

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 1024

INTRODUCER: Senator Stewart

SUBJECT: Public Records/Homeless Management Information System

DATE: March 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1024 creates an exemption from the public records requirements for individual identifying information on homeless persons. Such data is collected pursuant to federal and state law and if made public, could lead to discrimination, injury, and pose a barrier to homeless persons receiving services. The bill provides the exemption is subject to the Open Government Sunset Review Act and unless reviewed and saved from repeal through reenactment by the Legislature shall be repealed on October 2, 2022.

This bill requires a two-thirds vote from each chamber for passage because the bill creates a public records exemption.

This bill has no fiscal impact on the state and will become effective upon becoming law.

II. Present Situation:

Homelessness

Although recent progress has been made in reducing the number of homeless individuals and families, ending homelessness remains a priority in communities across the country. According to a Point-in-Time Count from January 2015, 564,708 people were homeless on a given night in the United States.¹ This number includes both homeless individuals and homeless families. Less than 20% of the homeless population are chronically homeless, defined as someone who has experienced homelessness for a year or longer, or who has experienced at least four episodes of homelessness in the last three years, and has a disability.² Other sub-populations that are a key focus include veterans, youth aging out of foster care, and LGBTQ youth. At the federal level,

¹ Department of Housing and Urban Development. <https://www.hudexchange.info/programs/policy-areas/#homelessness>. Last visited March 8, 2017.

² *Id.*

the Department of Housing and Urban Development (HUD) oversees efforts to reduce and eliminate homelessness.

In Florida, responsibility for addressing homelessness is shared between the Department of Children and Families (DCF) and the Department of Economic Opportunity (DEO). The State Office on Homelessness is housed within DCF to coordinate efforts relating to homelessness.³ DCF supports the Council on Homelessness (council) that oversees services and funding the homeless.⁴ The council develops policy and advises the State Office on Homelessness. The council members include: the secretary of DCF, the executive director of DEO, the State Surgeon General, the executive director of Veterans' Affairs, the secretary of the Department of Corrections, the secretary of the Agency for Health Care Administration, the commissioner of Education, the director of CareerSource Florida, Inc., one representative of the Florida Association of Counties, one representative of the Florida League of Cities, one representative of the Florida Supportive Housing Coalition, the executive director of the Florida Housing Finance Corporation, one representative of the Florida Coalition for the Homeless, and four members appointed by the Governor.⁵ The council coordinates among state, local, and private agencies and providers to produce a statewide inventory for the state's system of homeless programs which incorporates regionally developed plans.

DEO establishes local coalitions to plan, network, coordinate, and monitor the delivery of services to the homeless.⁶ The local coalitions develop the local homeless continuum of care plan⁷, for the area of the county or region served by the local homeless coalition. Unless otherwise specified in the plan, the local coalition serves as the lead agency for the local homeless assistance continuum of care. The local coalitions receive funding from a grant program to provide services to the homeless.⁸ The amount of these grants, referred to as "challenge" grants, totaled \$5 million statewide for fiscal year 2016-2017.⁹ In addition, the state provided \$3.3 million for homeless housing assistance.¹⁰ These funds were appropriated to DCF to distribute to local homeless coalitions throughout the state.

Local communities must establish a homeless assistance continuum of care.¹¹ This continuum is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons and persons at risk for homelessness. Each local continuum of care plan must designate a lead agency that will serve as the point of contact and accountability to the State Office on Homelessness. The lead agency may be a local homeless coalition, municipal or county government, or other public agency or private, not-for-profit corporation.

³ Section 420.622, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 420.623, F.S.

⁷ Section 420.624, F.S., provides that a local homeless assistance continuum of care is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons and persons at risk for homelessness.

⁸ Section 420.625, F.S.

⁹ Specific Appropriation 361, General Appropriations Act, Chapter 2016-66, Laws of Florida.

¹⁰ Specific Appropriation 363, General Appropriations Act, Chapter 2016-66, Laws of Florida.

¹¹ Section 420.624, F.S.

Data on Homelessness

In Florida, the council collects, maintains, and makes available information concerning persons who are homeless or at risk for homelessness, including demographics information, current services and resources available, the cost and availability of services and programs, and the met and unmet needs of this population. All entities that receive state funding must provide access to all data they maintain to the council. This data is provided to the council in summary form, with no individual identifying information. The State Office on Homelessness, in consultation with the council and lead agencies for a local homeless continuum of care, specifies the system and process of data collection. All lead agencies provide data for the purpose of analyzing trends and assessing impacts in the statewide homeless delivery system. Any statewide homelessness survey and database system must comply with all state and federal statutory and regulatory confidentiality requirements.

