

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 681 Unclaimed Funds Held by the Clerks of Court
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Clemons, Sr.
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N, As CS	Whittaker	Harrington
2) Appropriations Committee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Uniform Unclaimed Property Act provides that intangible property held for the owner by a court that has not been claimed by the owner for more than 1 year after it became payable is presumed unclaimed. Under the act, the unclaimed property is remitted to the Department of Financial Services (DFS). DFS is responsible for receiving the property, attempting to locate the owners, and returning the property to them. The process differs for unclaimed surplus funds that remain after a foreclosure. Upon the conclusion of a foreclosure, any undisbursed funds are held in surplus by the clerk of the court for 60 days. If no legal claim is made for the surplus, the clerk is required to appoint a "surplus trustee" to locate the owner of the surplus. The primary duty of a surplus trustee is to locate the owner of record and return the surplus funds to the owner.

The bill repeals s. 43.19, F.S., relating to money held in the court registry. As a result, the court will remit the unclaimed money to DFS after 1 year for disposition pursuant to the Florida Disposition of Unclaimed Property Act.

The bill amends procedures relating to the disbursement of surplus funds after a foreclosure. The bill provides that if no claim is filed during the 60 day period after the clerk issues a certificate of disbursement or if any surplus funds remain after payment to a subordinate lienholder, the clerk must report and remit the surplus to DFS pursuant to ss. 717.117 and 717.119, F.S., after 1 year. The bill repeals the law relating to surplus trustees. As such, the owner of the surplus funds may claim the funds with DFS. The bill also provides that for purposes of establishing entitlement to real property, only the owner of record reported by the clerk, or the estate or beneficiary of a deceased owner of record reported by the clerk, is entitled to the surplus. Any surplus of less than \$10 escheats to the clerk.

The bill may have an insignificant negative fiscal impact on the state and does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Unclaimed Property

Section 43.19, F.S., provides for the disposition of unclaimed money paid into the court registry. If such unclaimed funds remain in the registry for 5 years or more, the court must direct that the money be deposited with the Chief Financial Officer to the credit of the State School Fund. A person, firm or corporation entitled to any of the money may obtain an order directing the payment of the money to the claimant by petitioning the court and providing written notice to the state attorney and proof of entitlement to the money.¹

In 1987, Florida adopted the Uniform Unclaimed Property Act that 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. It provides that intangible property held for the owner by a court that has not been claimed by the owner for more than 1 year after it became payable is presumed unclaimed.² 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, and citizens may claim their property at any time and at no cost.

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.³ 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 DFS may file a claim for the property, subject to certain requirements.⁴ Claims for recovery of unclaimed property may be filed by or on behalf of any person with an interest in the property.⁵ 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 the claim by executing a power of attorney agreement. The claimant may also sell the right to the property to certain individuals who are registered with DFS for this purpose.⁶ 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.⁷

DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, DFS is to deliver or pay over to the claimant the property or the amount DFS actually received or the proceeds, if it has been sold by DFS.⁸ If the property remains unclaimed, all proceeds from abandoned property are then deposited by DFS into the Unclaimed Property Trust Fund.⁹ DFS is allowed to retain up to \$15 million to make prompt payment on verified claims and to cover costs

¹ Section 43.19(3), F.S.

² Section 717.113, F.S.

³ Section 717.1201, F.S.

⁴ Sections 717.117 and 717.124, F.S.

⁵ Section 717.124, F.S.

⁶ Section 717.1351, F.S. A person desiring to acquire ownership of or entitlement to property reported to DFS must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, a licensed private investigator, or an employer of a licensed private investigator.

⁷ All contracts to acquire ownership of or entitlement to unclaimed property must have a purchase price that discounts the value of the unclaimed property at the time the agreement is executed by the seller at no greater than 20 percent per account held by DFS. The amount paid to the seller for an unclaimed property account must not be discounted in excess of \$1,000 unless full disclosure is provided to the owner of the unclaimed property. Section 717.1351(2), F.S.

⁸ Section 717.124, F.S.

⁹ Section 717.123, F.S.

incurred by DFS in administering and enforcing the act. All remaining funds received must be deposited into the State School Fund to be used for public education.¹⁰

Surplus Trustees – Judicial Sales of Real Property

Foreclosure is the legal process for enforcement of a security interest in real property. In most foreclosures, the property is sold and the proceeds of the sale are applied against the debt. In some cases, the property is sold for more than the debt. The difference is known as the surplus. Upon the conclusion of a foreclosure, a copy of the final judgement must be furnished by the clerk by first class mail to the last known address of every party to the action or to the attorney of record for such party.¹¹ Any undisbursed funds are held in surplus by the clerk of the court for 60 days. If no legal claim is made for the surplus, the clerk is required to appoint a surplus trustee to locate the owner of the surplus. As part of the process, the clerk is authorized to deduct certain fees from the surplus funds.¹²

