

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 Children, Families, and Elder Affairs

BILL: SB 552

INTRODUCER: Senator Hays

SUBJECT: Public Records/Homelessness Surveys and Databases

DATE: February 19, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 552 creates s. 420.6231, F.S., to provide that individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill defines the term “individual identifying information” and applies the exemption to such information held retroactively.

The bill does not prevent the release of aggregate information from a Point-In-Time Count and Survey or data in a Homeless Management Information System that does not disclose individual identifying information of a person. The bill provides for an Open Government Sunset review and contains a statement of public necessity as required by the State Constitution.

The bill is anticipated to have no fiscal impact on state government.

The bill has an effective date of upon becoming law.

II. Present Situation:

Point-In-Time Count and Survey

A point-in-time count is an unduplicated count on a single night of the people in a community who are experiencing homelessness that includes both sheltered and unsheltered populations. Counts are provided by household type (individuals, families, and child-only households), and are further broken down by subpopulation categories, such as homeless veterans and people who are chronically homeless.¹

¹ National Alliance to End Homelessness. Point-In-Time Count: Fact Sheet. November 4, 2010, available at: <http://www.endhomelessness.org/library/entry/fact-sheet-point-in-time-counts>. (last visited February 23, 2015).

The Department of Housing and Urban Development (HUD) requires that state homeless continuums of care² conduct an annual count of persons who are homeless and 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 continuums of care also must conduct a count of the unsheltered homeless population every other year, required on odd numbered years. The goal is to produce an unduplicated count, or statistically reliable estimate of the homeless in the community.³

Point-in-time counts are important because they establish the severity of the problem of homelessness and help policymakers and program administrators track progress toward the goal of ending homelessness. Collecting data on homelessness and tracking progress can inform public opinion, increase public awareness, and attract resources that will lead to a reduction or the eradication of the problem.⁴ On the local level, point-in-time counts help communities plan services and programs to appropriately address local needs, measure progress in decreasing homelessness, and identify strengths and gaps in a community's current homelessness assistance system.⁵

For 2014, Florida's homeless continuums of care carried out both the sheltered and unsheltered counts as required. The 2014 Point-In-Time Survey reports from the local continuums of care indicate that 41,335 persons met the HUD definition of homeless in Florida on a given day in January 2014. The Florida Department of Education reports that 70,215 public school students were homeless in Florida in the 2012-2013 school year. Sixteen rural county areas did not have the point in time count conducted in 2014 due to lack of resources.⁶

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

- 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 campground;
- 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;

² The federal Department of Housing and Urban Development (HUD) designed the Homeless Continuums of Care to promote communitywide commitment and planning toward the goal of ending homelessness. In Florida there are 28 Continuum of Care lead agencies serving 64 of 67 counties.

³ National Alliance to End Homelessness. Point-In-Time Count: Fact Sheet. November 4, 2010, available at: <http://www.endhomelessness.org/library/entry/fact-sheet-point-in-time-counts>. (last visited February 23, 2015).

⁴ *Id.*

⁵ *Id.*

⁶ Florida Department of Children and Families. Council on Homelessness, 2014 Annual Report. June 2014, available at: www.myflfamilies.com/service-programs/homelessness. (last visited February 23, 2015).

- A person who will lose their primary nighttime residence within 14 days, where no subsequent dwelling has been found and the individual lacks the resources to obtain permanent housing.⁷

Public Records Requirements

The Florida Constitution specifies requirements for public access to government records. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁸ The records of the legislative, executive, and judicial branches are specifically included.⁹

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. Chapter 119, F.S., guarantees every person's right to inspect and copy any state or local government public record¹⁰ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹¹

Only the Legislature may create an exemption to public records requirements.¹² Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹³ 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 provisions¹⁴ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁵

⁷ *Id.*

⁸ FLA. CONST. art. I, s. 24(a).

⁹ *Id.*

¹⁰ Section 119.011(12), F.S., defines "public records" 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" to mean 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." Chapter 119, F.S., does not apply to legislative or judicial records. See *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

¹¹ Section 119.07(1)(a), F.S.

¹² FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates 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 (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 2004); and *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).

¹³ FLA. CONST. art. I, s. 24(c).

¹⁴ The bill, however, may contain multiple exemptions that relate to one subject.

¹⁵ FLA. CONST. art. I, s. 24(c).

III. Effect of Proposed Changes:

Section 1 creates s. 420.6231, F.S., to provide that identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations, is confidential and exempt from s.119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption is applied to information being held retroactively.

The section also provides a definition of the term “individual identifying information”, provides that such information may be released in the aggregate, and provides for an Open Government Sunset Review in 2020.

Section 2 provides a statement of public necessity as required by the Florida Constitution. The bill states that it is a public necessity to keep confidential and exempt from public disclosure identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations.

The public release of such sensitive information could lead to discrimination against or ridicule of such individuals and could make them reluctant to seek assistance for themselves or their family members. The public release of such information may put affected individuals at greater risk of injury as a significant proportion of such individuals are survivors of domestic violence or suffer from mental illness or substance abuse. Additionally, public access to such information may put affected individuals at a heightened risk for fraud and identity theft.

Section 3 provides an effective date of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 provides a public record exemption related to individual identifying information obtained during annual counts of persons who are homeless and therefore it **requires a two-thirds vote for final passage**.

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 provides a public record exemption related to individual identifying information obtained during annual counts of persons who are homeless and is therefore required to include a public necessity statement.

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. The exemption provided for in the bill does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 420.6231.

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.