide remedial training and technical assistance related to the default. If the defaulting state fails to cure the default, the commission may terminate its membership in the NLC, upon majority affirmative vote of the majority of the administrators. The commission must notify the governor and the head of the licensing board of the defaulting state, as well as all party states, of its intent to suspend or terminate the state's membership in the NLC. However, termination of membership is to only be imposed after all other means of compliance have been exhausted.

A termination of membership in the NLC may be appealed by petitioning the U.S. District Court for the District of Columbia or the federal district in which the commission's principal office is located. The commission's principal office is located in Chicago, Illinois. The commission may also bring an action in federal court against a defaulting state to enforce compliance with the provisions of the NLC. The commission may seek injunctive relief, damages, or any other remedies available under state or federal law. A prevailing party in either action is entitled to court costs and reasonable attorneys' fees.

In the event that a dispute arises between party states, the commission will attempt to resolve such disputes. The NLC directs the commission to promulgate a rule that provides for mediation and binding dispute resolution. If a dispute cannot be resolved by the commission, the NLC provides that the issue may be submitted to an arbitration panel, whose decision is final and binding.

#### *Effective Date, Withdrawal and Amendment (Article X)*

The NLC becomes effective and binding on the earlier of the date of legislative enactment by at least 26 states or December 31, 2018. The NLC provides a procedure for adopting the revised compact for states that were a party to the prior contract.

To withdraw from the NLC, a state must enact a statute repealing the NLC. Such withdrawal does not take effect until six months after the enactment of the repealing legislation. Any adverse actions or significant investigations that occur prior to the effective date of a withdrawal or termination must be reported as required under the NLC.

The NLC may be amended by the party states; however, an amendment will not be effective until it is enacted into the laws of all the party states. The NLC authorizes non-party states to be invited to participate in the activities of the commission, on a nonvoting basis.

#### *Construction and Severability*

The NLC is to be liberally construed to effectuate its purposes. The NLC contains a severability clause that provides that any provision that is found to be unconstitutional pursuant to a state constitution or the U.S. Constitution is severed and the other provisions of the compact remain valid. If the entire compact is found to be unconstitutional in a party state, the NLC remains in full force and effect for all other party states.

### OPPAGA Review of the NLC

#### *2006 OPPAGA Report*

In 2006, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report evaluating the possibility of Florida adopting the original NLC.<sup>45</sup> OPPAGA concluded that adopting the NLC would allow the state to alleviate short-term nursing shortages but would not resolve the state's long-term nursing shortage. The report identified several benefits that would be realized by adopting the NLC. Those benefits included:

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<sup>45</sup> OPPAGA, *Nurse Licensure Compact Would Produce Some Benefits But Not Resolve the Nursing Shortage*, Report No. 06-02 (Jan. 2006), available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=06-02> (last visited January 4, 2016).

- Access to NURSYS®, the coordinated licensure information system, would provide improved access to information regarding disciplinary action taken against a nurse's license and notification of a nurse under investigation for patient safety issues, including information that is only available to party states.
- As a party state, Florida would be able to influence interstate nursing policies as a member of the Nurse Licensure Compact Administrators.

Conversely, the report also identified several disadvantages to joining the compact at that time:

- Potentially, there could be an increase in disciplinary cases, both domestic and multistate, which could have a negative fiscal impact on the DOH.
- Florida's continuing education requirements would not apply to a nurse working in Florida but whose home state is not Florida.
- A nurse whose home state was not Florida may not be subject to a criminal background screening because some party states did not require criminal background screening for licensure.
- Public access to licensure and disciplinary action may be impaired.
- The DOH and BON will incur some initial start-up costs in implementing the NLC.

Additionally, OPPAGA identified barriers to implementing the original NLC legislation:

- The provisions of the original NLC language may conflict with Florida's public records and open meetings laws. The original NLC required states receiving information to honor the confidentiality restrictions of the state providing the information, and did not address notice requirements for open meetings.
- The original NLC provided general and broad authorization for the compact administrators to develop rules that were required to be adopted by party states, which raised concern about an unlawful delegation of legislative authority.
- The DOH and the BON would need to educate nurses and employers on the NLC and its requirements for the NLC to operate as intended.
- A compact nurse is not required to notify the BON when he or she enters the state to practice nursing, making it difficult for the workforce data to be captured. Additionally, the BON would not be on notice that a nurse under investigation in another state has entered Florida to work.

