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FISCAL IMPACT REPORT

SPONSOR <u>Nibert/Cervantes</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/2/24</u>
	BILL
SHORT TITLE <u>Revised Uniform Unclaimed Property Act</u>	NUMBER <u>Senate Bill 237</u>
	ANALYST <u>Torres, J.</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD Operating Budget*	No fiscal impact	No fiscal impact	(\$94.2)	(\$94.2)	Recurring	Other state funds
TRD Operating Budget	No fiscal impact	No fiscal impact	(\$150)	(\$150)	Nonrecurring	Other state funds

Parentheses () indicate expenditure decreases. *Taken from 2023 TRD Analysis.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 State Treasurer’s Office (STO)
 Regulation and Licensing Department (RLD)
 +Department of Information and Technology (DOIT)
 NM Gaming Commission (NMGC)

Agency Declined to Respond
 Secretary of State (SOS)

Because of the short timeframe between the introduction of this bill and its SJC hearing, LFC has yet to receive analyses from other state agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of Senate Bill 237

Senate Bill 237 (SB237) codifies revised definitions and requirements applicable to unclaimed tangible property. The parties involved are the apparent owner, holder and administrator. The apparent owner is the person claiming the loss. The holder is the person who either has the property or is obligated to hold the property for the owner. The holder reports abandoned property to the state administrator responsible for enforcing the Revised Unclaimed Property Act (RUUPA).

The bill authorizes rulemaking for conducting property examinations; sets forth enhanced notice requirements; details the manner in which compliance is to be achieved; includes appellate procedures; and has a statute of limitations. Its provisions protect unclaimed property and apparent owners. The updated bill will likely create a substantial fiscal impact by modernizing the existing Unclaimed Property Act and its method of implementation.

The effective date of this bill is January 1, 2026

FISCAL IMPLICATIONS

There is no fiscal appropriation. As noted in TRD's 2023 RUUPA analysis, future estimated general fund revenue depletion from the return of unclaimed property is recurring and indeterminate.

TRD indicated that the bill would require annual information system changes and updated forms, instructions, and publications. These changes would be incorporated into annual tax year implementation starting with tax year 2024 and each subsequent tax year and represent significant workload costs for TRD's Information Technology Division (ITD). TRD's additional fiscal expenditures will likely include the cost of employing additional administrative, accounting, legal, and IT staff, and purchasing necessary equipment and supplies.

TRD's FY23 operating budget was \$113.8 million and its FY24 budget request was \$120 million. More agency analysis will be warranted to determine the bill's fiscal impact. TRD's FY23 agency-wide vacancy rate was over 20 percent. Like other agencies, TRD was facing recruitment and staffing challenges. TRD may have sufficient revenue in otherwise reverted funds to cover some of the implementation costs.

TRD stated:

This bill would reverse 2021 amendments that currently allow TRD to save taxpayer funds by using more efficient and cost-effective methods to connect abandoned property to its rightful owners. The 2021 amendments were advocated by TRD to reduce inefficient expenditures of taxpayer funds. This bill would once again require TRD to publish a lengthy and costly list of unclaimed property owners and their addresses annually in every county. Current law shortens the published notices significantly by simply requiring TRD to publish information to search unclaimed property online and how to contact TRD. If this bill is passed, the newspaper publication requirements will once again become more extensive. The notices will once again be longer, and therefore be more costly for TRD to publish. As detailed in the table below, TRD estimates this bill presents an unfunded recurring mandate of \$118 thousand, growing with inflation.

By contrast, after a local television news station featured unclaimed property in May 2019, TRD sent out about 4,200 claims. That three-minute local news segment yielded three times as many claims as the legal notices at no cost to the state. Further, every month since TRD launched its automated unclaimed property search system in September 2022, claims have been extremely high by historic standards.

