

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. 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 records or public meetings 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 records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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,
- Protecting 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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 created (e.g., allowing another agency access to the confidential or exempt records), 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.² 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.³ Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the Department of Financial Services (DFS).⁴ 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

¹ Section 119.15, F.S.

² Section 717.102, F.S.

³ Sections 717.104 – 717.116, F.S.

⁴ Section 717.117(1), F.S.

a \$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.⁵

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.⁶

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.⁷

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.⁸ 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 website⁹ 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.¹⁰ Claimants' representatives utilize compact discs produced by the Bureau of Unclaimed Property that contain information describing the unclaimed property and identifying the owner to assist them in finding the owners of unclaimed property.

Public Records Exemption under Review

Current law provides a public records exemption for social security numbers and financial account numbers contained in reports of unclaimed property.¹¹ It also authorizes DFS to release social security numbers paired with descriptions of unclaimed property to representatives for registered claimants for the limited purpose of finding the owners of unclaimed property.

The law does not provide a definition of financial account numbers. In addition, as part of the committee's review of the exemption, it was discovered that not all unclaimed property is identified by a financial account number. If the property is not financial in nature, then it could be assigned a number used by the holder to identify the unclaimed property.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2007, unless reenacted by the Legislature.

⁵ Section 717.123, F.S. Approximately \$1.5 billion has been transferred to the Department of Education since the program's inception, including \$267,095,187 transferred to the State School Fund in fiscal year 2005-2006.

⁶ Chapter 717, F.S.

⁷ Section 717.117, F.S.

⁸ Section 717.118, F.S.

⁹ www.fltreasurehunt.org

¹⁰ Section 717.1400, F.S.

¹¹ Section 717.117(8), F.S.

EFFECT OF BILL

The bill reenacts and expands the current exemption for unclaimed property. In addition, it reorganizes the exemption.

The bill replaces the term "financial account numbers" with the more accurate term "property identifier." Property identifier is defined to mean "the descriptor used by the holder to identify the unclaimed property." A public necessity statement has been included in the bill because the change in terms is considered an expansion of the current public records exemption. In addition, the repeal date has been extended to October 2, 2012, as a result of the expansion.

C. SECTION DIRECTORY:

Section 1 amends s. 717.117, F.S., to expand the public records exemption for unclaimed property reports.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill likely could create a minimal fiscal impact on the Department of Financial Services, because staff responsible for complying with public records requests will require training related to changes made to the current public records exemption. In addition, the department could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The department, however, would absorb these costs as they are part of its day-to-day responsibilities.

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:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

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 passage of a newly created or substantially amended public records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created or substantially amended public records or public meetings exemption. The bill expands the current public records exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.