

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/CS/HB 783	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Regulatory Affairs Committee; Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Trumbull and others	116 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/SB 970	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/CS/HB 783 passed the House on March 4, 2016, and subsequently passed the Senate on March 7, 2016.

Unclaimed property consists of any funds or other property, including insurance proceeds, that remains unclaimed by the owner for a certain period of time. Current law 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, Bureau of Unclaimed Property (DFS). The bill makes the following changes:

- Revises certain definitions and adds one for the term "United States";
- Allows certain tax exempt water cooperatives to retain unclaimed patronage refunds;
- 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;
- Requires a specified disclosure to be executed separately from, rather than as part of, representation 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;
- Voids certain authorizations or agreements and limits fees thereunder to the default maximum fee, if they do not meet certain documentary and filing requirements;
- 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 was approved by the Governor on March 24, 2016, ch. 2016-90, L.O.F., and will become effective on July 1, 2016.

## 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.<sup>1</sup>

In 1987, Florida adopted the Uniform Unclaimed Property Act<sup>2</sup> by enacting the Florida Disposition of Unclaimed Property Act.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.<sup>8</sup>

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

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<sup>1</sup> ss. 717.104 – 717.116, F.S.

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> s. 717.102(1), F.S.

<sup>5</sup> s. 717.117(4), F.S.

<sup>6</sup> s. 717.117, F.S.

<sup>7</sup> 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.

<sup>8</sup> s. 717.119, F.S.

<sup>9</sup> 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.

<sup>10</sup> 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.<sup>11</sup>

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> In either case, the transaction is subject to a fee limitation, unless a disclosure statement<sup>16</sup> 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:<sup>17</sup>

- 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.

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

<sup>12</sup> s. 717.123, F.S.

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

<sup>14</sup> s. 717.124, F.S.

<sup>15</sup> 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 783, p. 3 (Dec. 14, 2015).

<sup>16</sup> ss. 717.135(3) and 717.1351(2), F.S., require the following disclosure statement on the face of the power of attorney or purchase agreement:

FULL DISCLOSURE STATEMENT

The property is currently held by the State of Florida Department of Financial Services, Bureau of Unclaimed Property, pursuant to chapter 717, Florida Statutes. The mailing address of the Bureau of Unclaimed Property is . The Internet address of the Bureau of Unclaimed Property is .

The property was remitted by: .

Date of last contact: .

Property category: .

<sup>17</sup> 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.

For purchasers obtaining rights under a purchase agreement:<sup>18</sup>

- 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.

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,<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

### **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.<sup>22</sup> 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.

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<sup>18</sup> 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.

<sup>19</sup> ss. 717.118 and 717.1381, F.S.

<sup>20</sup> s. 717.1381, F.S.

<sup>21</sup> 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).

<sup>22</sup> s. 717.1243, F.S.

The bill 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.

The bill requires the statutory disclosure to be presented to the property owner as a separate document from the limited power of attorney or purchase agreement prior to the execution of the limited power of attorney or purchase agreement. The content of the disclosure statement is not changed.

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 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 and active attempt to locate the claimant.<sup>23</sup> The substantive portions of s. 717.1381, 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.<sup>24</sup>

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**

### **Activities Related to Representation Agreements and Authorizations**

The DFS reports that some property owners are presented with an initial agreement or authorization for representation that provides for a fee that exceeds the 20 percent cap, but does not include the 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.<sup>25</sup>

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<sup>23</sup> s. 717.118, F.S., which is not affected by the bill, contains a statement of legislative intent similar to the statement repealed by the bill, as well as provisions describing what activities constitute an active or passive attempt at contact.

<sup>24</sup> 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).

<sup>25</sup> 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 have ranged from averages of 30 percent to 35 percent and can reach as high as 60 percent.

