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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 1979 (PCB FPR 01-06)
RELATING TO: Administration of Agency Trust Funds
SPONSOR(S): Committee on Fiscal Policy & Resources and Representative Wallace
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) FISCAL POLICY & RESOURCES YEAS 10 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

PCB FPR 01-06 amends statutory provisions in chapters 215 & 216, F.S., controlling the operation of trust funds. It defines a set of trust funds that are used by agencies in day-to-day operations. It provides for criteria with which to analyze a trust fund identified for termination, and provides for two additional requirements upon the re-creation of a trust funds: a maximum operating level not to exceed 20 percent of the average two year balance, and the creation of a mechanism to suspend the flow of taxes or fees into a trust fund when that fund exceeds its maximum operating level.

This PCB also provides for additional detail on trust fund operations to be submitted in the annual legislative budget request.

Finally, PCB FPR 01-06 amends ss. 18.10 and .125, F.S., to provide that investment earnings shall be credited to the General Revenue Fund unless otherwise provided by law.

There does not appear to be a fiscal impact on the State.

Unless otherwise provided, the PCB takes effect July 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Basis for the Creation, Operation, and Termination of Trust Funds.

Constitutional basis for the creation and termination of trust funds.

Section 19(f), Art. III, Fla. Const. (1999), provides for the creation of trust funds. This section, adopted by the voters in 1992, provides for the termination and recreation of trust funds, and identifies those trust funds that are to be excepted from the termination requirement.

The constitution requires that the creation of a trust fund be done by a three-fifths vote of the membership of each house upon a bill that contains only the proposal for creating that trust fund. It also provides that all trust funds in existence at the time of adoption were to terminate within four years, and that trust funds created subsequently were to have a term of existence no longer than four years.

Trust funds to be excepted from the termination provisions include:

- Funds required by federal programs or mandates;
- Funds from which revenues are pledged for the repayment of bonds;
- The state transportation trust fund;
- The fund to which the net proceeds of the Florida Education Lotteries are deposited;
- The Florida retirement trust fund;
- Funds for institutions under the Board of Regents that are created for certain activities; clearing accounts for funds;
- Trust funds authorized by the constitution; and
- Trust funds for which the state acts as an agent or fiduciary for individual, private organizations, or other governmental units.

Statutory basis for the creation, termination, and re-creation of trust funds.

The Florida Statutes implements the constitutional provisions regarding trust funds. It also provides for Legislative review of those funds scheduled for termination, additional criteria for the creation of new trust funds, and for service charges to be assessed against certain income of trust funds.

Section 215.32, F.S. implements, among other things, s. 19(f), Art. III, Fla. Const. (1999). It provides for the use of trust funds for purposes authorized by law and for which monies have been appropriated. The section provides for the operation of such trust funds by state agencies. It also provides for the transfer in the General Appropriation Act of unallocated monies within trust funds to the Budget Stabilization Fund or the Working Capital Fund, except for those funds in a listing that is identical to that found in the constitution.

Section 215.3206, F.S., implements s. 19(f)(2), Art. III, Fla. Const. (1999) relating to the termination and creation of trust funds. It provides instructions to the agencies, Governor, and Chief Justice on the method of identifying trust funds scheduled for termination, for making recommendations whether to terminate or re-create a trust fund scheduled for termination, and when recommending re-creation, for proposing modifications. The section also provides instructions for the closing out of a terminated trust fund.

Section 215.3207, F.S., implements s. 19(f)(1), Art. III, Fla. Const. (1999) by providing that a trust fund can only be created upon the enactment of a separate bill by a vote of three-fifths of the membership of each house. It provides that each newly created trust fund, but not those funds being re-created, be enacted into statute and include information as to its name, administering agency, purpose, and sources of money to be credited to the fund. Currently, there are a number of re-created trust funds for which authority only exists in chapter law, not the Florida Statutes.

Section 215.3207, F.S., provides a mechanism for review of trust funds proposed for termination by the Legislature. It provides the method of identification of the trust fund under review and also provides that the Legislature may review accounts within a trust fund. When the Legislature terminates a trust fund, the section provides for the disposition of all monies, unencumbered or encumbered within that fund.