The report made several recommendations, including seeking approval to use alternative compact language to address the barriers identified in the report. Other recommendations including authorizing the BON to require employers to report employment data, providing a later effective date to allow for education of the public regarding the NLC, and requiring the BON to report information to the legislature on the effect of the NLC two years after its implementation.

### *2015 OPPAGA Memorandum*

In 2015, the revised NLC was reviewed by OPPAGA to determine if it adequately addresses concerns identified in the 2006 report.<sup>46</sup> OPPAGA found that the revised NLC resolved some of the barriers and disadvantages listed above, and specifically it found:

- The revised NLC partially addresses the concerns regarding constitutional issues related to public meetings but did not address public records concerns.
  - Under the revised NLC, there are provisions requiring the commission to publicly notice meetings on its website, as well as the websites of party states. However, the commission is allowed to have closed door meetings to address certain issues. Such meetings may be deemed inconsistent with Florida's open meetings law.

<sup>46</sup> *Supra* fn. 24. See also OPPAGA, Presentation to the House Select Committee on Affordable Healthcare Access (December 1, 2015), available at <http://www.oppaga.state.fl.us/Presentations.aspx> (last visited January 4, 2016).

- A party state may still designate information it provides as confidential and restrict the sharing of such information. However, once the information is in the possession of the BON, it may be considered a public record under Florida law, available through the BON.
- The revised NLC addresses the issue of delegation of legislative authority, by limiting the scope of the rules the commission may adopt to only those rules that would facilitate and coordinate the implementation and administration of the NLC. OPPAGA suggests that the legislature include an expiration date, an automatic repeal provision, or a required review of the NLC to provide the legislature with an opportunity to review the rules adopted by the commission.
- The revised NLC does not become effective until it has been enacted by 26 states or December 31, 2018, whichever is earlier. This provides the state with the time needed to educate nurses and employers about the NLC.
- The revised NLC does not require employers of compact nurses who are practicing in a state under a multistate licensure privilege to report such employment to the state's board of nursing.
- Public access to nurse disciplinary information has improved due to the increased state participation in NURSIS®, the coordinated licensure information system.
- The revised NLC requires a criminal background screening for licensees. However, this requirement only applies to new multistate licensure applicants, and a nurse who currently holds a multistate license will not have to undergo a criminal background screening unless required by his or her home state.
- The NLC does not address continuing education requirements. Although most states require some continuing education, not all states do. Florida authorities would be unable to enforce continuing education requirements for those practicing in the state under the multistate licensing privilege.

OPPAGA advises that the revised NLC does not affect the benefits it identified in its 2006 report. In addition to those benefits, it noted that as a member of the NLC, the processing time and resources required to process a licensure by endorsement would be reduced or eliminated. Florida would also be able to access investigative information earlier and would be able to open its own investigation if the nurse is practicing in this state.

## **Effect of Proposed Changes**

### Nurse Licensure Compact

The bill enacts the Nurse Licensure Compact in full (see description of compact provisions in the Current Situation section) and authorizes Florida to enter into the NLC with all other jurisdictions that have legally joined the NLC. The bill makes minor changes to the language of the NLC, including stylistic and grammatical changes and adding definitions for "commission" and "compact." Some of the primary purposes of the NLC include addressing the expanded mobility of nurses and use of advanced communication technologies, such as telehealth. Furthermore, in Florida, the bill would expedite or eliminate the time it requires a military spouse who is a nurse to be able to practice here and address the demand for temporary nurses during seasonal increases in population caused by tourism.

The bill amends current law to allow NLC implementation. It authorizes the DOH to charge a fee to convert a single-state license to a multistate license. The bill exempts an individual who holds a multistate license from having to comply with the licensure by examination or licensure by endorsement requirements. The DOH must designate each nurse license it issues as either a single-state or multistate license.

The bill makes conforming changes to statute to reference the multistate license and the requirements under the NLC. The bill does not require changes to Florida's licensure and license renewal requirements. However, an applicant that wishes to apply for a multistate license must meet the requirements of the NLC, in addition to the Florida licensure requirements.

