

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 783 Unclaimed Property

SPONSOR(S): Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Trumbull

TIED BILLS: IDEN./SIM. BILLS: SB 970

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 1 N, As CS	Lloyd	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Unclaimed property consists of any funds or other property, including insurance proceeds, that remains unclaimed by the owner for a certain period of time. The Florida Disposition of Unclaimed Property Act requires holders of unclaimed property to exercise due diligence to locate owners and pay them the funds. If the owner cannot be located, the holder must report and remit the unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property. The bill makes the following changes to the Act:

- Revises certain definitions and adds one for the term “United States”;
- Increases the maximum value defining claims related to small estates from \$5,000 to \$10,000;
- Requires the filing of certain court documents, in certain circumstances;
- Authorizes the DFS to estimate property value if the holder fails to produce sufficient records to do so;
- Eliminates the conditional \$1,000 cap on fees and costs applicable to property claimed under a power of attorney and the conditional \$1,000 limit on the discount allowed in purchase agreements;
- Eliminates an exception that removes a fee cap and disclosure requirement, in the case of a claim made under a power of attorney, or the \$1,000 discount limit (but not the disclosure requirement) in the case of a claim for a property right obtained under a purchase agreement;
- Deletes authority to remove certain language otherwise required in grants of limited power of attorney and purchase agreements;
- Limits certain authorizations or agreements associated with grants of a limited power of attorney or purchase agreements and requires denial of claims, if compensation is inconsistent with statute;
- Increases the number of days allowed for a purchaser to pay a property right seller from 10 days to 30 days; requires the filing of proof of completed payment; and, voids the claim, if the required proof is not filed with the DFS;
- Repeals the 45 day waiting period for claims made under a power of attorney or purchase agreement and preserves certain statements of legislative intent; and
- Removes the authorization for registrants to receive social security numbers.

Current law requires candidates for public office to dispose of the funds in their campaign account within 90 days of the end of their candidacy. They are allowed to deposit refund checks to be disposed of consistent with law. However, the law does not specify how to dispose of funds that come in by other means after the disposition of the account. The bill requires that unclaimed campaign account property be reported to the Chief Financial Officer (CFO) and deposited into the State School Fund.

The bill has an insignificant, yet indeterminate positive fiscal impact on revenues deposited into the State School Fund within the Department of Education. Specifically, the bill provides that all remaining unclaimed campaign account funds reported to the CFO must be deposited into the State School Fund. The bill appears to have no effect on local government or state expenditures.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Unclaimed Property

Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for more than five 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

In 1987, Florida adopted the Uniform Unclaimed Property Act² by enacting the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., "the Act").³ 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, Bureau of Unclaimed Property (DFS) 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. 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.⁴ Holders of unclaimed property (which typically include banks and insurance companies) of \$50 or more are required to use due diligence to locate and notify apparent owners of inactive accounts, at least 60 days but not more than 120 days prior to filing a report with the DFS.⁵ If the owners cannot be located, 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.⁶ 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 of apparent owners.⁷ The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.⁸

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.⁹ 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.¹⁰ 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

¹ ss. 717.104 – 717.116, F.S.

² UNIFORM LAW COMMISSION, *Unclaimed Property Act (1952)(1981)*, [http://www.uniformlaws.org/Act.aspx?title=Unclaimed Property Act \(1952\)\(1981\)](http://www.uniformlaws.org/Act.aspx?title=Unclaimed%20Property%20Act%20(1952)(1981)) (last visited Jan. 29, 2016).

³ 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> (last visited Jan. 26, 2016).

⁴ s. 717.102(1), F.S.

⁵ s. 717.117(4), F.S.

⁶ s. 717.117, F.S.

⁷ For unclaimed funds owing under any life or endowment insurance policy or annuity contract, the report must also include the last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds. s. 717.117(1)(b), F.S.

⁸ s. 717.119, F.S.

⁹ s. 717.1201, F.S. 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.

¹⁰ ss. 717.117 and 717.124, F.S.

