

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 15-03 OGSR Judicial Bypass

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SPB 7016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Harrington	Williamson

### 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.

The Parental Notice of Abortion Act (act) requires a parent be given notice of a child's intent to have an abortion prior to the abortion. The act provides that a minor may petition the circuit court where she resides for a waiver of the notice requirement. The minor has a right to a court-appointed counsel at no cost. Once the petition is filed, the court must rule within three business days. Circuit court and appellate court records that identify a minor petitioning a court to waive parental notice requirements are confidential and exempt from disclosure.

Current law provides a public record exemption for information held by the office of criminal conflict and civil regional counsel (office) or the Justice Administrative Commission (commission). Specifically, the public record exemption makes confidential and exempt information held by the office or the commission that identifies a minor petitioning a court to waive parental notice requirements before terminating a pregnancy.

The bill reenacts the public record exemption for information held by the office or the commission that identifies a minor petitioning a court to waive parental notice requirements, which will repeal on October 2, 2015, if this bill does not become law.

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

# 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 Open Government Sunset Review 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 and 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.

##### Parental Notice of Abortion Act

In 1999, the Legislature enacted the Parental Notice of Abortion Act (act), which required a parent be given advance notice of a child's intent to have an abortion.<sup>4</sup> When the act became effective, several groups filed suit seeking injunctive and declaratory relief to block its enforcement.<sup>5</sup> In 2003, the Florida Supreme Court found the law violated a minor's constitutional right to privacy.<sup>6</sup> In 2004, the State Constitution was amended to provide that notwithstanding a minor's right to privacy, a physician must notify a minor's parent or guardian prior to an abortion, and to provide for a bypass. The amendment provides:<sup>7</sup>

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.

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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 and exempt records.

<sup>4</sup> Chapter 99-322, L.O.F.; codified as s. 390.01115, F.S.

<sup>5</sup> *North Florida Women's Health and Counseling Services v. State*, 866 So.2d 612 (Fla. 2003).

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

<sup>7</sup> Section 22, Art. X of the State Constitution.

In 2005, the Legislature passed another Parental Notice of Abortion Act, which required an attending physician to give actual notice, in person or by phone, to a parent or legal guardian of the minor at least 48 hours before the minor's pregnancy is terminated.<sup>8</sup> If actual notice is not possible after a reasonable effort, the physician performing or inducing the abortion or the referring physician must give constructive notice.<sup>9</sup> Parental notice is not required under the act under certain circumstances.<sup>10</sup>

#### Judicial Waiver of Parental Notice

The act provides that a minor may petition the circuit court where she resides for a waiver of the notice requirements.<sup>11</sup> To initiate the process, she may file the petition under a pseudonym or by using her initials, as provided by court rule. The petition must contain a statement that the petitioner is pregnant and notice has not been waived. The court must advise the petitioner that she has a right to a court-appointed counsel and must provide her with counsel, if she requests, at no cost to the minor.<sup>12</sup>

Judicial waiver proceedings must be given precedence over other pending matters to the extent necessary to ensure the court reaches a decision promptly.<sup>13</sup> Once a petition is filed, the court must rule and issue written findings of fact and conclusions of law within three business days. This time period may be extended at the request of the minor.<sup>14</sup> If the court fails to rule within three business days, the minor may immediately petition for a hearing to the chief judge, who must ensure a hearing is held within 48 hours after the petition; an order must be entered within 24 hours after the hearing.<sup>15</sup>

If the circuit court decides by clear and convincing evidence that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to consent to the abortion without the notification of a parent or guardian.<sup>16</sup> If the court finds the minor does not possess the requisite maturity to make the determination, the court must dismiss the petition.<sup>17</sup> If the court determines by a preponderance of the evidence that the minor is a victim of child abuse or sexual abuse inflicted by her parent or guardian, or if the court determines by clear and convincing evidence that the notification of a parent or guardian is not in the minor's best interest, the court must issue an order authorizing the minor to consent to the abortion without notification of a parent or guardian.<sup>18</sup> In 2014, 242 petitions for judicial bypass were filed.<sup>19</sup>

#### Public Record Exemption for Judicial Bypass Proceedings

Current law provides a public record exemption for judicial records pertaining to parental notification bypass proceedings. Specifically, any information held by a circuit court or appellate court which could be used to identify the minor is confidential and exempt<sup>20</sup> from public disclosure.<sup>21</sup>

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<sup>8</sup> Chapter 2005-52, L.O.F.; codified as s. 390.01114, F.S.

