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Committee on Ethics and Elections

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 97.0585, F.S., VOTERS AND VOTER REGISTRATION CONFIDENTIALITY OF INFORMATION

Issue Description

The question is whether to reenact, repeal, or revise the following public records exemptions in s. 97.0585, F.S., governing information on voters and voter registration applicants: declinations to register to vote; information relating to where a person registered to vote or updated a voter registration; and social security numbers, driver's license numbers, Florida state identification numbers, and handwritten signatures. For the reasons expressed herein, staff recommends reenacting the current exemptions.

Background

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record 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.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

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

Unless specifically exempted, all agency⁴ records are available for public inspection. The term "public record" is broadly defined to mean:

¹ § 1390, 1391 F.S. (Rev. 1892).

² Art. I, s. 24, FLA. CONST.

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made statutorily exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption; further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹³

The Open Government Sunset Review Act¹⁴ provides for the systematic review, through a 5-year cycle ending October 2, of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three statutory criteria are if the exemption:

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or

⁵ § 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Id.*; *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Art. I, s. 24(c), FLA. CONST.; *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁹ Art. I, s. 24(c), FLA. CONST.

¹⁰ An existing exemption will be treated as a new exemption for sunset review purposes if the exemption is expanded to cover additional records or information. § 119.15(4), F.S.

¹¹ Art. I, s. 24(c), FLA. CONST.

¹² *WFTV, Inc. v. School Bd. of Seminole Co.*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *rev'w denied*, 892 So.2d 1015 (Fla. 2004).

¹³ *Id.*; *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *rev'w denied*, 589 So.2d 289 (Fla. 1991).

¹⁴ § 119.15, F.S.

- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁵

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹⁶

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory (as opposed to constitutional) do not limit the Legislature because one session of the Legislature cannot bind another.¹⁷ The Legislature is only limited in its review process by constitutional requirements.

Voter and Voter Registration Confidentiality of Information

Voter Registration

Florida residents can register to vote by mailing or hand delivering a voter registration application to various locations, including their county Supervisor of Elections' office, a driver's license office, a voter registration agency,¹⁸ an armed forces recruitment office, or the Florida Division of Elections.¹⁹

The voter registration application solicits several pieces of information, including:

- The last four digits of the applicant's *social security number* ("SSN");²⁰
- The applicant's *Florida driver's license number* ("DL#") or *identification number* from a State-issued I.D. card ("I.D. number"); and²¹
- The *applicant's signature*.²²

The DL#, I.D. number, and/or last 4 digits of the applicant's SSN are matched against other databases (i.e., federal Social Security Administration database, Florida Department of Highway Safety and Motor Vehicles ["DHSMV"] database) to verify the authenticity of the information and confirm the applicant's identity --- a necessary precursor to being registered in the statewide electronic database and permitted to vote.²³ This unique identifying information is also used post-registration to maintain the accuracy of the statewide voter registration database --- i.e., to make sure voters are not registered in more than one county (duplicate registrations) and to

¹⁵ § 119.15(6)(b), F.S.

¹⁶ § 119.15(6)(a), F.S.

¹⁷ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

¹⁸ Any office that provides public assistance or serves persons with disabilities, a center for independent living, or a public library. § 97.021(4), F.S.

¹⁹ § 97.053(1), F.S.

²⁰ § 97.052 (2)(l), F.S.

²¹ § 97.052(2)(m), F.S.

²² § 97.052(2)(p), F.S.

²³ § 97.053(6), F.S. Applicant's *without* a SSN, FL DL#, or Florida I.D. can be registered, *provided* the nonexistence of such information is verified. *Id.*

remove: deceased voters; voters who move out-of-state; voters convicted of felonies; and electors adjudicated as mentally incompetent who are no longer eligible vote.

The voter's signature on the voter registration application, made under oath, subjects the voter to felony criminal penalties for false swearing and submitting false voter registration information²⁴ which deters fraud.

