

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 Rules

BILL: CS/SB 552

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Public Records/Homelessness Surveys and Databases

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 552 provides 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 provides for retroactive application of the exemption.

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 limited fiscal impact on state government.

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

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 Although HUD requires continuums of care gather survey data, federal law privacy laws do not necessarily extend to non-federal agencies that receive federal funds.⁴

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.⁵ 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.⁶

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 during the 2012-2013 school year. Sixteen rural county areas did not conduct a point-in-time count in 2014 due to a lack of resources.⁷

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;

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).

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, according to 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).

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 *Housing Authority of City of Daytona Beach v. Gomillion*, 639 So.2d 117 (Fla. 5th DCA 1994).

⁵ *Id.*

⁶ *Id.*

⁷ 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).

- 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;
- 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.⁸

Point-In-Time Surveys and Homeless Management Information Systems

Point-In-Time Surveys request personal information such as a person's name, date of birth, social security number, race, marital status, disability (including personal health information) and veteran status. The Surveys also inquire about a homeless person's children. Data collected through Point-In-Time Surveys⁹ and during other counts is managed through the Homeless Management Information System (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.¹⁰

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.¹¹ The Florida Constitution states that this right applies to the records of the legislative, executive, and judicial branches of government.¹²

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

⁸ *Id.*

⁹ Sample surveys can be found on the HUD website at <https://www.onecpd.info/resource/1699/homeless-pit-count-survey-sample/> and <https://www.onecpd.info/resource/1698/homeless-pit-count-survey-domestic-violence-form-sample>. (last viewed March 11, 2015).

¹⁰ HUD Exchange Homeless Management Information System. <https://www.hudexchange.info/hmis> (last viewed on March 11, 2015).

¹¹ FLA. CONST. art. I, s. 24(a).

¹² *Id.*

right to inspect and copy any state or local government public record¹³ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁴

Only the Legislature may create an exemption to public records requirements.¹⁵ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁶ 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 provisions¹⁷ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁰

The OGSR 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 necessary.²¹ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

¹³ 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).

¹⁴ Section 119.07(1)(a), F.S.

¹⁵ 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).

¹⁶ FLA. CONST. art. I, s. 24(c).

¹⁷ The bill, however, may contain multiple exemptions that relate to one subject.

¹⁸ FLA. CONST. art. I, s. 24(c).

¹⁹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²²
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²³ or
- It protects trade or business secrets.²⁴

In addition, the Legislature must find that the purpose of the exemption overrides the Florida's public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.²⁵ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁶ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁷

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 exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption also applies retroactively to information that is already being held.

The section also provides a definition of the term "individual identifying information" as meaning information that directly or indirectly identifies a specific person or can be used to identify a specific person. The bill provides that aggregate information may be released so long as an individual cannot be identified.

Pursuant to the OGSR, the bill provides that this exemption will stand repealed on October 2, 2010, unless it is continued by the Legislature.

²² Section 119.15(6)(b)1., F.S.

²³ Section 119.15(6)(b)2., F.S.

²⁴ Section 119.15(6)(b)3., F.S.

²⁵ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ Section 119.15(7), F.S.

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 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 that the bill will be effective 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 creates 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 that this exemption is necessary in order to protect homeless people and their families and that this exemption makes it more likely that the homeless will be willing to participate in the Point-In-Time Count and Survey.

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:

The Department of Children and Families' (DCF) Office on Homelessness is the central point of contact within state government on homelessness.²⁸ DCF reports that this bill has no impact on it and did not provide fiscal impact information.²⁹ However, it seems plausible that government agencies and local service providers which collect Point-in-Time Surveys and HMIS information will have to expend resources to train their staff and perform redactions when a public records request is made. These costs will probably be negligible.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.6231 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on March 17, 2015:

The CS removes specific references to part 91 of the Code of Federal Regulations and 42 USC s. 11363. These references were removed because federal statutes and rules governing the program and federal level privacy protections are located in several other sections of the Code of Federal Regulations and the United States Code.

B. Amendments:

None.

²⁸ Florida Department of Children and Families. <http://www.myflfamilies.com/service-programs/homelessness>

²⁹ 2015 Agency Legislative Bill Analysis from the Department of Children and Families prepared February 10, 2015.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
