

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 956

(Senator Hershey)

Judicial Proceedings

Corporations and Associations - Cooperatives - Nonescheat Capital Credits

This bill (1) alters what funds held by a cooperative are presumed to be abandoned property by creating an exception for “nonescheat capital credits” and (2) authorizes the use of nonescheat capital credits only for specified purposes.

Fiscal Summary

State Effect: General/special fund revenues may decrease to the extent that specified property is no longer presumed abandoned, as discussed below. Expenditures are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “nonescheat capital credits” as money (1) due to any past member of a cooperative (as specified in the bill) in retirement of capital allocated on a patronage basis to the account of the past member for amounts received and receivable by the cooperative in excess of operating costs and expenses; (2) for which at least five years have passed since the credits were retired; and (3) that has not been claimed by the past member.

A cooperative may use nonescheat capital credits only to (1) assist members of the cooperative or (2) donate to nonprofit, charitable organizations approved by the cooperative’s board of directors. A cooperative must expend the nonescheat capital credits

within three years after the credits become available; otherwise, the nonescheat capital credits must be considered abandoned property and disposed of in accordance with the Maryland Uniform Disposition of Abandoned Property Act.

The bill may not be construed as relieving a cooperative of the obligation to refund nonescheat capital credits on application of a past member.

Current Law:

Cooperatives and Benefit Corporations – In General

The Corporations and Associations Article explicitly authorizes various types of cooperatives to do business in the State. Generally, these entities operate on a cooperative basis for the mutual benefit of their members adhering to certain requirements and specific purposes set forth in statutory law.

A State corporation may become a benefit corporation provided that the corporation's purpose is to create a general public benefit (defined as a material, positive impact on society and the environment, as measured by a third-party standard, through activities that promote a combination of specific public benefits).

Abandoned Property

Title 17 of the Commercial Law Article generally governs abandoned property in the State. The Comptroller is the administrator of abandoned property in the State. Generally, property presumed abandoned includes (among numerous other items) any funds held by a business association – including a corporation – paid toward the purchase of shares or other interest in a financial organization (or any deposit made with these funds), as specified, three years after the later of the date (1) the holder is deemed to not have a valid address for the owner of the property or (2) the owner took actions related to the deposit with the financial organization, as statutorily specified. The running of the three-year period of abandonment ceases immediately upon the occurrence of either of the two conditions stated above.

Statute includes additional notice and procedural requirements. For example, a holder of presumed abandoned property valued at \$100 or more is required to send written notice (by first-class mail) to the apparent owner of the presumed abandoned property, at the apparent owner's last known address, informing the owner that the holder is in possession of the property and that the property will be considered abandoned unless the owner responds to the holder within 30 days after the notification.

A person holding abandoned property must also file a report with the Comptroller including information on the nature of the property and the property's presumed owner. The Comptroller is required to take specified actions, including those related to publication and the mailing of notice to apparent owners.

In general, within one year of taking custody of abandoned personal property, the Comptroller must sell the property at auction. A person who claims a legal interest in property delivered to the Comptroller must file a claim to the property or to the proceeds from its sale. For property sold at auction, if the Comptroller allows the claim, the Comptroller must pay the claimant an amount equal to the sales price.

State Fiscal Effect: As noted above, the Comptroller's Office is required to sell property that has been deemed abandoned at auction after specified requirements have been satisfied. The bill removes nonescheat capital credits for members of a cooperative from the presumption of abandoned property under current law provisions and lengthens the time period after which a retired capital credit is deemed abandoned property. Although unable to quantify an exact impact on State finances, the Comptroller's Office advises that the bill may reduce revenues for the Unclaimed Property Fund. Because net proceeds from unclaimed property are distributed to the general fund (after administrative costs and certain required distributions are made), general fund revenues may also be impacted.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1276 (Delegate Hornberger) - Rules and Executive Nominations.

Information Source(s): State Department of Assessments and Taxation; Comptroller's Office; Department of Legislative Services

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