

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 406

INTRODUCER: Senator Stargel

SUBJECT: Public Records/Minor's Petition to Waive Consent/Abortion

DATE: December 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Pre-meeting
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

I. Summary:

SB 406 creates s. 390.01118, F.S., to establish a public records exemption for any information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in SB 404. Specifically, the bill provides that any such information is:

- Confidential and exempt from article I section 24(a) of the State Constitution, if held by a circuit court or an appellate court; and
- Confidential and exempt from article I section 119.07(1) and section 24(a) of the State Constitution, if held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

The bill provides legislative findings that the public records exemption is a public necessity and provides that the public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST. art. I, s. 24(c).

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁴ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

Office of Criminal Conflict and Civil Regional Counsel (Office)

In 2007, the Legislature created the Office to provide adequate representation to persons entitled to court-appointed counsel under the U.S. or Florida Constitution or as authorized by general law. In creating the Office, the Legislature intended to provide adequate representation in a fiscally sound manner, while safeguarding constitutional principles.²⁰ The Office provides counsel only in cases where a judge appoints the office. Counsel may be provided in both criminal and civil cases.²¹

The Justice Administrative Commission

The Justice Administrative Commission (JAC), created in 1965, provides administrative services on behalf of 49 judicial related offices. Currently, the JAC administratively serves 20 Offices of State Attorney, 20 Offices of Public Defender, 5 Offices of Criminal Conflict and Civil Regional Counsel, 3 Offices of Capital Collateral Regional Counsel, and the Statewide Guardian ad Litem Program. Services provided are primarily in the areas of accounting, budget, financial services, and human resources. While the JAC administratively serves these offices, the JAC does not supervise, direct, or control the offices it serves.²²

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 27.511, F.S.

²¹ See <https://rc1fl.com/about-us/case-types>, (last visited on November 7, 2019).

²² See <https://www.justiceadmin.org/commissioners/history.aspx>, (last visited on November 7, 2019).

III. Effect of Proposed Changes:

SB 406 creates s. 390.01118, F.S., to establish a public records exemption for any information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in SB 404, if SB 404 becomes law. Specifically, the bill provides that any such information is:

- Confidential and exempt from article I, section 24(a) of the State Constitution, if held by a circuit court or an appellate court; and
- Confidential and exempt from article I, section 119.07(1) and section 24(a) of the State Constitution, if held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

The bill provides legislative findings of public necessity as follows:

- It is a public necessity to keep confidential and exempt from public disclosure information contained in a court record which could be used to identify a minor who is petitioning the court for a waiver from the statutory requirement that a parent or legal guardian give consent before the minor may obtain an abortion. The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, 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 when child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, if the information was not held confidential, could learn of her pregnancy, her plans to obtain an abortion, and her petition to the court.
- It is a public necessity to keep this identifying information in records held by the court confidential and exempt in order to protect the privacy of the minor. The State Constitution contains an express right of privacy in section 23 of article I. Further, the United States Supreme Court has repeatedly required parental-consent laws to contain judicial-bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the confidentiality and exemption provided in this act, the disclosure of personal identifying information would violate the right of privacy of the minor and would place the constitutionality of the state's program providing for a judicial waiver of consent in question.

The bill also provides that the public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. Because the bill creates a public record exemption, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

The public necessity statement in section 2 of the bill provides findings that the State Constitution contains an express right of privacy in section 23 of article I. Further, the United States Supreme Court has repeatedly required parental-consent laws to contain judicial-bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the confidentiality and exemption provided in this act, the disclosure of personal identifying information would violate the right of privacy of the minor and would place the constitutionality of the state's program providing for a judicial waiver of consent in question.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

SB 406 provides that the bill's provisions take effect upon a senate bill, or other similar legislation, taking effect if such legislation is adopted in the same legislative session or extension thereof. However, the effective date does not provide a specific senate bill number to which the effective date is tied. The bill should be amended to provide that the bill takes effect upon SB 404 taking effect.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 390.01118 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.