

STORAGE NAME: h1585.sa.doc
DATE: April 10, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1585
RELATING TO: Public records
SPONSOR(S): Representative Detert, Lerner and Brutus
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BANKING YEAS 7 NAYS 0
 - (2) STATE ADMINISTRATION
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (4)
 - (5)
-

I. SUMMARY:

Chapter 717, F.S., authorizes the department to receive unclaimed property and charges the department with attempting to reunite this property with its owners. Such owners are often solicited and represented by heir finder agencies.

Pursuant to s. 717.117, F.S., once the allowable time period for holding unclaimed property has expired, a holder is required to file a verified report with the Department of Banking and Finance (the department) by May 1 of each year for all property presumed abandoned the previous fiscal year. Within 120 days of filing, a holder must mail a written notice to the "apparent owner" of such property valued at or above \$50. Willful failure to report unclaimed property is punishable as a second-degree misdemeanor. All reported property must be paid or delivered to the department within six months after the final date for filing the report.

The bill establishes an exemption from the public records requirements for information relating to abandoned property that is contained in reports to the department pursuant to s. 717.117, F.S. The bill also provides for future review and sunset, and provides a finding of public necessity for the exemption. The act shall take effect July 1, 2001.

In order to address a potential constitutional concern with this bill, an amendment was adopted by the Banking Committee and is traveling with this bill. See Part V.A., CONSTITUTIONAL ISSUES, IN this analysis for further details. Please see Part VI of the analysis for information regarding the amendment.

Please see "Other Comments" section for comments by the Committee on State Administration.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A

The bill may limit immediate access to reports filed by property holders to the department.

- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is

sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The Abandoned Property Program

In Florida, reversion of property to the state is based on the presumption that there is no heir to assume the property upon the death of the owner. The state has jurisdiction to take charge of unclaimed property. It is within the power of the Legislature to establish a reasonable time period for succession and to determine what shall become of unclaimed property and the conditions upon which it shall pass to the state. Escheat of unclaimed property to the state under appropriate statutes does not constitute a taking of property without due process of law in violation of the Federal Constitution as established in *Cockrill v. California* (1925) 268 US 258, 69 L Ed 944, 45 S Ct 490. Generally, all property, real and personal, and every right of property of any nature is subject to escheat to the state.

The Florida Disposition of Unclaimed Property Act (Chapter 717, F.S.), provides the obligations of the "holder" of property presumed abandoned and provides a mechanism for the disposition of such property. Under this Act, the department's Unclaimed Property Program is responsible for receiving property, locating the rightful owners, and returning the property (or its value in cases of sold securities) to them. The department is authorized to make a one-time attempt to notify owners of unclaimed property. There is no monetary charge to owners for the department's notification or for the recovery of the property. Owners have the right to claim their property at any time.

Unclaimed property constitutes any funds or other property, tangible or intangible, which has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, traveler's checks, un-cashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safety deposit boxes. Banks, insurance companies, and other holders of unclaimed property must submit unclaimed property to the Florida Department of Banking and Finance. The Act establishes that all checks, drafts, money orders, bank deposits, stocks, as well as other intangible property, is "presumed abandoned" if unclaimed for a period of five years. Notable exceptions include a three-year period for contents in safe-deposit boxes, a seven-year period for money orders, and a 15-year period for traveler's checks.

Prior to 1996, the department was required to publish the names of owners of unclaimed property of all accounts \$50 or greater in value in their respective local newspapers. In 1996, the law was amended to permit the department to use alternative means (i.e., direct mailing and electronic media) for owner notification. In addition, the 1996 law increased the minimum value of owner accounts requiring notice and publication from \$50 to \$100. Pursuant to s. 717.117, F.S., once the

allowable time period for holding unclaimed property has expired, a holder is required to file a verified report with the Department of Banking and Finance by May 1 of each year for all property presumed abandoned the previous fiscal year. Within 120 days of filing, a holder must mail a written notice to the "apparent owner" of such property valued at or above \$50. Willful failure to report unclaimed property is punishable as a second-degree misdemeanor. All reported property must be paid or delivered to the department within six months after the final date for filing the report.

C. EFFECT OF PROPOSED CHANGES:

The bill establishes an exemption from the public records requirements for information relating to abandoned property that is contained in reports to the department pursuant to s. 717.117, F.S. The bill also provides for future review and sunset, and provides a finding of public necessity for the exemption. The act shall take effect July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of counties and municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

HB 1585, as filed

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose. In addition, it must be filed in a separate bill.

This bill exempts information contained in reports filed by holders of unclaimed property to the department pursuant to s. 717.117, F.S. The purpose of the bill is to protect the general public from possible identity theft because these reports contain financial account numbers and social security numbers. As drafted, the bill exempts all information, rather than sensitive, personally-identifying information, therefore, the statement of necessity in section two of the bill may be constitutionally insufficient.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Committee on Banking

There is another bill relating to unclaimed property, HB 107, by Representative Prieguez. HB 107, which was filed on behalf of department, revises and clarifies provisions of Chapter 717, F.S., relating to Florida's unclaimed property program. The provisions within this bill continue the department's mission of fostering a positive business environment and protecting the interest of missing property owners as well as benefiting all citizens of Florida by placing excess money into the State School Trust Fund. The bill streamlines the claims processing and payment procedures, provides uniform record retention requirements for locators, and provides an improved procedure for the processing of claims for small accounts (under \$5,000).

Committee on State Administration

The strike-all amendment traveling with the bill creates a public records exemption for “reports required under s. 717.117.” There is no mention of what agency requires those reports; thus, the reader does not know, without reading s. 717.117, that it is the Department of Banking and Finance that requires the report and thus is the agency that enjoys the exemption. A public records exemption should, on its face, identify to what agency the exemption runs.

The sponsor has filed an amendment to the amendment that remediates this concern.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 2001, the Committee on Banking adopted one amendment by Representative Detert, which is traveling with the bill, which narrows the public records exemption to specific information on individuals (e.g., financial account numbers, social security numbers), and releases that information to specific entities for the purpose of locating unclaimed property.

VII. SIGNATURES:

COMMITTEE ON BANKING:

Prepared by:

Michael A. Kliner

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.
