STORAGE NAME: h1585z.hcs ****FINAL ACTION****
DATE: May 14, 1999 ****SEE FINAL ACTION STATUS SECTION****

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH CARE SERVICES
FINAL ANALYSIS

BILL #: HB 1585 (Passed as CS/SB 1598)

RELATING TO: Parental Notice of Abortion Act

SPONSOR(S): Rep. Murman & others

COMPANION BILL(S): SB 1598(I), HB 1485(c), and CS/SB 1596(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE SERVICES YEAS 12 NAYS 3
(2) JUDICIARY YEAS 8 NAYS 1
(3) CRIME & PUNISHMENT
(4) HEALTH & HUMAN SERVICES APPROPRIATIONS
(5)

I. FINAL ACTION STATUS:

06/11/99 Approved by Governor; Chapter No. 99-322

II. SUMMARY:

HB 1585 provides certain limitations on a minor's right to an abortion in Florida. Specifically, the bill requires the person performing or inducing the termination of a pregnancy of a minor to notify the parent or legal guardian of the minor's intention at least 48 hours prior to performing or inducing the termination of pregnancy.

The bill also provides for disciplinary action for violations of the notice requirement and for procedures for judicial waiver of notice. The court is required to issue an order authorizing the minor to consent to the termination of pregnancy if the court finds, by clear evidence, that the minor is sufficiently mature to make the decision or there is evidence of child abuse or neglect, or sexual abuse of the petitioner by one or both of her parents, her guardian, or her custodian.

In addition, the bill requires the court to conduct waiver proceedings to issue written and specific factual findings and legal conclusions supporting its decision and to maintain confidential records of the evidence and findings. Expedited confidential appeal is allowed, as provided by Florida Supreme Court rule, and filing fees shall not be required of minors who petition for waiver. Minors have the right to court-appointed counsel upon their request, and no county is obligated to pay the salaries, costs, or expenses of any counsel appointed by the court upon the minor's request. The bill requests the Florida Supreme Court to adopt rules to ensure that judicial proceedings for waiver are handled in an expeditious and confidential manner and in a manner satisfying state and federal courts.

The bill requires the Florida Supreme Court to report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed for judicial waiver of notice for the preceding year, and the timing and manner of disposal of such petitions by each circuit court.

Finally, the bill provides that notice shall not be required if: a medical emergency exists; notice is waived in writing by the person who is entitled to notice; the minor is or has been married or has the disability of nonage removed; or notice is waived through a judicial procedure.

The fiscal impact of this bill is indeterminate.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Since 1972 when the United States Supreme Court decided *Roe v. Wade*, 410 US 113, state legislatures have been testing the Constitutional limits on their authority to impose restrictions on abortions. The *Roe v. Wade* decision was premised upon the right of privacy which the Court held to be a "fundamental right" encompassing a woman's decision to terminate her pregnancy. Whenever a "fundamental right" is involved, regulations limiting that right are subject to strict scrutiny, justified by a "compelling state interest" that must be narrowly drawn to express only that interest.

Since the *Roe* decision, the Supreme Court has retreated somewhat from its position and no longer refers to the right to abortion as a "fundamental right." The Court has also shifted the standard against which it evaluates state regulatory provisions restricting abortions from a "strict scrutiny" standard to a less rigorous "undue burden" standard. Some of the most common restrictions on abortion require a minor choosing to have an abortion to notify, or obtain the consent of, a parent before the abortion can be performed.

Although the right to abortion may not be considered a "fundamental right" at the federal level, it does not necessarily mean it is not a "fundamental right" at the state level. Under the rule commonly referred to as the "adequate and independent state ground doctrine," a federal court will not disturb a state court judgment that is based on an adequate and independent state ground provided the result is not violative of the federal Constitution. The federal Constitution serves as a minimum level of guaranteed rights, and the states, in interpreting their own constitutions, are free to guarantee a higher level of protection. When states do guarantee a higher level of protection, federal courts do not have jurisdiction to review these decisions, as long as the state ground is both adequate and independent. Florida is one of only five states that has its own express constitutional provision raising the level of protection of the federal Constitution and guaranteeing an independent right to privacy. Such provisions can make a crucial difference in determining whether a statute is constitutional because the statute in question must pass muster under both the federal and state constitutions.

