

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-10 OGSR Identification of a Minor
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: IDEN./SIM. BILLS: SB 1198

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Governmental Affairs Policy Committee, 12 Y, 0 N, Williamson, Williamson. Rows 2-5 are empty.

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

In 2005, the Legislature enacted the Parental Notice of Abortion Act (Act). The Act requires a treating physician to provide actual notice, in person or by telephone, to a parent or other legal guardian of a minor seeking to have an abortion at least 48 hours before the performance of the abortion on the minor. The Act provides exceptions to the notice requirement. Under the Act, a minor may petition any circuit court in a judicial circuit within the jurisdiction of the District Court of Appeal, in which she resides, for a waiver of the notice requirements under the Act.

In conjunction with the enactment of the Florida Parental Notice of Abortion Act (Act), the Legislature created a public record exemption for judicial records related to parental notification bypass proceedings. Any information in a court record that could be used to identify a minor in a proceeding to bypass parental notification under the Act is confidential and exempt from public records requirements.

The bill reenacts the public record exemption for information in judicial records that would identify a minor participating in a parental notification bypass proceeding. It expands the exemption to also include such information when held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission. During representation of minors in judicial-waiver cases under the Act, the Office of Criminal Conflict and Civil Regional Counsel may obtain identifying information from the minors. Similarly, the Justice Administrative Commission may receive identifying information of minors that is related to the processing of attorney billing and payment requests for representation in such cases.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

The bill does not appear to have a fiscal impact on state or local governments.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for final passage.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### BACKGROUND

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Public Access to Court Records

Although Florida courts have consistently held that the judiciary is not considered an "agency" for purposes of the Public Records Act,<sup>4,5</sup> the Florida Supreme Court has found that "both civil and criminal

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Chapter 119, F.S., is known as the Public Records Act.

proceedings in Florida are public events” and that it will “adhere to the well established common law right of access to court proceedings and records.”<sup>6</sup> Furthermore, there is a constitutional guarantee of access to judicial records.<sup>7</sup> This constitutional provision provides for public access to judicial records, except for those records expressly exempted by the Florida Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the Legislature in accordance with the Constitution.<sup>8</sup>

### Parental Notice of Abortion Act

In 1999, the Legislature enacted a law requiring parents of minors to be notified prior to the minor’s termination of her pregnancy. This law was constitutionally challenged on grounds that the act violated a person’s right to privacy under the Florida Constitution. The Florida Supreme Court concluded that the act violated Florida’s constitutional right to privacy<sup>9</sup> because the minor was not afforded a mechanism by which to bypass parental notification if certain exigent circumstances existed.<sup>10</sup> In response to the court’s decision, the Legislature proposed a constitutional amendment authorizing the Florida Legislature, notwithstanding a minor’s right to privacy under the Florida Constitution, to require a physician to notify a minor’s parent or guardian prior to termination of the minor’s pregnancy, which was subsequently ratified by Florida voters. The amendment provides:

The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor’s right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor’s pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.<sup>11</sup>

The Legislature responded to this authorization by enacting the Parental Notice of Abortion Act (Act).<sup>12</sup> The Act requires a treating physician to provide actual notice, in person or by telephone, to a parent or other legal guardian of a minor seeking to have an abortion at least 48 hours before the performance of the abortion on the minor.<sup>13, 14</sup> Notice under the Act is not required if:

- In the physician’s good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements;
- Notice is waived in writing by the person who is entitled to notice;
- Notice is waived by a minor who is or has been married or has had the disability of nonage removed under statute;
- Notice is waived by the patient because the patient has a minor child dependent on her; or
- A court waives the parental notification process via a bypass proceeding.<sup>15</sup>

### Parental Notification Judicial-Bypass Proceeding

Under the Act, a minor may petition any circuit court in a judicial circuit within the jurisdiction of the District Court of Appeal, in which she resides, for a waiver of the notice requirements under the Act.<sup>16</sup>

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<sup>5</sup> *Times Publishing Co. v. Ake*, 660 So. 2d 255 (Fla. 1995) (holding that the judiciary, as a coequal branch of government, is not an “agency” subject to control by another coequal branch of government).

