

**STORAGE NAME:** h0615.fs  
**DATE:** December 27, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FINANCIAL SERVICES  
ANALYSIS**

**BILL #:** HB 615  
**RELATING TO:** Unclaimed Property  
**SPONSOR(S):** Representative Prieguez  
**TIED BILL(S):**

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

- (1) FINANCIAL SERVICES
  - (2) GOVERNMENTAL RULES AND REGULATIONS
  - (3) FINANCE AND TAXATION
  - (4) GENERAL GOVERNMENT APPROPRIATIONS
  - (5)
- 

**I. SUMMARY:**

Chapter 717, Florida Statutes, authorizes the Department of Banking and Finance (DBF) to receive unclaimed property and charges the department with using its best efforts to reunite this property with its owners. Such owners are often solicited and represented by heir finder agencies.

This bill makes a number of conforming and technical revisions to Ch. 717, F.S., to reference unclaimed property as opposed to abandoned property and to improve the syntax of the statutory language. The substantive revisions to the chapter provided in this bill primarily focus on establishing contract disclosure requirements and set percentage fee caps for agreements between apparent owners and their representatives (i.e., heir finder agencies). The revisions stipulate that all contracts between owners and their representatives must be in writing, must be filed with the claim form to the department, must disclose that the property is being held by the department, must disclose the name of the entity which held the property last, must disclose the date of the holder's last contact with the owner, and must disclose the approximate value, and type, of property the owner's representative is seeking to recover. The bill authorizes the department to make payments directly to the owner after deducting any fees as authorized in the written contract, and sets the following as percentage caps on fees are established:

<u>Claim range</u>	<u>Percentage Fee</u>
\$100,000 and above	5 percent
\$ 50,000 to \$99,000	8 percent
\$ 5,000 to \$49,999	12 percent
\$ 500 to \$ 4,999	20 percent

Fees for accounts less than \$500 in value are not subject to these percentage caps. In addition, these disclosure and fee caps are not applicable to contracts entered into between an heir finder agency and a corporation.

This bill does not negatively impact the General Revenue Fund. As a result of increasing the amount retained for the Unclaimed Property Trust Fund from \$3 to \$8 million, there will be a one-time \$5 million impact for FY 2000-2001, from the State School Fund which is used, in part, to pay valid claims. The department also estimates a private sector cost, and a corresponding private sector benefit of \$1.4 million annually. This represents the potential for reduced fees

paid to heir finders by claimants, based on industry representations that average fees range between six and eight percent. The bill's effective date is October 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                                         |                             |                                         |
|-----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

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, and 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 a mechanism for the disposition of such property. Under the 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, that 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 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. In general, 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 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.

Within 13 months following the report of abandoned property, the department must attempt to locate the apparent owner of property valued at or above \$100 by publishing a notice in a newspaper of general circulation at least once. All proceeds from abandoned property are deposited by the department into the State School Trust Fund.<sup>1</sup> The department maintains a separate account (the Unclaimed Property Trust Fund) with up to \$3 million for the prompt payment of verified claims. According to the department, it makes sometimes bi-weekly requests of the Department of Education to transfer funds to the Unclaimed Property Trust Fund for the payment of claims.

The department contracts with two separate companies to assist in discovering and recovering lost property. During FY 1998-1999, the two companies accounted for recovering over \$14.7 million. Out of these funds recovered, the two firms netted aggregate fees totaling over \$1.6 million. The contracts provide for a fee based upon 13 percent of what the companies recover.

In addition to the efforts by the department to match people with their unclaimed property, there are private investigative agencies, commonly referred to as heir finders, that locate owners of unclaimed property and offer their services to recover the property for a fee. Heir finders generally contact owners and may offer a percentage-based fee, or a sliding scale fee, to complete and file the necessary paperwork to the department to process the claim.

According to the department, there is a "lag time" from a few weeks up to six months from the date the department receives a report from a property holder and the date in which the property is received by the department. When the department receives the property, the property is matched to the report (referred to as "balancing" the report) and the department either places the report on the unclaimed property roll or pays the claim if a claim for the property is on file. Heir finder agencies routinely make public record requests of the department, seeking current reports of unclaimed property by property holders. Heir finders then take whatever information the department has at that time and researches public data bases in an attempt to find the owner to offer them the heir finder's collection services.

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<sup>1</sup>The State School Fund is funded from many sources: the proceeds of all lands that have been, or will be, granted to the state by the United States for public school purposes, donations to the state when the purpose is not specified, appropriations by the state, the proceeds of escheated property or forfeitures, and 25 percent of the sales of public lands now, or hereafter, owned by the state.