The bill proposes new TRD reporting requirements. 2023 HB165 Section 72 is an unpaid mandate to create extensive new reporting of unclaimed property administration, with the first report due three months after the end of fiscal year. TRD will need an additional full-

time equivalent (FTE) to support the new annual reporting requirements and other unfunded mandates in the bill. The FTE costs are based on a management analyst supervisor.

Other responding agencies did not note fiscal implications.

SIGNIFICANT ISSUES

SB237 Section 5, to be chaptered as Section 7-8B-102, includes applicable definitions. Section 6 sets forth exclusions.

Section 7 authorizes rulemaking.

Section 8 defines the presumption of abandonment as to the multiple categories set forth therein.

Section 9 pertains to the abandonment of tax-deferred retirement accounts.

Section 10 addresses the abandonment of other tax-deferred accounts.

Sections 11 and 12 pertain to abandoned custodial accounts and abandoned contents of safe deposit boxes. Sections 13 through 16 pertain to abandoned stored-value cards; gift cards; securities; and related property. Section 17 specifies methods for determining an apparent owner's interest in abandoned property.

Section 18 covers knowledge of death of an insured. Section 19 covers deposit accounts for insurance policy or annuity contracts.

Sections 20 through 22 pertain to matters concerning the address and domicile of apparent owners.

Section 23 pertains to the holder's domicile.

Section 24 pertains to the location of the transaction and Section 25 pertains to traveler's checks and similar instruments.

Sections 27 and 28 cover holder reporting requirements and report contents.

Section 29 specifies the holder's report-filing requirements.

Section 30 pertains to retention and contents of records.

Sections 31 through 34 pertain to property reportable by the holder absent owner demand; due diligence; liability; notice; and contents of notice.

Section 35 outlines the administration's notice procedures.

Section 36 requires cooperation among state officers and agencies to locate apparent owner, as authorized by law.

Good faith is defined in Section 37.

Dormancy is defined in Section 38.

Sections 39 and 40 pertain to the payment or delivery of property to the administrator and the effect of said payment or delivery.

Procedures for the holder's recovery of property from the administrator are set forth in Section 41.

Section 42 pertains to property removed from a safe deposit box.

Section 43 pertains to crediting income or gain to owner's account.

The administrator's custody options are set forth in Section 44.

The administrator's disposition of property with no substantial value and immunity are covered in Section 45. Section 46 sets forth periods of limitation and repose.

Sections 47 and 48 cover public sale of abandoned property and purchaser's ownership.

Section 49 covers military medals or decoration.

Sections 50 through 61 cover the administrator's deposit of funds; records retention; expenses and service charges; custodial responsibility towards owner; other state property claims and

recovery; property claim allowance; actions to establish claims; verified reports; examination of records to determine compliance. Requirements for examination of federally insured property and state-regulated financial institutions are set forth in

Sections 62 through 64.

Section 65 pertains to evidence of unpaid debt.

Section 66 pertains to failed record retention.

Record examination requirements are set forth in Sections 67 through 69.

Limits on future employment for those issuing examination contracts are set forth in Section 70.

Requirements for the administrator's reports to state officials are outlined in Section 71.

Liability for unreported property; informal conference procedures; review of the administrator's determination; appeals and judicial enforcement actions are set forth in Sections 72 through 77.

Section 78 covers interstate and international agreements.

Sections 80 through 82 cover interest and penalties for a holder's failure to report unclaimed property; other civil penalties; and waivers of interest and penalties.

Sections 83 and 84 address agreements to locate property and void agreements.

Agent recovery rights are set forth in Section 85.

Sections 86 through 92 define 'personal information;' 'confidential information;' disclosure of confidential information; confidentiality agreements; exclusion of confidential information n notices; and security of information.

Sections 93 through 95 pertain to indemnification for breach; uniformity of application and construction; and electronic signatures.

Sections 96 through 100 cover procedural transition from prior to current statute; property sale and distribution; finance; periods of limitation; and disposition of unclaimed assets.