DFS is to deliver or pay over to the claimant the property or the amount the DFS actually received or the proceeds, if it has been sold by the DFS.¹¹

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.¹² The DFS is allowed to retain up to \$15 million to make prompt payment on 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 Fund to be utilized for public education.¹³

Claims for recovery of unclaimed property held by the DFS under the Act may be filed by or on behalf of any person with an interest in the property.¹⁴ While the Act provides the opportunity for anyone to recover the full value of their property at no cost, provision is made for claimants to designate someone who may perfect the claim for them. The claimant may designate and empower a representative to pursue their claim by executing a power of attorney agreement. Or, the claimant may sell their right to the property to certain individuals that are registered with the DFS for this purpose.¹⁵ In either case, the transaction is subject to a fee limitation, unless a disclosure statement is provided to the claimant, in the form and with the content specified in the Act. The fee limitations are:

For representatives operating under a power of attorney:¹⁶

- 20 percent of the value of the property, not to exceed \$1,000;
- However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated before or if the claimant is outside of the United States.

For purchasers obtaining rights under a purchase agreement:¹⁷

- 20 percent discount off of the value of the property, not to exceed a discount of \$1,000;
- However, the \$1,000 discount limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated before, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

The Act also prescribes the form and content of the purchase agreement that transfers the right of the claimant to another person and the document granting the power of attorney. Additionally, s. 717.1351(4), F.S., requires that the purchaser pay the property seller within 10 days of execution to the purchase agreement and proof of payment by check must be filed with the DFS.

The DFS reports that some property owners are presented with an initial authorization or agreement for representation that provides for a fee that exceeds the 20 percent cap, but does not include the

¹¹ s. 717.124, F.S.

¹² s. 717.123, F.S.

¹³ *Id.*

¹⁴ s. 717.124, F.S.

¹⁵ Only a Florida licensed attorney, certified public accountant, private investigator or an employee of private investigator, or an employer of the private investigator if the employer holds a Class "A" license under ch. 493, F.S., may execute such purchase agreements. s. 717.1351, F.S. Additionally, the purchaser must be registered with the DFS. The DFS reports that there are currently 246 registrants under this provision. Florida Department of Financial Services, Agency Analysis of 2016 HB 1327, p. 3 (Dec. 14, 2015).

¹⁶ s. 717.135, F.S., requires the disclosure that the property is held by the DFS pursuant to the Act, the mailing and Internet addresses of the DFS, the person or name of the entity that held the property prior to the property becoming unclaimed, the date of the holder's last contact with the owner, if known, and the approximate value of the property, and the categories of unclaimed property the claimant's representative is seeking to recover. The categories of unclaimed property are: cash accounts; stale dated checks; life insurance or annuity contract assets; utility deposits; securities or other interests in business associations; wages; accounts receivable; and contents of safe-deposit boxes.

¹⁷ s. 717.1351, F.S. The content of the disclosure statement has the same elements as the disclosure described in s. 717.135, F.S., related to powers of attorney. However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

disclosure required by law to allow the higher fee. After having secured a relationship with the claimant, the representative subsequently executes a fully compliant power of attorney or purchase agreement that includes the specified disclosure that would otherwise validate a fee greater than 20 percent. Then, only the compliant documents are filed with DFS to support the claim. The DFS, unaware of these events, disburses the funds on the “perfected” claim. The representative holds the owner to the unlawfully high fee, in the case of a power of attorney, or obtains a higher percentage of the property value than they would otherwise be entitled, in the case of a purchase agreement.¹⁸

Since the public policy of the state is to provide the DFS with the first opportunity to locate the owner of the unclaimed property and for the owner to receive the full value of their property,¹⁹ there are limitations on claiming by others through powers of attorney and purchase agreements. Powers of attorney and purchase agreements that are executed less than 45 days after the property is received by the DFS and that relate to accounts over \$250 in value are void under the Act.²⁰ The 45 day limit on such claims provides the DFS the opportunity to attempt to locate the property’s owner. However, placing time and value limits on claim eligibility requires the DFS to track accounts and audit claims to identify the amount and timing of the claims. The DFS reports that this is inefficient and the public purpose can be served through other provisions of the Act. The DFS recommends repealing s. 717.1381, F.S., to eliminate administrative inefficiency.²¹

Effect of the Bill

The bill revises the definitions of “business association,” “domicile,” and “insurance company” to simplify their text and improve understandability. Limited liability companies are specifically included in the definition of “business association.” A definition of “United States” is created to specify the meaning of that term, which is currently used throughout the Act to determine various rights and conditions.