In 1980, Florida citizens voted in general elections to amend the State Constitution to provide for a right of privacy. Art. 1, Sec 23 of the Florida Constitution reads:

> Right of privacy..-- Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Florida Supreme Court has determined that "the amendment embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal Constitution." *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544 (Fla.1985). The Florida Supreme Court also held that the state's right of privacy:

> is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

In the case of *In re T.W.*, 551 So.2d 1186 (Fla. 1989), the Florida Supreme Court concluded, "based on the unambiguous language of the amendment" that, since minors are natural persons, they should be afforded the same fundamental right of privacy. To overcome these constitutional rights, a statute imposing on a minor's rights must survive the test set out in *Winfield:* The state must prove that the statute furthers a compelling state interest through the least intrusive means.

In the case of *In re T.W.*, the court was faced with the question of whether a state statute requiring parental consent for the abortion of a minor violated the express constitutional right of privacy in the State Constitution. Finding that "Florida's privacy provision is clearly implicated in a woman's decision of whether or not to continue her pregnancy," the court ruled the statute unconstitutional. Rejecting the federal test that a state's interest must only be "significant," the court adopted the Florida standard that the interest be "compelling." The court concluded that neither the interest in protecting minors nor the interest in preserving family unity was sufficiently compelling under Florida

law to override Florida's privacy amendment. The parental consent statute also did not pass the test of the least intrusive means of furthering the state interest. The statute did not make provisions for a lawyer for the minor or for a record hearing, which the court felt were necessary for providing an adequate judicial bypass procedure.

Since *In re T.W.* was decided, there have been a number of federal cases deciding similar issues. Most notably, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 120 L.Ed.2d 674 (1992), was decided in 1992 by the United States Supreme Court. In this case, the Supreme Court upheld Pennsylvania abortion regulations on informed consent requirements, parental consent, 24-hour waiting periods, and abortion reporting. *Casey* and other federal cases have indicated that parental consent and notification statutes meet all federal constitutional requirements as long as they make exceptions for emergencies and provide for an adequate judicial bypass of the consent requirement.

These decisions, however, do not firmly answer questions involving intrusions on a minor's right to privacy in Florida, nor do they answer the question of whether or not a judicial bypass to a parental notification is constitutionally required. In making its decisions on a minor's right to an abortion, the Supreme Court has not dealt with the question of a state's express constitutional right to privacy. Recently, a case from Montana, one of the five states that has a state constitutional right to privacy, was heard by the United States Supreme Court, which upheld a statute requiring parent notification for abortion. *Lambert v. Wicklund*, 520 U.S. 292, 117 S.Ct. 1169 (1997). This case, however, only addressed federal constitutional issues and made no mention of the state's constitutional right of privacy. On the other hand, the state supreme courts of California and Alaska, two other states with an express constitutional right to privacy, have ruled that certain constraints on abortion rights violated the state's fundamental right to privacy. *Mat-Su Coalition for Choice v. Valley Hosp.,* No. 3Pa-92-01207 (Alaska Super. Ct.), *American Academy of Pediatrics v. Lungren,* 912 P.2d 1148 (Calif. 1996). The question of whether or not a state's express constitutional right of privacy could have an effect on a minor's access to abortion has not been addressed by the United States Supreme Court.

The federal Court has also declined to make a decision on whether a parental notification statute must include some sort of bypass provision in order to be constitutional. See *Ohio v. Akron Center for Reproductive Health (Akron II)*, 497 U.S. 502 (1990). The Court ruled that constitutional parental consent statutes must contain a bypass provision that meets four criteria: 1) allows the minor to bypass the consent statute requirement if she established that she is mature enough and well enough informed to make the abortion decision independently; 2) allows the minor to bypass the consent requirement if she established that the abortion would be in her best interests; 3) ensures the minor's anonymity; and 4) provides for expeditious bypass procedures. *Bellotti v. Baird*, 443 U.S. 622 (1979). In deciding cases involving parental notice, the Court has never said that bypass provisions were required, but have ruled on whether or not the provisions meet the four criteria used in determining if consent bypass procedures are adequate. *See Akron II,* 497 U.S., at 508-510.