Sections 101 through 104 pertain to special remedies for unpaid rent on safe deposit boxes; dormant accounts; and credit union liquidation.

Section 105 pertains to board, director and supervisory agency requirements.

Section 106 outlines unclaimed life insurance requirements.

Sections 107 through 109 repeal the prior Unclaimed Property Act and set RUUPA's effective date.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

STO states:

Related, very distantly to HB150, SB17, SB90 and SB105 which propose different amendments to NMSA 1978, Section 7-1-2.

TECHNICAL ISSUES

STO states:

The phrase 'Except as otherwise provided in the Governmental Conduct Act,' on page 89, line 25 of Section 70 of the bill may create some confusion. This language appears to be directed towards Section 10-16-8 of the GCA, which contains restrictions on former government employees with respect to contracts and paid representation before their previous government employers. However, this phrase within Section 70 may create some confusion as far as the GCA does not appear to contain an exception or provision that would contradict the language of Section 70. That is, the phrase 'Except as otherwise provided in the Governmental Conduct Act,' may be unnecessary and serve only to create ambiguity. Better clarity may be ensured by either striking the phrase or rewording it as,

‘In addition to any other restrictions or limitations contained in the Governmental Conduct Act.’

Section 87 of the bill, on page 108, lines 6-8, exempts from public inspection ‘records of the administrator and the administrator's agent related to the administration of the Revised Uniform Unclaimed Property Act,’ among several other categories of records. This language may be susceptible to an exceptionally broad interpretation, as its literal language would appear to exempt from IPRA any and all records related to unclaimed property. This also has the effect of rendering the other exempted categories of records somewhat superfluous. The purpose of this exemption is unclear.

OTHER SUBSTANTIVE ISSUES

RLD states:

Financial institutions and the securities industry are already subjected to regular, vigorous examination by both state and federal examiners (such as the New Mexico Regulation and Licensing Department, the Office of the Comptroller of the Currency, the Federal Reserve Banks, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and others). SB 237 would increase the regulatory burden on these already highly regulated entities on information already subject to routine scrutiny by federal and state regulatory bodies.

SB 237 §7-8B-1002.1 allows the TRD to request that the FID examine ‘federally insured, state- regulated financial organizations’ if it has not done so within the past five years. The FID is currently the primary regulator of these entities, which represent only 0.26% of the total entities for which the FID is the primary regulator. The examination of only ‘federally insured, state-regulated financial organizations’ represents a potential duplication of effort on almost 1,600 companies representing nearly 17,000 licensees.

The State of Illinois, where the Uniform Law Commission is headquartered, has recognized the duplication of state agencies examination efforts regarding state-chartered, certified, or licensed financial organizations. Illinois enacted legislation allowing for exemption of examination by the administrator for all financial entities for which the state’s equivalent of the FID is the primary regulator (see the ‘Amendments’ section of this FIR for detailed language). Additionally, confidential financial and personal records held by non-federally insured, state-regulated financial organizations are typically protected by federal law and any third parties retained by the TRD viewing those records may conflict with federal law.

SB 237 seems to contain contradictory subsections as to when a security is assumed abandoned. Section 7-8B-201(13) states that property that is not specified in Sections 7-8B-201 or 7-8B-202 through 7-8B-207 is presumed abandoned ‘the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises.’ (p. 22). Securities are not specified in Sections 7-8B-201 or 7-8B-202 through 7-8B-

207 and would seemingly fall under that default timeline. However, Section 7-8B-208 specifies in detail when a security is presumed abandoned and seemingly contradicts Section 7-8B-201(13). (pp. 30-31).

SB237 also contains contradictory language regarding selling or liquidating a security at the request of the owner. Section 7-8B-905 states ‘[o]n request of the owner, the administrator may sell or liquidate a security and pay the net proceeds to the owner, even if the security had been held by the administrator for less than three years or the administrator has not complied with the notice requirements pursuant to Section 7-8B-701 NMSA 1978.’ (p. 76). Section 7-8B-701 does not contain notice requirements regarding securities.