Generally, a claim for property related to the estate of a deceased person must be accompanied by an order from a probate court. However, there are documentary exceptions for estates with an aggregate value of \$5,000 or less and no probate proceeding is pending.²² The bill increases the maximum threshold value of this small estate provision from \$5,000 to \$10,000.

Section 717.1262, F.S., requires that a claimant whose right to property is based on a court document must file a certified copy of the relevant court document with the DFS. The bill expands this requirement to include all pleadings filed with the court to establish the property right that were filed within 180 days preceding the signing of the claim form.

The holder of unclaimed property is obligated to report the value of property to the DFS. If the holder’s records are insufficient to permit preparation of the required report, the value of the property may be estimated by the DFS. However, there is no authority for the DFS to estimate the value of the property when the holder fails to produce the record. The bill authorizes the estimation to occur if the holder fails to produce records following a request by the DFS.

The bill eliminates the \$1,000 cap on fees and costs applicable to property claimed through a representative under a power of attorney and the \$1,000 limit on the discount allowed in purchase agreements. Since these caps limit the application of the primary fee limitation, which is 20 percent of the value of the property recovered under a power of attorney or a 20 percent discount on the purchase of the property right, the \$1,000 limitation is only triggered when value of the property exceeds \$5,000 (i.e., $\$5,000 \times 0.20 = \$1,000$). Currently, there is no fee cap if the specified disclosure statement is

¹⁸ Email from Walter Graham, Bureau Chief, Florida Department of Financial Services, Bureau of Unclaimed Property, Re: HB 783 (Feb. 3, 2016). The DFS reports that the impermissibly high fees charged under this dual authorization arrangement has ranged from averages of 30%–35% to as high as 60%.

¹⁹ ss. 717.118 and 717.1381, F.S.

²⁰ s. 717.1381, F.S.

²¹ Florida Department of Financial Services, Agency Analysis of 2016 HB 783, p. 3 (Dec. 14, 2015) and email from Elizabeth Boyd, Director of Legislative Affairs, Department of Financial Services, Re: 45 Day issue from HB 783 (Jan. 27, 2016).

²² s. 717.1243, F.S.

provided to the claimant. The bill increases the cap on fees and costs to the current 20 percent standard on property valued over \$5,000 where the specified disclosure is not made to the claimant.

The bill also eliminates the exception that removes the fee cap and disclosure requirement, in the case of a claim made under a power of attorney, or the \$1,000 discount limit (but not the disclosure requirement) in the case of a claim for a property right obtained under a purchase agreement. The exception applies when probate proceedings must be initiated on behalf of the claimant regarding an estate that has never been probated or if the claim is being made under the right of a person outside the United States or, in the case of a purchase agreement, the seller is not a natural person.

Currently, grants of limited power of attorney and purchase agreements are required to specify the percent of the property to be paid to the purchaser on a discrete line item in a grant or agreement pursuant to the form and content requirements of the Act. However, this line may be deleted if the purchaser is paid a flat fee instead of a percentage of the recovery. The bill eliminates this exception and requires every grant of limited power of attorney or purchase agreement to include the required text regarding the percent of the property to be paid to the purchaser and the insertion of the appropriate percentage figure, which varies depending upon the amount of the flat fee and the value of the property to be recovered.

The bill requires any authorization or agreement for the recovery of property to be personally signed and dated by the claimant. The date of the authorization or agreement cannot precede the date on the grant of limited power of attorney or purchase agreement. The effect is to have a compliant power of attorney or purchase agreement be the first agreement in the case. This facilitates getting the disclosure, if one is going to be used to remove the fee cap, in front of the claimant during the first step in the claims process. It is meant to address the problem of claimants being presented and obligated to noncompliant authorizations or agreements, only to later execute a compliant agreement, which misrepresents the factual circumstances of the representation and the lawfulness of the fee to the DFS.