Florida law prohibits heir finders from targeting owners whose property has been reported to the state for a period of time so that the department has an opportunity to notify owners before the heir finders. According to the law, such contracts are unenforceable if they are made within 90 days after the department attempted notification, or made within 12 months after the property is reported to the department, whichever occurs first. Heir finders are required to disclose these requirements in at least 6 point bold type in their agreements to ensure owners are apprised of their rights. Since the department is not a party to the contract between heir finder and an owner of unclaimed property, however, the department is unable to enforce the statutory time period restrictions, and since there is no requirement that heir finders print the date the owner's property was reported to the department, it is unlikely that an owner would know if the contract could be declared "unenforceable." In Report No. 99-13, dated November, 1999, the Office of Program Policy Analysis and Government Accountability (OPPAGA), recommended that, in order to "protect owners of unclaimed property from paying unnecessary fees for heir finder agreements, the Legislature amend s. 717.135, F.S., to provide that heir finder agreements are void, rather than unenforceable, if the agreements do not include the required disclosures or if they violate the required time periods. The department was not able to enforce that provision simply because the department was not a party to the contract between the owner and the heir finder agency. The department addressed the consumer protection issue in this bill through disclosure requirements in the contract between heir finder agencies and owners, and through percentage fee caps.

One may perform a computer search for unclaimed property by a name search in 46 of the 50 states, as well as Washington D.C., and Puerto Rico, on the National Association of Unclaimed Property Administrators' website at <http://www.unclaimed.org/>. Only Hawaii, Montana, New Mexico, Oklahoma, and the U.S. Virgin Islands, do not yet have an active web site dedicated to unclaimed property searches. To see if you have unclaimed property held in those states or territory, the aforementioned website provides an agency address to contact and provide your full name, social security number and last known address.

**C. EFFECT OF PROPOSED CHANGES:**

Mainly, the bill sets percentage fee caps and requires certain disclosures in written agreements between apparent owners and their representative (i.e., an heir finder agency).

All contracts between owners and their representative must be in writing and must be filed with the claim form to the department. The contract must disclose that the property is being held by the department, must disclose the name of the entity which held the property last, must disclose the date of the holder's last contact with the owner, and must disclose the approximate value, and type, of property the owner's representative is seeking to recover.

The bill authorizes the department to make payments directly to the owner after deducting any fees as authorized in the written contract and sets the following as percentage caps on those fees:

<u>Claim range</u>	<u>Percentage Fee</u>	<u>Possible Fee Range</u>
\$100,000 and above	5 percent	\$5,000 +
\$ 50,000 to \$99,000	8 percent	\$4,000 - \$7,999
\$ 5,000 to \$49,999	12 percent	\$ 600 - \$5,999
\$ 500 to \$ 4,999	20 percent	\$ 100 - \$ 999

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Fees for accounts less than \$500 in value are not subject to these percentage caps. In addition, these disclosure and fee caps are not applicable to contracts entered into between an heir finder agency and a corporation.

Furthermore, the bill:

Eliminates the requirement that abandoned property reports submitted to the department be verified. According to the department this requirement was unenforceable, given the fact that the department receives unclaimed property reports from holders all over the country. In addition, the department believes that the requirement is inconsistent with the high level of volunteerism upon which this system depends.

Places an affirmative duty on the part of a holder (one in possession of property belonging to another, a trustee, or one indebted to another) to use due diligence and reasonable and prudent methods to locate apparent owners, and clarifies when an account is "inactive."

Establishes a one year period of inactivity as a trigger to require the account's holder to actively seek the account's owner. This may cause an increase in work volume for the department and account holders due to the fact that, currently, reports are based on property presumed abandoned, which varies from three to five years, and which allows accounts to lie dormant for longer periods before the holder is required to actively seek an owner.

Differentiates between "active" and "passive" attempts to contact owners of property and places an affirmative duty on the department to make one active attempt to notify owners of unclaimed property.

Changes the requirement that stocks and other intangibles must be sold prior to submitting the property to the department.

Eliminates the requirement that interest be added to an amount which is the result of a claimant's successful action asserting rights to escheated property.

Increases the amount the department retains for for the payment of claims and administrative costs, from \$3 million to \$8 million. According to the department, this will decrease the number of transfer requests from bi-weekly, to six annually.

Expressly stipulates that a power of attorney relationship be established when an apparent owner of unclaimed property executes a written contract for services with a duly-licensed "heir finder" agency to file a claim with the department on behalf of the owner, rather than executing a simple assignment of rights. This may afford more consumer protection, as an assignment reflects a complete or partial relinquishment of rights, whereas a power of attorney relationship carries with it a duty to act in the interest of the owner. There is nothing in this section which expressly prohibits assignments, however. Makes numerous substitutions for the word "unclaimed" for "abandoned" property, and makes other technical changes throughout the chapter.

