

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7111 PCB GVOPS 12-13 OGSR/Unclaimed Property

SPONSOR(S): Government Operations Subcommittee, Mayfield

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	15 Y, 0 N	Williamson	Williamson
1) State Affairs Committee	15 Y, 1 N	Williamson	Hamby

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for property identifiers and social security numbers contained in reports of unclaimed property held by the Department of Financial Services. Social security numbers must be released for the limited purpose of locating owners of abandoned or unclaimed property to certain attorneys, Florida-certified public accountants, licensed private investigators, or licensed private investigative agencies.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law. In addition, it expands the public record exemption by removing access to social security numbers by certain attorneys, Florida-certified public accountants, licensed private investigators, or licensed private investigative agencies. As such, the bill provides for future review and repeal of the exemption pursuant to the Open Government Sunset Review Act, and provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

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 public record or public meeting exemption. The bill expands the public record exemption under review; thus, it appears to require a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Unclaimed Property

Unclaimed property consists of any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain period of time.⁴ Savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are potentially unclaimed property.⁵ Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS).⁶ If the property remains unclaimed, all proceeds from abandoned property are deposited by DFS into the Department of Education School Trust Fund (State School Fund), except for a \$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.⁷

Florida Disposition of Unclaimed Property Act

The Florida Disposition of Unclaimed Property Act serves to protect the interest of missing owners of property while the people of the state derive a benefit from the unclaimed and abandoned property until the property is claimed, if ever. DFS administers the Act through its Bureau of Unclaimed Property (bureau).⁸

¹ See s. 119.15, F.S.

² Section 24(c), Art. 1 of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ See s. 717.102(1), F.S.

⁵ See ss. 717.104 – 717.116, F.S.

⁶ Section 717.117(1), F.S.

⁷ See s. 717.123, F.S.

⁸ See chapter 717, F.S.

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners through at least one search for the owners within 180 days after an account becomes inactive (two years). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with DFS by May 1, for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year. The report generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.⁹

Current law places an obligation on the state to notify owners of unclaimed property accounts valued at over \$250, in a cost-effective manner, including through attempts to directly contact the owner.¹⁰ DFS indicates that the means used to find lost property owners include social security numbers, direct mailing, motor vehicle records, state payroll records, newspaper advertisements, and a state website¹¹ where unclaimed property can be found.

Attorneys, Florida-certified public accountants, Florida-licensed private investigators, and Florida-licensed private investigative agencies register with DFS in order to act as a claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS.¹² Claimants' representatives access information, including social security numbers, from the bureau's website or compact discs produced by the bureau.

Public Record Exemption under Review

In 2007, the Legislature reenacted and expanded the public record exemption for certain information contained in reports of unclaimed property.¹³ Social security numbers and property identifiers¹⁴ contained in reports of unclaimed property are confidential and exempt¹⁵ from public record requirements.¹⁶ Current law provides for retroactive application¹⁷ of the public record exemption.¹⁸

Social security numbers must be released for the limited purpose of locating owners of abandoned or unclaimed property. Such numbers may only be released to a "locator" who is a:

- Person who is an attorney and who is registered with DFS under chapter 717, F.S.;
- Florida-certified public accountant;
- Private investigator who is duly licensed in Florida; or
- Private investigative agency licensed under chapter 493, F.S.¹⁹

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.²⁰

⁹ See s. 717.117, F.S.

¹⁰ See s. 717.118, F.S.

¹¹ www.fltreasurehunt.org (last visited February 5, 2012)

¹² Section 717.1400, F.S.

¹³ Chapter 2007-69, L.O.F.; codified at s. 717.117(8), F.S.

¹⁴ Section 717.117(8)(a), F.S., defines "property identifier" to mean the descriptor used by the holder to identify the unclaimed property.

¹⁵ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *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 Section 717.117(8)(b), F.S.

¹⁷ The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

¹⁸ Section 717.117(8)(d), F.S.

¹⁹ Section 717.117(8)(c), F.S.

²⁰ Section 364.107(4), F.S.

Effect of Bill

The bill reenacts the public record exemption for property identifiers and social security numbers in reports of unclaimed property. It expands the exemption by removing access to social security numbers by a person who is an attorney and who is registered with DFS under chapter 717, F.S.; a Florida-certified public accountant; a private investigator who is duly licensed in Florida; or a private investigative agency licensed under chapter 493, F.S. As such, the bill provides for future review and repeal of the exemption pursuant to the Open Government Sunset Review Act, and provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 717.117, F.S., to reenact and expand the public record exemption for property identifiers and social security numbers contained in reports of unclaimed property.

Section 2 provides a public necessity statement.

Section 3 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:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain attorneys, Florida-certified public accountants, licensed private investigators, and licensed private investigative agencies may be impacted due to their inability to no longer access social security numbers from the Department of Financial Services for purposes of locating individuals who may be the owners of unclaimed property.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on the Department of Financial Services, because staff responsible for complying with public record requests could require training related to the changes in the public record exemption. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal government.

2. Other:

Vote Requirement

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 public record or public meeting exemption. The bill expands the exemption under review; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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 expands the exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Claims Payments

Florida is second in the nation in returning unclaimed property to its rightful owners.²¹ In 2011, locators filed 24 percent of the claims that were paid to the rightful owners of unclaimed property.²²

Access to Social Security Numbers

As part of the exemption review process, House staff met with staff from the Department of Financial Services. At that time, department staff shared copies of letters, emails, and documents sent by locators to find owners of unclaimed property or received from consumers expressing concerns over correspondence received from locators.

Examples include an email that was inadvertently sent by a locator to the Department of Financial Services indicating that the locator intended to deliver his CD containing social security numbers to another person,²³ a letter sent to a possible owner of unclaimed property from a locator that contained the social security numbers of five other people,²⁴ and numerous email correspondence from possible owners of unclaimed property questioning how locators received their social security numbers or why such owners had to pay a finder's fee to locators when the department indicated there was no charge for processing a claim.²⁵

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²¹ See email correspondence on February 2, 2012, to Harry Carson, Vice President, Carson, Carson & Associates, from Walter Graham, Chief, Bureau of Unclaimed Property, Department of Financial Services (on file with the Government Operations Subcommittee).

²² See email correspondence on February 2, 2012, to Ashley Mayer, Director of Policy, Research & Legislative Affairs, Office of the Chief Financial Officer, from Walter Graham, Chief, Bureau of Unclaimed Property, Department of Financial Services (on file with the Government Operations Subcommittee).

²³ See email correspondence on September 15, 2009, to Henry Tisdale, Department of Financial Services, from Harry Carson (on file with the Government Operations Subcommittee).

²⁴ See document provided by the Department of Financial Services regarding correspondence received in June 2011, from Mr. and Mrs. Wilner. Mrs. Wilner reported they had received correspondence from a registered locator that included a screenshot from the department's locator website portal. (On file with the Government Operations Subcommittee).

²⁵ See email correspondence on February 9, 2012, from Ashley Mayer, Director of Policy, Research & Legislative Affairs, Office of the Chief Financial Officer (on file with the Government Operations Subcommittee).