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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-73, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
FINAL ANALYSIS**

BILL #: HB 1575, 2ND ENG
RELATING TO: FRS Contributions Clearing Trust Fund
SPONSOR(S): Representative(s) Fasano
TIED BILL(S): HB 807, 1st ENG

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 YEAS 19 NAYS 0
- (4)
- (5)

I. SUMMARY:

The Florida Retirement System (FRS) consists of two programs: the defined benefit program, which is the traditional retirement program, and the Public Employee Optional Retirement Program (PEORP), the new optional defined contribution retirement program. The FRS is non-contributory, meaning the employer pays the full cost of the retirement benefit. Membership in the defined benefit program is compulsory; however members may now elect to participate in the PEORP. FRS members begin the election process to participate in the PEORP on June 1, 2002. FRS employer contributions for PEORP participants begin the month immediately after the month the FRS member elects to participate in the PEORP.

This act creates the Florida Retirement System Contributions Clearing Trust Fund within the Department of Management Services. The department administers the fund in a trustee capacity as a fiduciary for FRS employers. The trust fund is to be used as a clearing fund for employer retirement contributions prior to disbursement to the Florida Retirement System Trust Fund, the Public Employee Optional Retirement Trust Fund or other trust funds as authorized by law.

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

This act specifically exempts the trust fund from statutory service charges assessed against trust funds.

This act does not appear to have a fiscal impact on state or local governments.

This act takes effect upon becoming law, which was on April 22, 2002.

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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 checked="" type="checkbox"/> | N/A <input 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 act creates a clearing trust fund within the Department of Management Services for the employer contributions prior to disbursement to operating trust funds.

B. PRESENT SITUATION:

The Defined Benefit Retirement Program

Chapter 121, Part I, F.S., establishes a defined benefit retirement program for public employees in the Florida Retirement System (FRS). The FRS is administered by the Division of Retirement within the Department of Management Services. Membership is compulsory for all employees working in regularly established positions for public employers participating in the FRS (state agencies, county governments, school boards, state universities, community colleges, and some cities and special districts). The program is non-contributory, meaning the employer pays the full cost of the retirement benefit.

The Public Employee Optional Retirement Program

Chapter 121, Part II F.S., establishes the Public Employee Optional Retirement Program (PEORP) within the Florida Retirement System. Likewise, this program is non-contributory, meaning the employer pays the full cost of the retirement benefit. Public employees have the opportunity to choose to participate in the PEORP or remain in the traditional defined benefit retirement program. 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). An 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 utilizing 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

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

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., 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.

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 are:

- 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. 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., 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 certain trust funds listed in s. 215.20(4), F.S., which are 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 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 act creates the Florida Retirement System Contributions Clearing Trust Fund within the Department of Management Services. This trust fund will be used to hold employer contributions until such time as those funds are transferred to the Florida Retirement System Trust Fund, the Public Employees Optional Retirement Trust Fund, or other trust funds as authorized by law. The department administers the trust fund. 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, this act specifically exempts the trust fund from service charges imposed by s. 215.20, F.S.

This act authorizes the department to adopt rules governing the receipt and disbursement to amounts received into the trust fund.

This act takes effect upon becoming law, which was on April 22, 2002.

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 act can be absorbed by the department.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act 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:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This act grants the department authority to adopt rules that govern the receipt and disbursement of trust fund monies.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its February 21, 2002, meeting, the Committee on State Administration adopted a strike-everything amendment that traveled with the bill. The amendment provides that 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.

On March 8, 2002, the Fiscal Responsibility Council adopted one amendment to the Committee on State Administration amendment. This amendment inserts a word that was inadvertently omitted.

On March 19, 2002, the House of Representatives adopted a strike-everything amendment that provided for the creation of the Florida Retirement System Contributions Clearing Trust Fund for the purpose of holding employer contributions prior to disbursement to operating trust funds. The operation of the trust fund is described in the body of this analysis.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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