In both *Casey* and *Hodgson v. Minnesota,* 110 S.Ct. 2926 (1990), the Supreme Court has upheld statutes requiring waiting periods before the performance of an abortion. In *Hodgson,* the Court allowed a 48-hour waiting period between notification and the performance of the abortion to give the parents a realistic opportunity to discuss the decision with the daughter. In *Casey,* the Court found that a required 24-hour waiting period before a woman could receive an abortion was constitutional. In Florida, however, due to the constitutional right to privacy, waiting period requirements, like consent or notification requirements, would appear to violate a woman's fundamental right to abortion.

In addressing the issue of a minor's right to privacy in Florida, attention should also be given to other Florida statutes. The Florida Supreme Court noted in *In re T.W.* that under s. 743.065, F.S., a minor may consent, without parental approval, to any medical procedure involving her pregnancy or her existing child -- no matter how dire the possible consequences -- except abortion. The court stated that it failed "to see the qualitative difference in terms of impact on the well-being of the minor between undergoing a highly dangerous medical procedure on oneself and undergoing a far less dangerous procedure to one's pregnancy. If any qualitative difference exists, it certainly is insufficient in terms of state interest." The court also noted that Florida's adoption act contains no requirement that a minor obtain parental consent prior to placing a child up for adoption.

Florida case law on abortion and statutes allowing for medical procedures and the placing of one's child up for adoption without the consent or notification of the parent imply that a statute restricting a

minor's right to abortion by requiring parental notification could be perceived by the courts as unconstitutional. Moreover, because the state supreme court has found abortion to be protected by the privacy provision in the constitution, any efforts by the Legislature to restrict access to an abortion could elicit the interpretation of the Florida Supreme Court. In any case, however, it can be inferred from both state and federal case law that to be considered constitutional, such a statute would require a clause allowing for judicial bypass of the notification requirement.

Chapter 743, F.S., provides for removal of *disability of nonage of minors*. Removal of a minor's nonage disability is generally referred to as "emancipation." Under ch. 743, F.S., if a minor, defined in s. 1.01(13), F.S., as a person under 18 years of age, is married, has been married, or subsequently becomes married, including a minor whose marriage is dissolved, widowed, or widowered, the disability of nonage is removed. Additionally, under this statute, a circuit court may remove the disability of nonage of a minor age 16 or older residing in the state upon a petition filed by the minor's natural or legal guardian or a guardian ad litem. Once emancipated, a minor may assume the management of his or her estate, contract and be contracted with, sue and be sued, and perform all acts that he or she could do if not a minor.

Section 743.065, F.S., authorizes an unwed pregnant minor, i.e., unemancipated minor (unless emancipated by petition, as described above), to consent to the performance of medical or surgical care or services relating to her pregnancy by a hospital or a clinic or by a state-licensed physician. Furthermore, under this provision of law, an unwed minor mother may consent to the performance of medical or surgical care or services for her child by a hospital, clinic, or a state-licensed physician. Such consents are declared valid and binding as if the minor had achieved majority--that is, had attained 18 years of age. This section is explicitly stated to not affect the law relating to termination of pregnancy as provided in ch. 390, F.S.

During the 1997 legislative session, the "Woman's Right to Know Act" was enacted as chapter 97-151, Laws of Florida, amending ch. 390, F.S., the state law regulating termination of pregnancy. The Act, which is currently s. 390.0111(2), F.S., requires physicians, prior to performing a termination of pregnancy procedure, to explain certain specified information to the woman who is to receive the procedure.

