

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 887

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Trumbull

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**COMPANION SB 1138
BILLS:**

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 887 passed the House on April 22, 2015, and subsequently passed the Senate on April 27, 2015.

Unclaimed property consists of any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain period of time. Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property, pursuant to the Florida Disposition of Unclaimed Property Act (ch. 717, F.S.).

U.S. savings bonds are one type of unclaimed property. They are debt securities issued by the U.S. Department of the Treasury (Treasury) to help pay for the federal government's borrowing needs. Given the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, the state of Florida currently holds custody of unclaimed, physical bonds (bonds in possession) with a face value of more than \$1.2 million. However, federal law prohibits the transfer of U.S. savings bonds to anyone other than the named beneficiary except in limited circumstances, including pursuant to a valid judicial proceeding. Currently, the custody-based nature of the Act precludes recovery of these physical bonds. In addition, the DFS estimates there is an even greater number of absent bonds issued to individuals whose last known address is in Florida, but have been lost, stolen, or destroyed.

The bill creates a judicial process whereby the DFS may seek a court order to obtain title to the bonds in possession. The bill establishes a post-maturity period of time which will indicate that the bonds are lost, stolen, or destroyed, allowing the DFS to initiate escheat proceedings. If or when the proceeds are received, the bill requires the proceeds to be deposited in accordance with the Act, as with any other unclaimed property. The bill creates a claims process that requires the DFS to comport with due process prior to any escheat hearing, in that it must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication. Even after the bonds escheat to the state, the original bond owner may still recover the bond proceeds under the claims process set forth in the bill, and may make a claim to the DFS for the proceeds of the bond. Once the DFS obtains title to these bonds, it may petition the Treasury for redemption of these bonds in possession. If necessary, the DFS may also seek information from Treasury leading to the owners of absent bonds with last known addresses in Florida.

There is a potential positive, yet indeterminate fiscal impact to state revenues and an indeterminate fiscal impact to state expenditures. The fiscal impact depends on whether the state prevails in obtaining title to the physical bonds, whether it prevails in a petition to the Treasury for information and ultimate release of absent bond proceeds, and the extent to which originally registered bond owners may make a claim.

The bill was approved by the Governor on June 11, 2015, ch. 2015-152, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Unclaimed Property

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 safe deposit boxes.¹

Florida Disposition of Unclaimed Property Act

In 1987, Florida adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., "the Act").² The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the Department of Financial Services (DFS) Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, 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 five years after the property becomes payable or distributable, unless otherwise provided in the Act.³ Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate apparent owners within 180 days after an account becomes inactive.⁴ Once this search period expires, holders must file an annual report with the DFS for all property, valued at \$50 or more, that is presumed unclaimed for the preceding year.⁵ The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.⁶

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.⁷ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.⁸ The DFS is required to make a determination on a 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 DFS.⁹

¹ ss. 717.104 – 717.116, F.S.

² Ch. 87-105, Laws of Fla. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act>

³ s. 717.102(1), F.S.

⁴ s. 717.117(4), F.S.

⁵ s. 717.117, F.S.

⁶ s. 717.119, F.S.

⁷ s. 717.1201, F.S.

⁸ ss. 717.117 and 717.124, F.S.

⁹ s. 717.124, F.S.

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.¹⁰ The DFS is allowed to retain up to \$15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Trust Fund to be utilized for public education.¹¹

Like many other states' unclaimed property acts, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.¹²

U.S. Savings Bonds¹³

Pursuant to its constitutional power "to borrow money on the credit of the United States,"¹⁴ Congress delegated authority to the United States Department of the Treasury ("Treasury"), with approval of the President, to issue savings bonds "for expenditures authorized by law."¹⁵ U.S. savings bonds are debt securities issued by the Treasury to help pay for the federal government's borrowing needs and are backed by the full faith and credit of the U.S. government. A U.S. savings bond is a contract between the federal government and the bond's owner that is controlled by federal law. However, in disputes which do not concern the rights and duties of the United States, questions of title are to be decided by state law.¹⁶