The voter registration application is also used to make any necessary *changes* to a voter's registration information (i.e., name change, address changes, party affiliation change), and may be submitted in the same manner and at the same places as original registrations.²⁵

Other Voting-Related Documents

Florida voters may also provide their signatures on a number of other election-related documents, such as absentee ballot envelopes,²⁶ provisional ballot envelopes,²⁷ early voting certificates,²⁸ and requests to secure assistance in casting ballots at the polls.²⁹

Findings and/or Conclusions

Prior to 2005, section 97.0585, F.S., made confidential and exempt from public records disclosure "declinations to register to vote" at a voter registration agency and the location where a person registered or updated a voter registration.³⁰ It also exempted, for purposes of *copying only*, a voter's signature, SSN, and telephone number: those items were subject to public inspection.³¹ Finally, it limited the use of declinations to "voter registration purposes," as required by federal law.³²

In 2005, the Legislature amended section 97.0585, F.S.;³³ it currently provides that the following information held by an agency be confidential and exempt from public records disclosure --- *and used only for voter registration purposes*:

- a) All **declinations** to register to vote at a voter registration agency or driver's license office.
- b) Information relating to where a person **registered** or **updated** a voter registration.
- c) A voter or voter registration applicant's **SSN, DL#, and Florida I.D. number**.

Further, the section provides that a voter or voter registration applicant's **signature may not be copied**, and is exempt from public records law for that limited purpose.³⁴ These exemptions in section 97.0585, F.S., are subject to the Open Government Sunset Review Act of 1995, in accordance with s. 119.15, F.S., and will be repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

When the Legislature amended Section 98.0575, F.S., in 2005, it made several specific public necessity findings.

²⁴ § 97.052(p), F.S.; see 104.011, F.S. (providing third-degree felony penalties for willfully submitting a false elections oath or false voter registration information).

²⁵ See *infra* fns. 18-19 and accompanying text (identifying voter registration locations).

²⁶ See § 101.64(1), F.S. (Voter's Certificate).

²⁷ See § 101.048(3), F.S. (Provisional Ballot Voter's Certificate and Affirmation).

²⁸ § 101.657(4)(a), F.S.

²⁹ See § 101.051(4), F.S. (Declaration to Secure Assistance).

³⁰ § 97.0585, F.S. (2004).

³¹ *Id.*

³² § 97.0585(1), F.S. (2004); see *infra* fn. 35 (discussing federal National Voter Registration Act ("NVRA") confidentiality requirements). Federal law also limits to voter registration purposes the use of information on where a voter *registered* to vote, although the Florida statute did not reflect this requirement in 2005. *Id.*; see § 97.0585(1), F.S. (2004).

³³ Ch. 2005-279, LAWS OF FLA., § 1, at 2738-39.

³⁴ §97.0585(2), F.S.

Declinations & Voter Registration Locations

With respect to the exemptions governing *declinations to register to vote* and *where a person registered to vote*, the Legislature noted that keeping such information confidential and exempt from disclosure was necessary to conform to the requirements of the federal National Voter Registration Act (“NVRA”);³⁵ these NVRA requirements are still in effect today. Further, the Legislature found that the exemption for the location where a person registered to vote or *updated a voter registration* was necessary to protect the “personal information” of persons applying for certain types of public assistance (i.e., welfare, unemployment compensation, etc.).³⁶ Some might consider the public disclosure of such information embarrassing or believe it may result in social stigmatization, thereby dissuading otherwise eligible persons from registering to vote.

