

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SPB 7026

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: OGSR/Reports of Unclaimed Property/Department of Financial Services

DATE: March 13, 2017

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Matiyow</u>	<u>Knudson</u>		<b>Pre-meeting</b>

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**I. Summary:**

SPB 7026 continues the existing public records exemption for social security numbers held by the Division of Unclaimed Property at the Department of Financial Services by removing the October 2, 2017, repeal date.

The bill provides an effective date of October 1, 2017.

**II. Present Situation:**

**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.<sup>1</sup> 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.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> 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’ may be released at the discretion of the records custodian.<sup>14</sup>

### **Open Government Sunset Review Act**

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

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<sup>6</sup> 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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.<sup>15</sup> 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.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:<sup>17</sup>

- 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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>18</sup> 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 otherwise provided for by law.<sup>19</sup>

### **Unclaimed Property**

Unclaimed property consists of any funds or other property, tangible or intangible, which has remained unclaimed by the owner for more than 5 years after the property becomes payable or distributable.<sup>20</sup> 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.<sup>21</sup> Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS).<sup>22</sup> 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

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<sup>15</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So.3d 379 (Fla. 2013).

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(a), F.S.

<sup>18</sup> FLA. CONST., art. I, s. 24(c).

<sup>19</sup> Section 119.15(7), F.S.

<sup>20</sup> Section 717.102(1), F.S.

<sup>21</sup> Sections 717.104 – 717.116, F.S.

<sup>22</sup> Section 717.117(1), F.S.

\$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.<sup>23</sup>

### **Florida Disposition of Unclaimed Property Act**

The Florida Disposition of Unclaimed Property Act<sup>24</sup> 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. Department of Financial Services (DFS) administers the Act through its Division of Unclaimed Property (division).<sup>25</sup>

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> 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 website<sup>30</sup> where unclaimed property can be found.<sup>31</sup>

Attorneys, Florida-certified public accountants, Florida-licensed private investigators, and Florida-licensed private investigative agencies must first 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.<sup>32</sup> Claimants' representatives access information from the division's website or the division itself.

### **Public Record Exemption under Review**

Current law provides a public record exemption for social security numbers and property identifiers contained in reports of unclaimed property held by DFS.<sup>33</sup> Prior to 2012, the exemption provided an exception which allowed social security numbers to be released to certain persons registered with DFS to act as claimants' representatives. In 2012, the Legislature repealed the exception to the public record exemption and reenacted the exemption, requiring all

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<sup>23</sup> Section 717.123, F.S.

<sup>24</sup> Section 717.001, F.S. Chapter 717, F.S., may be cited as the "Florida Disposition of Unclaimed Property Act."

<sup>25</sup> Section 20.121(2)(k), F.S.

<sup>26</sup> Section 717.117(4), F.S.

<sup>27</sup> Section 717.117(3), F.S.

<sup>28</sup> Section 717.117(1), F.S.

<sup>29</sup> Section 717.118(1), F.S.

<sup>30</sup> [www.fltreasurehunt.org](http://www.fltreasurehunt.org) (last visited March 11, 2017).

<sup>31</sup> Section 717.118(1), F.S.

<sup>32</sup> Section 717.1400, F.S.

<sup>33</sup> Section 717.117(8), F.S.

social security numbers and property identifiers to be kept confidential and exempt from public record requirements.<sup>34</sup>

The 2012 public necessity statement provides that:

Social security numbers, which are used by a holder of unclaimed property to identify such property, could be used to fraudulently obtain unclaimed property. The release of social security numbers could also place owners of unclaimed property at risk of identity theft. Therefore, the protection of social security numbers is a public necessity in order to prevent the fraudulent use of such information by creating falsified or forged documents that appear to demonstrate entitlement to unclaimed property and to prevent opportunities for identity theft.<sup>35</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2017, unless reenacted by the Legislature.<sup>36</sup>

During the 2016 interim, committee staff consulted with staff from DFS as part of the Open Government Sunset Review process. DFS staff recommended reenactment of the exemption without changes and indicated that protecting social security numbers and property identifiers is critical to preventing fraud and identity theft related to unclaimed property claims. According to the department, protecting the social security number and property identifiers has not impaired property locators' ability to locate the property owners. The DFS provided the following information regarding the activity of registered claimant's representatives during the past 10 years.

<b>Fiscal Year</b>	<b>Number of Paid Claims Filed by Registrants</b>	<b>Amounts Paid to Registrants (Fees and Purchase Proceeds)</b>
<b>2007-08</b>	61,823	\$4,411,999
<b>2008-09</b>	68,204	\$4,954,184
<b>2009-10</b>	81,980	\$6,511,745
<b>2010-11</b>	71,744	\$7,288,154
<b>2011-12 (Law Change)</b>	75,149	\$8,190,483
<b>2012-13</b>	70,492	\$7,729,066
<b>2013-14</b>	95,796	\$10,141,842
<b>2014-15</b>	97,742	\$11,676,028
<b>2015-16</b>	94,128	\$9,252,767
<b>2016-17 (7.5 months)</b>	71,519	\$7,321,928

<sup>34</sup> Chapter 2012-227, L.O.F., and s. 717.117(8)(b), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 717.117(8)(c), F.S.

**III. Effect of Proposed Changes:**

Removes the October 2, 2017, repeal date of the existing public records exemption for social security numbers held by the Division of Unclaimed Property at the Department of Financial Services.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 717.117 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.

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

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