

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 970

INTRODUCER: Senator Bracy

SUBJECT: Florida Compensation Trust Fund for Survivors of Human Trafficking/Department of Law Enforcement

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 970 creates the Florida Compensation Trust Fund for Survivors of Human Trafficking within the Florida Department of Law Enforcement. The trust fund's purpose is to administer claims for compensation for survivors of human trafficking.

The Florida Constitution requires a bill creating a new trust fund to pass by a three-fifths vote of the membership of each chamber of the Legislature. State trust funds must terminate not more than four years after the initial creation of the fund unless the Legislature sets a shorter time.

In accordance with the Florida Constitution, the trust fund is terminated on July 1, 2021.

The bill requires the trust fund create a public-private partnership by establishing a not-for-profit foundation for receipt of charitable contributions. **(See Section IV. Constitutional Issues).** The bill also specifies the foundation's purposes.

The bill is effective July 1, 2017, if SB 972 or similar legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in the world who are in some sort of forced labor or sexual exploitation. Of that number, an

estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.¹

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.²

Civil Cause of Action for Human Trafficking

SB 972 Human Trafficking

SB 972, which is linked to SB 970, creates a civil cause of action for a minor victim of human trafficking to bring against the trafficker³ or facilitator⁴ of human trafficking who victimized the minor. The minor victim may recover actual and punitive damages and may seize and have forfeited the personal and real property of the trafficker or facilitator used in the trafficking.

SB 972 allows the following representatives to bring a civil action on behalf of the minor human trafficking victim:

- A parent or guardian of a minor human trafficking victim;
- A person or entity acting on behalf of the minor with the consent of the minor or his or her guardian; or
- The personal representative of the estate of a deceased victim who was a minor.

SB 972 also allows a civil action to be brought on behalf of and for the benefit of the Florida Compensation Trust Fund for Survivors of Human Trafficking.

A victim or the trust fund on the behalf of the victim must prove his or her case by the greater weight of the evidence. If the victim or the trust fund prevails, he or she is entitled to recover reasonable attorney fees, reasonable investigative expenses, court costs, economic and noneconomic damages, forfeited personal and real property, and any other applicable civil penalties. These remedies are in addition to and cumulative with other legal and administrative remedies available to a victim of human trafficking.

The court must also impose a civil penalty against the defendant for \$100,000 in favor of the victim or the trust fund.

¹ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at http://ojp.gov/newsroom/factsheets/ojps_humantrafficking.html (last visited March 26, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited March 26, 2017).

² See ss. 787.06(3) and (4), F.S.

³ SB 972 defines a "trafficker" or "human trafficker" as any person who knowingly, or in reckless disregard of the facts, engages in human trafficking of a minor, attempts to engage in human trafficking of a minor, or benefits financially by receiving anything of value from participation in a venture that has subjected a minor to human trafficking.

⁴ SB 972 defines "facilitator" as assisting or providing services to a human trafficker, which assist or enable a trafficker to carry out human trafficking activities, or one who provides such assistance or provides such services.

SB 972 specifies that the personal or real property of a person who knowingly or through willful blindness allowed his or her property to be used to facilitate human trafficking is subject to civil forfeiture. This is only subject to the disposition of valid and lawful leases or recorded mortgages or liens of innocent third parties that were in effect before the date of the arrest of a trafficker or perpetrator and the filing of the civil action.⁵

If a victim or the trust fund proves the civil forfeiture by the greater weight of the evidence, without having to prove an actual amount of money damages of any individual victim or victims, he or she is entitled to seize the personal and real property of traffickers, perpetrators, and facilitators. The forfeited property must be used or disposed of for the benefit of the prevailing victim or the trust fund.

There is no statute of limitations for these civil actions or civil forfeiture cases.

SB 972 provides that the Governor must appoint the administrator of the trust fund, and a three-person panel to fairly evaluate and pay compensation claims based upon the individual circumstances of each victim and the availability of current funds or future funds received. The trust fund administrator must establish guidelines and prepare and submit an implementation plan, and any amendments to the plan, to the Governor. The Executive Office of the Governor must also prepare and issue an annual report on the compliance of the trust fund with its duties. SB 972 specifies that applications for compensation must be available in at least English and in Spanish.