Subsequent to enactment, the Circuit Court for the Fifteenth Judicial Circuit in Palm Beach County issued a temporary injunction that enjoined implementation of the Act. The Fourth District Court of Appeal upheld the circuit court's injunction in *State v. Presidential Women's Center*, 707 So.2d 1145, (Fla. Dist. 1998). The court stated that the "new abortion consent law contains neither of the above provisions which allow the physician to conform the information for 'the circumstances' or the 'accepted standard of medical practice' in the same or similar community." The court noted that the consent law, "which does not allow a physician to tailor the information to the woman's circumstances, infringes on the woman's ability to receive her physician's opinion as to what is best for her, considering her circumstances."

As a result of the temporary injunction, changes made to ch. 390, F.S., by chapter 97-151, Laws of Florida, have not been implemented. At this time, a motion for permanent injunction is pending.

The Legislature has also enacted legislation prohibiting a physician from performing a partial birth abortion except to save a woman whose life is physically endangered. CS/HB 1227 was passed during the 1997 Legislative Session and subsequently vetoed by the Governor. In 1998, the veto was overridden. In *A Choice For Women, et al v. Robert A. Butterworth*, Case No. 98-0774-CIV-GRAHAM, the plaintiffs sought declaratory and injunctive relief from the applications of the provisions of the law with the United States District Court for the Southern District of Florida. That court granted a permanent injunction, which prohibited the implementation of the Act, stating that: "This Court is bound by precedent and must strike down the Partial-Birth Abortion Act because it has the unconstitutional purpose and effect of placing a substantial obstacle in the path of a woman seeking an abortion prior to the fetus attaining viability." A Notice of Appeal was filed and subsequently withdrawn; the Eleventh Circuit has now dismissed the State's appeal with prejudice.

B. EFFECT OF PROPOSED CHANGES:

Any person performing or inducing the termination of a pregnancy of a minor will be required to give 48 hours notice to the parent or legal guardian of the minor prior to performing or inducing the termination of pregnancy.

Exceptions will be made for the notice requirement, and procedures for the judicial waiver of notice will be provided. The court will be required to issue an order authorizing the minor to consent to the termination of pregnancy, if the court finds, by clear evidence, that the minor is sufficiently mature to make the decision or there is evidence of child abuse or neglect, or sexual abuse of the petitioner by one or both of her parents, her guardian, or her custodian, or that the notification of the minor's parent or guardian is not in the best interest of the petitioner.

Filing fees will not be required for minors who petition for waiver, and minors will have the right to court-appointed counsel upon their request. No county will be obligated to pay the salaries, costs, or expenses of any counsel appointed by the court upon the minor's request.

A court that conducts waiver proceedings will be required to provide for a written transcript of all testimony and proceedings and issue written and specific factual findings and legal conclusions supporting its decision and will order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At such a hearing, the court will hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor.

Expedited confidential appeals will be provided to minors who are denied a waiver of parental notification, and orders authorizing termination of pregnancy without notice will not be subject to appeal.

The Supreme Court of Florida will be required to report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed for judicial waiver of notice for the preceding year, and the timing and manner of disposal of such petitions by each circuit court.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the Florida Supreme Court is requested to adopt rules to ensure that judicial proceeding to bypass the notice requirements are handled in an expeditious and confidential manner.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, any person performing or prescribing a termination of pregnancy of a minor must give notice to the parent or legal guardian of the minor's intention to terminate her pregnancy.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, a new limitation will be placed on a minor’s right to an abortion.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

When the minor chooses to seek waiver of the notice requirement through judicial proceedings, the court will determine whether the parent or legal guardian should be notified.

(2) Who makes the decisions?

If a judicial proceeding occurs, the court will make the decision as to whether the parent or guardian should be notified. Once the parent or guardian is notified of the minor's decision to terminate her pregnancy, it is assumed that the minor will make the decision regarding her pregnancy together with her parent or guardian.

(3) Are private alternatives permitted?

No.

(4) Are families required to participate in a program?

Because the person performing or prescribing the termination of pregnancy is required to inform the parent or guardian of a minor's intention to terminate her pregnancy, families will be required to participate if the parent or legal guardian can be notified or unless the minor receives a judicial waiver.

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

Yes, a parent's right to play a role in his or her minor daughter's decisions will be strengthened, but a minor's access to termination of her pregnancy will be limited.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 390.01115, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 390.01115, F.S. The following subsections are created:

Subsection (1) is created to provide that this act may be cited as the "Parental Notice of Abortion Act."