The federal government began selling savings bonds in 1941 for World War II defense spending, and subsequently to encourage thrift and savings by small investors. The majority of the bonds at issue are Series E bonds (known informally as Defense Bonds), which were issued between 1941 and 1980 and had maturity terms of 30-40 years. In 2011, the last Series E bonds matured and stopped earning interest.¹⁷

Due to the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, a significant number of bonds remain unclaimed. As of January 31, 2015, the Treasury holds nearly \$49.3 million matured, unredeemed savings bonds, with a maturity value of \$16.5 billion.¹⁸ The federal regulations do not impose any time limits for bond owners to redeem Series E savings bonds.

There are two types of unclaimed savings bonds:

- *Bonds in possession* are U.S. savings bonds physically held by an unclaimed property administrator's office, typically discovered from expired safe deposit boxes. These bonds are delivered to the DFS pursuant to the Act. However, as described in further detail below, the

¹⁰ s. 717.123, F.S.

¹¹ *Id.*

¹² Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.

¹³ Except where specifically identified, this portion of the analysis is derived from the facts and background in *Treasurer of New Jersey v. U.S. Dep't of Treasury*, 684 F.3d 382 (3rd Cir. 2012).

¹⁴ U.S. CONST. art. I, § 8, cl. 2

¹⁵ 31 U.S.C. § 3105(a). The federal legislation authorizing Treasury to sell U.S. savings bonds was signed into law in 1935. See TREASURY DIRECT, *The History of U.S. Savings Bonds*, <http://www.treasurydirect.gov/timeline.htm>

¹⁶ 91 C.J.S. United States § 249 (Government bonds, generally).

¹⁷ TREASURYDIRECT, *The Volunteer Program and Series E Savings Bonds*, http://www.treasurydirect.gov/indiv/research/history/history_ebond.htm. The federal government sold the Series E bonds at a discount and paid interest on them only at maturity. While Series E bonds have stopped earning interest, owners of E bonds may still redeem them. Series E bonds were replaced by the Series EE bond in 1980.

¹⁸ TREASURYDIRECT, *Matured, Unredeemed Debt and Unclaimed Moneys Reports: Statistical report of matured, unredeemed savings bonds and notes* (Jan. 21, 2015), http://www.treasurydirect.gov/foia/foia_mud.htm

DFS currently cannot redeem bonds in possession without first taking title to these bonds via escheatment.

- *Absent bonds* are the class of U.S. savings bonds issued to an individual whose last known address is in Florida, but have been lost, stolen, or destroyed. As such, these bonds are not physically in the possession of the DFS. The records regarding absent bonds (such as registration information, serial numbers, and addresses) are exclusively held by the Treasury. The Treasury's online unredeemed bonds database, Treasury Hunt, does not contain a record of all savings bonds. The system only provides information on Series E bonds issued in 1974 or after, and is organized by social security number. Additionally, pursuant to the Privacy Act of 1974, Treasury Hunt only provides limited information to anyone who is not the bond owner or co-owner.¹⁹

In Florida, the DFS presently is in possession of unclaimed *physical* U.S. savings bonds with a face value of more than \$1.2 million. According to the DFS, the total amount of unclaimed, matured *absent* U.S. savings bonds registered to persons with a last known address in Florida is estimated to be well over \$100 million.²⁰

Unlike many other types of securities, "savings bonds are not transferable and are payable only to the owners named on the bonds," except as specifically provided for in the federal regulations.²¹ There are limited exceptions to this general rule against transferability of savings bonds, including cases in which a third party attains an interest in a bond through valid judicial proceedings.²² A registered owner of a bond is presumed conclusively to be its owner, absent errors in registration.²³

While federal law pervades the terms and conditions of the U.S. savings bond program (including the authority to fix the bonds' investment yield, transfer, redemption, and sales prices),²⁴ there is no federal escheat or unclaimed property law requiring the federal government to search for and reunite bond owners with the bonds. Instead, the federal government will hold these bonds in perpetuity. State unclaimed property laws, on the other hand, govern the significant public policy concerns of the abandonment of intangible personal property.²⁵