Section 215.20, F.S., provides that a service charge be assessed against all trust funds revenue of an income nature. Section 215.20(1), F.S., provides that a 7 percent service charge be assessed against funds except those listed in s. 215.22, F.S., which includes trust funds with income related to charges by an agency for services provided to another state agency or the Judicial branch, retirement of employee benefit funds; receipts from Medicaid, Medicare, or third-party receipts for client custodial care; trust funds administered by the Department of Education, Transportation, or Agriculture and Consumer Services; the Tobacco Settlement Trust Funds, and the Save Our Everglades Trust Fund.

Subsection (2) provides certain income derived from agriculture marketing orders and income into the Florida Citrus Advertising Trust Fund be assessed at 3 percent.

Subsection (3) provides for a 0.3 percent to be assessed the income of a listing of trust funds found in subsection (4), which includes such funds as the Fuel Tax Collection Trust Fund, the Phosphate Research Trust Fund, the Local Option Fuel Tax Trust Fund, the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund, the Insurance Commissioner's Regulatory Trust Fund, and the Alcoholic Beverage and Tobacco Trust Fund.

Section 215.24, F.S., provides that for those funds that are the recipient of federal contributions or private grants that are received as a result of a state matching effort maybe exempted from the assessment of the service charge under authority provided to the Governor.

Statutory basis for the operation of agency trust funds.

Trust funds are the receivers of monies as directed by substantive law and which are to be used for those purposes directed by law. The law creating a program and the related trust fund provide for the receipt and deposit of funds from identified sources such as fees, taxes, bond receipts, grants-in-aid and donations and for the disbursement of those monies to identified recipients.

The state operates approximately 450 trust funds as the recipient of those monies earmarked in the General Appropriations Act for specific purposes. In practice, these appropriations continue from year-to-year without much change, except for adjustments for inflation or program activity. Because of statutory limitations on the operations of most trust funds, the Legislature has little discretion in allocating money allocated in trust funds among programs. For Fiscal Year 2000-2001, \$31.2 billion, or 60.8 percent, of the \$51.2 billion appropriated went into trust funds. Of that \$31.2 billion, over half went to 9 major trust funds:

Major Trust Fund	Appropriations in millions
• Medical Care TF	\$5,095.5
• State Transportation TF	\$3,804.1
• Fla. Retirement TF	\$2,421.9
• Local Gov't ½cent Sales Tax TF	\$1,294.9
• Public Education Capital Outlay	\$1,227.2
• Educational Enhancement TF	\$921.2
• Unemployment Compensation TF	\$850.0
• Tobacco Settlement TF	\$448.6
• Public Medical Assistance TF	\$380.3
• Total for the listed Trust Funds	\$16,500.0
• All other Trust Funds	\$14,700.0
• Total for all Trust Funds	\$31,200.0

The operation of any trust fund is specific to the operation of its program. However, general provisions concerning the creation and accounting of trust fund monies are described in chapter 215, F.S., addressing the general provisions relating to state financial matters, and chapter 216, F.S., relating to planning and budgeting.

Particular to this bill, s. 216.023, F.S., directs agencies of the executive and judicial branches to submit final legislative budget requests and describes the requirements for such submittals. These requirements are expanded in budget instructions to include exhibits and schedules. The appropriations committees and the Executive Office of the Governor develop these instructions during the interim after the completion of the legislative session and before the time of submittal of the annual legislative budget request. Schedule 1 of the budget instructions provides directions to the agencies regarding the treatment of trust funds within the appropriations process.

Treasurer's Duties Regarding Deposits and Investments of State Money.

Section 18.10, F.S., provides for the duties of the Treasurer to deposit and invest the monies of the state as fully as can be consistent with the cash requirements of the state. Section 18.10(4), F.S., provides that all earnings made by the Treasurer are to be credited to the General Revenue Fund, excepted those funds made available pursuant s. 18.125(3), F.S., are to be credited on a pro rata basis to the fund from where the money originated.