Subsection (2) is created to define "actual notice," "child abuse," "constructive notice," "medical emergency," and "sexual abuse."

Subsection (3)(a) is created to provide that a termination of a pregnancy of a minor may not be performed or induced unless the person performing or inducing the termination of pregnancy has given at least 48 hours actual notice to one parent or to the legal guardian of the pregnant minor. Such notice may be given by a referring physician if the person who performs the termination of pregnancy receives the written statement of the referring physician certifying that the referring physician has given notice. The person performing or inducing the abortion or his or her agent must give 48 hours constructive notice if actual notice is not possible after a reasonable effort.

Subsection (3)(b) is created to describe situations in which notice is not required. These situations include:

- A medical emergency when certain requirements are met;
- Notice is waived in writing by person who is entitled to notice;
- The minor is or has been married or has had the disability of nonage removed;
- The patient has a minor dependent child; and
- A judicial waiver of notice.

Subsection (3)(c) is created to provide for disciplinary action under s. 458.331, F.S., or s. 459.015, F.S., for violations of the notice requirement.

Subsection (4)(a) is created to allow a minor to petition for judicial waiver of the notice requirement and to provide for her right of court-appointed counsel. The minor may also be appointed a guardian ad litem.

Subsection (4)(b) is created to provide that court proceedings under this section must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly, and to require that the court rule and issue written findings of fact and conclusions of law within 48 hours of the time the petition was filed or the petition will be deemed granted.

Subsection (4)(c) is created to provide that the court shall issue an order authorizing the minor to consent to a termination of pregnancy without the notification of a parent or guardian if the court finds, by clear evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy. If the court does not make the finding specified in this section or paragraph (d), it must dismiss the petition.

Subsection (4)(d) is created to provide that the court shall issue an order authorizing the minor to consent to a termination of pregnancy without the notification of the parent or guardian if the court finds, by clear evidence, a pattern of physical, sexual, or emotional abuse of the complainant by one or both of her parents, her guardian, or her custodian, or that the notification of a parent or guardian is not in the best interest of the complainant. If the court does not make the finding specified in this section or paragraph (c), it must dismiss the petition.

Subsection (4)(e) is created to provide that a court that conducts proceedings under this section shall provide for a written transcript of all testimony and proceedings and issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor.

Subsection (4)(f) is created to provide for expedited confidential appeals to minors who are denied a waiver of parental notification. Orders authorizing termination of pregnancy without notice are not subject to appeal.

Subsection (4)(g) is created to provide that no filing fees are required of any pregnant minor who petitions a court for a waiver notice requirement at either the trial or appellate level.

Subsection (4)(h) is created to provide that no county shall be obligated to pay the salaries, costs, or expenses of any counsel appointed by the court under this subsection.

Subsection (5) is created to request the Florida Supreme Court to adopt rules to ensure that proceedings under this section will be handled expeditiously and in a manner that will satisfy the requirements of state and federal courts.

Subsection (6) is created to provide that the Supreme Court, through the Office of the State Courts Administrator, shall report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed under subsection (4) for the preceding year, and the timing and manner of disposal of such petitions by each circuit court.

Section 2. Provides that if any provision of this act or application thereof to any person or circumstance is held invalid, the invalidity shall not effect the other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 3. Provides for an effective date of July 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   See Fiscal Comments.

2. Direct Private Sector Benefits:

   See Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

   N/A

D. FISCAL COMMENTS:

A minor who petitions for a waiver of the notice requirements will be appointed counsel upon her request and will not have to pay filing fees at either the trial or appellate level. Therefore, the state will be required to pay for all court expenses for petitions for a waiver of the notice requirement. There could be a significant fiscal impact on state courts resulting from the judicial waiver of notice proceedings for evidentiary hearings, expedited hearings, appointment of counsel, sealing records, preparation of records for appeal, and other related requirements. The bill expressly states that no county shall be obligated to pay the salaries, costs, or expenses of any counsel appointed by the court under the requirements of the bill.

