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DATE: March 7, 2002

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: HB 1575
RELATING TO: Public Employee Retirement TF/DMS
SPONSOR(S): Representative(s) Fasano
TIED BILL(S): HB 807

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) FISCAL POLICY & RESOURCES (W/D)
 - (3) FISCAL RESPONSIBILITY COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

The Public Employee Optional Retirement Program (PEORP) is an optional defined contribution retirement program created within the Florida Retirement System (FRS). FRS members begin the election process to participate in the PEORP beginning June 1, 2002. Employer contributions begin the month immediately after the month the FRS member elects to participate in the PEORP.

This bill creates the PEORP Clearing Trust Fund within the Department of Management Services. The department administers the fund in a trustee capacity as a fiduciary for the participants in the PEORP. The trust fund is to be used as a clearing fund so that employer contributions received by the department can be kept segregated from employer contributions to the defined benefit program. The contributions are held for a short period of time to confirm employee data prior to disbursement to the third-party administrator for deposit in participants' PEORP accounts.

The trust fund does not terminate pursuant to an exception provided for in the Florida Constitution.

The bill specifically exempts the trust fund from statutory service charges assessed against trust funds.

The bill does not appear to have a fiscal impact on state or local governments. However, it is unclear who receives the interest that is generated from the monies flowing through the trust fund. Please see section III.D., "Fiscal Comments," for details.

The bill takes effect upon becoming law.

The Committee on State Administration adopted a strike-everything amendment that is traveling with the bill. The amendment provides that the employer contributions are held in trust for the employers and restricts the grant of rulemaking authority given to the Department of Management Services to rules governing the receipt and disbursement of trust fund monies.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

This bill creates a clearing trust fund within the Department of Management Services for the employer contributions for PEORP participants.

B. PRESENT SITUATION:

The Public Employee Optional Retirement Program.

Chapter 2000-169, L.O.F., created s. 121.4501, F.S., which regulates an optional defined contribution retirement program, the Public Employee Optional Retirement Program (PEORP), within the Florida Retirement System. The plan is non-contributory, meaning the employer pays the full cost of the retirement benefit. Public employees have the opportunity to choose to participate in either the traditional defined benefit retirement program or the PEORP. Each PEORP participant will direct the investment of the contributions in his or her account.

The PEORP is administered by the Trustees of the State Board of Administration (SBA). The interagency agreement between the SBA and the Department of Management Services outlines the responsibilities of the department for verifying and maintaining participant information and transmitting that information and employer contributions to the third-party administrator for deposit in participants' PEORP accounts.

Election to participate in the PEORP begins June 2002 on a phase-in schedule for current employees. Employees of state entities are given the option to join the optional program between June 1, 2002, and August 31, 2002; employees of education-related employers between September 1, 2002, and November 30, 2002; and, other local government employees between December 1, 2002, and February 28, 2003. The SBA has adopted rules governing the initiation of employer contributions to PEORP participant accounts.¹

Basis for the Creation, Operation, and Termination of Trust Funds.

Constitutional basis for the creation and termination of trust funds.

Section 19(f), Art. III, Fla. Const. (1999), provides for the creation of trust funds. This section, approved by the electors in 1992, provides for the termination of trust funds, and identifies those trust funds that are excepted from the termination requirement.

¹ Rule 19-9, F.A.C., provides that employer contributions for a member electing to participate in the PEORP begin the month immediately proceeding the month in which the election is made.

The constitution requires that the creation of a trust fund be enacted by a three-fifths vote of the membership of each house in a bill that contains only the proposal for creating that trust fund. It also provides that all trust funds in existence at the time of adoption of the constitutional revision were to terminate within four years, and that trust funds created subsequently are to have a term of existence no longer than four years.

Trust funds excepted from the termination provisions include:

- Funds required by federal programs or mandates;
- Funds from which revenues are pledged for the repayment of bonds;
- The state transportation trust fund;
- The fund to which the net proceeds of the Florida Education Lotteries are deposited;
- The Florida retirement trust fund;
- Funds for institutions under the Board of Regents that are created for certain activities;
- Clearing accounts for funds deposited by the chief financial officer or state agencies;
- Trust funds authorized by the constitution; and
- Trust funds for which the state acts as an agent or fiduciary for individual, private organizations, or other governmental units.

Statutory basis for the creation, termination, and re-creation of trust funds.

