

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Present situation:

The creation, recreation and termination of trust funds are governed by provisions in both the Florida Constitution and the Florida Statutes (F.S.).

Section 19(f), Article III of the Florida Constitution governs the creation of trust funds. It provides that no trust fund of the state or other public body may be created without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

The Florida Constitution also specifies that state trust funds shall terminate not more than 4 years after the effective date of the act authorizing the initial creation of the trust fund, unless the Legislature by law sets forth a shorter time period. Specified trust funds are exempted from this provision.¹

Section 215.3206, F.S., requires agencies to recommend to the Speaker of the House of Representatives and the President of the Senate whether the trust fund should be terminated or re-created in the year prior to the scheduled termination date of any existing trust fund.

Section 215.32(b), F. S., governs the segregation of trust funds. In order to meet accounting standards established by the Government Accounting Standards Board, this section was amended in 2004 to require that, to the extent possible, each agency shall use certain trust funds as a depository for funds to be used for day-to-day operations for uniform specified purposes. These include the following trust funds:

- Operating trust fund—for program operations funded by program revenues.
- Operations and maintenance trust fund –client services funded by third-party payors.
- Administrative trust fund –for management activities that are departmental by nature and funded by indirect cost earnings and assessments against trust funds.
- Grants and donations trust fund – for allowable grant or donor agreement activities funded by restricted contractual revenue from private and public non-federal sources.
- Agency working capital trust fund – for the operation of data processing centers.
- Clearing funds trust fund – for collections pending distribution to lawful recipients.
- Federal grant trust fund – for allowable grant activities funded by restricted program revenues from federal sources.

The 2004 revision to s. 215.32, F.S., further required any agencies that did not have the trust funds specified above, but used other trust funds for the specified purposes of the above referenced trust

¹ Exempt are trust funds required by federal programs or mandates; trust funds established for bond covenants, indentures, or resolutions, whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body; the state transportation trust fund; the trust fund containing the net annual proceeds from the Florida Education Lotteries; the Florida retirement trust fund; trust funds for institutions under the management of the Board of Governors, where such trust funds are for auxiliary enterprises and contracts, grants, and donations, as those terms are defined by general law; trust funds that serve as clearing funds or accounts for the chief financial officer or state agencies; trust funds that account for assets held by the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and other trust funds authorized by the Florida Constitution.

fund, to request the creation of the trust fund during the next scheduled review of the agency's trust funds, pursuant to s.215.3206, F.S.

As a result agencies have been requesting the creation of the above noted trust funds as needed at the time of their required recommendation regarding trust fund recreations or terminations.

Currently, revenues are deposited into designated clearing accounts for distribution. The department has statutory authority to use a percentage of those revenues to administer the General Tax Administration Program. The department distributes the appropriate amount from each revenue source and deposits it into the Administrative Trust Fund.

Proposed changes:

The creation of this trust fund will allow the department to receive funds to be used for operations within the General Tax Administration (GTA) program. The GTA program is responsible for remittance and distribution of multiple taxes in Florida. Under Florida Statutes, the department is authorized to recoup its operating costs on certain taxes. This trust fund will serve as the operating fund depository for those funds.

The creation of this trust fund will align agency accounts with the requirements of s. 215.32, F.S.

The trust fund will terminate in four years, on July 1, 2012, pursuant to s. 19 (f)(2), Art. II of the State Constitution, unless recreated by the Legislature.

C. SECTION DIRECTORY:

Section 1. Creates the Operating Trust Fund within the Department of Revenue for use as a depository for funds to be used for program operations funded by program revenues. Requires termination of the trust fund on July 1, 2012, unless re-created.

Section 2. Provides an effective date of July 1, 2008.

II. 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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable

2. Other:

This bill creates a new trust fund and must pass the Legislature by a three-fifths vote of the membership of each house to become law pursuant to s. 19 (f), Article III of the State Constitution.

B. RULE-MAKING AUTHORITY:

Not required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.