

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – the bill appears to increase the options of an individual regarding the conduct of their own affairs.

B. EFFECT OF PROPOSED CHANGES:

Escheat

When a person dies and leaves an estate without being survived by a person entitled to part or all of the estate, such property shall escheat (revert) to the state.¹ Property that escheats to the state is sold and the proceeds from the sale are paid to the Chief Financial Officer and deposited in the State School Fund.²³ A person claiming to be entitled to the proceeds from the sale of escheated property may reopen the administration to assert entitlement within 10 years after payment is made to the CFO.⁴ After 10 years, however, the state's rights to the proceeds are absolute and the property has escheated to the state.⁵

Section 732.103, F.S., contains the intestate succession rules that are used to determine entitlement to property when a decedent dies intestate (without disposing of the property via a will). If there is no will, property descends as follows:

- Surviving spouse of the decedent as provided in s. 732.102, F.S.⁶ If none then:
- Descendants of the decedent. If none then:
- Equally to the father and mother of the decedent, or the survivor of them. If none then:
- Brothers and sisters of the decedent and the descendants of deceased brothers and sisters.

If none of the above are entitled to the property then the estate is divided equally (half and half) between the decedent's paternal and maternal kindred as follows:

- To the grandfather and grandmother equally, or to the survivor of them. If none, then:
- Uncles and aunts and descendants of deceased uncles and aunts of the decedent. If none, then:

¹ Section 732.107, F.S.

² Section 732.107(2), F.S.

³ The State School Fund is also known as the State School Trust Fund, created pursuant to s. 1010.71, F.S.

⁴ Section 732.107(3), F.S.

⁵ Property held by a guardian that cannot make a distribution to a ward becomes the final property of the state 5 years after it is turned over to the CFO pursuant to s. 744.534, F.S.

⁶ Section 732.102, F.S., provides The intestate share of the surviving spouse is:

(1) If there is no surviving descendant of the decedent, the entire intestate estate.

(2) If there are surviving descendants of the decedent, all of whom are also lineal descendants of the surviving spouse, the first \$60,000 of the intestate estate, plus one-half of the balance of the intestate estate. Property allocated to the surviving spouse to satisfy the \$60,000 shall be valued at the fair market value on the date of distribution.

(3) If there are surviving descendants, one or more of whom are not lineal descendants of the surviving spouse, one-half of the intestate estate.

- To other kindred who survive, in the order stated above.
- If there is no kindred among the decedent's paternal and maternal line as described above, then the entire property goes to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate.

In 2004,⁷ the Legislature created subsection (6) of s. 732.103, F.S., to temporarily expand the above intestacy succession if any of the descendants of the decedent's great-grandparents were Holocaust victims as defined in s. 626.9543(3)(a), F.S.⁸ In such a circumstance, a court was required to allow any such descendant to meet a reasonable, not unduly restrictive, standard of proof to substantiate his or her lineage.⁹ Outside of this exception, the intestacy statute only looks to the grandparents of the decedent, not great-grandparents, to locate an heir. However, the expansion was only effective for proceedings filed on or before December 31, 2004.¹⁰

Unclaimed Property

Generally, all property, real and personal, and every right to property of any nature are subject to escheat to the state.¹¹ Abandoned property is also subject to escheat to the state under appropriate statutes.¹² The escheat of abandoned property does not constitute a taking of property without due process of law in violation of the U.S. Constitution.¹³

Unclaimed property consists of any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain period of time.¹⁴ Essentially, the unclaimed property laws cover financial accounts, but not real property or other personal property such as automobiles, furniture, jewelry (if not in a safe deposit box), and other items. Savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are all potentially unclaimed property.¹⁵ Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the Department of Financial Services (DFS).¹⁶ There is no time limit for the owner to make a claim for unclaimed property.

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the State School Trust Fund within the Department of Education (State School Fund), except for a \$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.¹⁷ Approximately \$1.5 billion has been transferred to the Florida Department of Education since the program's inception, including \$267,095,187 transferred to the State School Fund in Fiscal Year 2005-2006.

⁷ Section 145, ch. 2004-390, L.O.F.

⁸ "Holocaust victim" is defined as "any person who lost his or her life or property as a result of discriminatory laws, policies, or actions targeted against discrete groups of persons between 1920 and 1945, inclusive, in Nazi Germany, areas occupied by Nazi Germany, or countries allied with Nazi Germany."