SSNs, Driver’s License Numbers, and Florida I.D. Numbers

In 2005, the Legislature found that access to **SSNs, DL#,s, and Florida I.D. numbers** can lead to fraud, personal identity theft, and invasion of privacy.³⁷ It further determined that:

Even the memorization of a single person’s social security number, driver’s license number, or Florida identification number could result in economic and personal harm to that individual whose numbers may be used to perpetrate fraud or may be coupled with other readily available public information to commit personal identity theft or to gain access to records, such as financial, educational, or medical records.³⁸

The Legislature also believed that it was necessary to keep such information “confidential and exempt in order to encourage voter registration and remove disincentives to registering to vote.”³⁹

Identity-theft fraud is a significant and growing problem, both nationally and especially in Florida. According to 2008 Federal Trade Commission (“FTC”) complaint records, Florida ranked **third** *per capita* in reported incidents of identity-theft fraud, up from fifth in 2007: only Arizona and California ranked higher.⁴⁰ Last year’s jump represents a *per capita* increase of over 26%,⁴¹ with identity-theft fraud constituting almost one-third of all the State’s fraud complaints.⁴² While the FTC does not quantify identity fraud by state, the costs are likely in the millions.

SSNs

The need to protect an individual’s SSN from public disclosure is as incontrovertible today as it was in 2005 when the Legislature adopted a *specific* public records exemption for voters and voter registration applicants. Identity thieves consider a person’s SSN the ‘holy grail’ of personal information; it is used to obtain other identification

³⁵ Ch. 2005-279, LAWS OF FLA., § 4(1), at 2740. The confidentiality of declinations to register to vote and information relating to the place where a person *registered* to vote are required by the federal National Voter Registration Act (“NVRA”), and thus will remain the law in Florida irrespective of legislative action or inaction on these provisions. See 42 U.S.C. §§ 1973gg-3(b),(c)(2)(D), 1973gg-5(a)(7), 1973gg-6(a)(6),(i) (prohibiting public disclosure of declinations to register to vote and information identifying where a person registered to vote). The federal law also limits use of such information to “voter registration” purposes. *Id.*

³⁶ Ch. 2005-279, LAWS OF FLA., § 4(1), at 2740.

³⁷ *Id.* at § 4(2), at 2740.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Federal Trade Commission, *Consumer Sentinel Network: Data Book for January – December 2008*, at 3, 14 (February 2009), at <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2008.pdf> [hereinafter, “2008 FTC Report”]; Federal Trade Commission, *Consumer Fraud and Identity Theft Complaint Data: January – December 2007*, at 18 (February 2008), at <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2007.pdf> [hereinafter, “2007 FTC Report”].

⁴¹ See 2008 FTC Report at 14 (133.3 incidents/100,000 population); 2007 FTC Report at 18 (105.6 incidents/100,000 population).

⁴² See 2008 FTC Report at 27 (24,440 reported incidents of identity fraud out of 81,912 total complaints). About 50% of complaints were classified as either credit card fraud, government documents and benefit fraud, or bank fraud. *Id.*

documents, set-up fraudulent credit cards and wireless telephone accounts, transfer funds out of existing bank accounts, file phony tax returns, etc.⁴³ The documented problem of identity theft fraud in Florida, combined with the growing inter-connectedness of our information society and computerization of data compilations, counsel strongly against *any* expansion of access to SSNs.

As the First Amendment Foundation correctly points out, though, Florida public records law *already* contains a **general exemption** for SSNs held by governmental agencies; that exemption also requires SSNs to be kept “confidential and exempt.”⁴⁴ Why not just use that one? Because the general exemption in Chapter 119, F.S., sports a host of confidentiality *exceptions* that render it significantly *less-protective* than the specific exemption under review (which limits use of SSN information exclusively to voter registration).⁴⁵ Shifting to the general exemption could have a “chilling effect” on voter registration, as the law requires that potential registrants be notified of the possible uses of their SSNs outside the voting context⁴⁶ --- including, but not limited to, private commercial purposes such as debt or tax collection and governmental purposes like child support enforcement.⁴⁷ Floridians without a driver’s license or state I.D. who refuse to provide the last 4 digits of their SSN will not be able to register to vote.⁴⁸ If they respond to the new notice by submitting an application without the last 4 digits of their SSNs they can provide it later, but will face delays and extra paperwork in getting registered;⁴⁹ if they fail to cure the defect before a book closing deadline⁵⁰ for a particular election, they will not be able to vote in that election.⁵¹ The potential disincentives and delays to voter registration --- a necessary precursor to exercising the fundamental right to vote in Florida --- justify greater protection for SSNs in the electoral process.⁵²

