

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 699 Pub. Rec./Homelessness Counts and Databases

**SPONSOR(S):** Government Operations Subcommittee, McFarland and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 934

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	17 Y, 0 N	Guzzo	Brazzell
2) Government Operations Subcommittee	18 Y, 0 N, As CS	Skinner	Toliver
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The U.S. Department of Housing and Urban Development (HUD) requires local homeless continuums of care (CoCs) to submit annual point-in-time (PIT) counts of people experiencing homelessness. The CoCs collect the data necessary to generate a PIT count of people experiencing homelessness by requiring individuals who apply for assistance to provide certain individual identifying information, including the person's name, date of birth, and social security number. Collecting a person's individual identifying information is necessary to ensure PIT counts provide unduplicated counts of homeless individuals. Having an accurate PIT count allows for federal grants and assistance to be provided to those who need it the most.

The bill creates a public record exemption for individual identifying information contained in a PIT count or a homeless management information system that is collected pursuant to federal law.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2027, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill has no fiscal impact on state or local government.

**Article I, s. 24(c) of the Florida 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:

#### Background

##### Public Records

Article I, s. 24(a) of the Florida 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. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.<sup>2</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>3</sup> 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect 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
- Protect trade or business secrets.<sup>4</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>5</sup>

##### Continuums of Care (CoC)

A CoC is a group of organizations that are responsible for coordinating, planning, and pursuing an end to homelessness in a designated catchment area.<sup>6</sup> Florida has 27 CoCs of varying sizes and geographic areas.<sup>7</sup> Each CoC is represented by a CoC lead agency.<sup>8</sup> The lead agency is responsible for applying to HUD for federal grants and distributing grant funds to other CoCs and local homeless organizations in their catchment area.<sup>9</sup>

##### Federal Homelessness Grants

<sup>1</sup> Art. I, s. 24(c), FLA. CONST.

<sup>2</sup> *Id.*

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> Section 119.15(6)(b), F.S.

<sup>5</sup> Section 119.15(3), F.S.

<sup>6</sup> Section 420.621(1), F.S. CoCs can be composed of nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and organizations that serve homeless and formerly homeless persons.

<sup>7</sup> Department of Children and Families, *Continuums of Care and Local Providers of Service*, CoC Contact Table, available at <https://www.myflfamilies.com/service-programs/homelessness/docs/CoC%20Contact%20Table.pdf> (last visited February 4, 2022).

<sup>8</sup> Section 420.621(2), F.S.; see also s. 420.6225, F.S.

<sup>9</sup> Section 420.6225(2), F.S.

In 2009, Congress enacted the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act.<sup>10</sup> The HEARTH Act created two main federal programs administered by the U.S. Department of Housing and Urban Development (HUD), which distribute federal homelessness grant funding: the Emergency Solutions Grants (ESG) program and the Continuum of Care (CoC) program.<sup>11</sup> The ESG program distributes grant funds primarily for emergency sheltering of the homeless.<sup>12</sup> The CoC program distributes grant funds to assist with the longer-term housing and service needs of the homeless.<sup>13</sup>

### *Homeless Management Information Systems*

To be eligible to receive federal grants, HUD requires a CoC to have a homeless management information system (HMIS) with the capacity to collect unduplicated counts of individuals and families experiencing homelessness.<sup>14</sup> CoCs use the information collected from serving homeless individuals and families to determine future needs and establish funding priorities.<sup>15</sup>

HUD also requires a CoC to report certain universal data elements into its HMIS.<sup>16</sup> The universal data elements include personal identifying information that are necessary to produce an unduplicated estimate of the number of homeless people accessing services from homeless providers. The universal data elements include an individual's:

- Name;
- Social security number;
- Date of birth;
- Ethnicity and race;
- Gender;
- Veteran status;
- Disabling condition;
- Residence prior to program entry;
- Zip code of last permanent residence;
- Program entry date and exit date;
- Unique personal identification number;
- Program identification number; and
- Household identification number.<sup>17</sup>

HUD requires all homeless organizations that record or process personal protected information (PPI) of homeless individuals into a HMIS to comply with certain standards to protect the confidentiality of PPI, while allowing for reasonable, responsible, and limited use and disclosure of data.<sup>18</sup> Specifically, HUD restricts the disclosure of personal identifying information to the following circumstances:

- To provide or coordinate services to an individual;
- To provide payment or reimbursement for services;
- To carry out administrative functions; and
- To create de-identified personal identifying information.<sup>19</sup>

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<sup>10</sup> Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, Pub. L. No. 111-22, 111<sup>th</sup> Cong. (May 20, 2009).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Title II, Emergency Solutions Grant Program, § 1203(f), and Title III, Continuum of Care Program, § 423(a)(9); see also The HUD Exchange, *HMIS Requirements*, available at <https://www.hudexchange.info/programs/hmis/hmis-requirements/> (last visited February 4, 2022).

