

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 918

INTRODUCER: Judiciary Committee and Senator Grimsley

SUBJECT: Clerks of Circuit Court

DATE: February 28, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Jones | Miller | TR | Favorable |
| 2. | Cibula | Cibula | JU | Fav/CS |
| 3. | Jones | Phelps | RC | Pre-meeting |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 918 amends statutes that affect the duties of the clerks of the circuit courts. Specifically, these changes affect how the clerks will receive course completion information from driver improvement schools and how clerks will dispose of surplus funds from the judicial sale of property.

Under the bill, driver improvement schools must transmit student course completion certificates to the clerks of the circuit court through the Florida Courts E-Filing Portal. Under the current practice, students must provide their course completion certificates to the clerks.

Other statutory changes eliminate requirements for clerks of court to appoint surplus trustees to locate the owners of surplus funds after property is sold at judicial sale of property to satisfy a judgment. Under current law, a surplus trustee who locates the owner of surplus funds within 1 year after appointment is entitled to 12 percent of the surplus funds. Under the bill, any surplus funds remaining with the clerk of court 1 year after the judicial sale must be remitted to the Department of Financial Services as unclaimed property.

The department currently receives unclaimed property from many public and private entities. Upon receipt, the unclaimed property statutes presently direct DFS to try to notify owners of the existence of their unclaimed property. Those who assist property owners in the recovery unclaimed property may charge fees of up to 20 percent of the amount of a claim, not to exceed \$1,000.

II. Present Situation:

Clerks of the circuit court are county officers. They may perform court-related functions as the clerk of court and county-related functions as the “ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.”¹

Driver Improvement Schools

Section 318.14(9), F.S., provides that any person who does not hold a commercial driver license or commercial learner’s permit and who is cited while driving a noncommercial vehicle for certain noncriminal traffic infractions² may elect to attend a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. If the individual completes the course, adjudication is withheld and no points may be assessed against the individual’s driver license. In addition, the DHSMV may require individuals involved in certain crashes to complete a driver improvement course as a requirement to maintain their driving privileges.³

Driver improvement course providers are required to submit course completion information to the DHSMV through the DHSMV’s Driver Improvement Certificate Issuance System within 5 days.⁴ However, the person who completes the driver improvement course is required to obtain a completion certificate and submit it to the clerk’s office (as required by each office) by mail, e-mail, or in-person.⁵

Unclaimed Funds in the Court System

Clerks of the circuit court may come into the possession of unclaimed funds in at least two ways. Funds may have been deposited with the clerk pursuant to judicial proceedings, which remain unclaimed by their owner after the proceedings.⁶ Once the funds have remained unclaimed for 5 years, the chief judge of the court or other judge must order that the funds be deposited with the Department of Financial Services.

A second way that unclaimed funds come into possession of a clerk of court is when property is sold at a judicial sale to satisfy a judgment and the sale price exceeds the amount of the judgment.⁷ After the sale, any surplus funds must be first made available to satisfy the claims of subordinate lien holders before they may be claimed by the record owner of the property.⁸

Property sold at a judicial sale is sold at a public auction which has been advertised at least two times in a local newspaper in the days before the sale.⁹ These advertisements must also include a

¹ FLA. CONST. art. V., s. 16 and art. VIII, s. 1(d).

² The option to elect to attend a driver improvement program is not available for violations of ss. 316.183(2), 316.187, 316.189, 320.0605, 320.07(3)(a) and (b), 322.065, and 322.15(1), F.S.

³ Section 322.0261, F.S.

⁴ Section 318.1451(6)(f), F.S.

⁵ See Florida Association of Court Clerks & Comptrollers, *Bill Analysis of SB 918* (on file with the Senate Committee on Judiciary).

⁶ Section 43.19, F.S.

⁷ See ss. 45.031-45.035, F.S., for more information about judicial sales procedures.

⁸ Section 45.031(1)(a), F.S.