Driver’s License Numbers/I.D. Numbers

The need to protect *Florida DL#s* (and their “legal” proxy for Florida resident non-drivers, *I.D. numbers* issued by the DHSMV,⁵³) is also beyond serious debate. The DL# (along with the SSN) is one of only a handful of

⁴³ See e.g., Social Security Administration, *Identity Theft and Your Social Security Number* (October 2007) (SSA Publication No. 05-10064), at <http://www.ssa.gov/pubs/10064.html> ; LifeLockBlog, *Identity Theft Basics – Knowledge is Power*, at <http://www.lifelockblog.com/archive/identity-theft-basics-knowledge-is-power/> (February 6, 2008); 2008 FTC Report at 11 (listing types of identity fraud).

⁴⁴ § 119.071(5)(a), F.S.; see, Letter from Barbara Petersen, President, First Amendment Foundation to Sarah Naf, Florida Senate Governmental Oversight and Accountability Committee staff and Heather Williamson, House Governmental Affairs Policy Committee staff, at 2 (July 31, 2009) (identifying the SSN general exemption in Chapter 119, and characterizing the specific SSN exemption under review as “duplicative and therefore unnecessary”).

⁴⁵ The general exemption provides that SSNs held by an agency may be disclosed if: a) required by federal or state law, or a court order; b) necessary for the receiving agency or governmental entity to perform its duties and responsibilities; c) the individual consents in writing; d) made to comply with the Patriot Act or Presidential Executive Order 13224 (blocking property and prohibiting transactions involving terrorists); e) the disclosure is made to certain **commercial entities**, pursuant to written request and subject to felony penalties, for permissible uses set forth in the federal Driver’s Privacy Protection Act, Fair Credit Reporting Act, or the Financial Services Modernization Act; f) for the purpose of administering health benefits for an agency employee or dependent; g) for the purpose of administering various retirement programs for agency employees; and, h) for the purpose of the Secretary of State’s administration of the Uniform Commercial Code. § 119.071(5)(a)6.-8., F.S.

⁴⁶ § 119.071(5)(a)2., 3., F.S.

⁴⁷ E-mail correspondence from Maria Matthews, Asst. Gen’l Counsel, Fla. Dep’t of State to Jonathan Fox, Chief Attorney, Senate Ethics and Elections Committee (Aug. 11, 2009).

⁴⁸ § 97.053(6), F.S.

⁴⁹ *Id.*

⁵⁰ Registration closes for a primary or general election 29 days before the date of the election; anyone registered after this date is ineligible to cast a ballot in that election. § 97.055(1), F.S. The period immediately preceding a book-closing deadline frequently sees an increase in applications.

⁵¹ § 97.053(6), F.S.; E-mail correspondence from Maria Matthews, Asst. Gen’l Counsel, Fla. Dep’t of State to Jonathan Fox, Chief Attorney, Senate Ethics and Elections Committee (Aug. 18, 2009). Processing these applications also costs more in terms of time, money, and effort, as the State has to provide notice of the defect and obtain a copy of evidence of the SSN. *Id.*

⁵² Similarly, the courts have long recognized that political speech deserves **greater** protection than commercial speech. See e.g., *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 422 (1992) (political speech occupies the highest position in hierarchy of free speech constitutional protections; commercial speech is regarded as sort of second-class expression).

