

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 399 Pub. Rec./Homelessness Surveys and Databases

SPONSOR(S): Powell

TIED BILLS: **IDEN./SIM. BILLS:** SB 516

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N	Collins	West
2) Government Operations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill creates a public records exemption for "individual identifying information" contained within a Point-In-Time Count or in a Homeless Management Information System (HMIS) that could directly or indirectly identify a specific person, be manipulated to identify a specific person, or be linked with other available information to identify a specific person. The bill does not preclude the release of information in the aggregate contained within a Point-In-Time Count or Homeless Management System that does not disclose individual identifying information of a person.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

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

The bill provides an effective date upon becoming law.

Article I, s. 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 or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed in Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

The Open Government Sunset Review Act² 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; or
- protects trade or business secrets.

Homelessness Point-In-Time Surveys

A Point-in-Time Count provides a count of sheltered and unsheltered homeless persons. Counts are further broken down into subpopulation categories of persons who are chronically homeless, persons with severe mental illness, chronic substance abusers, veterans, persons with HIV/AIDS, and victims of domestic violence.³ Data collected through these counts is managed through a HMIS, a software application designed to record and store client-level information on the characteristics and service needs of homeless persons. An HMIS is typically a web-based software application that homeless assistance providers use to coordinate care, manage their operations, and better serve their clients.⁴ The U.S. Department of Housing and Urban Development's (HUD) Homelessness Data Exchange allows local homeless Continuums of Care (CoC) to submit data directly from their local HMIS to the department.⁵

Homeless Continuums of Care in Florida

¹ Art. I, s. 24(c), Fla. Const.

² Section 119.15, F.S.

³ *Homelessness Data Exchange*; U.S. Department of Housing and Urban Development; (can be found at: <http://www.hudhdx.info/>) last accessed on February 8, 2014.

⁴ *Homeless Assistance*; U.S. Department of Housing and Urban Development; (can be found at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/homeless) last accessed on February 8, 2014

⁵ *Homelessness Data Exchange*; U.S. Department of Housing and Urban Development; (can be found at: <http://www.hudhdx.info/>) last accessed on February 8, 2014.

CoC Overview

A local CoC is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of the homeless and those at risk of homelessness.⁶ The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions in a community or region.⁷

The Department of Children and Families (DCF) interacts with the state's 28 CoCs through the Office of Homelessness (Office), which serves as the state's central point of contact on homelessness. The Office is responsible for coordinating resources and programs across all levels of government, and with private providers that serve the homeless. It also manages targeted state grants to support the implementation of local homeless service CoC plans.⁸ The Office has recognized and designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The Office has made these designations in consultation with the local homeless coalitions and the Florida offices of HUD.

The CoC model creates a framework for a comprehensive array of emergency, transitional, and permanent housing, and supportive services to address the varying needs of persons who are homeless or at risk of becoming homeless. These are community-based plans and are reflective of unique conditions in each local area. The purpose of the local CoC is to help communities envision, plan, and implement coordinated, long-term solutions to address homelessness.⁹

The CoC planning effort is an ongoing process that addresses all subpopulations of the homeless. Participation of all interested individuals and organizations is encouraged, including those who are or have been homeless. Faith-based organizations are encouraged to participate, along with state and regional offices that administer mainstream program resources such as Medicaid, food stamps, employment assistance, welfare assistance, and mental health services.¹⁰

The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD. The plan also makes the community eligible to compete for the state's Challenge Grant and Homeless Housing Assistance Grant.¹¹

A model CoC should include the following:¹²

- outreach, intake, and assessment to link housing and services to the needs of those who are homeless;
- services and resources to prevent housed persons from becoming homeless or returning to homelessness;
- emergency sheltering as a safe alternative to living on the streets;
- transitional housing to move persons toward permanent housing solutions;
- permanent housing to end episodes of homelessness; and
- supportive services designed to assist the person with necessary skills to secure and retain permanent housing.

CoCs and the Point-In-Time Count

⁶ Section 420.624(1), F.S.

⁷ Section 420.624(2), F.S.

⁸ *Homelessness*; Florida Department of Children and Families; (can be found at: <http://www.myflfamilies.com/service-programs/homelessness>) last accessed on February 8, 2014.

⁹ *Lead Agencies*; Florida Department of Children and Families; (can be found at: <http://www.myflfamilies.com/service-programs/homelessness/lead-agencies>) last accessed on February 8, 2014.

¹⁰ Ibid.

¹¹ *Lead Agencies*; Florida Department of Children and Families; (can be found at: <http://www.myflfamilies.com/service-programs/homelessness/lead-agencies>) last accessed on February 8, 2014.

¹² Ibid.

HUD requires that the CoCs conduct an annual count of the homeless persons who are sheltered in emergency shelters, transitional housing, and safe havens on a single night during the last ten days of January. Further, HUD requires that the CoCs must conduct a count of the unsheltered homeless population every other year on odd numbered years. For 2013, the state's 28 CoCs carried out both the sheltered and unsheltered counts. The goal is to produce an unduplicated, statistically reliable count and estimate of the homeless in the community.¹³

The intent is to identify those men, women, and children who meet HUD's definition of a homeless person. This is limited to:¹⁴

- those living in a publicly or privately operated shelter providing temporary living arrangements;
- those persons whose primary nighttime residence is a public or private place not intended to be used as an accommodation for human beings, such as a car, park, abandoned building, or camping ground;
- a person who is exiting from an institution, where he or she lived for 90 days or less, and who was otherwise homeless immediately prior to entering that institution;
- a person who is fleeing from a domestic violence situation; or
- a person who will lose their primary nighttime residence within 14 days, no subsequent dwelling has been found, and the individual lacks the resources to obtain permanent housing.

The count is undertaken on a single day and night. The federally approved methods include a report of all homeless persons counted, or a statistically valid sampling to arrive at the unduplicated estimate of the homeless. The unsheltered count methods typically are street counts, street counts with interviews, or screening, and interviewing persons at supportive service agencies such as soup kitchens where the homeless seek help.¹⁵

For the 28 CoC planning areas reporting in 2013, the total number of sheltered and unsheltered homeless persons was 45,364. The 2012 number of homeless persons was 54,972 for these 28 planning areas.¹⁶

Effect of Proposed Changes

The bill creates a public records exemption for individual identifying information of persons contained in a Point-In-Time Count and Survey or data within a HMIS collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations provided in 24 C.F.R. part 91.

The bill defines "individual identifying information" as information that identifies a specific person either directly or indirectly, can be manipulated to identify a specific person, or can be linked with other available information to identify specific a person.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.¹⁷

B. SECTION DIRECTORY:

Section 1: Creates s. 420.6231, F.S., creating an exemption from public record requirements for individual identifying information gathered pursuant to certain federally-authorized homelessness data collection programs.

¹³ 2013 Report; Florida Council on Homelessness; (can be found at: <http://www.dcf.state.fl.us/programs/homelessness/docs/2013CouncilReport.pdf>) last accessed on February 8, 2014.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Section 249(c), Art. I of the State Constitution

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date upon becoming 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 appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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 final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; 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 creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.