

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 112
SPONSOR: Communication and Public Utilities Committee and Senator Bennett
SUBJECT: Renewable Energy
DATE: March 9, 2004 REVISED: 03/15/04 03/22/04 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Favorable/CS</u>
2.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>ATD</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	<u>RC</u>	_____

I. Summary:

The bill creates the Florida Alternative Electric Energy Trust Fund within the Florida Public Service Commission. The trust fund is to receive moneys collected pursuant to the Alternative Electric Energy Surcharge and from other sources designated by law, federal moneys made available for alternative energy uses, donations, or money otherwise appropriated from the General Revenue Fund. The purpose of the fund is to provide funding to the Florida Alternative Energy Technology Center in fulfilling its statutory duties. Any balance remaining in the trust fund at the end of a fiscal year is to remain in the trust fund and to be available for carrying out the purposes of the trust fund. The trust fund is scheduled to terminate on July 1, 2008, unless terminated sooner. The Legislature is to review the trust fund before its scheduled termination.

The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Creation and Operation of Trust Funds

A trust fund consists of moneys received by the state which, under law or under trust agreement, are segregated for a purpose authorized by law. s. 215.32(2)(b)1., F.S. Section 19(f), Art. III of the State Constitution, governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the membership of each house of the Legislature. This provision further specifies that a trust fund must be created in a separate bill for that purpose only. The Florida Supreme Court has interpreted this provision to encompass the inclusion of issues relating to the trust fund's purpose, administration and funding, as well as language addressing its regulation and solvency. *Americans Bankers Insurance Company v. Chiles*, 675 So.2d 922 (Fla. 1996). The First District

Court of Appeal construed the three-fifths vote as requiring heightened scrutiny of the bill by the Legislature. *Service Insurance Company v. Chiles*, 660 So.2d 734 (Fla. 1st DCA 1995).

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.

s. 215.3207, F.S.

The Chief Financial Officer is directed to invest all the trust funds and all agency funds of each state agency. s. 17.61, F.S. Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for re-appropriation. s. 216.301(1)(b), F.S. Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act. s. 216.301(1)(c), F.S.

Termination of Trust Funds

Section 19(f)(2), Art. III of the State Constitution, specifies that trust funds created after November 4, 1992, with certain exceptions, shall terminate not more than 4 years after the effective date of the act authorizing the creation of the trust fund, unless the Legislature by law sets a shorter time period. Accordingly, a bill that creates a trust fund should specify the trust fund's date of termination, or, if the trust fund is exempt from the automatic 4-year termination requirement, the bill should declare that the trust fund is exempt from this requirement.¹

The Legislature established a schedule and process for reviewing trust funds. ss. 215.3206 and 215.3208, F.S. Before the regular session of the Legislature and immediately prior to the scheduled termination date of an executive branch trust fund (or an earlier date if specified by the Legislature), the agency responsible for administration of the trust fund and the Governor must recommend to the Legislature whether the trust fund should terminate or be re-created. s. 215.3206(1), F.S. Each recommendation is based on a review of the trust fund's purpose, use, and necessity. A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.

If the trust fund is terminated and not immediately re-created, all cash balances and income of the trust fund are deposited into the General Revenue Fund. s. 215.3206(2), F.S. The agency must pay any outstanding debts of the trust fund as soon as practicable, and the Chief Financial Officer closes out and removes the trust fund from the various state accounting systems, using generally accepted accounting practices concerning warrants outstanding, assets, and liabilities.

¹ See Florida Senate, *Manual for Drafting General Bills* 82 (Sept. 1999).

III. Effect of Proposed Changes:

The bill creates the Florida Alternative Electric Energy Trust Fund within, to be administered by, the Florida Public Service Commission. The trust fund is to receive moneys collected pursuant to the Alternative Electric Energy Surcharge provided in s. 366.95, F.S., and from other sources designated by law, federal moneys made available for alternative energy uses, donations, or money otherwise appropriated from the General Revenue Fund. The purpose of the fund is to provide funding to the Florida Alternative Energy Technology Center in fulfilling its statutory duties. Any balance remaining in the trust fund at the end of a fiscal year is to remain in the trust fund and to be available for carrying out the purposes of the trust fund.

The trust fund is scheduled to terminate on July 1, 2008, unless terminated sooner. The Legislature is to review the trust fund before its scheduled termination.

The bill takes effect July 1, 2004, but does not take effect unless enacted by a three-fifths vote of the membership of each house of the Legislature.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill creates the Florida Alternative Electric Energy Trust Fund to be administered by the Florida Public Service Commission. The bill appears to comply with s. 19(f), Art. III of the State Constitution, relating to creation and termination of trust funds.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The trust fund will enable the Florida Alternative Energy Technology Center to fulfill its duties in assisting in recruiting businesses to relocate in Florida and in establishing a unified approach to research, development, and use of alternative energy technology in Florida, which will benefit citizens, universities, and other state entities and private companies.

C. Government Sector Impact:

The trust fund will enable the Florida Alternative Energy Technology Center to fulfill its duties in assisting in recruiting businesses to relocate in Florida and in establishing a unified approach to research, development, and use of alternative energy technology in Florida, which will benefit citizens, universities, and other state entities and private companies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill creates the Florida Alternative Electric Energy Trust Fund to provide funding to the Florida Alternative Energy Technology Center. The bill that creates the Florida Alternative Energy Technology Center is CS/SB 1316. This bill should be linked to the passage of that bill.

VIII. Amendments:

#1 by Natural Resources:

This amendment links the passage of this bill to SB 1316. Provides that this bill does not take effect unless SB 1316, or other legislation creating a funding mechanism for this trust fund, is enacted in the same legislative session, or an extension thereof.