⁹ Section 732.103(6), F.S.

¹⁰ *Ibid.*

¹¹ See ch. 716, F.S.

¹² Section 716.02, F.S.

¹³ *Cockrill v. California*, 268 U.S. 258 (1925).

¹⁴ Sections 717.102 and 717.1035, F.S.

¹⁵ Sections 717.104 through 717.116, F.S.

¹⁶ Section 717.119, F.S.

¹⁷ Section 717.123(1), F.S., provides that "All funds received under this chapter, including the proceeds from the sale of unclaimed property under s. 717.122, shall forthwith be deposited by the department in the Unclaimed Property Trust Fund. The department shall retain, from funds received under this chapter, an amount not exceeding \$15 million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. All remaining funds received by the department under this chapter shall be deposited by the department into the State School Fund."

Any person claiming an interest in unclaimed property may file a claim with the department for unclaimed property.¹⁸ Within 90 days of the receipt of a properly submitted claim for unclaimed property (though potentially extendable for 60 additional days for good cause), the department determines the claim.¹⁹ When a claim is determined in favor of the claimant, the department delivers the property or the amount the department received from the sale of the property plus any applicable interest.²⁰ An estate may claim unclaimed property only after the heir or legatee of the decedent entitled to the property has been located.²¹ An estate that receives unclaimed property before the heir or legatee has been located is personally liable for the unclaimed property and must immediately return the full amount of the unclaimed property to the DFS.²²

Proposed Changes

The bill creates a new subsection (2) in s. 717.12405, F.S., granting specified Holocaust victims the ability to make a claim for escheated property. A Holocaust victim as defined in s. 626.9543(3)(a), F.S.,²³ may make a claim for escheated property if he or she is a lineal descendant of a decedent's great-grandparents and if he or she may have a legitimate interest in the property. The beneficiary, heir, or descendant of the Holocaust victim is also entitled to make such a claim. The Department of Financial Services is required to allow a qualifying claimant to meet a reasonable and not unduly restrictive standard of proof to substantiate his or her lineage and the validity of the claim for escheated property.

The bill provides that, regardless of any law or an agreement made by any parties to a claim, claims by a Holocaust victim or the beneficiary, heir, or descendant of such person may not be dismissed for failure to comply with any applicable statute of limitations or laches.²⁴ This will create a special exemption whereby property that has already escheated to the state because it was not claimed within the statutory time frames will be subject to claims under the provisions of the bill.

The bill takes effect on July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amends s. 717.12405, F.S., relating to claims by estates.

Section 2: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See D. Fiscal Comments below.

2. Expenditures:

¹⁸ Section 717.124, F.S.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ 717.12405, F.S.

²² *Ibid.*

²³ See footnote 8 above.

²⁴ "Laches" is defined as "The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought." Black's Law Dictionary (8th ed. 2004).

Indeterminate. See D. Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow certain descendants of Holocaust victims to claim property that has escheated to the state. Professional heir finders may benefit from this legislation if they are able to find heirs qualified under the bill for escheated estates.

D. FISCAL COMMENTS:

This bill appears to have an indeterminate fiscal impact on state government. Funds that escheat to the state are deposited into the State School Trust Fund within the Department of Education, except for a \$15 million balance that is retained in the Unclaimed Property Trust Fund that is maintained to pay claims and cover administrative costs.²⁵ Money in the State School Trust Fund is used to entirely fund public education. The Department of Financial services states that the amount of property that escheats to the state varies each year. There is no way to predict how many estates will avoid escheating to the state if this bill becomes law. DFS estimates that as of Fiscal Year 2008-2009, a total of \$29,308,732.76 is expected to have escheated to the state from estates where a lawful heir could not be found (this is the anticipated total of all estates to have ever escheated to the state). Under the proposed bill, all \$29.3M is potentially subject to claims by qualified parties, however, there is no way to know how many, if any, of these escheated estates will have a beneficiary that qualifies under the bill.