⁵³ Beginning on November 1, 2009, the Florida DHSMV will no longer issue a Florida I.D. to anyone with a valid driver’s license. Ch. 2009-183, LAWS OF FLA. § 11, at 7 (codified at § 322.08(6), F.S.) Therefore, for purposes of this review, the exemption for DL#s and Florida I.D. numbers will be considered together.

nearly-universal, unique identifiers: as such, common sense dictates that they be kept confidential. Because of concerns over identity theft and fraud, privacy groups and experts typically recommend not listing your DL# on your personal checks and keeping the number private.⁵⁴

DL#s held or originated by the DHSMV are already exempt from public disclosure as “personal information” pursuant to the federal Driver’s Privacy Protection Act (“DPPA”) and its Florida statutory counterpart (subject to some exceptions).⁵⁵ Further, the statement of public necessity supporting the public records exemption for DL#s held by the Florida DHSMV provides:

The personal information that is contained in motor vehicle records, if readily available for public inspection and copying, could be used to invade the personal privacy of the persons named in the records or it could be used for other purposes, such as solicitation, harassment, stalking, and intimidation. Limiting access to the state’s motor vehicle records will protect the privacy of persons who are listed in those records and minimize the opportunity for invading that privacy.⁵⁶

Once identity thieves are in possession of an individual’s DL#, they can use it to acquire other personal documents or information, forge driver’s licenses in the victim’s name, effect the creation of fraudulent notarized documents and, in turn, pass “bad” checks,⁵⁷ open “instant” or store credit accounts (i.e., Sears charge card), create fraudulent wills and legal documents requiring notarization, and commit other *financial* identity-theft-based fraud. Further, persons in possession of an individual’s DL# can engage in *criminal* identity theft --- presenting fraudulent documentation or information to law enforcement and court officers that results in criminal violations, traffic citations, fines, arrest warrants being issued for failure to appear in court, and criminal records --- that is attributed to the identity-theft victim.⁵⁸ Thus, permitting unfettered access to such information in voter registration records and in the voting context would raise legitimate privacy concerns, subject individual’s to increased threats of both financial and criminal identity-theft fraud, and serve as a convenient means of circumventing the confidentiality protections of the DPPA.

⁵⁴ See e.g., Privacy Rights Clearinghouse, Coping with Identity Theft: Reducing the Risk of Fraud (Fact Sheet #17), at <http://www.privacyrights.org/fs/fs17-it.htm>; Spector, Lincoln, Should You Keep Your Driver’s License Number Private?, PC World online at http://www.pcworld.com/article/136120/should_you_keep_your_drivers_license_number_private.html (August 23, 2007).

⁵⁵ 18 U.S.C. §§ 2721, 2725(3); § 119.0712(2), F.S. The statement of public necessity supporting the state’s public records exemption for DL#s characterizes the DPPA as prohibiting disclosure of such information of a “sensitive, personal nature.” Ch. 2004-62, LAWS OF FLA., § 3, at 451.

⁵⁶ *Id.*

⁵⁷ Retail store clerks typically write a DL#/state I.D. number on the check as proof of identification, as well as check that the photo and signatures match what is being presented. Office of the State Attorney, Eighth Judicial Circuit, *Filing a Worthless Check Complaint*, at <http://sawwww.co.alachua.fl.us/Check%20Fraud.htm>; see § 832.07(2)(b), F.S. (identifying the DL#/state I.D. number as prima facie evidence of the identity of the person passing the check, for purposes of prosecuting for fraud).

⁵⁸ Identity Theft Resource Center, Fact Sheet 110 - Criminal Identity Theft, Criminal Identity Theft: A Guide to the Crime, at http://www.idtheftcenter.org/artman2/publish/v_fact_sheets/Fact_Sheet_110_Criminal_Identity_Theft.shtml (June 5, 2007). Identity theft victims may not discover what’s been occurring until they’re unexpectedly detained at a traffic stop or subsequently booked on an outstanding arrest warrant erroneously issued in their name; others may learn of the impersonation when denied or terminated from employment based on a background investigation that indicated a criminal history under the victim’s name. Privacy Rights Clearinghouse, *Criminal Identity Theft: What to Do if It Happens to You* (Fact Sheet #17g), at <http://www.privacyrights.org/fs/fs17g-CrimIdTheft.htm>. Adding insult to injury, the job of correcting errors on one’s criminal record is the victim’s responsibility:

Unfortunately, as with financial identity theft, the burden of clearing one’s name within the criminal justice system is primarily on the victim. The victim must act quickly and assertively to minimize the damage. Yet, the responsibility to correct the erroneous data in the various criminal justice computer systems is with the officials working within the criminal justice system. There are no established procedures for clearing one’s wrongful criminal record.

