

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 770

INTRODUCER: Senator Siplin

SUBJECT: Unclaimed Deposits Held by Utilities

DATE: April 07, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	<b>Favorable</b>
2.	Wiggins	Yeatman	EP	<b>Pre-meeting</b>
3.			BC	
4.				
5.				
6.				

**I. Summary:**

The bill requires that any unclaimed deposits held by a utility be deposited into the Energy Affordability Trust Fund within the Department of Community Affairs (DCA) for the purpose of supplementing the Low Income Home Energy Assistance Program. The bill has a conditional effective date; it is to take effect July 1, 2011, if an undesignated Senate Bill (presumably SB 772 which creates the Energy Affordability Trust Fund) or similar legislation takes effect, if such legislation is enacted in the same legislative session, or an extension thereof, and becomes law.

The bill substantially amends section 717.108 of the Florida Statutes.

**II. Present Situation:**

Chapter 717 of the Florida Statutes provides for disposition of unclaimed property. In general, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than 5 years after the property becomes payable or distributable, unless otherwise provided in the chapter.<sup>1</sup> The time period for utility<sup>2</sup> deposits is different. Any deposit made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, including any interest less any lawful charges, that remains unclaimed by the owner for more than 1 year after termination of the services for which the deposit or

<sup>1</sup> s. 717.102(1), F.S.

<sup>2</sup> s. 717.101 (23), F.S., defines the term "utility" to mean a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

advance payment was made is presumed unclaimed.<sup>3</sup> Certain types of unclaimed property, including security deposits, having a value of less than \$10 are not to be presumed unclaimed.<sup>4</sup>

Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property must file an annual report with the Department of Financial Services (DFS or department) that includes information on the identity and last known address of the apparent owner of the property, a description of the property, and the date the property became payable or returnable.<sup>5</sup> At the same time the report is filed, the holder must deliver to the department all unclaimed property required to be reported.<sup>6</sup>

Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property.<sup>7</sup> The department is required to use cost-effective means to make at least one active attempt to notify owners of unclaimed property accounts valued at more than \$250 with a reported address or taxpayer identification number. All other apparent owners get indirect or passive notice such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts.<sup>8</sup>

Speaking generally, after the receipt of unclaimed property, the department sells all non-cash property to the highest bidder at public sale on the Internet or at a specified physical location wherever in the judgment of the department the most favorable market for the property involved exists.<sup>9</sup> The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department also has the discretion to withhold from sale any unclaimed property that the department deems to be of benefit to the people of the state. Finally, if in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale and may be disposed of as DFS deems appropriate.

All funds received, including the proceeds from sales, are deposited into the Unclaimed Property Trust Fund.<sup>10</sup> DFS is allowed to retain an amount not exceeding \$15 million from which it must make prompt payment of claims it allows and must pay the costs it incurred in administering and enforcing the chapter. All remaining funds received must be deposited into the Principal State School Fund.

The department must record the name and last known address of each person appearing from the holder's reports to be entitled to the unclaimed property in the total amounts of \$5 or greater; the name and the last known address of each insured person or annuitant; and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due. Any person claiming an interest in any property delivered to

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<sup>3</sup> s. 717.108, F.S.

<sup>4</sup> s. 717.117(1)(h), F.S.

<sup>5</sup> s. 717.117, F.S.

<sup>6</sup> s. 717.119, F.S.

<sup>7</sup> s. 717.1201, F.S.

<sup>8</sup> s. 717.118, F.S.

<sup>9</sup> s. 717.122, F.S.

<sup>10</sup> s. 717.123, F.S.

the department may file a claim for the property.<sup>11</sup> The department is required to make a determination on the claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds if it has been sold by the department.

In January, 2009, DCA, in collaboration with the Florida Energy Affordability Coalition, filed a report with the Legislature on affordability of energy in Florida.<sup>12</sup> The report made ten proposals on how to address affordability issues. Among them was a proposal to consider earmarking unclaimed utility deposits to supplement energy affordability assistance and energy efficiency programs rather than escheating the money to the state's general treasury,<sup>13</sup> and a proposal to create a state Energy Affordability Trust Fund, to be administered by DCA, charged with receiving and distributing funds such as those for use in low-income energy assistance, weatherization, and energy conservation education initiatives.<sup>14</sup>

Pursuant to s. 409.508, F.S., DCA administers the Low Income Home Energy Assistance Program (LIHEAP), which provides federal money to non-profit agencies and local governments so they can assist low-income families with home heating and cooling costs.<sup>15</sup> DCA applies for funding from the federal government and distributes it directly to local agency providers and non-profit agencies who then determine who will receive assistance. DCA monitors the local agency providers to ensure that they administer the funding in compliance with state and federal laws and rules and provides them technical assistance to help them comply with these requirements.

### III. Effect of Proposed Changes:

The bill amends s. 717.108, F.S., to provide that unclaimed security deposits paid to utility companies are to be deposited into the Energy Affordability Trust Fund within DCA for the purpose of supplementing the Low Income Home Energy Assistance Program.

The bill has a conditional effective date, providing that it takes effect July 1, 2011, if an unspecified Senate bill (presumably SB 772, which creates the Energy Affordability Trust Fund) or similar legislation takes effect, if such legislation is enacted in the same legislative session, or an extension thereof, and becomes law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Local governments that have a utility and hold and report unclaimed utility deposits would be required to separate these accounts from the rest of their annual unclaimed property report and remit them separately, which may result in an increase in costs which is likely to be insignificant.

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<sup>11</sup> s. 717.124, F.S.

<sup>12</sup> <http://www.fleac.net/pdf/FL%20DCA%20-%20Report%20CS-HB697%20-%20Energy%20Affordability%20-%20Jan%202009.pdf>.

<sup>13</sup> *Id.* at 18.

<sup>14</sup> *Id.* at 21.

<sup>15</sup> <http://www.floridacommunitydevelopment.org/liheap/index.cfm>.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The bill may be subject to a challenge that it violates the equal protection provision of the Constitution in that some owners of unclaimed property are being treated differently from others.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Unclaimed utility deposits would no longer be available for the owners to reclaim.

There will be additional funding for the LIHEAP program.

**C. Government Sector Impact:**

According to the Department of Financial Services, the bill would reduce the amount of money transferred into the Principal State School Trust Fund by approximately \$4 million each year. The fiscal note stated that, over the past ten years, the Bureau of Unclaimed Property has received an average of 43,500 unclaimed utility deposits annually, totaling more than \$4 million annually, making it one of the most common types of unclaimed property. The note also provided the more specific following information.

Unclaimed Utility Deposits Received by Bureau of Unclaimed Property			
Report Year	Number of Holders	Number of Accounts Reported	Total Reported
2000	203	26,115	\$3,689,847.81
2001	207	28,412	\$4,281,549.30
2002	206	26,370	\$3,606,079.23
2003	224	24,384	\$2,633,237.70
2004	221	95,585	\$4,814,876.96
2005	274	47,238	\$3,782,977.23
2006	270	49,384	\$4,063,476.03

Unclaimed Utility Deposits Received by Bureau of Unclaimed Property			
Report Year	Number of Holders	Number of Accounts Reported	Total Reported
2007	265	54,090	\$4,594,809.59
2008	271	41,277	\$4,822,225.59
2009	297	42,158	\$4,624,460.58
Totals	2438	435,013	\$40,913,540.02
<b>Average</b>	<b>243.8</b>	<b>43,501</b>	<b>\$4,091,354.00</b>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.