<sup>6</sup> *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 116 (Fla. 1988).

<sup>7</sup> Section 24(a), Art. I of the State Constitution.

<sup>8</sup> Section 24, Art. I of the State Constitution.

<sup>9</sup> Section 23, Art. I of the State Constitution.

<sup>10</sup> *North Florida Women’s Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).

<sup>11</sup> Section 22, Art. X of the State Constitution.

<sup>12</sup> Section 2 of chapter 2005-52, L.O.F.

<sup>13</sup> Section 390.01114(2)(a) and (3)(a), F.S.

<sup>14</sup> Constructive notice may be provided after a physician has made reasonable efforts to contact the parents. To accomplish legally valid constructive notice, the physician must provide written notice, signed by the physician, and mailed at least 72 hours before the inducement or performance of the termination of pregnancy, to the last known address of the parent or legal guardian of the minor, by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian. After 72 hours, delivery is deemed to have occurred. (Section 390.01114(2)(c), F.S.)

<sup>15</sup> Section 390.01114(3)(b), F.S.

To initiate the proceeding, a minor must file a petition with the court under a pseudonym or through the use of initials.<sup>17,18</sup> The court must advise the minor that she is entitled to court-appointed counsel upon her request at no charge.<sup>19</sup>

After a petition is filed, the court must rule and issue written findings of fact and conclusions of law within 48 hours.<sup>20</sup> In order to the grant the petition, the court must find:

- By clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy;
- By a preponderance of the evidence, that there is evidence of child abuse or sexual abuse of the minor by one or both of her parents or her guardian; or
- By a preponderance of the evidence that the notification of a parent or guardian is not in the best interest of the minor.<sup>21</sup>

If the court fails to issue a ruling within the 48-hour period and an extension of time has not been requested by the minor, the petition is granted and the notice requirement is waived.<sup>22</sup>

### Exemption under Review

In conjunction with the enactment of the Florida Parental Notice of Abortion Act (Act), the Legislature created a public record exemption for judicial records related to parental notification bypass proceedings. Any information in a court record that could be used to identify a minor in a proceeding to bypass parental notification under the Act is confidential and exempt<sup>23</sup> from public records requirements.<sup>24</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.<sup>25</sup>

### **EFFECT OF BILL**

The bill reenacts the public record exemption for information in judicial records that would identify a minor participating in a parental notification bypass proceeding. It expands the exemption to also include such information when held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission. During representation of minors in judicial-waiver cases under the Act, the Office of Criminal Conflict and Civil Regional Counsel may obtain identifying information from the minors. Similarly, the Justice Administrative Commission may receive identifying information of minors that is related to the processing of attorney billing and payment requests for representation in such cases.

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<sup>16</sup> Section 390.01114(4)(a), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> No filing fees or court costs are required of any pregnant minor who petitions a court for a waiver of parental notification under the Act. (Section 390.01114(4)(g), F.S.)

<sup>19</sup> Section 390.01114(4)(a), F.S.

<sup>20</sup> The 48-hour period may be extended only upon the request of the minor. (Section 390.01114(4)(b), F.S.)

<sup>21</sup> Section 390.01114(4)(c) and (d), F.S.

<sup>22</sup> Section 390.01114(4)(b), F.S.

<sup>23</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

<sup>24</sup> Section 390.01116, F.S. This exemption is not the first public-records exemption related to juveniles and domestic cases. All dependency court records, including cases related to the termination of parental rights, are closed to the public except to those demonstrating a proper interest. See ss. 39.0132(3) and 39.814(3), F.S.

<sup>25</sup> Section 2 of Chapter 2005-104, L.O.F.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

**B. SECTION DIRECTORY:**

Section 1 amends s. 390.01116, F.S., to reenact and expand the public record exemption for information used to identify a minor petitioning a circuit court for a judicial waiver of the notice requirements under the Parental Notice of Abortion Act.

Section 2 provides a public necessity statement.

Section 3 repeals s. 2 of chapter 2005-104, L.O.F., which provides for repeal of the exemption.

Section 4 provides an effective date of upon becoming a law.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.