

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 Governmental Oversight and Accountability

BILL: SB 464
 INTRODUCER: Senator Flores
 SUBJECT: Disposition of Unclaimed Property
 DATE: April 1, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	Favorable
2.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 464 authorizes the Department of Financial Services to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim to the department. The bill also applies the procedures of Ch. 717 F.S. to property reported or remitted by the Chief Financial Officer pursuant to: ss. 43.19, 45.032, 732.107, 733.816, and 744.534, F.S.

This bill substantially amends section 717.124 of the Florida Statutes.

II. Present Situation:

Disposition of Unclaimed Property

Chapter 717 of the Florida Statutes provides for disposition of unclaimed property. In general, 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 5 years after the property becomes payable or distributable, unless otherwise provided in the chapter.¹ The time period for utility² deposits is different. Any deposit made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, including any interest less any lawful charges, that remains unclaimed by the owner for more than 1 year after termination of the services for which the deposit or

¹ Section 717.102(1), F.S.

² Section 717.101 (23), F.S., defines the term “utility” to mean a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

advance payment was made is presumed unclaimed.³ Certain types of unclaimed property, including security deposits having a value of less than \$10, are not to be presumed unclaimed.⁴

Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property must file an annual report with the Department of Financial Services (DFS or department) that includes information on the identity and last known address of the apparent owner of the property, a description of the property, and the date the property became payable or returnable.⁵ At the same time the report is filed, the holder must deliver to the department all unclaimed property required to be reported.⁶

Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property.⁷ The department is required to use cost-effective means to make at least one active attempt to notify owners of unclaimed property accounts valued at more than \$250 with a reported address or taxpayer identification number. All other apparent owners get indirect or passive notice such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts.⁸

Generally, after the receipt of unclaimed property the department sells all non-cash property to the highest bidder at a public sale on the Internet or at a specified physical location wherever in the judgment of the department the most favorable market for the property involved exists.⁹ The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department also has the discretion to withhold from sale any unclaimed property that the department deems to be of benefit to the people of the state. Finally, if in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale and may be disposed of as the department determines appropriate.

All funds received, including the proceeds from sales, are deposited into the Unclaimed Property Trust Fund.¹⁰ The department is allowed to retain an amount not exceeding \$15 million from which it must make prompt payment of claims it allows and must pay the costs it incurred in administering and enforcing the chapter. All remaining funds received must be deposited into the State School Fund.

The department must record the name and last known address of each person appearing from the holder's reports to be entitled to the unclaimed property in the total amounts of \$5 or greater; the name and the last known address of each insured person or annuitant; and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due.

³ Section 717.108, F.S.

⁴ Section 717.117(1)(h), F.S.

⁵ Section 717.117, F.S.

⁶ Section 717.119, F.S.

⁷ Section 717.1201, F.S.

⁸ Section 717.118, F.S.

⁹ Section 717.122, F.S.

¹⁰ Section 717.123, F.S.

Unclaimed Property Claims

Section 717.124, F.S., provides that any person claiming an interest in any property delivered to the department may file a claim for the property. The claimant, or the claimant's representative, must provide the department with a legible copy of a valid driver's license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver's license at the time the original claim form is filed, the department must be provided with a legible copy of a photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule.

The department is required to make a determination on the claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds if it has been sold by the department.

Existing Rulemaking Authority

Section 717.138, F.S., provides the department has authority to adopt rules pursuant to implement the provisions of chapter 717, F.S. The department may adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter.

III. Effect of Proposed Changes:

The bill authorizes the Department of Financial Services to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim to the department, notwithstanding any other provision of law. The bill provides no standards or guidelines as to what those rules should contain. The department has indicated this will allow for greater efficiency,¹¹ which should help speed up the return of unclaimed property to owners.

The bill also applies the procedures of ch. 717, F.S., to property reported or remitted by the Chief Financial Officer pursuant to:

- Section 43.19, F.S., Money Paid into Court; unclaimed funds: Provides that unclaimed funds held in the court registry for 5 years shall be deposited with the Chief Financial Officer to the credit of the State School Fund. Accounts/funds held in perpetuity.
- Section 45.032, F.S., Disbursement of Surplus Funds after Judiciary Sale: Provides that unclaimed funds as a result of a property foreclosure are to be deposited with the Chief Financial Officer. Accounts/funds held in perpetuity.

¹¹ DFS bill analysis dated January 30, 2013 (On file with the Senate Banking and Insurance Committee.)

- Section 732.107, F.S., Escheat: Property held by an Estate without Heirs ‘escheats’ to the state. Accounts/funds can be claimed for 10 years, after which the funds permanently escheat.
- Section 733.816, F.S., Disposition of Unclaimed Property Held by Personal Representatives: Property held by a Personal Representative that cannot be distributed to a beneficiary is deposited into the court registry and then deposited with the Chief Financial Officer. Accounts/funds can be claimed for 10 years, after which the funds permanently escheat.
- Section 744.534, F.S., Disposition of Unclaimed Funds Held by Guardian: Property held by a Legal Guardian that cannot be distributed to a ward or ward’s estate is deposited into the court registry and then is deposited with the Chief Financial Officer. Accounts/funds can be claimed for 5 years, after which the funds permanently escheat.

The bill takes effect July 1, 2013.

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The separation of powers provision in the Constitution of the State of Florida states:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The separation of powers doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 264 (Fla.1991). Under the nondelegation doctrine the legislature may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law. *Sims v. State*, 754 So.2d 657, 668 (2000). Further, the nondelegation doctrine precludes the legislature from delegating its powers absent ascertainable minimal standards and guidelines. *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

In this bill, the department is given the authority to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim for unclaimed property, *notwithstanding any other provision of law*. This rulemaking grant contains no standards or guidelines for establishing what kind of identification should be required for electronic claims, or what level of claims may be handled electronically, and any rules adopted by the department could potentially overwrite existing legislatively determined requirements in s. 717.124(1), F.S. All such determinations would be made by the department through the rulemaking process. Absent legislative direction on the standards and guidelines to be utilized by the department when determining the types and value of those unclaimed property claims which may be transacted electronically, or the type of identification that ought to be required, the grant of rulemaking authority may potentially violate the nondelegation portion of the separation of powers doctrine.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing for the electronic submission of claims should help speed up the return of unclaimed property to owners.

C. Government Sector Impact:

The bill may help DFS staff to analyze and process claims quicker.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The department has existing rulemaking authority to adopt rules to allow for electronic filing of fees, forms, and reports related to the disposition of unclaimed property. If the Legislature intends for the department to have the authority to handle a portion of such dispositions electronically, it may want to set the policy directly, rather than allowing the department to set the policy via the rulemaking process. See also *Other Constitutional Issues*, above.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
