

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1637 Public Records/Department of Financial Services/Unclaimed Property
SPONSOR(S): Fiorentino
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	_____	<u>Williamson</u>	<u>Everhart</u>
2) <u>Commerce</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law provides a public records exemption for social security numbers and financial account numbers contained in reports of unclaimed property held by the Department of Financial Services (DFS). This bill expands that exemption to also include unclaimed property account dollar amounts and the number of reported shares of stock.

This bill creates a public records exemption for:

- Social security numbers, unclaimed property account dollar amounts, the number of reported shares of stock, and financial account numbers contained in legal files, claims files, investigations, and examinations;
- Trade secrets of holders of unclaimed property and persons providing services for auditing or examining holders of unclaimed property;
- Personal photographic identification held by DFS pursuant to the Florida Disposition of Unclaimed Property Act; and
- Databases subscribed to by DFS for purposes of verifying unclaimed property claims.

This bill provides for exceptions to the exemptions. It also requires a person receiving such confidential and exempt information, to maintain the confidential and exempt status of such information. This bill creates criminal penalties for violating the provisions contained in the public records exemptions.

This bill provides for future review and repeal of the expanded public records exemption for information contained in an unclaimed property report. It also provides a statement of public necessity.

This bill authorizes DFS to subscribe to a database for purposes of verifying unclaimed property claims. Such provision will create a fiscal impact on DFS of \$5000 for fiscal year 03-04, and a recurring annual cost of \$25,000 thereafter. It is unclear how DFS intends to pay for the database subscriptions.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1637.sa.doc
DATE: April 10, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

This bill creates criminal penalties for any person who willfully and knowingly violates the provisions of the public records exemptions discussed herein.

B. EFFECT OF PROPOSED CHANGES:

Background

The Department of Financial Services (DFS) administers the Florida Disposition of Unclaimed Property Act. DFS is responsible for receiving unclaimed property,¹ locating the rightful owner, and returning the property (or its value, in cases of sold securities) to the rightful owner. Holders of unclaimed property² are required to submit unclaimed property reports to DFS once the allowable time period for holding unclaimed property has expired. After receipt of a holder’s report, DFS must attempt to locate the apparent owner of unclaimed property by publishing or televising notices.

Current law provides a public records exemption for social security numbers and financial account numbers contained in reports of unclaimed property held by DFS. Such numbers may be released for the limited purpose of locating owners of abandoned or unclaimed property to: an attorney, Florida-certified public accountant, private investigator, or private investigative agency.

Effect of Bill

This bill expands that exemption to include unclaimed property account dollar amounts and the number of reported shares of stock. It also creates a public records exemption for social security numbers, unclaimed property account dollar amounts, the number of reported shares of stock, and financial account numbers contained in legal files, claims files, investigations, and examinations held by DFS.

This bill creates a public records exemption for trade secrets of holders of unclaimed property and persons providing services for auditing or examining holders of unclaimed property. It is unclear as to why DFS would have in its possession trade secrets belonging to a holder or auditor submitting a claim for unclaimed property.

This bill also creates a public records exemption for “personal photographic identification” held by DFS pursuant to the Florida Disposition of Unclaimed Property Act. DFS has stated that such identification includes a person’s driver license. The department has also stated that it has copies of personal photographic identification for identity verification with regards to unclaimed property. Again, it is

¹ 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, 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.

² Holders typically include banks and insurance companies.

unclear why DFS would maintain copies of such identification rather than verifying the identity of a person without photocopying the photographic identification.

The previously discussed exemptions will not prohibit DFS from providing the confidential and exempt³ information to a law enforcement agency, administrative agency, or regulatory body. If such information is offered into evidence, then the presiding officer may prevent the disclosure of the confidential and exempt information. Also, any person receiving such information must maintain its confidential and exempt status.

This bill allows DFS to subscribe to one or more databases for the purpose of verifying the validity of unclaimed property claims. DFS must keep confidential and exempt such database if the database vendor requires confidentiality as a part of the subscription. This provision raises a constitutional concern.

