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BILL



ANALYSIS

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Senate Bill 1148 (as passed by the Senate)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 9-24-96

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 several months to work with the new Act, it has suggested some amendments to help the Department's Abandoned and Unclaimed Property Division administer the new Act.

CONTENT

The bill would make a number of changes to the Uniform Unclaimed Property Act, including reducing from seven years to five years the point at which stock or other intangible ownership interest is considered abandoned; requiring the State Treasurer to sell securities presumed abandoned within one year of their receipt; allowing the State Treasurer to contract with another person to conduct an examination, on behalf of the State Treasurer,

to determine if a person had complied with the Act; and eliminating a provision in the Act that prohibits the State Treasurer from increasing the number of employees in the Abandoned and Unclaimed Property Division of the Department of Treasury. Following is a detailed description of the bill.

Stock and Ownership Interest

Currently, under the Act, any stock or other intangible ownership interest in a business association, whose existence is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the business association is the holder, 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, within seven years, has not communicated in writing with the business association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest. The interest may not be presumed abandoned unless there have been at least seven dividends, distributions, or other sums paid during the seven-year period, none of which has been claimed by the owner. The bill would reduce the seven-year requirements to five years, and the seven dividend requirement to five dividends.

Sale of Abandoned Securities

Currently, within three years after receiving abandoned property, the State Treasurer must sell it to the highest bidder. All securities, however, other than stock or other intangible business ownership interest presumed abandoned, must be held by the Treasurer for at least one year before he or she may sell them, unless doing otherwise is in the State's best interest. The bill would delete that provision for a one-year holding period.

Currently, all stock and other intangible interests in a business association that are presumed abandoned and delivered to the Treasurer must be held for at least three years before being sold, unless the Treasurer considers it to be in the best interest of the State to do otherwise. If the Treasurer sells any of the securities before the three-year period expires, any person making a claim before the end of the period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any necessary deductions. The bill would eliminate these provisions, and provide instead that, unless the State Treasurer considered it to be in the best interest of the State to do otherwise, all securities presumed abandoned and delivered to the Treasurer would have to be sold within one year of receipt.

Property Claims

A person, excluding another state, claiming an interest in any property paid or delivered to the Treasurer is allowed to file a claim. The Treasurer must consider each claim within 90 days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. If a claim is allowed, the Treasurer must pay over or deliver to the claimant the property or the amount the Treasurer actually received, or the net proceeds if it has been sold by the Treasurer, plus any additional dividends, interest, or increments required. The bill would delete a provision that, if the claim is for stocks or business ownership interests presumed abandoned that were sold within three years after the date of delivery, the amount payable for the claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater.

Reporting Requirements/Examination

A person holding property presumed abandoned and subject to the State's custody as unclaimed property must report annually to the State Treasurer the name, Social Security number, and last known address of each owner of property with a value of \$50 or more, excluding travelers checks and money orders. The Treasurer 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. The bill also would allow the Treasurer to require a person whom the Treasurer believed had filed an inactive, incomplete, or false report to file a verified report. A verified report would have to

be in a form specified by the Treasurer, describe unclaimed property not previously reported as to which the Treasurer inquired, and specifically identify and state the amounts of property that might be in issue.

Currently, the Treasurer, at reasonable times and upon reasonable notice, may examine the records of a person to determine whether the person has complied with the Act. The Treasurer may conduct the examination even if the person believes he or she is not in possession of any property reportable or deliverable. The bill would allow the Treasurer to contract with any other person to conduct the examination on behalf of the Treasurer.

State Employees/Repealer

Currently, Section 43 of the Act prohibits the State Treasurer and the Department of Treasury from increasing the number of full-time equivalent (FTE) State employee positions in the Abandoned and Unclaimed Property Division of the Department beyond the number of FTE State employee positions that existed on December 31, 1995, in that division. If additional personnel are needed to administer the provisions of the Act, the Treasurer and the Department must hire independent contractors, as provided by Article XI, Section 5 of the State Constitution and as provided by the Civil Service Commission, if hiring those independent contractors is more cost effective than hiring State employees. If hiring independent contractors is not cost efficient as compared with hiring State employees, the Department may hire additional personnel as needed. An independent contractor who is hired must not have made a contribution to a candidate for State elective office within the immediately preceding four-year period from the date his or her employment begins. In addition, an independent contractor must certify to the Treasurer and the Department that as a condition of employment he or she will not make a contribution to a candidate for State elective office during the period that he or she is employed as an independent contractor. The bill would repeal Section 43.

Notice of Abandoned Property

Prior to June 2 of the year following receipt of a report of abandoned property, the State Treasurer must publish a notice, at least once a week for two consecutive weeks in a newspaper of general circulation in the county containing the last known address of a person named in the notice. The bill

would require the Treasurer to publish the notice prior to July 2 each year, and would eliminate the requirement that the notice be published at least once a week for two consecutive weeks.

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 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, currently the Treasurer may examine the records of a person to determine if the person has

complied with the provisions of the Act, such as 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

This bill would avert a potential reduction in General Fund revenue from unclaimed property over the next two to three years; however, the magnitude is not known at this time. Changes to the Uniform Unclaimed Property Act were enacted in 1995 and went into effect in April 1996. One of these changes increased the time period that dividends and other earnings from stocks, and other similar intangible property, must go unclaimed before the property can be declared abandoned. Prior to April 1996, if this type of intangible property went unclaimed for five years, it was declared abandoned and then could be liquidated immediately. In April 1996, the unclaimed time period was increased to seven years and an additional three-year holding period was added. Therefore, under current law, revenue from unclaimed property during the next two years will be lower than it otherwise would have been due to the extension of the unclaimed period from five to seven years. In other words, property that otherwise would have been escheated over the next two years will have to be held an additional two years. This bill would restore the five-year time period and eliminate the additional three-year holding period. Therefore, under the bill compared with current law, revenue from unclaimed property would increase over the next two years by an amount that is not known at this time.

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.