Provides an effective date of October 1, 2000.

This bill does not appear to affect the General Revenue Fund, however, the department estimates a one-time, negative \$5 million for FY 2000-2001, from the State School Fund.

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

**Section 1.** Amends s. 717.101, F.S., by adding a definition of “due diligence” as such relates to efforts holders of property take to unite property with a person. Also amends the definition of “last known address” so that unclaimed property owned by Florida residents but held by sister states will be reported to the department.

**Sections 2 through 6.** Amends s. 717.102, s. 717.103, s. 717.1035, s. 717. 104, and s. 717.105, F.S., substituting the word “unclaimed” for “abandoned” property and making other technical changes.

**Section 7.** Amends s. 717.106, F.S., substituting the word “unclaimed” for “abandoned” property, providing for other technical changes, and adding, as indicia of an active account in a financial organization, first class mail sent to the apparent owner which is not returned as undeliverable.

**Sections 8 and 9.** Amends s. 717.107, s. 717.108, F.S., substituting the word “unclaimed” for “abandoned” property and making other technical changes.

**Section 10.** Amends s. 717.109, F.S., removing the condition that a civil or administrative court order may affect the statutory one-year period in which a court-ordered sum owed by a business organization has been left unclaimed. This section also makes substitutions for the word “unclaimed” for “abandoned” property and makes other technical changes.

**Section 11.** Amends s. 717.1101, F.S., clarifying, in the case of an owner of stock or other security of a business association, which has failed to claim a dividend or distribution for five years, that the stock will not be considered abandoned until there has been five *consecutive* dividends not claimed by the owner after the five-year presumptive period. This section also makes substitutions for the word “unclaimed” for “abandoned” property and makes other technical changes.

**Section 12.** Amends s. 717.111, F.S., substituting the word “unclaimed” for “abandoned” property and making other technical changes.

**Section 13.** Amends s. 717.112, F.S., providing that intangible property issued by a government or governmental subdivision and held by an agent, is presumed unclaimed after one year. This section reflects a governmental entity holding property in an agency capacity and is different from s. 717.113, F.S, which presumes property held by a governmental agency or subdivision for one year as unclaimed, but not expressly held in an agency capacity. This section also makes substitutions for the word “unclaimed” for “abandoned” property and makes other technical changes.

**Sections 14 through 16.** Amends s. 717.113, s. 717.115, and s. 717.116, F.S., substituting the word “unclaimed” for “abandoned” property and making other technical changes.

**Section 17.** Amends s. 717.117, F.S., removing the requirement that reports of unclaimed property filed to the department be verified. This section also requires insurance companies to include the date of birth of the insured or annuitant to assist in proper identification of the individual. This section places an affirmative duty on the part of a holder (one in possession of property belonging to another, a trustee, or one indebted to another) to use “due diligence” and “reasonable and prudent methods” to locate apparent owners. The standards invoked by these terms of art replace the current requirement to

notify property owners 120 days prior to submitting a report to the department. The holder is required to make at least one search for the owner within 180 days after an account becomes inactive. An account is "inactive" if one year has transpired after the last owner-initiated account activity, the expiration date on the instrument or contract, or first-class mail has been returned as undeliverable. This section also makes substitutions for the word "unclaimed" for "abandoned" property and makes other technical changes.

**Section 18.** Amends s. 717.118, F.S., differentiating between attempts to contact owners of property which are "active" (direct contact) and those attempts which are "passive" (publication in newspapers, posting on the Internet, or television spots), and placing an affirmative duty on the department to make an active attempt to notify owners of unclaimed property. The department is released from the obligation to publicize names and items over \$100 in value. This section also makes substitutions for the word "unclaimed" for "abandoned" property and makes other technical changes.

**Section 19.** Amends s. 717.119, F.S., authorizing unclaimed property holders to remit funds through electronic funds transfer, when appropriate. Cash and coin items identified as having numismatic value are required to be remitted to the department in their original form. This section also makes substitutions for the word "unclaimed" for "abandoned" property and makes other technical changes.

**Section 20.** Amends s. 717.1201, F.S., substituting the word "unclaimed" for "abandoned" property and making other technical changes.