This bill creates criminal penalties for violation of the previously discussed provisions. This bill makes it a felony of the third degree⁴ for any person who willfully and knowingly violates such provisions. The bill references the penalty provisions found in s. 775.084, F.S., however, this section pertains to violent career criminals and habitual felony offenders. Such section is not usually applied with regards to public records violations, and therefore appears inappropriate.

This bill provides a statement of public necessity and provides for future review and repeal. However, only the expanded exemption for unclaimed property account dollar amounts and the number of reported shares of stock is subject to review and repeal.

C. SECTION DIRECTORY:

Section 1. Amends s. 717.117(8), F.S., expanding the public records exemption for unclaimed property reports to also include the unclaimed property account dollar amounts and the number of reported shares of stock.

Section 2. Creates s. 717.1237, F.S., creating a public records exemption for social security numbers, unclaimed property account dollar amounts, the number of reported shares of stock, and financial account numbers contained in legal and claim files.

Section 3. Creates s. 717.12401, F.S., creating a public records exemption for personal photographic identification.

Section 4. Amends s. 717.1301(5), F.S., creating a public records exemption for social security numbers, unclaimed property account dollar amounts, the number of shares of stock, and financial account numbers contained in an investigation or examination.

Section 5. Creates s. 717.1342, F.S., creating criminal penalties.

Section 6. Creates s. 717.1402, F.S., authorizing DFS to subscribe to databases for verification of unclaimed property claims, and creating a public records exemption for such database.

³ There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

⁴ A felony of the third degree is punishable by a term of imprisonment not exceeding five years and a fine not exceeding \$5,000.

Section 7. Creates s. 717.1403, F.S., creating a public records exemption for trade secrets.

Section 8. Provides a statement of public necessity.

Section 9. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

A. Recurring Effects:

Subscription to additional databases not currently used by the Bureau:⁵

Amount Year 1 (FY03-04)	Amount Year 2 (FY04-05)	Amount Year 3 (FY05-06)
\$5,000	\$25,000	\$25,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS:

The department did not provide staff with the funding source for such subscriptions. Therefore, it is unclear how DFS intends to pay for the database subscriptions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

2. Other:

Article I, s. 24(c) of the Florida Constitution, provides that public records and public meetings exemptions may be created by general law. Such law must only contain public records or public meetings exemptions.

This bill not only requires DFS, upon request, to keep confidential and exempt vendor databases, but also authorizes DFS to subscribe to the databases for the purpose of verifying the validity of unclaimed

⁵ Department of Financial Services' fiscal analysis of HB 1637, March 14, 2003, at 1.

property claims. This appears to violate the constitutional requirement that a public records exemption be created in a stand-alone bill.

Additionally, the public necessity statement, which is required by the Florida Constitution, could also raise concerns. The only reason provided for making the previously discussed information confidential and exempt from public disclosure is because

any minor public benefit that might be derived from the release to the public of such sensitive personal and financial information and trade secret information . . . is vastly outweighed by the benefit to the public served by the creation of the described exemptions.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

It appears that a number of the public records exemptions created by this bill are duplicative and could be addressed by the creation of one all-encompassing exemption. Additionally, DFS has stated that the effective date should be tied to the passage of HB 853.

Additional issues that were previously addressed in the "EFFECT OF PROPOSED CHANGES" include:

- Why DFS would have in its possession trade secrets belonging to a holder or auditor submitting a claim for unclaimed property.
- Why DFS would maintain copies of personal photographic identification rather than verifying the identity of a person without photocopying such identification.
- The inclusion of language, in a public records bill, authorizing DFS to subscribe to databases for purposes of verifying the validity of unclaimed property claims.
- Providing career criminal and habitual felony offender penalties to a person violating the public records provisions provided in the bill.
- Only subjecting one of the six exemptions created in the bill to future review and repeal.

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995⁶ 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 public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an

⁶ Section 119.15, F.S.

individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.