⁹ Section 45.031(2) and (3), F.S.

statement that “any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens [usually the date of the lawsuit] must file a claim within 60 days after the sale.”¹⁰ If the owner of record or an assignee or transferee claims the surplus funds during the 60 period when subordinate lienholders may claim the funds, the court must hold an evidentiary hearing to determine entitlement to the surplus.¹¹

When the 60-day period ends, only the owner of record of the property on the¹² date of the lis pendens is presumed to be the person entitled to the surplus funds, if any.¹³ However, the owner of record may assign or transfer the right to the funds. The court will approve the assignment or transfer if the assignee or transferee proves that the right to the surplus funds was transferred or assigned voluntarily.¹⁴

A transfer or assignment is sufficiently voluntary if the transfer or assignment is in writing and the instrument:

1. If executed prior to the foreclosure sale, includes a financial disclosure that specifies the assessed value of the property, a statement that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, and the approximate amount of any equity in the property. If the instrument was executed after the foreclosure sale, the instrument must also specify the foreclosure sale price and the amount of the surplus.
2. Includes a statement that the owner does not need an attorney or other representative to recover surplus funds in a foreclosure.
3. Specifies all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.
 - (b) The transfer or assignment is filed with the court on or before 60 days after the filing of the certificate of disbursements.
 - (c) There are funds available to pay the transfer or assignment after payment of timely filed claims of subordinate lienholders.
 - (d) The transferor or assignee is qualified as a surplus trustee, or could qualify as a surplus trustee
 - (e) The total compensation paid or payable, or earned or expected to be earned, by the transferee or assignee does not exceed 12 percent of the surplus.¹⁵

Despite the criteria above, a court may approve a nonconforming assignment or transfer that is “procured in good faith and with no intent to defraud the transferor or assignor.”¹⁶

If the surplus funds remain unclaimed by the owner 120 days after the judicial sale, the clerk must appoint a surplus trustee “for the purpose of finding the owner of record in order for the clerk to disburse the surplus, after deducting costs, to the owner of record.”¹⁷

¹⁰ Section 45.031(2)(f), F.S.

¹¹ Section 45.032(3)(b), F.S.

¹² Section 45.032(3)(a) and (c), F.S.

¹³ Section 45.032(2), F.S.

¹⁴ *Id.* and s. 45.033(2) and (3), F.S.

¹⁵ Section 45.033(3), F.S.

¹⁶ Section 45.033(5), F.S.

¹⁷ Section 45.032(3)(c), F.S.

Surplus trustees must be approved by the Department of Financial Services.¹⁸ An entity seeking to qualify as a surplus trustee must:

- Be registered with the Secretary of State to do business in this state.
- Have a minimum of 12 months' experience in the recovery of surplus funds in foreclosure actions.
- Hold a valid Class "A" private investigator license.
- Carry a minimum of \$500,000 in liability insurance, cash reserves, or bonding.
- Have a principal who is an attorney or employ a full-time attorney who will supervise the management of the entity during the entity's tenure as a surplus trustee.

According to DFS, there are 83 registered surplus trustee entities.¹⁹ However, many of these entities are owned by the same individuals. For example, "16 are owned by the same individual(s), 15 are owned by another, and 10 by another"²⁰

Cases are assigned to surplus trustees based on a rotation system.²¹ Because the same individuals own multiple surplus trustee entities, these individuals obtain a disproportionate share of the appointments under the rotation system.²² Once appointed, the surplus trustee is entitled to a cost advance of 2 percent of the surplus.²³ If a surplus trustee is successful in having the surplus funds disbursed to the owner of record, the trustee will receive an additional 10 percent of the surplus. If the surplus trustee is unable to locate the owner of record within 1 year after appointment, the appointment terminates, and the clerk must report the surplus funds to DFS as unclaimed property.²⁴

Unclaimed Property

Unclaimed property generally includes "[a]ll intangible property, including any income or increment thereon less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and the owner fails to claim such property for more than 5 years after the property becomes payable or distributable is presumed unclaimed"²⁵ In practical terms, unclaimed property may include unclaimed paychecks, the contents of a safe deposit box, property held by government entities, property held by trustees, unclaimed utility deposits, the proceeds of life insurance policies, uncashed checks, dormant bank accounts, and more.

A person who holds unclaimed property must file a report with DFS, which describes the property and provides information about the identity and last known address of the owner.²⁶ With the report, the holder must also pay or deliver the unclaimed property to DFS.²⁷ Once the

¹⁸ Section 45.034, F.S.

¹⁹ Email from Walter T. Graham, Director, Division of Unclaimed Property, Department of Financial Services (Feb. 15, 2018).

²⁰ *Id.*

²¹ Section 45.034(5), F.S.

²² See email, *supra* n. 19.

²³ Section 45.034(7), F.S.

²⁴ Section 45.032(4), F.S.

