

# 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: SB 2090

SPONSOR: Senators Villalobos and Smith

SUBJECT: Trust Funds

DATE: March 18, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>HC</u>	_____
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill creates the Elder Victims Trust Fund within the Department of Elder Affairs. Funds will be used to investigate and prosecute financial exploitation against elderly persons. Moneys will also be used to fund education initiatives on financial exploitation for elderly persons, law enforcement, the judicial system, social service professionals and the public.

The trust fund terminates on July 1, 2008, and must be reviewed before that date.

This bill creates section 410.706 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.<sup>1</sup> 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.<sup>2</sup> 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).

<sup>1</sup> s. 215.32(2)(b)1., F.S.

<sup>2</sup> s. 19(f)(1), Art. III of the State Constitution.

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.<sup>3</sup>

The Chief Financial Officer is directed to invest all the trust funds and all agency funds of each state agency.<sup>4</sup> Under current law, any balance of an appropriation for any given fiscal year that remains 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.<sup>5</sup> 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.<sup>6</sup>

#### ***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.<sup>7</sup>

The Legislature established a schedule and process for reviewing trust funds.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> The agency must pay any outstanding debts of the trust fund as soon as practicable, and the Chief Financial Officer closes

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<sup>3</sup> s. 215.3207, F.S.

<sup>4</sup> s. 17.61, F.S.

<sup>5</sup> s. 216.301(1)(b), F.S.

<sup>6</sup> s. 216.301(1)(c), F.S.

<sup>7</sup> See Florida Senate, *Manual for Drafting General Bills* 82 (Sept. 1999).

<sup>8</sup> s. 215.3206 and S. 15.3208, F.S.

<sup>9</sup> s. 215.3206(1), F.S.

<sup>10</sup> s. 215.3206(2), F.S.

out and removes the trust fund from the various state accounting systems, using generally accepted accounting practices concerning warrants outstanding, assets, and liabilities.

### **III. Effect of Proposed Changes:**

This bill creates the Elder Victims Trust Fund in the Department of Elder Affairs. Funds credited to the trust fund will be used to investigate and prosecute financial exploitation against elderly persons, and for education initiatives targeting elderly persons, law enforcement, the judiciary, social service professionals and the public.

This bill also requires that balances in the trust fund at the end of each fiscal year shall remain in the fund and be available for carrying out the purposes of the fund, precluding appropriations from the General Revenue Fund or other sources from reverting if the appropriations are not used during the fiscal year for which they were provided.

Pursuant to s. 19(f)(2) of Article III of the state constitution, this trust fund shall terminate on July 1, 2008. Before it terminates, it shall be reviewed in accordance with s. 215.3206(1) and (2), F.S.

#### **Contingent Effective Date**

This bill provides that it takes effect July 1, 2004, contingent on its enactment by a three-fifths vote of the membership of both the Senate and the House of Representatives.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

This bill creates the Elder Victims Trust Fund to be administered by the Department of Elder Affairs. This bill appears to comply with s. 19(f), Art. III of the State Constitution, relating to the creation and termination of trust funds.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill creates an Elder Victims Trust Fund but does not provide appropriations for the program.

This bill requires the Department of Elder Affairs to administer the program and to provide initiatives educating the elderly and other members of the public, law enforcement, the judiciary, and social service professionals.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

This bill authorizes any balance in the trust fund at the end of the fiscal year to remain within the fund, rather than revert back to General Revenue. This bill cites s. 216.351, F.S., which provides that subsequent inconsistent laws shall supersede this chapter “only to the extent that they do so by express reference to this section” in support of this provision. This appears to be an exception to s. 216.301, F.S., which requires that all unexpended funds revert back at the end of the fiscal year to the fund from which they were appropriated, so that the Legislature retains control over the unspent balances and decides whether the need exists to re-appropriate the funds.

**VIII. Amendments:**

#1, Judiciary:

Technical; inserts bill number of linked bill.