For several decades, various states have sought to recover the proceeds from matured but unredeemed savings bonds. In 1952, Treasury issued a bulletin (referred to as the "Escheat Decision") explaining that it would pay the proceeds of savings bonds to the state of New York if it actually obtained *title* to the bonds, but would not do so if the state merely obtained a right to the *custody* of the proceeds.²⁶ In 2000, the Treasury published online guidance consistent with the 1952 Escheat Decision.²⁷ Both articulations of the Treasury policy raised serious concerns with releasing U.S. bonds to states with custody-based statutes, because such a state that steps into the shoes of the *payor* (Treasury) merely as a custodian would not discharge the Treasury of its contractual obligation and liability to bond holders.²⁸ On the other hand, the Treasury guidance appears to accept a state stepping into the shoes of the *payee* (the bond owner) through a valid judicial determination made under a title-based law.

¹⁹ TREASURYDIRECT, *Treasury Hunt*, at http://www.treasurydirect.gov/indiv/tools/tools_treasuryhunt.htm

²⁰ Department of Financial Services, Agency Analysis of House Bill 887, p. 1 (Mar. 17, 2015).

²¹ 31 C.F.R. §§ 315.15, 353.15.

²² 31 C.F.R. §§ 315.20(b), 353.20(b).

²³ 31 C.F.R. §§ 315.15, 353.15.

²⁴ 31 U.S.C. § 3105.

²⁵ Other scenarios involving the application of state unclaimed property laws to unclaimed intangible property in the federal government's possession include unclaimed accounts from liquidated nationally-chartered financial institutions or property subject to administration by the U.S. bankruptcy courts.

²⁶ *New Jersey v. Treasury*, at 390-391.

²⁷ TREASURYDIRECT, *EE/E Savings Bonds FAQs*, http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds_eefaq.htm

²⁸ In *New Jersey v. Treasury*, several states with custody-based statutes offered to indemnify Treasury in exchange for the bond proceeds; however, Treasury declined.

Kansas Title-Based Statute and Recovery of Proceeds from Bonds in Possession

In 2000, the state of Kansas enacted a change in state law to designate its state treasurer's office as the official *title owner* of unclaimed U.S. savings bonds,²⁹ in order to align with long-standing Treasury policy. Based on this state law, Kansas obtained a favorable declaratory judgment in state trial court awarding title to 1,447 fully matured and unclaimed U.S. savings bonds in possession found in unclaimed safe deposit boxes. In January 2014, the Kansas state treasurer announced the receipt of \$861,908 from the Treasury for those physical bonds (bonds in possession).³⁰

In contrast to the outcome in Kansas, a federal appeals court in 2012 denied an attempt by several state unclaimed property administrators to recover proceeds of unredeemed physical U.S. savings bonds from the Treasury, based on several constitutional grounds.³¹ However, a significant aspect of the court's holding turned on the fact that these states' unclaimed property acts were "custody" statutes, not "title" statutes, thus conflicting with the Treasury's policy.³²

To date, seven states have enacted similar title-based unclaimed property laws based on the Kansas statute, in an effort to seek the proceeds of bonds in possession. Title-based unclaimed property legislation is currently pending in at least nine other states.

Unclaimed Absent Bonds

Following its receipt of proceeds from the Treasury for unclaimed physical bonds, Kansas next petitioned the Treasury to redeem the remaining class of matured *absent* savings bonds issued to owners with a last known address in Kansas. While the Treasury made limited information available to Kansas about matured savings bonds issued after 1974 on its Treasury Hunt website, the Treasury did not provide other information necessary to search the database (such as the original owners' social security numbers) or any information about older bonds.