The bill requires a copy of such authorizations or agreements to be filed with the DFS along with the other required documents. Additionally, the bill requires the DFS to deny any claim where the representative under an authorization or agreement refuses to reduce its fee to the maximum allowed by law, i.e., 20 percent of the value of the property, if the disclosure was required but not provided to the claimant timely. Taken together, the provisions of the bill creating ss. 717.135(5) and 717.1351(8), F.S., would allow the fee cap to be lifted when the specified disclosure is made at the time of the first engagement of services. Failure to do so limits fees to 20 percent of the value of the property or requires the DFS denial of the claim.

The bill repeals s. 717.1381, F.S., including the statements of legislative intent located there. The bill retains the portion of legislative intent regarding the right of the claimant to recover their property without charge by moving it to s. 717.139, F.S. However, it does not preserve the legislative intent statement regarding the obligation of the DFS to make a meaningful attempt to locate the claimant. The substantive portions of s. 171.1381, F.S., are also repealed. This eliminates the 45 day waiting period for claims over \$250 in value that are handled by a representative or purchaser. The DFS reports that they will be able to maintain a waiting period using their authority under s. 717.117(3), F.S., and that their administrative efficiency will be improved by not having to audit claim filings for the timing of agreements and value of the claim for compliance with the repealed limitation.²³

Individuals who register with the DFS as a potential purchaser under the Act are permitted to receive the social security numbers of apparent owners of property reported to the DFS. This is in addition to other information related to the unclaimed property. The bill deletes the authorization for registrants to receive social security numbers.

Current Situation

²³ Florida Department of Financial Services, Agency Analysis of 2016 HB 783, p. 3 (Dec. 14, 2015) and email from Elizabeth Boyd, Director of Legislative Affairs, Department of Financial Services, Re: 45 Day issue from HB 783 (Jan. 27, 2016).

Unclaimed Campaign Funds

Section 106.141, F.S., requires candidates for public office to dispose of the funds in their campaign account within 90 days of the date that their candidacy ended.²⁴ Paragraph 106.141(4)(a), F.S., specifies a variety of options for the disposal of surplus campaign funds. With certain exceptions, they may take any combination of the following actions when disposing of the surplus:

- Return, pro rata to each contributor, the funds that have not been spent or obligated;
- Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code;
- Give not more than \$25,000 of the funds that have not been spent or obligated to the affiliated party committee or political party of which such candidate is a member; or
- Give the funds that have not been spent or obligated:
 - In the case of a candidate for state office, to the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the candidate; or
 - In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

If the candidate accepted contributions under the Florida Election Campaign Financing Act, the surplus funds must be returned to the General Revenue Fund, after satisfying certain monetary obligations. If the candidate takes office, they may transfer a limited amount of the funds to their office account.

Violations of the campaign finance law are subject to criminal penalties, both misdemeanors and felonies. Failure to properly dispose of surplus campaign funds is a first degree misdemeanor punishable by up to a year in jail and/or a fine of \$1,000. Candidates are prohibited from accepting campaign contributions following the end of their candidacy. They are allowed to receive and deposit refund checks to be disposed of consistent with the requirements of law, as described above. However, the law does not specify how to dispose of cash (or other property), received in forms other than a check, that would otherwise go into the campaign account but comes into the possession of the former candidate after the end of their candidacy and the disposition of the campaign account.

Effect of the Bill

The bill provides that if unclaimed property is owned by the campaign account of a candidate for public office, following a report of the property to the DFS, the property shall be deposited into the State School Fund via the Chief Financial Officer.

B. SECTION DIRECTORY:

Section 1: Amends s. 717.101, F.S., relating to definitions applicable to the Florida Disposition of Unclaimed Property Act.

Section 2: Creates s. 717.1235, F.S., relating to unclaimed campaign funds of candidates for public office.