## **Effect of the Bill**

In the event that there is an initial agreement or authorization for representation that predates the limited power of attorney or purchase agreement that complies with the Act, the bill prohibits a fee for recovery of property from exceeding the statutory cap of 20 percent of the property value, not to exceed \$1,000, unless the specified disclosure agreement is provided to and signed by the owner on the face of the initial representation agreement or authorization. The bill allows 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, not to exceed \$1,000.

If there is an agreement or authorization that predates those specified in the Act and those documents are not provided to the DFS with the original claim for recovery, the agreement or authorization is void.

## **Current Situation**

### **Water and Wastewater Patronage Refunds**

Water and wastewater services in Florida are typically provided by a utility company.<sup>26</sup> The utility company can be organized in any of the various business entity forms authorized by law. One method is to form a not-for-profit cooperative corporation that is owned by the utility's customers.<sup>27</sup> Depending upon the governing law or the cooperative's by laws, the cooperative may be required to refund excess revenues to its member customers, by means of a patronage refund, which is usually based upon the amount of services purchased by the member over a given period. With one exception, unclaimed patronage refunds are subject reporting and delivery to the DFS under the Act.

Chapter 425, F.S., authorizes the formation of rural electric cooperative associations for the purpose of supplying electric energy and promoting and extending the use electric energy in rural areas. Rural electrical cooperatives have the power to process, treat, sell, and dispose of water and water rights; to purchase, construct, own and operate water systems; to own and operate sanitary sewer systems; and to supply water and sanitary sewer services. Rural electrical cooperative patronage refunds are exempt from the reporting requirements of the Act, pursuant to s. 717.117(7)(a), F.S.

## **Effect of the Bill**

The bill exempts unclaimed patronage refunds held by any not-for-profit water and wastewater corporation that is exempt from state ad valorem property taxes, pursuant to s. 196.2002, F.S., and federal income taxes, pursuant to s. 501(c)(12) of the Internal Revenue Code.<sup>28</sup> According to information provided by the DFS, there are 118 such cooperatives. In last two fiscal years, they reported the following in unclaimed patronage refunds:<sup>29</sup>

- In fiscal year 2014-2015, 524 refunds totaling approximately \$36,264; and
- In fiscal year 2013-2014, 503 refunds totaling approximately \$33,466.

The bill is silent about how the tax exempt water and wastewater cooperative may use the unclaimed patronage refunds and how long it is obligated to make the refund to the owner. It is likely that the general statute of limitation provisions of s. 95.11, F.S., will govern the time to recover such unclaimed

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<sup>26</sup> With proper permitting, one can obtain water from a private well and dispose of wastewater using a sanitary septic system.

<sup>27</sup> s. 617.0401(1)(b), F.S.

<sup>28</sup> Section 501(c)(12) of the Internal Revenue Code exempts the following organizations from federal income tax: benevolent life insurance associations of a purely local character; mutual ditch or irrigation companies; mutual or cooperative telephone companies; mutual or cooperative electric companies; and "like organizations." INTERNAL REVENUE SERVICE, *Part 7. Rulings and Agreements, Chapter 25. Exempt Organizations Determinations Manual, Section 12. Organizations Exempt Under IRC 501(c)(12)*, [https://www.irs.gov/irm/part7/irm\\_07-025-012.html](https://www.irs.gov/irm/part7/irm_07-025-012.html) (last visited Feb. 26, 2016). Cooperative water and wastewater corporations qualify as "like organizations."

<sup>29</sup> Email from B.G. Murphy, Deputy Legislative Affairs Director, Department of Financial Services, Re: CS/CS/HB 783, Unclaimed Property – water co-op refunds (Feb. 19, 2016).

patronage refunds. Since there is no time limitation on the recovery of unclaimed property under the Act, this limits the right to recovery of the refund.

## **Current Situation**

### **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.<sup>30</sup> Section 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.

## **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

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<sup>30</sup> 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.

campaign account funds reported to the CFO must be deposited into the State School Fund to be utilized for public education.<sup>31</sup>

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.

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<sup>31</sup> *Id.*