In December 2014, the Kansas state treasurer initiated suit against the Treasury in the U.S. Court of Federal Claims,³³ seeking payment for \$151 million in unclaimed absent bonds and for records identifying the original owners.³⁴ This lawsuit is still pending. The parties recently completed supplemental briefing on the Treasury's motion to dismiss, but a final ruling has not yet been issued.³⁵

Effect of the Bill

The bill, similar to the Kansas law, creates a judicial process in the Act, whereby the DFS may file a civil action in a court of competent jurisdiction in Leon County, Florida to determine that title to unclaimed U.S. savings bonds escheat to the state. If the DFS obtains title to these bonds, it places the DFS in the same position as the record owner of the bond, which is necessary to recover proceeds from Treasury.

²⁹ Kan. Stat. Ann. §§ 58-3979 and 3980 (2014).

³⁰ KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: <https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php>

³¹ The constitutional issues in *New Jersey v. Treasury* involved preemption, intergovernmental immunity, and waiver of sovereign immunity under the federal Administrative Procedures Act.

³² *New Jersey v. Treasury*, at 389. The plaintiff states were New Jersey, North Carolina, Montana, Kentucky, Oklahoma, Missouri, and Pennsylvania.

³³ *Ron Estes, Treasurer of the State of Kansas v. United States*, U.S. Ct. of Fed. Claims (Case No. 1:13-cv-01011-EDK). The U.S. Court of Federal Claims is an Article I, congressionally created court that has exclusive jurisdiction over claims for monetary damages against the federal government and that arise from federal constitutional, statutory, and regulatory laws, as well as contracts with the U.S. government. See 28 U.S.C. § 1491.

³⁴ KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: <https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php>

³⁵ Supplemental briefs in *Estes v. United States*, on file with the Insurance & Banking Subcommittee staff.

Under the bill, U.S. savings bonds are not considered unclaimed until they have matured and have remained unclaimed for five years after the bond maturity date (typically 30-40 years). This five year post-maturity period will indicate that the bonds are lost, stolen, or destroyed, allowing the DFS to initiate escheat proceedings.

If or when the proceeds are received, the bill requires the proceeds to be deposited in accordance with s. 717.123, F.S. (as with any other unclaimed property), which requires deposit of proceeds into the Unclaimed Property Trust Fund within the DFS, allows the DFS to retain \$15 million to pay proceeds and administrative expenses, and requires deposit of any remaining funds into the State School Trust Fund to be utilized for public education.

The bill creates a claims process to return the money to valid claimants and requires the DFS to comport with due process prior to any escheat hearing, in that it must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication,³⁶ as it must do when parties cannot be found through reasonable and customary due diligence efforts. Even after the bonds escheat to the state, an original bond owner may still recover the proceeds of the bond under the claims process set forth in the bill, and may make a claim to the DFS for the proceeds of the bond. This "second chance" provision allows originally named bond owners who did not or could not comply with the Treasury's regulations for redemption.

Once the DFS obtains title to these bonds, it may petition the Treasury for redemption of these bonds in possession. If necessary, the DFS may also seek information from Treasury leading to the owners of absent bonds with last known addresses in Florida.³⁷

The bill applies to any U.S. savings bonds that reach maturity on, before, or after the bill's effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

³⁶ Service of process by publication is set forth in ch. 49, F.S. (Constructive Service of Process).

³⁷ If necessary, the state may join the lawsuit against Treasury. Because the value of absent bonds is significantly higher than the bonds in possession, it is likely that the state will have to file suit to recover the proceeds from the absent bonds.

Indeterminate,

D. FISCAL COMMENTS:

There is a potential positive, yet indeterminate fiscal impact to state revenues and an indeterminate fiscal impact to state expenditures. The fiscal impact depends on whether the state prevails in obtaining title to the physical bonds, whether it prevails in a petition to the Treasury for information and ultimate release of absent bond proceeds, and the extent to which originally registered bond owners may make a claim. The DFS anticipates legal costs associated with potential litigation as a result of the bill. The actual costs are unknown at this time; however, the department indicates that any legal costs can be absorbed with existing resources. The DFS indicates that any revenue or expenditure impact to the DFS as a result of this legislation is unknown at this time.³⁸

³⁸ Department of Financial Services, Agency Analysis of House Bill 887, p. 2 (Mar. 17, 2015).