Section 3: Amends s. 717.1243, F.S., relating to small estate accounts.

Section 4: Amends s. 717.1262, F.S., relating to court documents.

Section 5: Amends s. 717.1333, F.S., relating to evidence; estimations; audit reports, examiner's worksheets, investigative reports, other related documents.

Section 6: Amends s. 717.135, F.S., relating to power of attorney to recover reported property in the custody of the department.

²⁴ The triggers for disposition are when the candidate withdraws their candidacy, becomes an unopposed candidate, is eliminated, or is elected. s. 106.141(1), F.S.

Section 7: Creates s. 717.1351, F.S., relating to acquisition of unclaimed property.

Section 8: Repeals s. 717.1381, F.S., relating to void unclaimed property powers of attorney and purchase agreements.

Section 9: Amends s. 717.139, F.S., relating to uniformity of application and construction.

Section 10: Amends s. 717.1400, F.S., relating to registration.

Section 11: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminate, yet positive impact to revenues deposited into the State School Fund within the Department of Education. Specifically, the bill provides that all remaining unclaimed campaign account funds reported to the CFO must be deposited into the State School Fund to be utilized for public education.²⁵

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate negative impact on the private sector because it eliminates, under certain circumstances, the current limit on fees that third parties may collect for assisting in the recovery of unclaimed property. In addition, the bill has an indeterminate positive effect on the private sector by allowing more small estates to benefit from simpler claim filing requirements, increasing the informational content on certain disclosures, establishing new authority to deny or void claims with excessive compensation, and allowing the streamlining of claim processing by the DFS.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

²⁵ *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill repeals s. 717.1381, F.S., which contains certain legislative intent language regarding the right of the claimant to recover their property without charge and the obligation of the DFS to make a meaningful attempt to locate the claimant. The bill retains a portion of this language by relocating it to s. 717.139, F.S. However, the portion that speaks to the obligation of the DFS to make a meaningful attempt to locate the claimant has not been restored to statute. Deleting this language may be inconsistent with the intent of the bill.

On lines 183–185 and 230–233, the bill authorizes DFS to deny claims if the compensation for the representative or purchaser under certain authorizations or agreements exceeds the 20 percent fee cap and the statutory disclosure requirements were not properly complied with. However, the 20 percent fee cap is inapplicable under current law when a compliant disclosure is presented to and signed by a claimant. It is unclear when the fee cap can be lifted under the provisions of the bill. Additionally, the provisions could be interpreted to allow multiple fees, which in the aggregate might exceed the 20 percent cap. An amendment would facilitate the correct application of law, avoid conflict, and achieve the intent of the bill. This could be accomplished by providing an exception to the stated provisions to specify the effect of the disclosure, when disclosure must occur, if used, and limit total fees related to a particular claim to the current 20 percent cap, absent proper timely disclosure.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably with a committee substitute. The amendment made the following revisions to the bill:

- Removed section 1 of the bill relating to “surplus trustees”;
- Requires each court pleading filed within 180 days prior to a claim for unclaimed property to be filed with the Department of Financial Services;
- Requires identification of the percent of the recovery to be paid to the representative in all claims involving a grant of limited power of attorney, regardless of whether a flat fee payment is made;
- Requires all authorizations or agreements for representation regarding a claim for unclaimed property to meet specified requirements regarding accurate and personal completion by the claimant;
- Authorizes DFS to deny the claim for exceeding the fee cap on the representative’s or purchaser’s compensation;
- Increases the maximum number of days for a claimant to be paid following a purchase agreement from 10 days to 30 days from the date of execution and voiding the claim if proof of payment is not filed with the DFS;
- Restores a statement of legislative intent;
- Removes the section of the bill that expressed intent to apply a portion of the bill retroactively; and
- Certain other technical, grammatical or clarifying revisions.

On February 16, 2016, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. Specifically, the amendment:

- Removed the application and renewal fees created in the bill.

The staff analysis is drafted to the bill as amended and passed by the Government Operations Appropriations Subcommittee.