The Florida Statutes implement the constitutional provisions regarding trust funds. It also provides for legislative review of those funds scheduled for termination and for service charges to be assessed against certain income of trust funds.

Section 215.32, F.S., implements, among other things, s. 19(f), Art. III, Fla. Const. (1999). It provides for the use of trust funds for purposes authorized by law and for which monies have been appropriated. The section provides for the creation and operation of such trust funds by state agencies.

Section 215.3207, F.S., implements s. 19(f)(1), Art. III, Fla. Const. (1999) by providing that a trust fund can only be created upon the enactment of a separate bill by a vote of three-fifths of the membership of each house. It provides that each newly created trust fund, but not those funds being re-created, be enacted into statute and include information as to its name, administering agency, purpose, and sources of money to be credited to the fund.

Section 215.20, F.S., provides that a service charge be assessed against all trust fund revenue that is considered income (as opposed to monies held in the trust fund prior to immediate disbursement, i.e., pass-through funds). Section 215.20(1), F.S., provides that a 7 percent service charge be assessed against funds except those listed in s. 215.22, F.S., which includes trust funds with income related to charges by an agency for services provided to another state agency or the Judicial branch; employee retirement benefit funds; receipts from Medicaid, Medicare, or third-party receipts for client custodial care; trust funds administered by the Departments of Education, Transportation, or Agriculture and Consumer Services; the Tobacco Settlement Trust Funds; and the Save Our Everglades Trust Fund.

Section 215.20(2), F.S., provides certain income derived from agriculture marketing orders and income into the Florida Citrus Advertising Trust Fund be assessed a 3 percent service charge.

Section 215.20(3), F.S., provides for a 0.3 percent service charge to be assessed on the income of a listing of trust funds found in s. 215.20(4), F.S., which includes such funds as the Fuel Tax

Collection Trust Fund, the Phosphate Research Trust Fund, the Local Option Fuel Tax Trust Fund, the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund, the Insurance Commissioner's Regulatory Trust Fund, and the Alcoholic Beverage and Tobacco Trust Fund.

Section 215.24, F.S., provides that those funds that receive federal contributions or private grant money received as a result of a state matching effort may be exempted from the assessment of the service charge under authority provided to the Governor.

C. EFFECT OF PROPOSED CHANGES:

This bill creates the PEORP Clearing Trust Fund within the Department of Management Services. This trust fund will be used to hold employer contributions, submitted pursuant to s. 121.571, F.S. These contributions will be transmitted to the third-party administrator for further distribution to the SBA or private vendors for participants' PEORP accounts. The department administers the trust fund in accordance with the interagency agreement between the department and the SBA. The department holds the distributions in a trustee capacity as a fiduciary for PEORP participants. Since the trust fund's purpose is to act as a clearing fund to temporarily hold monies for disbursement to other accounts, pursuant to s. 19(f), Art. III, Fla. Const., it is excepted from termination. Additionally, the bill specifically exempts the trust fund from service charges imposed by s. 215.20, F.S.

The bill provides general rulemaking authority to the department to implement the provisions of the act. This rulemaking is not tied to a specific power or duty as is required by s.120.536, F.S.

The bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes," above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Any costs associated with the operation of the trust fund and the adoption of rules as provided for in this bill can be absorbed by the department.

It is unclear who is the beneficiary of the interest that accrues on the monies passing through the trust fund. As the bill is written, the PEORP participants are the beneficiaries of the trust. It can be argued that the PEORP participants do not acquire an interest in the contributions until the monies are deposited in participant accounts. Additionally, to apportion the interest among the thousands of PEORP participants could easily become an administrative nightmare. It would better to argue that the contributions are being held in trust for the employers subject to confirmation of participant data. It might then be appropriate to revise the bill to provide that the contributions are being held for the benefit of the employers and that the interest that accrues on the monies flowing through the trust fund are to be annually appropriated as a set-off to employer administrative and educational contribution rates.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The rulemaking authority provided to the department should be tied to a specific activity within the bill. The strike-everything amendment limits the grant of rulemaking to adopting rules to govern the receipt and disbursement of trust fund monies.

C. OTHER COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its February 21, 2002, meeting, the Committee on State Administration adopted a strike-everything amendment that is traveling with the bill. The amendment provides that the employer contributions are held in trust for the employers and limits the grant of rulemaking authority given to the Department of Management Services to rules that govern the receipt and disbursement of trust fund monies.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

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