III. Effect of Proposed Changes:

The bill creates the Florida Compensation Trust Fund for Survivors of Human Trafficking within the Florida Department of Law Enforcement (FDLE). The trust fund's purpose is to administer claims for compensation for survivors of human trafficking.

The bill specifies that the trust fund be established to receive and administer funds from civil actions brought on behalf of the trust fund. The funds include, but are not limited to:

- Money from seizures of personal and real property;
- Penalties imposed by the courts;
- Funds received from any other public or private sources; or
- Funds received from the Legislature.

The bill requires the trust fund create a public-private partnership by establishing a not-for-profit foundation for receipt of charitable contributions. (See Section IV. Constitutional Issues). The foundation's purposes include, but are not limited to:

- Educating the public about the recruitment, trafficking, and exploitation of persons in connection with human trafficking;
- Assisting in the prevention of the recruitment of minors in Florida schools for exploitation;
- Establishing a survivor's resource center for legal services, social services, safe harbors, safe houses, and language services available to survivors of human trafficking;

⁵ The applicability of this provision is unclear.

- Advertising the National Human Trafficking Resource Center hotline number and the BeFree Textline;
- Assisting in the coordination between law enforcement and service providers; and
- Assisting in vacating any convictions of minors who were victims of human trafficking.

In accordance with section 19(f)(2), Art. III, of the Florida Constitution, the trust fund must, unless terminated sooner, be terminated on July 1, 2021. Before its scheduled termination, the trust fund must be reviewed as provided in s. 215.3206(1) and (2), F.S.

The bill is effective July 1, 2017, if SB 972 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:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Section 19(f), Art. III, of the Florida Constitution requires that a bill that creates a new trust fund must:

- Terminate not more than four years after the effective date of the bill creating the trust fund. The Legislature may set a shorter time period.
- Pass both chambers of the Legislature by a three-fifths vote of the membership of each chamber.

The bill contains a termination date of July 1, 2021, for the created trust fund.

D. Other Constitutional Issues:

Section 19(f), Art. III, of the Florida Constitution requires a bill that creates a new trust fund must be in “a separate bill for that purpose only.” The bill creates a public-private partnership by establishing a not-for-profit foundation. The bill also specifies the purposes of the foundation. Having these requirements in the bill violates section 19, Art. III, of the Florida Constitution and should be removed.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE does not believe the bill will have fiscal impact on the department.⁶

VI. Technical Deficiencies:

The bill takes effect on the same date that “SB ____” or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law. The effective date of the bill will need to be linked to a specific Senate bill. SB 972 (2017) is the bill connected to this bill.

VII. Related Issues:

The bill seems to create a citizen support or direct-support organization by establishing a not-for-profit foundation to receive charitable contributions and provide services to the community. If this were the case, the organization would be subject to reporting and auditing requirements under ss. 16.616 and 20.058, F.S. The bill does not explicitly define the not-for-profit foundation as a citizen support or direct-support organization, so it is unclear the applicability of reporting requirements.

Current statutes that establish similar organizations also include general guidelines and requirements for the organization including, but not limited to: composition of the board of directors, annual reporting requirements, and how funds can be spent.⁷ The bill does not include any such guidelines.

Lines 25-26 state that the purpose of the fund is to “create a public-private partnership by establishing a not-for-profit foundation.” It is unclear if any of the foundation’s operational expenses are intended to be funded by the trust fund. If monies from the trust fund are to be accessed by the foundation, a contractual agreement between the FDLE and the not-for-profit organization would be required and the bill should state this.

This bill places fiscal responsibility for the trust fund in FDLE. SB 972 places responsibility for operational accountability, compliance, and reporting on trust fund activities in the Executive Office of the Governor. Consolidating responsibility and management of the trust fund in one agency may improve efficiency and accountability.

VIII. Statutes Affected:

This bill creates section 787.062 of the Florida Statutes.

⁶ 2017 Florida Department of Law Enforcement Bill Analysis, *SB 970*, February 20, 2017, (on file with the Senate Criminal Justice Committee).

⁷ See ss. 16.616, 288.955, and 744.2105, F.S.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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