Section 18.125, F.S., provides additional authority to the Treasurer to invest all general revenue funds, all trust funds, and all agencies funds of each state agency. Directs each agency to make available the money in those funds under its direction to the Treasurer for investment.

C. EFFECT OF PROPOSED CHANGES:

PCB FPR 01-06 amends statutory provisions controlling the operation of trust funds. It defines a set of trust funds that are used by agencies in day-to-day operations. It provides for criteria with which to analyze a trust fund identified for termination, and provides for two additional requirements for the re-creations of a trust funds: a maximum operating level not to exceed 20 percent of the average two year balance, and the creation of a mechanism to suspend the flow of taxes or fees into a trust fund when that fund exceeds its maximum operating level.

This PCB also provides for additional detail on trust fund operations to be submitted in the annual legislative budget request.

Finally, PCB FPR 01-06 provides that investment earnings shall be credited to the General Revenue Trust Fund unless otherwise provided by law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Revises s. 18.10(4), F.S., to provide that investment earnings shall be credited to the General Revenue Fund except otherwise distributed by law.

Section 2. Revises s. 18.125(3), F.S., to provides that agencies of the executive branch and the judicial branch make such moneys in funds under their control available for investment. Removes notification requirement of agencies to identify moneys for investment, the fund for which the investment is to be made, and the life of the investment if the principal sum is to be required for meeting obligations.

Section 3. Amends s. 215.32, F.S., to provide for a set of trust fund types to be used by agencies in day-to-day operations, effective July 1, 2003.

Section 4. Amends s. 215.3206, F.S., to provide that the Legislature shall include in a bill re-creating a trust fund, a mechanism that would provide for the periodic suspension of fees and taxes flowing into a trust fund until the fund no longer exceed its maximum operating level as directed by law, or provide a mechanism for the periodic transfer of unallocated funds from the funds accounts.

Section 5. Amends s. 215.3208(1), F.S., to provide criteria upon which the Legislature may base its review of a trust fund that is scheduled to be terminated. These criteria allow for an analysis of the operation of a trust fund to determine whether the revenues flowing through the fund are sufficient relative to the expenditures required of the programs funded by through the trust fund. The Legislature may adjust the types and amounts of revenues allocated to the trust fund to reflect the expenditures associated with operating the identified programs.

The amendment also directs the legislature to establish for each re-created trust fund a maximum operating level that is no more than 20 percent above the average trust fund balance for the previous 2 years, except as otherwise provided by law.

Section 6. Amends s. 216.023, F.S., to require additional detail on trust funds that within a legislative budget request.

Each agency is to provide summary information on expenditures made from the fund with respect to mechanism used for the expenditure: the General Appropriations Act, by a budget amendment authorized under s. 216.292, F.S. (authorizing the transfer of up to 5 percent of an originally approved budget between budget categories of a budget entity), s. 216.177(2), F.S., (budget amendments approved by the legislative Budget Commission), or by another mechanism, which must be specifically listed. Each agency is to also provide summary information on revenues by the types received: general funding sources, specific taxes and fees, and funding sources other than state appropriations.

An agency is provide a narrative describing the circumstances leading to a certified forward trust fund balance that is greater than 50 percent of the amount appropriated for the trust fund in General Appropriations Act of the last complete fiscal year.

With the submission of the legislative budget request for fiscal year 2004-05, each agency is to provide an affirmation that the trust funds it operates are done so consistent with the definitions of the trust fund types described in s. 215.32(1)(b), F.S., (section 3, above). Finally, requires the Executive Office of the Governor and the Comptroller to submit a report annually to the legislature that identifies those trust funds that are not operated consistently with section 215.32(1)(b),F.S.

Section 7. Provides an effective date, except as otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The provisions of this bill should not impact on the state's revenues so long as trust funds operate within the maximum operating level designated for each fund. A fund that exceeds its maximum operating level and for which the Legislature has enacted a suspension mechanism would see a reduction in the amount of revenue received for the period the fund is over that level and the suspension mechanism is in effect.

2. Expenditures:

Expenditures of a program funded from trust fund proceeds should not be impacted.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

See section II.C., Effect Of Proposed Changes, for discussion.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON FISCAL POLICY & RESOURCES:

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