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SFA



BILL ANALYSIS

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Senate Bill 340 (as passed by the Senate)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 4-18-97

RATIONALE

Article X, Section 4 of the Michigan Constitution requires the procedures relating to escheats and the custody and disposition of escheated property to be prescribed by law. Escheated property is tangible or intangible property that reverts to the State in the absence of legal owners or claimants because the owner died leaving no known heirs, has disappeared or been missing for a continuous period of at least five years, or has abandoned the property. A person may file a claim for redemption of his or her property at any time (even after it has escheated to the State and been disposed of), and the State must keep property (or its equivalent in money) for potential claimants in perpetuity.

From 1947 to 1996, escheated property was handled according to the provisions of the Michigan Code of Escheats. In 1995, the Uniform Unclaimed Property Act (effective April 1, 1996) was adopted and replaced the Michigan Code of Escheats, in order to update the State's escheat procedures and to align them with those of many other states (reportedly 27) that had adopted the same or a similar uniform law. Now that the Department of Treasury has had a year to work with the new Act, it has suggested some amendments to help the Department's Abandoned and Unclaimed Property Division administer the Act.

CONTENT

The bill would amend the Uniform Unclaimed Property Act to provide for the presumed abandonment of unclaimed stock or other intangible ownership interest in a business association after five, rather than seven, years; delete requirements that abandoned securities be held for one year or three years before being sold; revise the deadline for reporting property that is presumed abandoned; allow the deadline to be extended if an estimated

payment were made; revise requirements for notifying the apparent owner of property presumed abandoned, and for publishing notice; and expand requirements for filing a verified report. The bill also would repeal a section of the Act that limits the number of employees hired in the Abandoned and Unclaimed Property Division of the Department of Treasury and provides for the hiring of independent contractors. The bill is described in more detail below.

Reporting

The Act generally provides that all property that is unclaimed for more than five years is presumed abandoned and subject to the custody of the State; the Act also provides for the abandonment of specific types of property. A person holding property presumed abandoned must report to the administrator (the State Treasurer) concerning the property.

Currently, a report must be filed by December 31 of each year for the 12-month period ending on the preceding June 30. The bill would change the filing deadline to November 1. The Act permits the administrator to postpone the filing date upon a person's request. The bill also would permit the administrator to extend the filing date for up to 60 days after the deadline if an estimated payment were paid by the deadline for the 12-month period ending on the preceding June 30. Remittance of an estimated payment without a report by the deadline would be considered a request for extension. A request for extension of time to file a report would not be a request for an extension of time to remit payments. Interest and penalties would not accrue during the extension period against a person who remitted an estimated payment. The administrator would have to determine how estimated payments would be

remitted.

The Act provides that, not more than 120 days before filing the required report, the holder in possession of property presumed abandoned must send the apparent owner written notice that the holder is in possession of the property, if the following requirements are met: the holder has an address for the apparent owner that the holder's records do not disclose to be inaccurate, the claim of the apparent owner is not barred by the statute of limitations, and the property has a value of \$50 or more. The bill would require the holder to send the notice not less than 60 days or more than 365 days before filing a report. In addition, the holder would have to send notice if the property had a value of at least \$50 or, if the holder were reporting for the current report year at least 25,000 properties over \$50 each, the property had a value of \$100 or more.

Under the Act, the administrator must have a notice published by June 1 of the year following the required report in a newspaper of general circulation in the county containing the last known address of any person named in the notice. If no address is listed or if the address is outside of Michigan, the notice must be published in the county in which the holder of the property has its principal place of business within this State. The bill would require the notice to be published by November 1, rather than June 1, and would delete a requirement that the notice be published at least once a week for two consecutive weeks. If no address were listed or if the address were outside of Michigan, the notice would have to be published in the county in which the holder had its principal place of business within this State or another county as determined by the administrator.

Currently, the administrator may require a person who has not filed a report to file a verified report stating whether the person is holding any unclaimed property reportable or deliverable under the Act. Under the bill, the administrator could require a verified report either from a person who had not filed a report or from a person whom the administrator believed had filed an inactive, incomplete, or false report. The verified report would have to be in a form specified by the administrator. The report would have to state whether the person was holding any unclaimed property reportable or deliverable under the Act, describe unclaimed property not previously reported or about which the administrator had inquired, and specifically identify and state the amounts of property that could be in issue.

