

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 17-03 OGSR/Unclaimed Property
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Toliver	Harrington

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.

Unclaimed property consists of any funds or other property, tangible or intangible, which has remained unclaimed by the owner for more than five years after the property becomes payable or distributable. Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners. Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with the Department of Financial Services by May 1, for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year. The report must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.

Current law provides a public record exemption for social security numbers and property identifiers contained in reports of unclaimed property held by the Department of Financial Services.

The bill reenacts the public record exemption, which will repeal on October 2, 2017, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ 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.²

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.³

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.⁴ 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 created⁵ 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, which has remained unclaimed by the owner for more than five years after the property becomes payable or distributable.⁶ 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.⁷ Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS).⁸ 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.⁹

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 717.102(1), F.S.

⁷ Sections 717.104 – 717.116, F.S.

⁸ Section 717.117(1), F.S.

⁹ Section 717.123, F.S.

Florida Disposition of Unclaimed Property Act

The Florida Disposition of Unclaimed Property Act¹⁰ 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).¹¹

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners.¹² 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.¹³ 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.¹⁴

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.¹⁵ 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 website¹⁶ where unclaimed property can be found.¹⁷

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.¹⁸ 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. 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.¹⁹ In 2012, the Legislature repealed the exception to the public record exemption and reenacted the exemption, requiring all social security numbers and property identifiers to be kept confidential and exempt²⁰ from public record requirements.²¹

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

¹⁰ Section 717.001, F.S. Chapter 717, F.S., may be cited as the "Florida Disposition of Unclaimed Property Act."

¹¹ Section 20.121(2)(k), F.S.

¹² Section 717.117(4), F.S.

¹³ Section 717.117(3), F.S.

¹⁴ Section 717.117(1), F.S.

¹⁵ Section 717.118(1), F.S.

¹⁶ www.fltreasurehunt.org (last visited February 3, 2017).

¹⁷ Section 717.118(1), F.S.

¹⁸ Section 717.1400, F.S.

¹⁹ Section 717.117, F.S. (2011).

²⁰ There is a difference between records the Legislature designates 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).

²¹ Chapter 2012-227, L.O.F., and s. 717.117(8)(b), F.S.

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.²²

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2017, unless reenacted by the Legislature.²³

During the 2016 interim, subcommittee staff consulted with staff from DFS as part of the Open Government Sunset Review process. DFS staff 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. As such, DFS staff recommended reenactment of the exemption without changes.

B. SECTION DIRECTORY:

Section 1 amends s. 717.117, F.S., to save from repeal the public record exemption for unclaimed property reports.

Section 2 provides an effective date of October 1, 2017.

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.

²² *Id.*

²³ Section 717.117(8)(c), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.