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DATE: December 27, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 543
RELATING TO: Public Records / Abandoned Property
SPONSOR(S): Representative(s) Detert

TIED BILL(S):

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

- (1) STATE ADMINISTRATION
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The Department of Banking and Finance (DBF) administers the Florida Disposition of Unclaimed Property Act. DBF is responsible for receiving unclaimed property, locating the rightful owners, and returning the property to those rightful owners. Once the allowable time period for holding unclaimed property has expired, a holder is required to file a verified report with the DBF by May 1 for all property presumed abandoned for the preceding calendar year. Such report usually contains the social security number of the apparent owner.

After receipt of the holders' reports, DBF must attempt to locate the apparent owner of unclaimed property. In addition to the efforts by DBF to locate the owners of unclaimed property, private investigative agencies, certified public accountants, and attorneys assist apparent owners in recovering unclaimed property.

This bill creates a public records exemption for social security numbers and financial account numbers contained in unclaimed property reports, held by DBF. This exemption does allow the release of social security numbers to an attorney, Florida-certified public accountant, or a State licensed private investigator, for the purpose of locating abandoned or unclaimed property owners.

This bill provides a public necessity statement which states that the public records exemption for the social security number and financial account numbers of apparent owners of abandoned or unclaimed property is necessary to prevent identity theft and related crimes. This exemption is necessary to prevent such numbers from being used in forged documents demonstrating entitlement to abandoned property and thereby defrauding the rightful property owner or the State School Fund.

This bill provides for future review and repeal of the public records exemption.

This bill also grants licensed private investigative agencies registered with DBF authority to receive information contained in unclaimed property reports.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

Public Records Law

Florida Constitution

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 (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. 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 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

The Department of Banking and Finance (DBF) administers the Florida Disposition of Unclaimed Property Act.¹ DBF is responsible for receiving unclaimed property, locating the rightful owners, and returning the property (or its value, in cases of sold securities) to those rightful owners. DBF is only required to make a one-time attempt to notify owners of unclaimed property.²

Unclaimed property constitutes any funds or other property, tangible or intangible, which has remained unclaimed by the owner for a certain number of years.³ Holders of unclaimed property⁴ are required to submit unclaimed property to DBF. A check, draft, bank deposit, stock, as well as other intangible property, is presumed abandoned if not claimed for a period of five years. Exceptions to the five-year period include contents in safe deposit boxes⁵, money orders⁶, and travelers' checks⁷.

¹ Chapter 717, F.S.

² Section 717.118, F.S. DBF may use post, print, visual, telecommunications, or electronic media to satisfy the one-time notice requirement. Owners are not charged for DBF's cost in notification or recovery of the property.

³ Unclaimed property may include 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.

⁴ Holders typically include banks and insurance companies.

⁵ Contents contained in safe deposit boxes are presumed abandoned if not claimed for a period of three years. Section 717.116, F.S.

⁶ Money orders are presumed abandoned if not claimed for a period of seven years. Section 717.104(2), F.S.

⁷ Travelers' checks are presumed abandoned if not claimed for a period of 15 years. Section 717.104(1), F.S.

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 (2 years from the date of specified activities). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with DBF by May 1 for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year.⁸

Under the provisions of section 717.117, F.S., the report to DBF usually contains the name, social security number or federal employer identification number, if known, and the last known address of the apparent owner.

After receipt of the holders' reports, DBF must attempt to locate the apparent owner of unclaimed property by publishing or televising a notice in the county in which the last known address of the apparent owner is located or, if the address is unknown, in the county in which a holder has a principal place of business.⁹ In addition to the efforts by DBF to locate the owners of unclaimed property, private investigative agencies¹⁰, certified public accountants, and attorneys assist apparent owners in recovering unclaimed property.

In 1973, the Attorney General opined that the records maintained by the Abandoned Property (Unclaimed Property) Section of DBF are public records and are open to public inspection.¹¹

C. EFFECT OF PROPOSED CHANGES:

This bill creates a public records exemption for social security numbers and financial account numbers contained in unclaimed property reports, held by the Department of Banking and Finance (DBF), as required under section 717.117, F.S. This exemption does allow the release of social security numbers to an attorney, Florida-certified public "account", or a state licensed private investigator, for the purpose of locating abandoned or unclaimed property owners. Although the exemption permits release to a Florida-certified public "account", the public necessity statement references a Florida-certified public "accountant". *The sponsor has filed an amendment to address this concern.*

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the public records exemption for the social security number and financial account numbers of apparent owners of abandoned or unclaimed property is necessary to prevent identity theft and related crimes. This exemption is necessary to prevent such numbers from being used in forged documents demonstrating entitlement to abandoned property and thereby defrauding the rightful property owner or the State School Fund. Additionally, the release of social security numbers to attorneys, certified public accountants, or private investigators is necessary to facilitate the return of unclaimed property to the rightful owners.

This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

This bill also allows licensed private investigative agencies registered with DBF to receive information contained in reports required under section 717.118, F.S. Section 717.118, F.S., pertains to notice and publication of lists of unclaimed property. The appropriate reference should

⁸ In lieu of forms, the holder may submit the required information via electronic medium as DBF may prescribe by rule. Section 717.117(1), F.S.

⁹ Section 717.118(2)(a), F.S.

¹⁰ Private investigative agencies are required to be licensed by the Florida Department of State, in accordance with chapter 493, F.S.

¹¹ AGO 073-167.

be to section 717.117, F.S., regarding reports of unclaimed property. Additionally, the inclusion of this language is somewhat superfluous because the bill otherwise already allows access to the social security number by a state licensed private investigator. *The sponsor has filed an amendment to address these concerns.*

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. 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.

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 action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

STORAGE NAME: h0543.sa.doc

DATE: December 27, 2001

PAGE: 6

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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