

STORAGE NAME: h0503s2.frc.doc
DATE: April 5, 2001

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: CS/CS/HB 503
RELATING TO: Public Employees Optional Retirement Trust Fund
SPONSOR(S): Fiscal Responsibility Council, Committee on State Administration and Representative Fasano
TIED BILL(S): HB 347

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

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 11 NAYS 0
 - (3) FISCAL RESPONSIBILITY COUNCIL YEAS 16 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

Last year, Chapter 2000-169, Laws of Florida, created the Public Employee Optional Retirement Program (PEORP), within the Florida Retirement System and in compliance with the provisions of the Internal Revenue Code. The plan is non-contributory, meaning the employer pays the full cost of the retirement benefit. Public employees will have the opportunity to choose to participate in either the defined benefit retirement program (the current plan) or the defined contribution program. However, there is no trust fund for employers to deposit contributions.

This bill creates s. 121.4502, F.S., which establishes the Public Employee Optional Retirement Program Trust Fund to be administered by the State Board of Administration. This bill provides that the trust fund is created to hold the assets of PEORP in trust for the exclusive benefit of such program's participants; that the trust fund is exempt from service charges; and, that any balance in the trust fund at the end of any fiscal year is to remain in the trust fund, and be available for carrying out its purposes.

This bill authorizes the State Board of Administration to adopt rules in order to maintain the trust fund's qualified status under section 401(a) of the Internal Revenue Code, as long as such rules do not make substantive changes to PEORP.

There is no fiscal impact.

This bill takes effect July 1, 2001, if passed by a three-fifths vote of the membership of each house and contingent upon the passage of HB 347 or similar legislation.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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:

This bill creates a trust fund in the State Treasury.

B. PRESENT SITUATION:

Section 19(f) of Article III of the State Constitution provides limitations on trust funds. The State Constitution provides a trust fund can only be created by a three-fifths vote of the membership of each house of the legislature and must be in a separate bill for that purpose only.

Also, the State Constitution states that trust funds must terminate not more than four years after the effective date of the act authorizing the creation of the trust fund. By law the legislature may set a shorter time period for which any trust fund is authorized. However, the State Constitution exempts certain trust funds from the termination requirement, including trust funds required by federal program or mandates.¹

Chapter 2000-169, L.O.F., created s. 121.4501, F.S., which establishes an optional defined contribution retirement program, the Public Employee Optional Retirement Program (PEORP), within the Florida Retirement System, in compliance with the provisions of section 401(a) of the Internal Revenue Code.² The plan is non-contributory, meaning the employer pays the full cost of the retirement benefit. Public employees will have the opportunity to choose to participate in either the defined benefit retirement program (the current plan) or the defined contribution program.

The optional retirement program is administered by the Trustees of the State Board of Administration (SBA). The SBA is in the process of contracting with a third party administrator to provide administrative services to the participating employers and the program participants. The SBA is also selecting investment products to be available in the optional program.

¹ 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 Regents, 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 comptroller 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 this Constitution are not subject to termination requirements. Section 19(f)(3), Article III, Florida Constitution.

² 26 USCS §401(a) (2000), provides for qualified pension, profit sharing, and stock bonus plans. Paragraph (1) of subsection (a) provides that "A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the *exclusive benefit* of his employees or their beneficiaries shall constitute a qualified trust under this section."

Unlike the defined benefit retirement program, the defined contribution program offers retirement payments that are not fixed for a lifetime. Rather, a participant may elect to receive the benefits in a lump-sum, by rolling over the distribution to another qualified investment, or in periodic distributions. However, both plans are specifically regulated under the Internal Revenue Code.

Chapter 2000-169, Laws of Florida, also provides a phase-in schedule for current employees to elect participation in the optional program. Employees of state entities are given the option to join the optional program between June 1, 2002, and August 31, 2002; employees of education-related employers between September 1, 2002, and November 30, 2002; and, other local government employees between December 1, 2002, and February 28, 2003.

Section 215.20, F.S., provides for the recuperation of the cost of administering trust funds. This statute requires the Comptroller to deduct a service charge of 7 percent, "representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund" from all revenue income deposited in all trust funds, unless exempt under s. 215.22, F.S., which lists 23 exempt trust funds.

Under section 401(a) of the Internal Revenue Code, the funds to implement PEORP must be held in trust (in a "trust fund"). Currently, there is no trust fund for PEORP.

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 121.4502, F.S., which creates the Public Employee Optional Retirement Program (PEORP) Trust Fund to be administered by the State Board of Administration.

This bill provides that this trust fund is exempt from the service charges imposed by s. 215.20, F.S. The Internal Revenue Service requires the language regarding holding the funds for the "exclusive benefit" of the participant, to comply with section 401(a) of the Internal Revenue Code.³

This bill authorizes the State Board of Administration to adopt rules in order to maintain the trust fund's qualified status under section 401(a) of the Internal Revenue Code, as long as such rules do not make substantive changes to PEORP.

This bill takes effect July 1, 2001, if passed by a three-fifths vote of the membership of each house and contingent upon the passage of HB 347 or similar legislation.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

³ Conference call with George Bostick and Walter Wingfield, Internal Revenue Service, February 23, 2001.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This 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:

This 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:

This 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:

This bill authorizes the State Board of Administration to adopt rules in order to maintain the trust fund's qualified status under section 401(a) of the Internal Revenue Code, as long as such rules do not make substantive changes to PEORP.

C. OTHER COMMENTS:

Last year, similar legislation, HB 2395, was passed by the House of Representatives and died in the Senate Committee on Governmental Oversight and Productivity.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 2001, the Fiscal Responsibility Council adopted a Council Substitute for HB 503. This CS/CS/HB 503 creates the Public Employee Optional Retirement Trust Fund contingent upon the passage of CS/HB 347 or similar legislation.

On April 4, 2001, the Committee on Fiscal Policy & Resources adopted one amendment that makes the effective date of the bill contingent on the passage of HB 347 or similar legislation. The amendment is traveling with the bill.

On March 20, 2001, the Committee on State Administration adopted the proposed committee substitute for HB 503, and reported the bill out favorably as a committee substitute.

The committee substitute:

- Adds that the trust fund assets will be held for the "exclusive benefit" of the participants in the Public Employee Optional Retirement Program;
- Removes the language regarding the balance of the trust fund remaining in the trust fund;
- Removes the language requiring the termination of the trust fund;
- Adds rulemaking authority for the State Board of Administration to maintain the tax qualified status of the Public Employee Optional Retirement Program;
- Makes editorial changes; and,
- Removes the language that ties the effective date of HB 503 to HB 347, and provides an effective date of July 1, 2001.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

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Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

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STORAGE NAME: h0503s2.frc.doc

DATE: April 5, 2001

PAGE: 6

AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

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