

SUBJECT: Waiving penalty and interest on certain delinquent unclaimed property

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Brimer, Dukes, J. Davis, Elkins, Solomons, Woolley

0 nays

3 absent — Corte, George, Giddings

WITNESSES: None

BACKGROUND: The Comptroller's Office is responsible for administering the Unclaimed Property Program under the Property Code, Title 6. Financial institutions and other entities must report any personal property they hold that is considered abandoned by its owner. To be considered unclaimed property, no one must have claimed or exercised ownership over the property for three to five years, and the owner's whereabouts must be unknown.

The comptroller acts as custodian for the state, holding the unclaimed property in trust until it is claimed and attempting to locate its rightful owners. The state does not take legal ownership of the property and sets no time limit for owners or their heirs to claim such property. The comptroller may sell unclaimed property to the highest bidder, and proceeds from the sale are deposited in the general revenue fund.

Property Code, sec. 74.301 requires any holder of abandoned property on June 30 to deliver the property to the comptroller on or before the following November 1. If the property is the contents of a safe deposit box, the comptroller may instruct the holder to deliver the property on a specified date before November 1 of the following year.

An entity that fails to pay or deliver unclaimed property within these time frames must pay the comptroller interest at a rate of 10 percent on the property from the date the property should have been paid or delivered, plus a penalty beginning at 5 percent, if the property was found to be due before September 1, 1997, when the statute was enacted. However, under Property Code, sec. 74.707, the comptroller may waive the interest and penalty for delinquent property that was due on or after September 1, 1997, if the

comptroller determines that the property holder made a good-faith effort to comply. Also, the comptroller may establish amnesty periods during which a holder of delinquent property may report and remit the unclaimed property without paying penalty or interest.

**DIGEST:**

HB 1840 would amend the Property Code to allow the comptroller to waive the penalty and interest imposed on delinquent property that the holder was required to deliver on or before November 1, 1997, or on delinquent property that was due on a specific date between November 1, 1997, and June 1, 1998.

HB 1840 would take effect September 1, 2001. The changes would apply only to unclaimed property delivered to the comptroller on or after the effective date.

**SUPPORTERS  
SAY:**

HB 1840 would benefit the state and its citizens by generating an additional \$18.2 million in general revenue funds, increasing the efficiency and effectiveness of the Unclaimed Property Program, and returning valuable unclaimed property to its rightful owners. HB 1840 also would bring the current law regarding delinquent unclaimed property that was due before September 1, 1997, into conformity with existing laws for property due after September 1, 1997, which already allow such waivers.

HB 1840 would implement one of the recommendations of the comptroller's e-Texas report. The comptroller cannot administer the unclaimed property program effectively if institutions with delinquent property choose to retain it rather than voluntarily disclose its existence. However, current law creates a disincentive for institutions to disclose unclaimed property voluntarily if it was due before September 1, 1997.

In many cases, the interest and penalties that these institutions would pay if they voluntarily disclosed the delinquent unclaimed property would far exceed the value of the property. As a result, many institutions do not reveal any unclaimed property to the comptroller because they do not want to pay the interest and penalties. They would rather risk an audit than disclose the property voluntarily. This results in a loss of revenue to the state and a delay in the timely return of this unclaimed property to its rightful owners.

HB 1840 would increase compliance with the law regarding the reporting of unclaimed property and would increase participation in the comptroller's Voluntary Disclosure Agreement program for unreported unclaimed property. Waiving interests and penalties in certain cases for delinquent unclaimed property has had positive fiscal results for the state. During the past three years, the comptroller has established two amnesty periods for unclaimed property, each of which generated \$26 million in unclaimed property.

Increased compliance due to HB 1840 would ease the administrative burden on the comptroller's office and allow it to administer the Unclaimed Property Program more effectively and efficiently. In turn, this would result in a quicker return of unclaimed property to its rightful owner.

HB 1840 would be limited in scope and merely would extend provisions in current law to apply to delinquent unclaimed property that was due before November 1, 1997, or on a specified date between then and June 1, 1998. The bill would allow but not require the comptroller to waive the penalty and interest on such property. The comptroller would determine whether to waive interest and penalties on a case-by-case basis and could do so only if the holder made a good-faith effort to comply with the law. HB 1840 would neither benefit nor reward entities that failed to disclose delinquent unclaimed property voluntarily. Rather, it would provide a logical and fair method for these institutions to return this property, particularly considering the relatively high cost of the interest and penalties and the relatively low value of the unclaimed property.

OPPONENTS  
SAY:

HB 1840 would allow institutions that have failed to comply with the law for the past four years to escape paying penalties and interest. These institutions had an obligation to follow the law, regardless of whether they would be subject to interest or penalties.

NOTES:

The fiscal note estimates that HB 1840 as introduced would result in a net gain of \$18.2 million in general revenue during fiscal 2002.

Rep. Junell plans to offer a floor amendment that would specify the contents of a safe deposit box as delinquent property that could qualify for the waiver under HB 1840. The amendment also would change the bill's effective date to provide immediate effect if finally passed by a two-thirds record vote.

The companion bill, SB 1038 by Ellis, was reported favorably as amended by the Senate Finance Committee on March 19 and was recommended for the Local and Uncontested Calendar. The committee amended the bill to delete the post-1997/pre-1998 eligibility period, thus limiting the bill's application to unclaimed property due on or before November 1, 1997.