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Legislative Budget
Office

H.B. 348
134th General Assembly

Fiscal Note & Local Impact Statement

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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 for determining what constitutes unclaimed funds, replacing the current requirements under which there is no threshold for this type of property.
- Conversely, the bill could potentially increase the amount of unclaimed funds deposited with the state by an unknown amount as a result of the bill's provision including virtual currency as a type of property that may constitute an item of unclaimed funds.
- The bill requires the Treasurer of State to consult with the Department of Commerce to develop an investment strategy for moneys in the Unclaimed Funds Trust Fund, and allows the Treasurer to invest unclaimed funds in income-generating accounts to be overseen by the Treasurer but outside the state treasury.

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.

Monetary threshold

The bill could reduce the amount of funds transferred to the state as unclaimed funds in the future by establishing a minimum threshold of \$25 for money or rights to money properties that constitutes unclaimed funds. Under current law, there is no threshold, except a \$50 threshold for sums payable as wages (changed to \$25 by the bill). As of late November 2021, there were 9,539,443 individual unclaimed properties totaling \$62.5 million that fall below the

\$25 threshold. (These particular properties would still constitute unclaimed funds after the bill's effective date.) Note that this amount does not include accounts of less than \$50 that holders may report in aggregate under current law. Overall, there were 1,070,467 properties under \$25 that were reported to the Department in FY 2021 and that are currently still claimable. These particular properties amount to \$6.1 million.

Until the rightful owners of unclaimed funds claim their properties, a portion of reported unclaimed funds is used to support the Mortgage Insurance Fund, Minority Business Bonding Fund, and the Housing Development Fund. The allocation to the Mortgage Insurance Fund and Minority Business Bonding Fund funds remain the same under the bill. However, the bill alters the allocation to the Housing Development Fund to an amount to be determined by the Director of the Department. According to the Department of Commerce, this provision mirrors current practices. In FY 2021, \$75.0 million was allocated to the Housing Development Fund. 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 value of funds valued at \$50 or greater. Under the bill, all unclaimed funds except certain certificates of deposit must be remitted to the state within six months of the bill's effective date. In total, \$1.04 billion 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 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.

Virtual currency

The bill includes virtual currency as a type of property that may constitute as an item of unclaimed funds if all other requirements under the Unclaimed Funds Law are met. The bill defines virtual currency as a digital representation of value used as a medium of exchange, unit of account, or store of value that does not have legal tender status recognized by the U.S. Virtual currency does not include (1) software or protocols governing the transfer of the digital representation of value, (2) game-related digital content, and (3) a gift card, loyalty card, or rewards card. As a result, this could increase the amount of unclaimed funds held by the state. However, the magnitude of any such increase is unknown.

Penalties

The bill revises penalties that can be imposed under the Unclaimed Funds Law in a way that may reduce the overall penalties collected by the Department. 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. Penalties are deposited into the GRF.

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 must work in consultation with the Department to develop an investment strategy to help meet the Department's financial objectives. The Treasurer of State is henceforth authorized to invest any moneys in the Unclaimed Funds Trust Fund in income-bearing instruments within custodial accounts outside the state treasury. Any interest accruing from the investments is to be credited to the Trust Fund and used to support the programs mentioned in the previous section.

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. The provision allows the Treasurer of State flexibility to reallocate the current investment mix should the financial climate make such a reallocation prudent. In recent years, under 1% of state interim funds have been invested in commercial paper, according to annual reports published by the Treasurer's Office.¹

According to the Office of the Treasurer of State, any changes to the investment mix of unclaimed funds will remain driven by market returns and consultation with the Department. The Treasurer's Office does not anticipate the bill to cause an increase or decrease in employment or costs to the agency.

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 authorizes the Department of Commerce to liquidate and dispose of any intangible or 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 2017 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 ten years after the holder filed a report with the Department (this limitation does not apply if the holder fails to file such a report or files a fraudulent report), potentially reducing the number of unclaimed funds held by the state.

¹ <https://www.tos.ohio.gov/archive-of-all-treasurers-office-reports/>. Calculation as of the end of each fiscal year, equal to investment in commercial paper as a percentage of the total investment in interim funds.

Additionally, the bill revises the law holding a holder of unclaimed funds harmless after delivering funds to the state in terms of the notice the holder is required to send to COM of pending proceedings, the COM Director's ability to intervene in proceedings against a holder, and the nature of each party's liability. Currently, the Department may be required to defend holders that did not act or comply with the law in good faith. The provision would put the state in alignment with other states that have a good faith requirement. As a result, this provision could result in a cost savings for the Department by reducing defense costs. At the beginning of this year, the Department was reviewing two substantial claims under this provision of law.

Finally, the bill requires state or political subdivisions to share information relating to unclaimed funds with the Department. It further allows the Department to enter into data-sharing agreements to enable such other governmental agencies and political subdivisions to provide an additional notice to owners of unclaimed funds or owners of tangible property mistakenly taken to the Department. The extent of any costs the state and local governments might incur for this data sharing or to provide notice to owners of unclaimed funds is uncertain.