²⁵ Section 717.102(1), F.S.

²⁶ Section 717.117, F.S.

²⁷ Section 717.919, F.S.

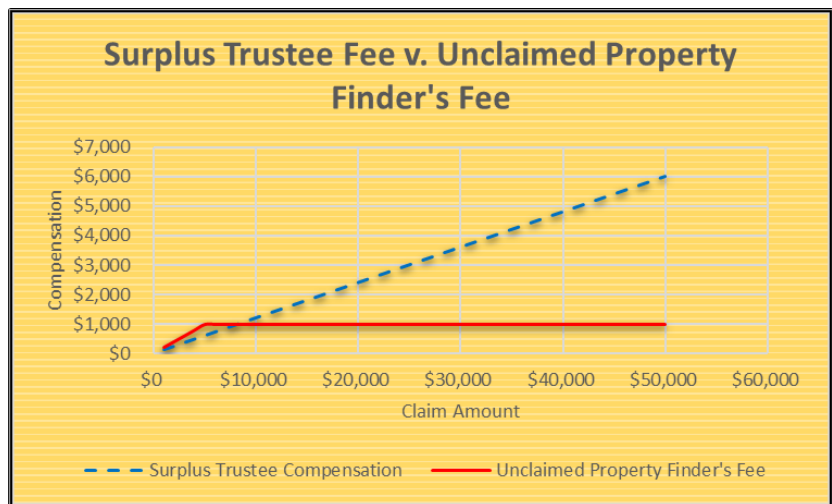
unclaimed property is in the possession of DFS, it has an obligation to try to notify the owners.²⁸ There is no statute of limitations on claims by owners and they may claim their property any time at no cost.²⁹

DFS must retain a portion of the unclaimed property it receives in its Unclaimed Property Trust Fund to promptly pay claims to the owners of the property.³⁰ The remainder of the funds must be deposited into the State School Fund. The State Constitution requires that the income from the fund be used for the “support and maintenance of free public schools.”³¹ However, the principal of the fund may be appropriated for these same purposes.

The unclaimed property statutes also allow claimants’ representatives to make claims on behalf of an owner using a power of attorney.³² Similarly, certain attorneys and private investigators may purchase the right to unclaimed property from an owner of the property. Under either mechanism, the maximum compensation to the agent under the power of attorney or the discount received by an attorney or private investigator is limited to 20 percent per account claimed, not to exceed \$1,000.

Compensation Comparison for Locating Owners of Fund

The chart to the right compares the fees received by successful surplus trustees with those who charge the maximum fee to assist property owners with unclaimed property claims from DFS’ Unclaimed Property Trust Fund. As shown, the formulas and fee cap is more beneficial to the owner of unclaimed property than to the owner of surplus funds when the amount of the claim exceeds \$8,333.33. Additionally, DCF has found that the lower fees paid to surplus trustees do not provide a sufficient incentive to locate the owners of surplus funds in amounts that are less than \$5,000.³³



²⁸ Section 717.118(1), F.S.

²⁹ DIVISION OF UNCLAIMED PROPERTY, FLORIDA DEPARTMENT OF FINANCIAL SERVICES, FLORIDA UNCLAIMED PROPERTY, <https://www.myfloridacfo.com/Division/UnclaimedProperty/> (last visited Feb. 15, 2018).

³⁰ Section 717.123, F.S.

³¹ FLA. CONST. art. IX, s. 6.

³² Sections 717.135 and 717.1351, F.S.

³³ See email, supra n. 19. The email includes an example of another email in which DFS notified a clerk of court of the appointment of a surplus trustee to locate the owner of \$913 in surplus funds. According to Mr. Graham, “the \$913 case and almost 100% of others like it will be ignored by the surplus trustee. This is generally true for assignments for less than \$5,000.”

III. Effect of Proposed Changes:

This bill changes how the clerks of the circuit courts will receive course completion information from driver improvement schools and how they will dispose of surplus funds from the judicial sale of property.

Termination of Surplus Trustee Program; Fees (Sections 3, 4, 5 & 6)

The bill amends or repeals several sections of statutes to terminate the use of surplus trustees to locate the owners of surplus funds from judicial sales. These surplus trustees receive 2 percent of the surplus funds upon appointment and an additional 10 percent of the surplus if the surplus trustee locates the owner of the funds and has the funds disbursed to the owner.