The bill does not provide the funding source for payment of claims of escheated property, but such funds would presumably be paid from the Unclaimed Property Trust Fund as currently provided by statute.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

²⁵ Section 717.123(1), F.S., provides that "All funds received under this chapter, including the proceeds from the sale of unclaimed property under s. 717.122, shall forthwith be deposited by the department in the Unclaimed Property Trust Fund. The department shall retain, from funds received under this chapter, an amount not exceeding \$15 million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. All remaining funds received by the department under this chapter shall be deposited by the department into the State School Fund."

2. Other:

Equal Protection

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that a state may not “deny to any person within its jurisdiction the equal protection of the laws.” Article I, section 2 of the Florida Constitution further provides that “[a]ll natural persons ... are equal before the law.” Both the federal and state Equal Protection Clauses are designed to prevent any person or class of persons from being singled out as a target for arbitrary and unjust discrimination.²⁶ They do not require that all persons be treated identically but rather that the law apply equally to all persons who are similarly situated.²⁷

In most cases, a governmental classification must merely be rationally related to a legitimate state purpose, i.e., reasonable classifications other than those involving suspect classes of persons or fundamental rights are generally permissible, so long as the classifications are not arbitrary and are based on some difference in the classes having a substantial relation to the purpose of the legislation.²⁸ A litigant could argue that there is not a rational relationship with respect to the classification in this bill, particularly if that litigant sought to claim proceeds of an escheated estate through descent from a victim of genocide or crimes against humanity other than the Holocaust and that the bill distinguishes between persons (collateral heirs such as second cousins) whose claims for escheated property are allowed or prohibited, depending on whether they are descendants of Holocaust victims.

Prohibited Special Law

This bill may raise concerns under a provision in Florida’s State Constitution that prohibits special laws that effectuate a change in the laws of descent.²⁹ A special law is one relating to, or designed to operate on, particular persons or things, or one that purports to operate on classified persons or things when classification is not permissible or the classification adopted is illegal.³⁰ If a court were to find that this bill was relating to, or designed to operate on, a particular person, it could find that it is a special law and therefore violates the State Constitution.

B. RULE-MAKING AUTHORITY:

It appears that the Department of Financial Services has the necessary authority to adopt any rules that may be required to implement the provisions of this bill.³¹

C. DRAFTING ISSUES OR OTHER COMMENTS:

²⁶ See *Washington v. Davis*, 426 U.S. 229 (1976); *Haber v. State*, 396 So.2d 707 (Fla. 1981).

²⁷ See *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quoting *F. S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920) (“all persons similarly circumstanced shall be treated alike”); *Duncan v. Moore*, 754 So.2d 708 (Fla. 2000).

²⁸ See, e.g., *Vacco v. Quill*, 521 U.S. 793 (1997); *Gregory v. Ashcroft*, 501 U.S. 452 (1991); *Williams v. Pryor*, 229 F.3d 1331 (11th Cir. 2000); *State v. Muller*, 693 So.2d 976 (Fla. 1997); *Libertarian Party of Florida v. Smith*, 687 So.2d 1292 (Fla. 1996); *Lite v. State*, 617 So.2d 1058 (Fla. 1993).

²⁹ FLA. CONST. art III, s. 11(a)(13), which prohibits a special law pertaining to “effectuation of invalid deeds, wills or other instruments, or change in the law of descent.”

³⁰ *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050, (Fla. 2003); *Bryan v. State*, 753 So.2d 1244, (Fla. 2000); *Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155, (Fla. 1989).

³¹ Section 717.138, F.S., provides that the “department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.”

This bill's evidentiary standard to substantiate a claim to intestate succession through a Holocaust victim may be unclear. The procedure the department is instructed to adopt, and a court may have to uphold, is required to be both "reasonable" and "not unduly restrictive," and a court could interpret these requirements to be distinct from each other.³²

It appears that the provisions of the bill would be more appropriately suited in s. 732.103, F.S., rather than s. 717.12405, F.S. Chapter 717, F.S., deals with unclaimed property and not specifically escheated property. Unclaimed property and escheatable property are separate and distinct types of property governed by different provisions of Florida law. Section 732.103(6), F.S., deals with the escheatment of property to the state.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

³² Courts assume that the Legislature adopts specific statutory language to achieve a particular purpose, i.e., that the addition, omission, or alteration of individual words is intentional and meaningful. *See Carlile v. Game & Fresh Water Fish Commission*, 354 So.2d 362 (Fla. 1977).