The sale of most securities is detailed in the New Mexico Uniform Securities Act, NMSA 1978, Sections 58-13C-101 to -701 (2010). The legal requirements regarding the offer and sale of securities depend on a variety of factors such as the amount and type of sale and the method of sale. SB 237 makes no reference to existing state or federal securities laws. SB 237 specifies the procedure to dispose or sell abandoned securities in Section 7-8B-701(B). (pp. 66-67). Additionally, SB 237 states in Section 7-8B-603(f) that ‘[t]he administrator shall establish procedures for registration, issuance, method of delivery, transfer and maintenance of securities delivered to the administrator by a holder.’ (pp. 57-58). Still no reference is made to existing securities laws.

SB 237 Section 7-8B-210(B)(2) includes an ‘indication of apparent owner interest in property’ as ‘an oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner’s communication.’ This clause may be problematic. Financial institutions typically require identification and/or a signature to compare with the signature card of the owner on file prior to removing a ‘freeze’ on the inactive/dormant account. This process protects funds from being fraudulently obtained by persons other than the owner(s). Removing the signature requirement, SB 237 increases the potential for fraud by either internal or external perpetrators with regard to property otherwise considered abandoned.

ALTERNATIVES

RLD states:

There is potential for significant duplication of state effort regarding non-federally insured, state-regulated financial organizations. To eliminate this duplication of effort and to avoid potential conflict with other state and federal regulations, the FID recommends that the proposed language in SB 237, Section 7-8B-102(8) (p. 9, lines 4 - 6) and Section 7-8B-1002.1 (p. 79, line 25 through p. 81, line 5) be amended to include all financial organizations which are already vigorously examined by the FID and that a definition for ‘state-regulated financial organizations’ be added as Section 7-8B-102(29) beginning on page 17, line 6, which the following definitions renumbered to reflect the additional definition. The FID proposes the amended language read as follows:

[7-8B-102]

(8) ‘financial organization’ means a bank, savings bank, foreign bank, corporate fiduciary, currency exchange, money transmitter, or credit union;

(29) ‘state-regulated financial organization’ means any financial organization or other entity for which the financial institutions division of the regulation and licensing department is the chartering, certifying, or licensing regulator;’

7-8B-1002.1 EXAMINATION OF STATE-REGULATED
FINANCIAL ORGANIZATIONS

- (a) Notwithstanding Section 7-8B-1002 NMSA 1978, for state-regulated financial institutions, the administrator may request that the financial institutions division examine the financial organization if the administrator has consulted with the director of the financial institutions division and the division has not conducted an examination of the state-regulated financial organization for compliance with the Revised Uniform Unclaimed Property Act within the past five years.
- (b) Notwithstanding Subsection (a) of this section, the administrator may, at reasonable times and upon reasonable notice:
 - (1) request that the financial institutions division examine the records of a state-regulated financial organization, if the administrator has reasonable grounds to believe that the state-regulated financial organization has failed to comply with the Revised Uniform Unclaimed Property Act; and
 - (2) adopt rules that describe conditions under which the administrator may have reason to believe that a financial institution is not in compliance with the Revised Uniform Unclaimed Property Act.
- (c) An examination pursuant to Subsection (a) or (b) of this section shall be governed by Sections 7-8B-1001 through 7-8B-1104 NMSA 1978 in addition to applicable state and federal laws.
- (d) Nothing in this Section shall be construed to limit the authority of the financial institutions division to examine state-regulated financial organizations.

The SD proposes that §7-8B-201(13) revised to state: ‘property not specified in this section or Sections 7-8B-202 through 7-8B-208 NMSA 1978, the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises.’

Further, the SD proposes that a requirement to be added to SB 237 that securities must

be sold or otherwise disposed of in accordance with applicable securities laws.

JT/al