By terminating the surplus trustee program, the full amount of unclaimed surplus funds will be transferred to the Department of Financial Services, which is obligated under current law to attempt to locate the owners of the funds at no cost to the owners. However, attorneys, private investigators, and others, pursuant to current law, may receive compensation for locating owners and assisting them with unclaimed property claims. The compensation may not exceed 20 percent of the amount claimed, not to exceed \$1,000.

Remission of Unclaimed or Surplus Funds from Courts to the Department of Financial Services (Sections 1, 3 & 8)

Section 1 of the bill repeals s. 43.19, F.S., which requires courts to remit any unclaimed funds that have been in their possession for 5 years to the Department of Financial Services. By default, the repeal of the statute will require courts to pay these funds to DFS 1 year after they become payable or distributable as provided in existing s. 717.113, F.S.

Under current law, surplus funds must be remitted to DFS by the clerk of court approximately 1 year and 120 days after the judicial sale of property resulting in the surplus funds.³⁴ Under the bill, surplus funds generally must be remitted to DFS as unclaimed property 1 year after the judicial sale. The time for remitting the funds is extended if the owner of the funds has not been determined by the court or if entitlement to the funds is being litigated.

Submission of Claims by Subordinate Lienholders (Sections 2 & 3)

The bill increases the time period in which subordinate lienholders may claim surplus funds resulting from a judicial sale of property to 1 year from 60 days. Nonetheless, the bill retains the provisions of existing law requiring a court to hold an evidentiary hearing to determine entitlement if the record owner claims the funds during the time period for subordinate lienholders to assert claims to the funds. If entitlement to the surplus funds is being litigated when the 1 year period elapses, the clerk of court must retain the funds until the conclusion of the litigation. Once a clerk remits the surplus funds to DFS, only the owner of record of the property sold at a judicial sale or the beneficiary of a deceased owner is entitled to the surplus.

³⁴ These time periods result from the 60-day period for subordinate lienholders to claim the surplus funds, an additional 60-day period before the appointment of a surplus trustee, and the 1 year appointment of a surplus trustee.

**Transmission of Course Completion Information by Driver Improvement Schools
(Section 7)**

Section 7 of the bill amends s. 318.1451, F.S., to require driver improvement schools to transmit student course completion certificates through the Florida Courts E-Filing Portal to the appropriate clerk of the circuit court. The appropriate clerk is the clerk for the county in which the driving citation was issued which resulted in the student's attendance at the driver improvement school. The requirement for the electronic submission of court completion certificates is intended to eliminate the need for students to obtain and submit course completion certificates to a clerk's office.

Cross-references Conformed (Sections 9, 10 & 11)

Sections 9 – 11 of the bill conform statutory cross-references to the repeal of the surplus trustee program and the transfer of surplus funds to DFS.

Effective Date (Section 12)

The bill takes effect July 1, 2018.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may have a positive financial impact on individuals who successfully complete driver improvement school and who will no longer be required to obtain and provide a copy of a course completion certificate to a clerk's office.

The bill may have a negative impact on driver improvement schools that will be required to electronically submit completion certificates. These schools may currently charge a fee to issue a paper completion certificate.

Owners of surplus funds from a judicial sale who need the assistance of a professional to recover them, will likely obtain a greater portion of their funds when larger amounts are involved. Although the bill allows professional locators to obtain a proportionately higher fee for assisting individuals with smaller claims, the higher fee may be a better incentive for locators to assist with smaller claims.

C. Government Sector Impact:

The Department of Financial Services will no longer be required to maintain a rotation system for the assignment of cases to surplus trustees. However, DFS likely will have increased numbers of unclaimed property accounts which contain the proceeds of surplus funds from judicial sales.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 45.031, 45.032, 45.033, 43.035, 318.1451, 717.113, 717.124, 717.138, and 717.1401.

The bill also repeals the following sections of the Florida Statutes: 43.19 and 45.034.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Judiciary on February 13, 2018:

The committee substitute differs from the underlying bill in that it no longer includes a provision which would have allowed clerks of court to maintain records at a location other than a county seat. Additionally, the committee substitute includes provisions terminating the surplus trustee program used by clerks of court to locate the owners of surplus funds from a judicial sale of property. Finally, the committee substitute specifies that the appropriate clerk of court for receiving course completion certificates from a driver improvement school is the clerk for the county issuing the citation resulting in the student's attendance at the school.

B. Amendments:

None.