<sup>9</sup> Section 390.01114(3)(a), F.S.

<sup>10</sup> Section 390.01114(3)(b), F.S., provides that parental notice is unnecessary if in the good faith clinical judgment of the physician, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification; if waived not more than 30 days before the termination of pregnancy by the person who is entitled to notice; if the minor is married or has had the disability of nonage removed; if the minor has a minor child dependent on her; or if the notice is waived in a judicial bypass procedure.

<sup>11</sup> Section 390.01114(4)(a), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 390.01114(4)(b)1., F.S.

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

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

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

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

<sup>18</sup> Section 390.01114(4)(d), F.S.

<sup>19</sup> Florida Office of the State Courts Administrator, *Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County, January through December 2014* (January 21, 2015).

<sup>20</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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

### *Public Record Exemption under Review*

In 2010, the Legislature expanded the exemption pertaining to parental notification bypass proceedings to additional entities.<sup>22</sup> Specifically, s. 390.01116(2)(a), F.S., provides that any information that can be used to identify a minor petitioning a circuit court for a judicial waiver is confidential and exempt if held by the office of criminal conflict and civil regional counsel (office)<sup>23</sup> or the Justice Administrative Commission (commission).<sup>24</sup>

The 2010 public necessity statement provides that:

The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, the release of which could harm the reputation of the minor, as well as jeopardize her safety. Disclosure of this information could jeopardize the safety of the minor in instances in which child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, without the public record exemption, could learn of the minor's pregnancy, her plans to terminate the pregnancy, and her petition to the court. The Legislature further finds that it is a public necessity to keep this identifying information in records held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission confidential and exempt in order to protect the privacy of the minor.<sup>25</sup>

In addition, the public necessity statement finds that without the public record exemption, the effective and efficient administration of the state's program, and the judicial bypass procedure in particular, would be in question. The public necessity statement provides that without the public record exemption, the disclosure of personal identifying information would violate the right of privacy of the minor.<sup>26</sup>

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.<sup>27</sup>

During the 2014 interim, subcommittee staff discussed the public record exemption with the commission and the different offices of criminal conflict and civil regional counsel as part of the Open Government Sunset Review process. The commission and the offices were asked if they recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. Of those participating in the discussion, each recommended reenacting the public record exemption.

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for information identifying a minor petitioning a court to waive parental notice requirements before terminating a pregnancy if the information is held by the office or the commission.

### **B. SECTION DIRECTORY:**

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<sup>21</sup> Section 390.01116, F.S. The public record exemption was passed in 2005 and reviewed and saved from repeal in 2010. *See* chapter 2010-41, L.O.F.

<sup>22</sup> Chapter 2010-41, L.O.F.

<sup>23</sup> If a minor requests counsel for a judicial bypass proceeding, a private court-appointed attorney is appointed if available. If no attorney is available, the office of criminal conflict and civil regional counsel will supply an attorney for the proceeding. Section 27.511(6)(a), F.S.

<sup>24</sup> The Justice Administrative Commission pays the invoices for the attorneys who volunteer for judicial bypass proceedings through the clerk of court's list of attorneys. *See* s. 27.40(3)(a), F.S.

<sup>25</sup> Chapter 2010-41, s. 2., L.O.F.

<sup>26</sup> *Id.*

<sup>27</sup> Section 390.01116(2)(b), F.S.

Section 1 amends s. 390.01116, F.S., relating to an exemption from public record requirements for information identifying a minor petitioning a court to waive parental notice requirements before terminating a pregnancy.

Section 2 provides an effective date of October 1, 2015.

## **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:

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

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

None.

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

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.