Id.; see Florida DHSMV, *Identity Theft & Driver License Fraud Information*, at <http://www.flhsmv.gov/idtheft.html> (DHSMV cannot remove a fraudulent citation from a driving record without the authorization of the convicting court).

Signature Inspection

Many of the same reasons for keeping an individual's DL# confidential and exempt from disclosure apply with equal or greater force to preventing the *copying* of a voter or voter registration applicant's *personal signature* --- the fact that it's a unique identifier and that it can be used to: pass bad checks; open store credit cards; create fraudulent notarized documents; etc.. Not to mention the fact that it forms the basis for all legal contracts and many other binding, legal documents.

One specific identity-theft scam prevalent in Florida today involves using copies of signatures and, in some cases, DL#, to file fraudulent quit-claim deeds --- typically on homes without a mortgage belonging to unsuspecting absentee owners.⁵⁹ It works like this: deeds filed with the county clerk of courts in Florida must include notarized signatures of the parties involved and two witnesses.⁶⁰ The identity thief simply obtains a copy of the owner's signature and the signature and official stamp of a notary⁶¹ --- often from online public records posted by the county --- to create the fraudulent deed. Or, if the identity thief has the current owner's DL#, he or she can present a bogus license as proof of I.D. to any notary who will notarize the fraudulent deed on the property in question. The identity thief then files the deed in which the actual property owner purportedly transfers ownership of the property to the identity thief or an accomplice (often using an alias), who, in turn, subsequently defrauds an unsuspecting third party by selling the home (typically for cash at a bargain price) or obtaining a mortgage or home-equity loan on the property from a lender. And the burden of undoing this fraudulent transfer falls on the original homeowner.

Options and/or Recommendations

Senate professional staff has reviewed the exemptions in s. 97.0585, F.S., pursuant to the Open Government Sunset Review Act of 1995, and finds that the exemptions meet the requirements for reenactment. Section 97.0585, F.S., allows the state to effectively and efficiently administer a governmental program, which would be significantly impaired without the exemptions. For example, they encourage voter registration applicants to disclose sensitive, personal information necessary to matching their identities and registering them to vote; absent the exemptions, voters would be reluctant to provide such information given the potential for damage to their good names and reputations. Accordingly, professional staff recommends that the exemptions in s. 97.0585, F.S., be reenacted and thereby saved from repeal.

⁵⁹ Gary White, *Real Estate Fraud Cases Breaking Out Across Florida*, Sarasota Herald-Tribune (March 1, 2009), reprinted online at <http://www.heraldtribune.com/article/20090301/ARTICLE/903010369?Title=Real-estate-fraud-cases-breaking-out-across-Florida>; Lawyersandsettlements.com, *The Role U.S. Counties May be Playing in International Deed Fraud*, at <http://www.lawyersandsettlements.com/story.html?storyID=215> (online legal news source).

⁶⁰ § 695.26(1), F.S. The county clerks' offices don't require any identification of those submitting deeds; they can be mailed-in or, in some counties, anonymously dropped in baskets at clerks' offices. Gary White, *Real Estate Fraud Growing in Polk and Across Florida*, The Lakeland Ledger (Feb. 27, 2009), reprinted at <http://www.theledger.com/article/20090227/NEWS/902280283?Title=Real-Estate-Fraud-Growing-in-Polk-and-Across-Florida>.

⁶¹ Florida law provides that a rubber stamp seal is the official notary seal for paper documents, as opposed to an embossed or raised impression-type stamp. § 117.05(3)(a), F.S.