The U.S. Department of Housing and Urban Development (HUD) maintains Homeless Management Information Systems (HMIS) to better inform homeless policy and decision making at the federal, state, and local levels.¹² HUD collects national-level data on the extent and nature of homelessness over time. Specifically, a HMIS can be used to produce an unduplicated count of homeless persons, understand patterns of service use, and measure the effectiveness of homeless programs. Data on homeless persons is collected and maintained at the local level. HMIS implementations can encompass geographic areas ranging from a single county to an entire state.

The HEARTH Act, enacted into law on May 20, 2009, requires that all communities have an HMIS with the capacity to collect unduplicated counts of individuals and families experiencing homelessness.¹³ These data systems must collect the following data elements for the homeless:

- Name
- Social Security Number
- Date of Birth
- Race
- Ethnicity
- Gender
- Veteran Status
- Disabling Condition
- Residence Prior to Project Entry
- Project Entry Date
- Project Exit Date
- Destination
- Personal ID
- Household ID
- Relationship to Head of Household

¹² Department of Housing and Urban Development. <https://www.hudexchange.info/programs/hmis/>. Last visited March 8, 2017.

¹³ *Id.*

- Client Location Code
- Length of Time on Street, in an Emergency Shelter or Safe Haven

HUD is currently developing rules for basic privacy and security requirements for client-level data.¹⁴

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹⁵ 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.¹⁶

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.¹⁷ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹⁸ The Public Records Act states that

it 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.¹⁹

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.²⁰ 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.”²¹ A violation of the Public Records Act may result in civil or criminal liability.²²

¹⁴ *Id.*

¹⁵ FLA. CONST., art. I, s. 24(a).

¹⁶ *Id.*

¹⁷ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

¹⁸ Public records laws are found throughout the Florida Statutes.

¹⁹ Section 119.01(1), F.S.

²⁰ 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.”

²¹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

²² Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to public records requirements.²³ An exemption must pass by a two-thirds vote of the House and the Senate.²⁴ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.²⁵ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.²⁶

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”²⁷ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.²⁸

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.²⁹ 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.³⁰

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 is necessary.³¹ 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 program, and administration would be significantly impaired without the exemption;³²
- 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;³³ or
- It protects trade or business secrets.³⁴

²³ FLA. CONST., art. I, s. 24(c).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

²⁷ 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 School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

²⁸ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

²⁹ 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.

³⁰ Section 119.15(3), F.S.

³¹ Section 119.15(6)(b), F.S.

³² Section 119.15(6)(b)1., F.S.

³³ Section 119.15(6)(b)2., F.S.

³⁴ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.³⁵ 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.³⁶ 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.³⁷

III. Effect of Proposed Changes:

The bill creates s. 420.6231, F.S., to create an exemption to the public records requirements for individual identifying information in homelessness surveys and databases. The bill defines “individual identifying information” as any information that directly or indirectly identifies a person. The bill would exempt information held before and after the effective date of the bill. The bill allows the release of aggregate information on homelessness. The bill states that the exemption is subject to the Open Government Sunset Review Act and unless reenacted by the Legislature, expires October 2, 2022.

The bill finds that it is a public necessity to exempt this information from the public records requirements because the release of such information could lead to discrimination, injury, and pose a barrier to homeless persons receiving services.

The bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each

³⁵ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁶ FLA. CONST. art. I, s. 24(c).

³⁷ Section 119.15(7), F.S.

chamber for public records exemptions to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill exempts certain identifying information of homeless persons. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private agencies and organizations will have to ensure that identifying information on homeless persons is held in confidence.

C. Government Sector Impact:

Governmental agencies and organizations will have to ensure that identifying information on homeless persons is held in confidence.

VI. Technical Deficiencies:

The bill's effective date is July 1. Most public records exemptions have an effective date of October 1, which gives agencies time to learn and prepare for public records exemptions after the laws are published.³⁸

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.6231 of the Florida Statutes.

³⁸ *Manual for Drafting Legislation, Sixth Edition*, Office of Bill Drafting Service, The Florida Senate, p. 66.

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.

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