The act creates both a duty of notification and a corresponding liability for failure to perform that duty, including being subject to professional disciplinary proceedings. Although indeterminate, these duties could have an impact of increasing costs by creating additional cases for consideration by the Board of Medicine and the Board of Osteopathic Medicine and the Division of Administrative Hearings.

Persons performing or prescribing the termination of pregnancy of unemancipated minors will be responsible for the expense involved in notifying the parent or legal guardian of the minor's intention to terminate her pregnancy.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

HB 1485 and CS/SB 1596 are public records companion bills to HB 1585 and CS/SB 1598. CS/SB 1596 was approved by both the House and Senate. The bill provides that when a minor petitions a circuit court for a waiver of the notice requirements pertaining to her termination of pregnancy, any information in documents relating to the petition which could be used to identify the minor is confidential and exempt

from the requirements of s. 119.07(1), F.S., and s. 24(a), art. I of the State Constitution. The court proceedings relating to that petition must ensure the anonymity of the minor, and the identity of the minor is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), art. I of the State Constitution. The bill makes findings that the exemptions are public necessity in that the disclosure of such information is not in the best interests of the minor. The bill makes additional findings that public disclosure of such information may expose minors who have been physically abused, sexually abused, or neglected by a parent or guardian to the risk of retribution.

Several provisions in this bill are controversial or problematic and could be subject to the interpretation of the courts. The definition and use of the term "medical emergency" could be considered problematic. The bill's definition of medical emergency includes conditions that necessitate the immediate termination of pregnancy to avert death or conditions in which a delay in the termination of pregnancy would create a risk of substantial and irreversible impairment of a major bodily function. It is unclear exactly what constitutes a risk of substantial and irreversible impairment of a major bodily function, and it could be argued that this criteria for a medical emergency is too stringent.

Both the notification requirements and the imposition of a 48 hour waiting period between the time the parent or guardian is notified and the time the minor may terminate her pregnancy may be considered by the courts as violatation of a minor's state constitutional right to privacy. If the provisions in this bill did become subject to interpretation of the court, any state interest would have to pass a compelling state interest standard due to the express privacy provision in the Florida Constitution. It appears that two of the state interests the bill is designed to protect are the protection of the immature minor and preservation of the family unit. In the case of *In re T.W.,* the Florida Supreme Court found "that neither of these interests is sufficiently compelling under Florida law to override Florida's privacy amendment." *In re T.W.*, however, was a parental consent law which directly negated the right of pregnant minors to consent to their own health care as provided in s. 743.65, F.S., and therefore, the courts may find that parental consent, as set out in *In re T.W.,* and notfication, as set in this bill, can be distinguished.

The provisions of the bill that establish "clear evidence" as a standard of proof may be problematic. "Clear evidence" is a somewhat vague standard of proof, and it may be difficult to determine what is clear evidence of child abuse or sexual abuse or what is clear evidence of a minor's sufficient maturity to decide whether to terminate her pregnancy. According to Black's Law Dictionary, clear evidence or proof "may mean no more than a fair preponderance of proof but may also be construed as requiring a higher degree of proof."

Finally, the bill provides that 48 hours constructive notice may be given by the individual performing or inducing the abortion or his or her agent if actual notice is not possible after a reasonable effort; however, the bill gives no indication as to what constitutes a reasonable effort. The bill provides that failure to make reasonable effort would subject the violator, if a physician, to professional disciplinary action.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original SB 1598 republished provisions relating to informed consent and partial-birth abortion that have been declared unconstitutional. On the floor, the Senate adopted a strike everything amendment that removed the informed consent and partial-birth abortion language from SB 1598. The amendment also changed the standard of proof to be used by the court in determining whether there is evidence of child abuse or sexual abuse and whether the minor is sufficiently mature to decide whether to terminate her pregnancy. The standard of proof was changed from "clear and convincing evidence" to "clear evidence."

VIII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

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Staff Director: Phil E. Williams

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:	Staff Director:
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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:	Staff Director:
Amy K. Guinan	Phil E. Williams