### *Single-State Licenses*



A party state may also issue single-state licenses for those individuals that meet the party state's requirements for a single-state license. The NLC does not govern the requirements for a single-state license. A single-state-license does not authorize the holder to practice nursing in any other state but the state of issuance. Nonparty states will continue to issue single-state licenses.

Florida may issue a single-state license upon the request of an applicant or for individuals who do not qualify for a multistate license but otherwise qualify to be licensed in Florida. For example, the NLC does not allow an individual who has been convicted of a felony to be issued a multistate license. However, under Florida law, the Board will review the application of individuals with felony convictions on a case-by-case basis to determine eligibility for licensure. If the board deems that the applicant does not pose a threat to public safety, the board may issue only a single-state license.

The bill requires that all licenses must be conspicuously designated as either a single-state license or a multistate license.

### The Florida Center for Nursing

The Florida Center for Nursing was established by the Legislature in 2001, to address the issues of supply and demand for nursing, including the recruitment, retention, and utilization of nurse workforce resources.<sup>47</sup> The bill requires the Florida Center for Nursing to include the impact of the state's participation in the NLC in its supply and demand calculations and projections for the need for nurse workforce resources. The Florida Center for Nursing is authorized to request any information held by the board regarding nurses licensed in this state, holding a multistate license, or any information reported by employers of such nurses, other than personally identifiable information.

### Enactment Date

The bill provides an effective date of December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by twenty-six other states, whichever date occurs first in time.

## B. SECTION DIRECTORY:

- Section 1.** Amends s. 456.073, F.S., relating to disciplinary proceedings.
- Section 2.** Amends s. 456.076, F.S., relating to treatment programs for impaired practitioners.
- Section 3.** Amends s. 464.003, F.S., relating to definitions.
- Section 4.** Amends s. 464.004, F.S., relating to the Board of Nursing.
- Section 5.** Amends s. 464.008, F.S., relating to licensure by examination.
- Section 6.** Amends s. 464.009, F.S., relating to licensure by endorsement.
- Section 7.** Creates s. 464.0095, F.S., relating to the Nurse Licensure Compact.
- Section 8.** Amends s. 464.012, F.S., relating to certification of advanced registered nurse practitioners.
- Section 9.** Amends s. 464.019, F.S., relating to titles and abbreviations.
- Section 10.** Amends s. 464.018, F.S., relating to disciplinary actions.
- Section 11.** Amends s. 464.0195, F.S., relating to the Florida Center for Nursing.
- Section 12.** Provides an effective date of December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by twenty-six other states, whichever date occurs first in time.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Due to the authorized fee for conversion of a single-state license to a multistate license, the DOH may realize an indeterminate, positive fiscal impact. The DOH has not yet determined the fee it will charge for conversion. The fee for initial licensure will not change.

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<sup>47</sup> Chapter 2001-277, L.O.F. and s. 464.0195, F.S.  
**STORAGE NAME:** h1061a.SCAHA  
**DATE:** 1/11/2016

The DOH may incur an indeterminate, negative fiscal impact due the loss of fees associated with licensure by endorsement and licensure renewal fees for those who are licensed in Florida but holds a multistate license from their home state. There are currently 16,351 nurses licensed in Florida who are also licensed in compact states.<sup>48</sup> However, this loss will likely be off-set by a reduction in expenditures related to the processing of licensure by endorsement applications, as nurses from member states will no longer need to obtain a Florida license to practice.

2. Expenditures:

The DOH will incur an indeterminate, negative fiscal impact associated with implementation of the NLC, including a one-time modification of computer software and education of the public.

The DOH may incur an indeterminate, negative fiscal impact due to an increase in complaints filed against nurses practicing in the state under the NLC.

The DOH may incur indeterminate, insignificant costs associated with the activities of the commission, such as travel for the compact administrator.

The DOH will incur a negative fiscal impact of \$6,000 annually to pay the compact membership fee.

The bill requires the DOH to comply with the rules adopted by the commission. Until the content of the rules is known, the fiscal impact for compliance is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A nurse currently licensed in Florida would be subject to a fee for the conversion of his or her single-state license to a multistate license.

