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H.B. 270
133rd General Assembly

Fiscal Note & Local Impact Statement

Revised

Click here for H.B. 270's Bill Analysis

Version: As Passed by the House

Primary Sponsor: Rep. Merrin

Local Impact Statement Procedure Required: No

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Highlights

- The amount of unclaimed funds deposited with the state in the future could decrease as a result of the bill's provision establishing a minimum threshold of $25 for what constitutes unclaimed funds, replacing the current requirements under which there is no threshold.
- The bill includes as unclaimed funds Ohio tax refunds of $25 or more that are not cashed within five years after they are issued, potentially increasing the amount of unclaimed funds held by the state five years from now. Currently, the uncashed tax refunds are deposited into the GRF or other funds to which receipts of the taxes or fees are credited.
- The bill allows the Treasurer of State to invest any moneys of the Unclaimed Funds Trust Fund in custodial accounts of the state. The bill precludes funds in this account from a codified limit on investment of state funds in debt interests other than commercial paper.

Detailed Analysis

The bill makes several changes to the Unclaimed Funds Law that is overseen by the Department of Commerce. Certain provisions will affect the amount of unclaimed funds held by the state. Those provisions are described below.

Ohio tax refunds as unclaimed funds

The bill includes Ohio tax refunds of $25 or more that are not cashed within five years after they are issued as unclaimed funds, regardless of whether voided. The amount is to be transferred from the fund or funds to which receipts of the tax are ultimately credited, in proportion to the amount credited to each such fund. According to the Department of Taxation, voided tax refund warrants totaled $9.2 million in FY 2019 and $11.0 million in FY 2020.[1] Most of these voided refunds were of GRF taxes: $8.6 million in FY 2019 and $10.3 million in FY 2020.[2] The rest, $0.6 million in FY 2019 and $0.7 million in FY 2020, were of non-GRF taxes. Reissuances of voided tax refund warrants totaled $2.9 million in FY 2019 and $2.1 million in FY 2020, also mostly GRF. However, amounts transferred to unclaimed funds under the bill may be less because the amounts reported here encompass income tax refunds not cashed within two years, and refunds of other GRF taxes not cashed within 90 days. Some tax refund warrants not cashed within these time periods may be reissued and cashed within five years of original issuance. Also, the above amounts include refunds of any amount, instead of only refunds over $25 as under the bill.

The bill would increase amounts transferred to unclaimed funds starting five years from the effective date of the bill.

Monetary threshold

The bill could also reduce the amount of funds transferred to the state as unclaimed funds in the future by establishing a minimum threshold of $25 for what constitutes unclaimed funds. Under current law, there is no threshold. For context, there are presently 8,602,499 unclaimed properties totaling $59.1 million under the $25 threshold (note that these particular properties would still constitute unclaimed funds after the bill's effective date). Additionally, for further context, there were 953,984 properties under $25 that were reported to the Department in FY 2019 and currently still claimable (this figure does not include properties that were already claimed). These particular properties amount to $5.0 million.

Until the rightful owners of unclaimed funds claim their properties, the Department uses a portion of reported unclaimed funds to support the Mortgage Insurance Fund, Minority Business Bonding Fund, and the Housing Development Fund. The allocations to these funds remain the same under the bill. Unclaimed funds have also been used in recent years to support operations of other state programs through transfers to the GRF.

Retaining rate of unclaimed funds

The bill alters a requirement in current law which allows holders of unclaimed funds to retain 90% of the value of funds valued at $50 or greater. Under H.B. 270, all unclaimed funds except certain certificates of deposit must be remitted to the state within one year of the bill's effective date. In total, $961.9 million of all unclaimed funds are retained by holders under the current process, which includes unclaimed funds valued at the current threshold of $50 or more. Overall, requiring all unclaimed funds of $25 or greater to be remitted to the state will increase the amount of unclaimed funds held in the state's account under the Unclaimed Funds Trust Fund.

Treasurer of State

The bill requires all unclaimed funds to be deposited into the Unclaimed Funds Trust Fund. Under the bill, the Treasurer of State is authorized to invest any or all moneys held in the

[1] The total for FY 2020 is known at the date this is written (June 12) even though the fiscal year is not yet over.

[2] Voided commercial activity tax refund warrants are treated in this calculation as 85% GRF and 15% non-GRF.

Unclaimed Funds Trust Fund in custodial accounts. Any interest generated by these investments is to be credited to the fund or custodial account in which the funds are deposited. According to the office of the Treasurer of State, no increase or decrease in employment or operating expense is expected.

Under ongoing law, the Treasurer is prohibited from investing more than 25% of the state's interim funds in debt instruments other than commercial paper. The bill exempts the investment of the new custodial accounts from this 25% limitation. To the extent that the Treasurer exceeds the limitation in practice, this exemption may increase the financial risk associated with investing the funds. However, historic evidence and economic theory suggest riskier financial assets on average enjoy higher rates of return.

Penalties

Current law imposes a civil penalty of 1% of the amount of unclaimed funds not reported, underreported, or on which settlement has not been made. The penalty is imposed for each month from the date prescribed for the reporting and payment or agreement until the required settlement is made, not exceeding 25 months. The bill removes this penalty.

Additionally, under current law, a holder who (1) knowingly fails to report unclaimed funds, (2) knowingly fails to report unclaimed funds upon request, and (3) knowingly fails to pay the unclaimed funds to the Department of Commerce when required to do so, can be assessed penalties up to $100 or $500 per day.

The bill replaces the $100 and $500 penalty as follows: (1) for negligently failing to report or deliver unclaimed funds, up to 5% of the funds or $5,000 for each month the violation occurs, with a cap of the lesser of 25% of the funds or $5,000, and (2) for knowingly failing to report or deliver unclaimed funds, including when requested by the Department, up to 5% of the funds or $10,000 for each month the violation occurs with a cap of the lesser of 50% of the funds or $10,000. By capping the penalties this could decrease penalties collected by the Department. Penalties are deposited into the GRF.

Other provisions with potential fiscal effects

The bill makes several other changes to the Unclaimed Funds Law that could affect state revenues and expenditures. First, the bill requires the Department of Commerce to adopt rules to liquidate tangible property that the Department receives mistakenly as an item of unclaimed funds and requires that any proceeds from the sale of such property be treated as if they were unclaimed funds. The last auction the Department held was in 2016 and generated $1.2 million in claimable funds.

Secondly, the bill establishes a new procedure for unclaimed funds on small or closed estate affidavits without requiring letters testamentary or letters of administration to be issued upon the estate. It could be possible that the new process would decrease the cost and time for claimants to file a claim, thereby increasing the volume of claims filed. Thirdly, the bill prohibits the Department from commencing an action or proceeding against a holder more than five years after the holder filed a report with the Department, potentially reducing the number of unclaimed funds held by the state.

In addition to these changes, the bill requires the Department to set up and maintain an online platform for both the reporting and claiming of unclaimed funds within one year of the bill's effective date. While the online "Treasure Hunt" platform currently facilitates the claiming of unclaimed funds, the Department is now in the process of gathering proposals from developers to build an online platform for reporting unclaimed funds. It plans to spend $1.0 million for this purpose under Fund 5430 appropriation item 800602, Unclaimed Funds – Operating. Finally, the bill requires state and local government agencies to share information relating to unclaimed funds with the Department and requires the Department to share information with those agencies and with federal agencies. The extent of any costs the state and local governments might incur for this data sharing is uncertain.

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