<sup>15</sup> *Id.*

<sup>16</sup> *The Federal Register*, Vol. 69, No. 146, July 30, 2004, Notices, pg. 45901, available at <https://www.govinfo.gov/content/pkg/FR-2004-07-30/pdf/04-17097.pdf> (last visited February 4, 2022).

<sup>17</sup> *Id.* at pg. 45905.

<sup>18</sup> *Id.* at pgs. 45927 and 45928.

<sup>19</sup> *Id.* at pg. 45928.

In addition to meeting the confidentiality and security requirements above, HUD requires CoC lead agencies and their local CoCs and homeless organizations to develop and implement written procedures to ensure that the following information is kept secure and confidential for individuals who receive assistance under the ESG program or the CoC program:

- All records containing the PPI of any individual or family who applies for and/or receives assistance from the CoC program or the ESG program;
- The address or location of any domestic violence project assisted under the CoC program or the ESG program, except with written authorization of the person responsible for the project or shelter; and
- The address or location of any housing of a program participant, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality.<sup>20</sup>

Despite these protections, some local homeless organizations that comprise certain CoCs do not share information in a HMIS about individuals to whom they provide assistance because they don't want the individual's personal identifying information to become a public record as a result of Florida's public policy regarding access to government records. This leads to the potential for a homeless individual to receive duplicate funding from multiple homeless organizations.<sup>21</sup>

### *Point-in-Time Counts*

HUD requires CoCs to annually conduct a point-in-time (PIT) count of people experiencing homelessness who are sheltered in an emergency shelter or transitional housing.<sup>22</sup> CoCs use their HMIS to conduct the PIT count on a single day of the year to provide a snapshot of the number of homeless people who are sheltered.<sup>23</sup> The PIT count includes the universal data elements/personal identifying information detailed above (name, social security number, date of birth, etc.) to ensure the count is accurate and unduplicated.

CoCs are also required to biennially conduct a PIT count of unsheltered people experiencing homelessness.<sup>24</sup> This count is conducted by surveying homeless individuals in the community. The survey also includes personal identifying information.<sup>25</sup>

### **Effect of the Bill**

The bill creates a public record exemption for individual identifying information contained in a PIT count or a homeless management information system that is collected pursuant to federal law. Further, the bill provides that the public record exemption applies retroactively to individual identifying information collected in a PIT count or a homeless management information system prior to the effective date of the bill.

The bill also authorizes aggregate information from a PIT count or a homeless management information system to be released as long as it does not disclose an individual's identifying information.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that public knowledge of identifying information of a homeless individual could lead to discrimination or ridicule of the individual which could make them reluctant to seek assistance. Public knowledge of such information may also create a greater risk of injury to affected individuals who are survivors of domestic violence or suffer from mental illness or substance abuse. Additionally, public knowledge of such information may create a heightened risk for

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<sup>20</sup> 24 C.F.R. § 578.103(b), and 24 C.F.R. § 576.500(x).

<sup>21</sup> Email from Chris Johnson, Chief Executive Officer, Suncoast Partnership to End Homelessness, RE: HB 699, (January 10, 2022).

<sup>22</sup> The HUD Exchange, *Point-in-Time Count and Housing Inventory Count*, available at <https://www.hudexchange.info/programs/hdx/pit-hic/> (last visited February 4, 2022).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Sample surveys are available at

<https://www.pointintime.info/simtechsolutions/assets/File/PIT%202018%20Unsheltered%20Survey.pdf> (last visited February 4, 2022).

fraud and identity theft to affected individuals. The harm from disclosing the individual identifying information of a person contained in a PIT count or in a homeless management information system outweighs any public benefit that can be derived from widespread and unfettered access to such information.

The bill further provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless the Legislature reviews and renews the exemption before that date.

The bill requires the Division of Law Revision to replace the phrase “the effective date of this act” wherever it occurs with the date the bill becomes law.

The bill is effective upon becoming law.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 420.6231, F.S., relating to individual identifying information in homelessness counts and databases; public records exemption.

**Section 2:** Provides a statement of public necessity.

**Section 3:** Directs the Division of Law Revision to take certain actions.

**Section 4:** Provides an effective date of upon becoming a 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:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record 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 Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida 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. This bill creates a public record exemption for individual identifying information contained in a point-in-time count or a homeless management information system that is collected pursuant to 42 U.S.C. 119, subchapter IV and 24 C.F.R. part 91. The purpose of the exemption is to protect homeless individuals from discrimination or ridicule, which could make them reluctant to seek assistance, and as such does not appear broader than necessary to accomplish the stated purpose of the law.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 8, 2022, the Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changed the repeal date of the newly created public record exemption under the bill from October 2, 2026, to October 2, 2027, to comply with the five-year repeal date under the Open Government Sunset Review Act.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.