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H.B. 426
(1_136_1424-3)
136th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 426's Bill Analysis](#)

Version: In House Technology and Innovation

Primary Sponsors: Reps. Williams and Demetriou

Local Impact Statement Procedure Required: No

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Highlights

- The Department of Commerce's (COM) Division of Unclaimed Funds will incur increased contracting costs to hire a qualified custodian to manage abandoned digital assets under the bill. These contracting costs would presumably be paid from the Unclaimed Funds Operating Fund (Fund 5430).
- The bill requires that the proceeds of all sales of digital assets be deposited into the Unclaimed Funds Trust Fund.

Detailed Analysis

Overview

The bill establishes procedures for digital asset holders to determine if a digital asset is considered abandoned and requires a digital asset holder to report and transfer presumed abandoned digital assets to the holder designated by the Department of Commerce (COM). Under the bill, digital assets are any virtual currency, cryptocurrency, native electronic asset, non-fungible token (NFT), or any other digital or virtual property that has economic value and is held in digital accounts maintained by a third party. Under the bill, digital assets held within a digital asset account are presumed to be abandoned five years after written or electronic communication from the holder to the owner is returned by the U.S. Postal Service or electronic mail provider, or if contact is not received, five years after last ownership action as defined by the bill. After the holder has decided to transfer the property, it must provide notice to the owner not less than 120 days, but not more than 180 days before transfer. Once determined abandoned and notice is provided, the holder must report these digital assets to COM, and, within 30 days of reporting, transfer the asset in its native form to the designated qualified holder.

Qualified custodian

The bill requires the Department of Commerce to select a qualified custodian for the management and safekeeping of presumed abandoned digital assets no later than one year after the bill's effective date. This would be according to a formal agreement with the custodian that specifies the duties, compensation, obligations, and other governing terms. Under the bill, the custodian would be responsible for holding abandoned digital assets in their native form until they are sold or claimed. Ultimately, compensation to the custodian would likely depend on the scope and size of the digital assets being held and managed. These contracting costs would presumably be paid from the Unclaimed Funds Operating Fund (Fund 5430), which consists of allocations from the Unclaimed Funds Trust Fund and is used to cover operating and administrative expenses of the Division of Unclaimed Funds.

Disposition of unclaimed digital assets

The bill specifies that if no owner makes a claim to a digital asset within the two years it is held by the qualified custodian, the Director of Commerce may arrange to sell the digital asset. However, the bill generally prohibits the sale of digital assets for less than prevailing market price at the time of sale. Digital assets may be sold at any time if the average market capitalization of that digital asset in the past 12 months is less than \$100 billion. Finally, the bill relieves the Director and the qualified custodian from any liability for the loss of value, depreciation, or devaluation of a digital asset held in accordance with the bill when they have acted pursuant to law. All proceeds from the sale of digital assets would be deposited into the Unclaimed Funds Trust Fund.

Synopsis of Fiscal Effect Changes

In totality, the substitute bill (I_136_1424-3) contains changes that appear to result in increased revenues to the Unclaimed Funds Trust Fund. First, the substitute version extends the time before a digital asset is considered abandoned from two years to five years. The substitute bill also requires the qualified custodian to maintain the digital asset in its native form until it is sold. Market conditions would largely dictate whether this would result in increased proceeds from the sale of digital assets when compared to the As Introduced bill.

The substitute bill permits the Director of Commerce to sell a digital asset at any time if the average market capitalization of that digital asset over the preceding 12 months is less than \$100 billion, as determined using a commercially reasonable method. Much like the provision above, market conditions would largely dictate whether that provision would result in increased proceeds from the sale of digital assets. Finally, the substitute bill relieves the Director and the qualified custodian from any liability for the loss of any value, depreciation, or devaluation of a digital asset held in accordance with the bill when they have acted pursuant to law.