Under the Act, a person who is required to file a report must at the time for filing pay or deliver to the administrator all abandoned property that is required to be reported. The bill would require a person to pay or deliver all abandoned property or any balance owing if an estimated payment were made.

The Act permits the administrator to examine a person's records to determine whether the person has complied with the Act. The bill also provides that the administrator could contract with any other person to conduct the examination on behalf of the administrator.

Abandoned Securities

Currently, stock or other intangible ownership interest in a business association is presumed abandoned if a dividend, distribution, or other sum payable as a result of the interest remains unclaimed by the owner for seven years and the owner has not met certain requirements within seven years. The bill would change this time period to five years.

The Act generally requires the administrator, within three years after receiving abandoned property, to sell it to the highest bidder at public sale. Unless the administrator considers it to be in the best interest of the State to do otherwise, all securities (except stock or other intangible ownership interest in a business association) must be held for at least one year before they are sold. Stock and other intangible interest in a business association must be held at least three years before being sold. If these securities are sold before the three-year period expires, anyone making a claim under the Act before the end of the period is entitled to either the proceeds of the sale or the market value of the securities at the time the claim is made, whichever is greater, minus certain costs. A person making a claim after the three-year period expires is entitled to receive either the securities or the proceeds of the sale, minus costs.

The bill would delete the requirements that the administrator hold securities for at least one year or at least three years. Under the bill, unless the administrator considered it to be in the best interest of the State to do otherwise, all securities presumed abandoned and delivered to the administrator would have to be sold within one year of their receipt.

Repeal

The bill would repeal Section 43 of the Act, which prohibits the administrator and the Department of Treasury from increasing the number of full-time equivalent State employee positions in the Abandoned and Unclaimed Property Division of the Department beyond the number of such positions that existed on December 31, 1995. If additional personnel are needed to administer the Act, the administrator and the Department may hire independent contractors if doing so is more cost effective than hiring State employees; otherwise, additional personnel may be hired as needed. Section 43 also restricts independent contractors' contributions to candidates for State elective office.

MCL 567.231 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The changes in the bill would help the Abandoned and Unclaimed Property Division, in several ways, to administer the provisions of the Uniform Unclaimed Property Act. Currently, all stock and other intangible interests in a business that are presumed abandoned and delivered to the State Treasurer must be held for at least three years before being sold. In effect, this forces the Department to act as an investor for property that it does not own. This should not be the Department's role. The bill would eliminate the three-year requirement and allow the Department to sell stock or other intangible business interests immediately upon delivery after abandonment. Further, prior to 1996 intangible property unclaimed for five years could be declared abandoned and sold. Currently, such property must go unclaimed for seven years. The bill would return to the system that considered property unclaimed for five years to be abandoned. This would further speed the process of allowing the State to dispose of abandoned property.

The bill also would eliminate the requirement that the State Treasurer publish a notice of abandoned property at least once a week for two weeks in a newspaper of general circulation, but would retain a requirement to publish a notice of abandoned property at least once a year. This would allow the Department annually to develop and publish a book listing abandoned property and distribute it statewide.

Currently, the Act prohibits the Department from increasing the number of employees in the Abandoned and Unclaimed Property Division. In effect, this restriction prevents the Department from reacting when it develops a backlog of abandoned property that must be handled. The bill would eliminate the hiring restriction and allow the Department greater flexibility. Further, the Treasurer currently may examine the records of a person to determine if the person has complied with the Act, such as by reporting presumed abandoned property that is subject to the State's custody. The bill would allow the Treasurer to contract with another person to conduct an examination on behalf of the Treasurer, thus allowing the Treasurer to use contractors who specialize in tracking down abandoned property.

Legislative Analyst: G. Towne

FISCAL IMPACT

As part of the Uniformed Unclaimed Property Act that was adopted in 1995, and went into effect in 1996, the period of time during which stocks and other similar intangible property must remain unclaimed before they can be declared abandoned was increased from five years to seven years. This bill would decrease this period of time back to five years and remove all restrictions on when the State may liquidate unclaimed securities. According to information from the Department of Treasury, these changes would generate additional unclaimed property revenue of an estimated \$7 million in FY 1996-97 and \$10 million in FY 1997-98.

Fiscal Analyst: J. Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.