**Section 21.** Amends s. 717.122, F.S., clarifying that if, at a public sale of unclaimed property, the department determines that the cost of the sale would probably exceed the value of the property, and the department decides not to sell the property at that time, that the department may dispose of the property as it deems appropriate. In addition, this section clarifies that in the case of a sale of unclaimed securities, and the department authorizes a deduction of brokerage fees, the owner's account shall not be reimbursed from the State School Fund if the securities were sold at the owner's request. This section also makes substitutions for the word "unclaimed" for "abandoned" property and makes other technical changes.

**Section 22.** Amends s. 717.123, F.S., increasing the amount the department retains for for the payment of claims and administrative costs, from \$3 million to \$8 million. This section eliminates the reference to "a separate account" for the retention of funds to pay claims and costs of the program, and specifically designates the Unclaimed Property Trust Fund as the depository for all funds received under this chapter. All remaining funds, after the retention amount is achieved, shall be deposited into the State School Fund. This section also makes substitutions for the word "unclaimed" for "abandoned" property and makes other technical changes.

**Section 23.** Amends s. 717.124, F.S., by expressly stipulating that a power of attorney relationship be established when an apparent owner of unclaimed property executes a written contract for services with a duly-licensed "heir finder" agency to file a claim with the department on behalf of the owner, rather than executing a simple assignment of rights. This section also establishes a level of accountability in the claims payment process by authorizing the department to make payments directly to the owner after deducting any fees as authorized in the written contract. Payment of the fees shall be made to the designated attorney or heir finder agency. This section appears to narrow the type of claims payments that must be placed in an escrow or trust account by an heir finder agency or law firm to only unclaimed securities and other intangible interests. This section also makes

substitutions for the word “unclaimed” for “abandoned” property and makes other technical changes.

**Section 24.** Amends s. 717.1241, F.S., simplifying the department’s responsibilities in the event of a dispute or conflicting claims by authorizing the department to remit the property to the owner’s representative or claimant who first filed a claim with the department (in the case of a dispute between the owner and the representative) or to the owner’s representative who first signed a contract with the property owner.

**Section 25.** Amends s. 717.1243, F.S., by requiring that all claims made by heirs of a deceased unclaimed property owner, whether the owner dies testate or intestate, must be accompanied by an affidavit stipulating that all funeral expenses, expenses of the last illness, and all other just claims, have been paid. Previously, it was enough to stipulate that there was enough in the estate to cover expenses. In addition, the maximum aggregate amount of the unclaimed property covered by this section is increased from \$1,000 to \$5,000.

**Sections 26 and 27.** Amends s. 717.125, and s. 717.129, F.S., substituting the word “unclaimed” for “abandoned” property and making other technical changes.

**Sections 28.** Amends s. 717.132 F.S., adding language specifying that all administrative fines collected by the department shall be deposited into the Unclaimed Property Trust Fund.

**Section 29.** Amends s. 717.135, F.S., establishes disclosure requirements and sets fee caps. All contracts between owners and their representatives (i.e., licensed heir finder agency) must be in writing and filed with the claim form to the department. The agreement must disclose that the property is being held by the department, must disclose the name of the entity which held the property last, must disclose the date of the holder’s last contact with the owner, and must disclose the approximate value, and type, of property the owner’s representative is seeking to recover. Written agreements shall also break out the dollar value of the property that will be paid to the owner, and the value that will be paid to the owner’s representative. The agreement must also include the name, social security number, address, and telephone number of the owner, and the license number of the owner’s representative. In addition, the following percentage caps on fees is established:

<u>Claim range</u>	<u>Percentage Fee</u>
\$100,000 and above	5 percent
\$ 50,000 to \$99,000	8 percent
\$ 5,000 to \$49,999	12 percent
\$ 500 to \$ 4,999	20 percent

Fees for accounts less than \$500 in value are not subject to these percentage caps. Under current law, these disclosure and fee caps are not applicable to contracts made in connection with guardianship proceedings or in the probate of an estate. This section excludes contracts entered with corporations from these disclosures and fee caps. This section also removes language stating that the contracts shall be unenforceable if made within 90 days after attempted notification by the department or within 12 months after such property is reported to the department.

**Section 30.** Amends s. 717.138, F.S., redrafting the language authorizing the department to promulgate rules to administer, enforce and interpret this chapter. This section also



specifies that no provision imposing liability shall apply to an act or omission in conformity with a rule in existence at the time of the act or omission. See, Part V.C. OTHER COMMENTS.

**Section 31.** Amends s. 732.107, F.S., clarifying that the ten year statute of limitation for claiming property escheated to the state begins to run at the time the state receives the property. In addition, this section eliminates the requirement that interest be added to an amount which is the result of a claimant's successful action asserting rights to escheated property.

