

HOUSE OF REPRESENTATIVES

**STATE ADMINISTRATION
FINAL ANALYSIS**

BILL #: CS/CS/HB 503

RELATING TO: Public Employees Optional Retirement Trust Fund

SPONSOR(S): Fiscal Responsibility Council, Committee on State Administration, Representative Fasano and others

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:

On May 3, 2001, CS/CS/HB 503 was ordered enrolled, and became law on June 15, 2001, as Chapter 2001-255, Laws of Florida (the "act"). The effective date of the act is July 1, 2001, "if passed by a three-fifths vote of the membership of each house and if HB 347 or similar legislation is adopted in the same legislative session or an extension thereof." This act was passed by three-fifths vote of members of each house (House 116/0; Senate 39/0). Also, SB 2, which contained legislation similar to HB 347, became law on June 14, 2001, as Chapter 2001-235, Laws of Florida.

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 act 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 act 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 act 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 act does not appear to have a fiscal impact on state or local governments.

This act takes effect July 1, 2001, if passed by a three-fifths vote of the membership of each house and HB 347 or similar legislation is adopted in the same legislative session or an extension thereof.

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 act 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 act 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 act 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 act 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 act 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. This act was passed by three-fifths vote of members of each house (House 116/0; Senate 39/0). Also, SB 2, which contained legislation similar to HB 347, became law on June 14, 2001, as Chapter 2001-235, Laws of Florida.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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

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.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This act 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 act 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 act 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 act 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:

Jennifer D. Krill, J.D.

Staff Director:

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

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

David M. Greenbaum

Staff Director:

Greg Turbeville

STORAGE NAME: h0503s2z.sa.doc

DATE: June 19, 2001

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AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

Staff Director:

Joe McVaney

David K. Coburn

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Jennifer D. Krell, J.D.

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