

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 7026

INTRODUCER: Banking and Insurance Committee

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

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Matiyow</u>	<u>Knudson</u>		BI Submitted as Committee Bill
1.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	Pre-meeting
2.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 7026 continues the existing public records exemption for social security numbers and property identifiers 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.¹ 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.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ 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.

⁴ Public records laws are found throughout the Florida Statutes.

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.⁵

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

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

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ 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.¹⁴

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

⁵ Section 119.01(1), F.S.

⁶ 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.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *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).

¹³ 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).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

meetings exemptions.¹⁵ 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.¹⁶

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.¹⁷ 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;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ 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.²² 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.²³

¹⁵ 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ 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?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

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.²⁴ 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.²⁵ Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS).²⁶ 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.²⁷

Florida Disposition of Unclaimed Property Act

The Florida Disposition of Unclaimed Property Act²⁸ 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 Division of Unclaimed Property (division).²⁹

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners.³⁰ Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with DFS by May 1 each year for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year.³¹ 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.³²

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.³³ 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 website³⁴ where unclaimed property can be found.³⁵

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

²⁴ Section 717.102(1), F.S.

²⁵ Sections 717.104 – 717.116, F.S.

²⁶ Section 717.117(1), F.S.

²⁷ Section 717.123, F.S.

²⁸ Section 717.001, F.S. Chapter 717, F.S., may be cited as the "Florida Disposition of Unclaimed Property Act."

²⁹ Section 20.121(2)(k), F.S.

³⁰ Section 717.117(4), F.S.

³¹ Section 717.117(3), F.S.

³² Section 717.117(1), F.S.

³³ Section 717.118(1), F.S.

³⁴ www.fltreasurehunt.org (last visited March 11, 2017).

³⁵ Section 717.118(1), F.S.

claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS.³⁶ Claimants' representatives access information from the division's website or the division itself.

Public Record Exemption under Review

Current law provides that social security numbers and property identifiers contained in reports of unclaimed property held by DFS are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.³⁷ 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 and reenacted the exemption, thus requiring all social security numbers and property identifiers to be kept confidential and exempt from public record requirements.³⁸

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.³⁹

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2017, unless reenacted by the Legislature.⁴⁰

Staff Review of the Exemption

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 DFS, 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.

³⁶ Section 717.1400, F.S.

³⁷ Section 717.117(8), F.S. The term "property identifier" means the descriptor used by the holder of the unclaimed property to identify it.

³⁸ Chapter 2012-227, Laws of Fla.

³⁹ *Id.*

⁴⁰ Section 717.117(8)(c), F.S.

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

Saving the exemption from repeal is recommended to protect social security numbers and property identifiers to prevent fraud and identity theft. No other changes are necessary.

III. Effect of Proposed Changes:

The bill removes the October 2, 2017, repeal date of the existing public records exemption for social security numbers and property identifiers held by the division at DFS.

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

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.