**Section 32.** This section repeals s. 717.137, F.S., an outdated section of Florida law.

**Section 33.** Provides an effective date of October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	<u>FY 00-01</u>	<u>FY 01-02</u>	<u>FY 02-03</u>
Trust Fund	\$115 m	\$115 m	\$115 m

2. Expenditures:

	<u>FY 00-01</u>	<u>FY 01-02</u>	<u>FY 02-03</u>
Program Costs	\$ 2.6 m	\$ 2.6 m	\$ 2.6 m
Claims	\$ 47 m	\$ 47 m	\$ 47 m
Transfers to the State School Fund	\$ 71 m	\$ 53 m	\$ 53 m
One-time transfer From the SSF	\$ 5 m	\$ 0	\$ 0
TOTAL (See, B.2., below)	(\$ 10.6 m)	(\$5.6 m)	(\$ 5.6 m)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill is not expected to have any effect on local government.

2. Expenditures:

This bill is not expected to have any effect on local government. Inasmuch as the bill calls for a one-time transfer of \$5 million from the State School Fund to the Unclaimed Property Trust Fund, this is a pool of funds which is available to the department to pay claims as needed. The department believes that this one-time transfer will reduce

requests of the Department of Education for transfers from the State School Fund to the Unclaimed Property Trust Fund from bi-weekly to six times annually.

Despite the apparent negative impact in the total for Revenue and Expenditures for FY 01-02, and FY 02-03, the department explains that the above numbers are approximate and do not balance due to the fact that (1) the entities which report the property usually perform an audit of themselves on a tax year basis, and (2) the entities are not required to file reports to the department until May 1 of every year, creating an accounting "lag time."

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The department estimates that reducing fees payed by claimants to research companies (heir finders) by imposing percentage caps on fees which are based on a sliding scale of amounts to be recovered, may result in a savings to consumers of approximately \$1.4 million annually. This estimate is based on representations by industry spokespersons, who claim the average fee percentage is between six and eight percent.

Section 17 of the bill defines an "inactive account, " in part, as one in which there has been no owner-initiated activity within one year, which triggers a responsibility on the part of the property holder to conduct a search for the owner within 180 days after the account becomes inactive. This requirement is likely to increase the work-load of the private sector in searching for owners of unclaimed property, since this search will have to be conducted on an annual basis instead of just once when the presumption date triggers the search.

**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:

N/A

B. RULE-MAKING AUTHORITY:

The department had existing rulemaking authority and that section of law was re-drafted in the bill. This section may need further redrafting to reflect specific subject areas for rulemaking authority.

C. OTHER COMMENTS:

On page 13, line 16, the bill may require a substitution of the word "unclaimed" for "abandoned" for consistency.\*

On page 23, line 31, to page 24, line 1, there is inserted language which references fees deducted in accordance with s. 717.119, F.S. On page 20, line 29, through page 21, line 1, fees were stricken from that section of law in the bill. An amendment to correct the cross-reference may be necessary.

In section 13 of the bill, intangible property issued by the state and held by an agent is presumed unclaimed within one year after the property became payable or distributable unless the owner makes one of several actions listed in the section regarding the property.

Section 17 of the bill defines an "inactive account," in part, as one in which there has been no owner-initiated activity within one year, which triggers a responsibility on the part of the property holder to conduct a search for the owner within 180 days after the account becomes inactive. Apart from potentially increasing the work-load of the private sector in searching for owners of unclaimed property, this section appears to conflict with the concepts of time passage for presumption of abandonment provided in other sections of the chapter which offer longer periods of time for a presumption of abandonment (i.e., 15 years for traveler's checks, five years for bank drafts, bank deposit accounts, amounts owed under life insurance policies, and other intangible property).

Section 30 of the bill re-drafts department rule-making authority and also provides a waiver from liability for an act or an omission in conformity with a rule of the department in existence at the time of the act or omission, even if the rule later is repealed, redrafted, or declared invalid. As for the rule making authority language, staff recommends the language be amended to specifically describe the subject matter areas which may necessitate rules.

As for the waiver of liability language, the first line of that subsection reads, in part: "No provision of this chapter imposing liability shall apply to an act or omission..." There does not appear to be any part in the chapter which imposes liability, however, the department maintains such language is necessary to protect parties who act, or fail to act, in accordance with department rules. According to the department, for instance, if Holder A turns unclaimed property over to the department, which in turn pays a claim filed by an apparent owner, this language purportedly would serve to shield the holder and the department from liability in a lawsuit filed by a third party claiming ownership of the property, provided the holder and the department acted in accordance with published rules. It is unclear, however, how this language would shield the department or property holders from liability in the above scenario.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

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Michael A. Kliner

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Susan F. Cutchins