

**STORAGE NAME:** h1199c.cjcl

**DATE:** April 17, 1997

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE  
COMMITTEE ON CIVIL JUSTICE AND CLAIMS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1199 (PCB TU 97-07)

**RELATING TO:** Museum/Unclaimed Property

**SPONSOR(S):** Committee on Tourism, Rep. Barreiro and others

**STATUTE(S) AFFECTED:**

**COMPANION BILL(S):** SB 1496 (I)

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

- (1) TOURISM YEAS 9 NAYS 0
- (2) COMMITTEE ON CIVIL JUSTICE AND CLAIMS YEAS 8 NAYS 0
- (3)
- (4)
- (5)

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**I. SUMMARY:**

House Bill 1199 establishes uniform procedures for the disposition of unclaimed property which has been loaned to public or private museums or property which could be loaned to museums in the future in Florida. Responsibilities for lenders and the borrowing museums are delineated. If the loan did not have an expiration date and the property owner has not contacted the museum for at least 25 years or if the loan did have an expiration date and the property owner has not contacted the museum for five years after the expiration date, a museum may begin a procedure for obtaining title to the property. Property in this category is defined as "unclaimed property".

Museum responsibilities include a reasonable and good faith search for the lender before the loan may be terminated for unclaimed property. Notice is by certified mail when possible and by a publication of general circulation when certified mail is not possible.

Museums may also apply conservation or disposal measures without a lender's permission when the lender cannot be reached and public or staff health and safety are at risk.

House Bill 1199 has no fiscal impact and it is not a mandate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

State policy relating to lost or abandoned property, found in Chapter 705, F.S., defines lost property as that which does not have an identifiable owner and has been mislaid on public property in a functioning condition or which has an intrinsic value to the owner. Abandoned property is defined as that which does not have an identifiable owner and has been mislaid on public property but in an inoperative or partially dismantled condition or which has no intrinsic value to the owner.

There are no provisions in current law which apply to property loaned to a museum and unclaimed after the expiration period of the loan. The artistic, historic, cultural, or scientific valued property is often beneficial to the museum and used for research, educational, or exhibitional purposes. Although the property can benefit the museum, care and maintenance can be expensive. However, the property may not be considered lost or abandoned by the definitions in Chapter 705, F.S. Some of the related costs include storage, record keeping, climate control, security, inspections, insurance, conservation and general overhead. If the property is not claimed at the end of the loan period or the loan agreement does not have a definitive end date, the costs of care continue for the museum although the museum does not have any title rights regarding the property.

B. EFFECT OF PROPOSED CHANGES:

House Bill 1199 establishes uniform procedures for the disposition of unclaimed property which has been loaned to public or private museums in Florida. Responsibilities for lenders and the borrowing museums are delineated. If the loan does have an expiration date and the property owner has not contacted the museum for at least 25 years or if the loan did have an expiration date and the property owner has not contacted the museum for five years after the expiration date, a museum may begin a procedure for obtaining title to the property. Property in this category is defined as "unclaimed property".

The museum must keep an updated written record of all loans including lender's name, address, phone number, description and condition of the property, and date and duration of the loan. The lender should notify the museum of any change in his address or ownership of the property.

To be able to claim title, a museum must make a good faith and reasonable search for the rightful owner of the "unclaimed property". The search will include notice by certified mail to the last known address or if the address is unavailable or signed receipt is not returned, then by notice in a general circulation publication in the county in which the museum is located and the county of the lender's last known address. Both notices are to be published twice, 60 or more days apart. If the lender does not contact the museum within 90 days of the certified mail notice or 90 days of the second publication, the museum gains good title to the property.

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The museum shall have a lien for any expenses for reasonable care of unclaimed property after the expiration of the loan date. Loan property to a museum may not revert to state ownership through any other escheat law except as provided under this act.

If the museum and the lender agree on provisions different from or in addition to those in this act, they can do so through a written contract.

A museum may apply conservation measures or dispose of loaned property without the lender's permission under the following conditions:

- To protect the loaned property or other museum property, or because the loaned property has become a health and safety hazard, and the museum is unable to reach the lender or the lender will not agree to recommended protective measures nor to retrieval of the property.
- If a lender cannot be reached and notice is placed in a general circulation publication in the county of the museum and the lender and there is no known response.

When the museum applies conservation or disposal measures, it will have a lien on the property. The museum will not be liable for property loss or injury if it had a reasonable belief that the action was necessary for property protection or the health and safety of the public or staff and if it exercised reasonable care in applying the measures.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

- (5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1 - LEGISLATIVE INTENT:** Because of the large expense involved with storing and caring for loaned property, it is in the public interest to establish procedures for unclaimed and loaned property.