Fees associated with applying for a license in a party state would be eliminated for a nurse whose home state is Florida and wants to practice in a party state, as well as a nurse whose home state is in a party state and wishes to practice in Florida. In addition, employers of nurses will likely experience improved ease of recruitment, as nurses can more easily move between states, both permanently and temporarily.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

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<sup>48</sup> E-mail from the staff of the DOH (December 10, 2015), on file with the Health Quality Subcommittee.

As discussed below in the section entitled, “RULE-MAKING AUTHORITY,” the bill delegates authority to the commission to adopt rules that facilitate and coordinate the implementation and administration of the Nurse Licensure Compact.

If enacted into law, the state will effectively bind itself to rules not yet adopted by the commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative power to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.<sup>4950</sup> Under this holding, the constitutionality of the bill’s adoption of prospective rules might be questioned, and there does not appear to be binding Florida case law that squarely address this issue in the context of interstate compacts.

The most recent opportunity Florida courts have had to address this issue appears to be in *Department of Children and Family Services v. L.G.*, involving the Interstate Compact for the Placement of Children (ICPC).<sup>51</sup> The First District Court of Appeal considered an argument that the regulations adopted by the Association of Administrators of the Interstate Compact were binding and that the lower court’s order permitting a mother and child to relocate to another state was in violation of the ICPC. The court denied the appeal and held that the Association’s regulations did not apply as they conflicted with the ICPC and the regulations did not apply to the facts of the case.

The court also references language in the ICPC that confers to its compact administrators the “power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.”<sup>52</sup> The court states that “the precise legal effect of the ICPC compact administrators’ regulations in Florida is unclear,” but noted that it did not need to address the question to decide the case.<sup>53</sup> However, in a footnote, the court provided:

Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even covered by the Florida Administrative Procedure Act. *See Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm’n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945) (“[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.”); *Brazil v. Div. of Admin.*, 347 So.2d 755, 757–58 (Fla. 1st DCA 1977), *disapproved on other grounds by LaPointe Outdoor Adver. v. Fla. Dep’t of Transp.*, 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.<sup>54</sup>

In accordance with the discussion provided by the court in this above-cited footnote, it may be argued that the bill’s delegation of rule-making authority to the commission is similar to the delegation to the ICPC compact administrators, and thus, could constitute an unlawful delegation of

<sup>49</sup> *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972) (quoting *Fla. Ind. Comm’n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772 (1945)).

<sup>50</sup> This prohibition is based on the separation of powers doctrine, set forth in Article II, Section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish the minimum standards and guidelines ascertainable by reference to the enactment creating the program. *See Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

<sup>51</sup> 801 So.2d 1047 (Fla. 1<sup>st</sup> DCA 2001).

<sup>52</sup> *Id.* at 1052.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

legislative authority. This case, however, does not appear to be binding as precedent as the court's footnote discussion is dicta.<sup>55</sup>

The bill requires the Florida Center for Nursing to assess the impact on the state's participation in the Nurse Licensure Agreement, and include such impact in its strategy for meeting the state's needs for nursing resources. Based on the assessment provided by the Florida Center for Nursing, the Legislature may make decisions on Florida's continued participation in the NLC. The Legislature may also review and reenact the NLC post-adoption of the commission's rules, which may counter a claim that the authority given to the NLC commission to adopt rules is an unlawful delegation.<sup>56</sup>

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<sup>55</sup> Dicta are statements of a court that are not essential to the determination of the case before it and are not a part of the law of the case. Dicta has no binding legal effect and is without force as judicial precedent. 12A FLA JUR. 2D *Courts and Judges* s. 191 (2015).

<sup>56</sup> *Supra* fn. 24.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes the Interstate Commission of Nurse Licensure Compact Administrators to adopt rules to facilitate and coordinate the implementation and administration of the compact. The NLC specifies that the rules have the force and effect of law and are binding in all party states. If a party state fails to meet its obligations under the NLC or the promulgated rules, the state may be subject to remedial training, alternative dispute resolution, suspension, termination, or legal action.

The compact details the rule-making process that must be followed including, notice, an opportunity for public participation, and hearings. The compact also provides a procedure for emergency rule-making in cases of imminent danger to public health, safety, or welfare, to prevent financial loss to the state's or commission, or to comply with federal laws or regulations. All rules and amendments are binding on party state as of the effective date specified.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**