

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, of the Florida 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.

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.²

The Chief Financial Officer is directed to invest all the trust funds and all agency funds of each state agency.³ 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.⁴ 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.⁵

State trust funds terminate no more than 4 years after the effective date of the act that created them, unless they are re-created by the Legislature with a three-fifths vote of the Florida House of Representatives and the Florida Senate.

Lead-based Paint Inspection and Abatement Regulations

In Florida, professionals conducting lead-based paint abatements, inspections, and risk assessments are regulated by the U.S. Environmental Protection Agency (EPA). The EPA requires individuals conducting lead-based paint activities (abatement, inspection, and risk assessment) in target housing and child-occupied facilities to be trained and certified. The trainers are accredited to ensure quality, and certified individuals must follow specific work practices ensuring that lead hazards are addressed.⁶

¹ Section 215.32(2)(b)1., F.S.

² Section 215.3207, F.S.

³ Section 17.61, F.S.

⁴ Section 216.301(1)(b), F.S.

⁵ Section 216.301(1)(c), F.S.

⁶ U.S. Environmental Protection Agency. Found at: <http://www.epa.gov/lead/pubs/traincert.htm#purpose> (last visited on March 24, 2008)

The goal of the EPA's regulations is to protect the public from hazards of improperly conducted lead-based paint activities. The federal regulations contain several elements, including:

- Training and certification requirements to ensure the proficiency of contractors who offer to conduct lead-based paint inspection, risk assessment and abatement services in residences and day care centers.
- Accreditation requirements to ensure that training programs provide quality instruction in current and effective work practices.
- Work practice standards to ensure that lead-based paint activities are conducted safely, reliably and effectively.

The program applies only in those states, territories and Indian Tribes that are not authorized by the EPA to operate their own lead program. Currently 39 states and the District of Columbia conduct their own accreditation and certification program under the authority of the EPA. Federal authority for the program comes from the Residential Lead-Based Paint Hazard Reduction Act of 1992 (PL. 102-550) and related regulations.

According to the DOH, the EPA currently operates this program in Florida and collects the generated revenue from 131 accredited training providers, 117 certified firms, and 364 certified individuals (who have a total of 503 professional certifications). These entities currently pay fees to the EPA of approximately \$565,756 over a 3 to 4-year period for their accreditation and certification.

III. Effect of Proposed Changes:

Section 1. Provides for the creation of the Lead Poisoning Prevention Trust Fund within the DOH. Funds credited to the trust fund shall consist of fees generated from examinations and certification required under the Florida Lead-based Paint Reduction Program pursuant to s. 381.99, F.S.

Notwithstanding s. 216.301, F.S., and pursuant to s. 216.351, F.S., any balance in the trust fund at the end of any fiscal year shall remain in the fund and be available for carrying out the purposes of the trust fund.

In accordance with s. 19(f)(2), Art. III of the State Constitution, the trust fund shall, unless terminated sooner, be terminated on July 1, 2012. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2), F.S.

Section 2. Provides that the bill takes effect July 1, 2008, if SB 2456, or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill are directly affected by the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution. The bill is a separate bill, contains the necessary sunset provision, and meets other constitutional requirements, and as such, will require a three-fifths vote for adoption.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Page 1, line 27. The bill establishes the trust fund pursuant to the Florida Lead-based Paint Reduction Program created by the linked bill, SB 2456. It is recommended that a technical amendment specifying the linked bill should be adopted.

VII. Related Issues:

It is unclear why a separate trust fund specific to this program is required. An existing trust fund within the DOH may be available for this purpose.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 750244 by Health Regulation on March 26, 2008:

Specifies a cross reference in the effective date to a linked bill (SB 2456) that creates the Lead-Based Paint Reduction Program.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