A surplus trustee is an entity that holds and administers surplus proceeds from a foreclosure. The primary duty of a surplus trustee is to locate the owner of record within 1 year after appointment. Surplus trustees are certified by DFS.¹³ The clerks assign the surplus trustees to cases using a rotational system developed by the DFS.¹⁴

A surplus trustee is entitled to service charges and fees which are disbursed by the clerk and payable from the surplus. Surplus trustees receive a cost advance of 2 percent of the surplus and upon obtaining a court order disbursing the surplus to the owner of record, the surplus trustee then receives an additional 10 percent of the surplus.¹⁵ Upon locating the owner of record, the surplus trustee files a petition with the court on behalf of the owner of record seeking disbursement of the surplus funds. If the surplus trustee is unable to locate the owner of record within 1 year of appointment, the clerk notifies the surplus trustee that the appointment is terminated. The clerk treats the remaining funds as unclaimed property to be deposited with DFS pursuant to ch. 717, F.S.

According to the DFS, there are 79 surplus trustee entities.¹⁶ Surplus trustees have been appointed in 10,033 cases.¹⁷ The total value of those cases is \$85,032,758 (6,970 cases involved a surplus of less than \$5,000 and 3,063 cases involved a surplus greater than \$5,000).¹⁸

Effect of the Bill

The bill repeals s. 43.19, F.S., relating to money in the court registry. As a result, money in the court registry that has not been claimed after 1 year is presumed unclaimed. Once the property is “unclaimed,” the clerk will report the property to DFS pursuant to s. 717.117, F.S. Claimants, or their representatives, can claim the money by filing a claim with DFS.

The bill amends procedures relating to the disbursement of surplus funds after a foreclosure. The bill provides that if no claim is filed during the 60 day period after the clerk issues a certificate of disbursement or if any surplus funds remain after payment to a subordinate lienholder, the clerk must report the surplus to DFS pursuant to ss. 717.117 and 717.119, F.S. The clerk will report and remit the surplus after 1 year as provided in the Disposition of Unclaimed Property Act.

¹⁰ *Id.*

¹¹ Section 45.031(1)(c), F.S.

¹² Section 45.035, F.S.

¹³ Section 45.034(4), F.S.

¹⁴ Sections 45.034 and 45.035, F.S.

¹⁵ Section 45.034(7), F.S.

¹⁶ DFS Bill Analysis for HB 681 at p. 2 (on file with the Oversight, Transparency & Administration Subcommittee). A list of the surplus trustees can be found online at: <http://www.myfloridacfo.com/aadir/SurplusTrustees/SurplusTrusteeEntities2016-2017.pdf> (last accessed March 6, 2017).

¹⁷ *Id.*

¹⁸ *Id.*

The bill deletes provisions relating to surplus trustees. Instead, such funds will be remitted to DFS. As such, owners of surplus funds that remain after a judicial sale will have the opportunity to recover 100 percent of their surplus, rather than having a 12 percent deduction pursuant to the surplus trustee process.

The bill provides that for purposes of establishing entitlement to real property, only the owner of record reported by the clerk, or the estate or beneficiary of a deceased owner of record reported by the clerk, is entitled to the surplus. Any surplus of less than \$10 escheats to the clerk.

B. SECTION DIRECTORY:

- Section 1. Repeals s. 43.19, F.S., relating to the disposition of certain money paid into a court which is unclaimed.
- Section 2. Amends s. 45.032, deleting provisions relating to surplus trustees.
- Section 3. Amends s. 45.033, conforming a provision to changes made by the act.
- Section 4. Repeals s. 45.034, F.S., relating to qualifications and appointment of a surplus trustee in foreclosure actions.
- Section 5. Amends s. 45.035, F.S., revising service charges that a clerk may receive and deduct from surplus amounts.
- Section 6. Amends s. 717.124, F.S., conforming a cross reference.
- Section 7. Amends s. 717.138, F.S., conforming a cross reference.
- Section 8. Amends s. 717.1401, F.S., conforming a cross reference.
- Section 9. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
See Fiscal Comments.
- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on the state. Over the past decade, DFS has received \$8,400 in application fees relating to the surplus trustee program (\$25 application fee). This bill will eliminate that fee.¹⁹ In addition, the clerks of court are entitled to certain nominal fees associated with the surplus trustee process that they will no longer receive. However, clerks will be able to retain custody of any surplus case values that are less than \$10.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a Committee Substitute. The amendment provides that the clerk of court must report and remit unclaimed surplus funds pursuant to the Disposition of Unclaimed Property Act. The effect of this change is to require the clerks to hold the unclaimed money for 1 year instead of 60 days.

This analysis is drafted to the Committee Substitute as approved by the Oversight, Transparency & Administration Subcommittee.

¹⁹ DFS Bill Analysis for HB 681 (on file with the Oversight, Transparency, & Administration Subcommittee).
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DATE: 3/14/2017