DEFINITIONS are established for lender, loans, museum, property, records, and unclaimed property.

OBLIGATIONS OF MUSEUMS TO LENDERS: The museum shall keep written updated records of loaned property and the owners of the property, provide receipts, notify lenders of this law and any loss or damage to the property on loan.

LENDER'S NOTICE: The property owner should notify the museum of any change in address or ownership.

TERMINATION OF LOANS: Museums may terminate loans by making a good faith and reasonable search for the property owner.

MUSEUM GAINING TITLE TO PROPERTY; CONDITIONS: After required notice by certified mail or by publication and a 90 day waiting period, the museum acquires title to the property.

CONTRACTUAL OBLIGATIONS: The property owner and the museum can agree to different loan provisions through a written contract.

EFFECT ON OTHER RIGHTS: Loaned property to a museum shall not revert ownership to the state except through the provisions of this act.

TITLE OF PROPERTY ACQUIRED FROM A MUSEUM: The title acquired under this act shall be a good title for transferring property.

MUSEUM LIEN FOR EXPENSES OF EXPIRED LOANS: After the expiration of a loan, the museum shall have a lien for reasonable care expenses of unclaimed property.

CONSERVATION OR DISPOSAL OF LOANED PROPERTY: To protect the loaned property or other museum property or if the loaned property has become a health or

safety hazard, the museum may apply conservation measures to a loaned property without the owner's permission if they are unable to reach the owner or the owner does not terminate the loan or agree to the recommended protective measures.

**Section 2** provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

House Bill 1199 does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

House Bill 1199 does not reduce the authority of counties and municipalities to raise revenue.

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

House Bill 1199 does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

House Bill 1199 was filed as HB 1351 during the 1996 Legislative Session at the request of the Florida Association of Museums through the Division of Historical Resources of the Department of State. The language of the bill is from a nationally recognized model by the 1991 Old Loan Task Force of the Registrar's Committee of the Mid-Atlantic Association of Museums. Additionally, the model language is recommended by the Smithsonian Institution and is the basis for a "Legal Problems of Museum Administrators" course which is given by the American Bar Association and the American Association of Museums.

During the 1996 Legislative Session the proposal passed the House but died in House Messages in the Senate.

The staff of the Civil Justice and Claims Committee reviewed HB 1199 to determine the effects of any waiver of liability provisions. Subsection (12) waives liability of museums for injury to loaned property or loss of loaned property. This waiver of immunity applies to the conservation or disposal of loaned property and only if the following requirements are met:

“ . . . (a) the museum had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum

or that the property on loan constituted a hazard to the health and safety of the public or the museum's staff and (b) the museum exercised reasonable care in the choice and application of conservation measures."

The above referenced reasonable belief and reasonable cause provisions have long been supported by judicial rulings. For example, in *Irving v. Doctors Hospital of Lake Worth, Inc.* (Fla. App. 4 Dist., 1982), 415 So. 2nd 55. A plaintiff brought action against a physician and hospital for negligent diagnosis and treatment. The hospital challenged any responsibility for damages on the basis that the doctor was not a hospital employee. The 4th DCA found for the plaintiffs by concluding that the hospital, by its actions, held out a particular physician as its agent and/or employee and that a patient accepted treatment from that physician in the reasonable belief that it was rendered in behalf of the hospital; therefore, the hospital was also liable for the physicians negligence."

The bill raises two key issues:

- ▶ Do the termination of ownership privileges exercised by museums applying conservation measures or disposing of loaned property conflict with the ownership rights of lenders?
- ▶ Do the termination of ownership privileges exercised by museums applying conservation measures or disposing of loaned property deprive owners of individual due process with respect to property ownership?

Property owners are granted due process under Article I, Section 9, of the Florida Constitution, "no person shall be deprived of life, liberty or property without due process . . ." The provisions of the bill would not directly conflict with the ownership rights provided under the Constitution. Furthermore, it cannot be concluded that the termination of ownership privileges exercised by museums would conflict with the ownership rights of lenders. Chapters 705 and 717, Florida Statutes.

The bill would create rules to settle disputes concerning abandoned or unclaimed property loaned to museums. It would also create new responsibilities for museums when accepting or disposing of loaned property.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Civil Justice and Claims adopted one amendment which revises the effective date provisions of Section 2 to provide that the act shall take effect on October 1, 1997, except for property exceeding a value of \$10,000 this act only applies to loans made after the effective date.

VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:

Legislative Research Director:

Jill F. Turman

Judy C. McDonald

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Bridget Edmond