

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.)

Prepared By: Commerce and Consumer Services Committee

BILL: SB 1776

SPONSOR: Senator Clary

SUBJECT: State Homeland Security Trust Fund

DATE: March 29, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	Cooper	CM	Pre-meeting
2.	_____	_____	DS	_____
3.	_____	_____	JU	_____
4.	_____	_____	GE	_____
5.	_____	_____	TA	_____
6.	_____	_____	WM	_____

I. Summary:

Senate Bill (SB) 1776 creates the State Homeland Security Trust Fund to be administered by the Division of Emergency Management within the Department of Community Affairs. The bill is intended to implement the purposes of the “Travel to and Commerce with Terrorist Nations Act,” created in SB 1788 or similar legislation creating the act.

This bill creates the following section of the Florida Statutes: 288.833.

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.¹ Section 19(f), Art. III, 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.² 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.³ The First District Court of Appeal has construed the three-fifths vote as requiring heightened scrutiny of the bill by the Legislature.⁴

¹ Section 215.32(2)(b)1., F.S.

² Section 215.3207, F.S.

³ *American Bankers Insurance Company v. Chiles*, 675 So.2d 922 (Fla. 1996).

⁴ *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.⁵

The Chief Financial Officer is directed to invest all the trust funds and all agency funds of each state agency.⁶ 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.⁷ 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.⁸

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.⁹

The Legislature established a schedule and process for reviewing trust funds.¹⁰ 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. 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. 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.

⁵ Section 215.3207, F.S.

⁶ Section 17.61, F.S.

⁷ Section 216.301(1)(b), F.S.

⁸ Section 216.301(1)(c), F.S.

⁹ See, Florida Senate, *Manual for Drafting General Bills* 82 (Sept. 1999).

¹⁰ Sections 215.3206 and 215.3208, F.S.

III. Effect of Proposed Changes:

Section 1 creates the State Homeland Security Trust Fund to be administered by the Division of Emergency Management within the Department of Community Affairs. Funds shall be credited to the trust funds as provided in s. 288.857(4)(c), F.S., to be used for purposes of the "Travel to and Commerce with Terrorist Nations Act." 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 bill also provides that the trust fund will terminate on July 1, 2009, unless terminated sooner. The Legislature is required to review the trust fund before its scheduled termination pursuant to s. 215.3206(1) and (2), F.S.

Section 2 provides this legislation will become effective on July 1, 2005, if SB 1788 or similar legislation creating the "Travel to and Commerce with Terrorist Nations Act" is passed or enacted.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill creates the State Homeland Security Trust Fund to be administered by the Division of Emergency Management within the Department of Community Affairs.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
