

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 Governmental Oversight and Accountability

BILL: SB 516

INTRODUCER: Senator Latvala

SUBJECT: Public Records/Point-In-Time Count and Survey/Homeless Management Information System

DATE: March 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 516 creates a public records exemption for 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. This information would be held exempt from public disclosure. 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.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies public records and open meetings requirements. 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.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or open meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ 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 provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ 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" 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ 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).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

Open Government Sunset Review Act

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.¹³ 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.¹⁴

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.¹⁵ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It 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
- It protects trade or business secrets.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷

If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are *not* required.

¹³ 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.).

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ 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?

¹⁸ FLA. CONST., art. I, s. 24(c). An existing exemption may be treated as a new exemption if the exemption is expanded to cover additional records (s. 119.15(4), F.S.).

Homeless Continuums of Care in Florida

A Continuums of Care (CoC) provides emergency, transitional, and permanent housing and services to address the various needs of the homeless and those at risk of homelessness.¹⁹ 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.²⁰

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.²¹ 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 the U.S. Department of Housing and Urban Development (HUD). The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD.

CoCs and Point-In-Time Count Surveys

HUD requires that CoCs conduct an annual count of the homeless persons who are sheltered in emergency shelters, transitional housing, and safe havens on a single night called a Point-In-Time Count Survey.²² Further, HUD requires CoCs to 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.²³

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 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

¹⁹ Section 420.624(1), F.S.

²⁰ Section 420.624(2), F.S.

²¹ *Homelessness*; Florida Department of Children and Families; (can be found at: <http://www.myflfamilies.com/service-programs/homelessness>) last accessed on February 8, 2014.

²² Sample surveys are located 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>. The 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 identities of an individual's children are also requested.

²³ *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.

- 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.²⁴

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.²⁵

Point-In-Time Surveys and Homeless Management Information Systems

Data collected through these Point-In-Time Surveys and during other counts is managed through a 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.²⁶ The HUD Homelessness Data Exchange allows local homeless Continuums of Care (CoC)²⁷ to submit data directly from their local HMIS to HUD.²⁸

III. 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 an HMIS. This information would be exempt from public disclosure. 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 a statement of public necessity as required by the State Constitution. The public necessity statement provides that the exemption is necessary to protect the homeless from discrimination and ridicule, which could make them reluctant to seek assistance. Public knowledge of their identities could make people at greater risk of injury, as many of the homeless were survivors of domestic violence or suffer from mental illness or substance abuse. Finally, the public necessity statement provides that public disclosure of individual identifying information could lead to identity theft and fraud.

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

²⁴ Id.

²⁵ Id.

²⁶ *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

²⁷ For more detailed information, see 24 CFR Section 578, or the Interim Final Rule on Homeless Emergency Assistance and Rapid Transition to Housing in Federal Register Volume 77, number 147, July 31, 2012. The interim rule became effective August 30, 2012.

²⁸ *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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house. This bill creates a new public records exemption; therefore, a two-thirds vote is required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating a public records exemption to contain a public necessity statement. This bill includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public records exemption for individual identifying information in Point-in-Time Count and Survey data and HMIS databases, which is sufficiently narrowly tailored to meet this requirement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

Agencies will have to redact information for future public records requests, which may expend agency resources.

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 Changes:

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

None.

B. Amendments:

None.