

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2620

SPONSOR: Education Committee and Senator Diaz de la Portilla

SUBJECT: State Homeland Security Trust Fund

DATE: April 20, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dodson</u>	<u>Skelton</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>Dormady</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>RI</u>	_____
4.	_____	_____	<u>CJ</u>	_____
5.	_____	_____	<u>AGG</u>	_____
6.	_____	_____	<u>AP</u>	_____

I. Summary:

CS/SB 2620 creates the State Homeland Security Trust Fund to be administered by the Department of Emergency Management. The purpose of the trust fund is to implement the purposes of the “Florida Commerce With Terrorist States Act” created in CS/SB 2614 or similar legislation creating the act. Funds transferred to the trust will be used to fund state homeland security, with priority for expenditures not funded by the federal government. Requests for funding must be reviewed by the Domestic Security Oversight Board, which will provide recommended funding priorities.

The bill requires an annual carry-forward of unused funds at the end of any fiscal year.

The bill provides for termination of the trust fund on or before July 1, 2008. Prior to termination, the trust fund shall be reviewed pursuant to s. 215.3206(1) and (2), F.S.

The bill takes effect on July 1, 2004, contingent upon passage and enactment of CS/SB 2614 or similar legislation in the same legislative session or an extension thereof. CS/SB 2620 must be enacted by a three-fifths vote of the membership of each House.

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 State Constitution, governs the creation of trust funds. This constitutional provision prohibits the creation by law of

¹ s.215.32(2)(b)1., F.S

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. The Florida Supreme Court has interpreted this provision to encompass the inclusion of issues relating to the trust fund's purpose, administration and funding, as well as language addressing its regulation and solvency. *Americans Bankers Insurance Company v. Chiles*, 675 So.2d 922 (Fla. 1996). The First District Court of Appeals construed the three-fifths vote as requiring heightened scrutiny of the bill by the Legislature. *Service Insurance Company v. Chiles*, 660 So.2d 734 (Fla. 1st DCA 1995).

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. 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.⁴

Termination of Trust Funds

Section 19(f)(2), Art. III of the State Constitution, specifies that trust funds created after November 4, 1992, with certain exceptions, shall terminate not more than 4 years after the effective date of the act authorizing the creation of the trust fund, unless the Legislature by law sets a shorter time period. Accordingly, a bill that creates a trust fund should specify the trust fund's date of termination, or, if the trust fund is exempt from the automatic 4-year termination requirement, the bill should declare that the trust fund is exempt from this requirement.⁵

The Legislature established a schedule and process for reviewing trust funds.⁶ Before the regular session of the Legislature and immediately prior to the scheduled termination date of an executive branch trust fund (or an earlier date if specified by the Legislature), the agency responsible for administration of the trust fund and the Governor must recommend to the Legislature whether the trust fund should terminate or be re-created. Each recommendation is based on a review of the trust fund's purpose, use, and necessity. A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.

² Section 215.3207, F.S.

³ Section 17.61, F.S.

⁴ Section 216.301(1), F.S.

⁵ See Florida Senate, *Manual for Drafting General Bills* 82 (Sept. 1999).

⁶ Sections 215.3206 and 215.3208, F.S.

If the trust fund is terminated and not immediately re-created, all cash balances and income of the trust fund are deposited into the General Revenue Fund. The agency must pay any outstanding debts of the trust fund as soon as practicable, and the Chief Financial Officer closes out and removes the trust fund from the various state accounting systems, using generally accepted accounting practices concerning warrants outstanding, assets, and liabilities.

Florida Domestic Security Oversight Board

In November 2001, the Florida Domestic Security Oversight Board (Board) was created to administer the operation of Florida's seven Regional Domestic Security Task Forces and to ensure consistency and communication among them. Among its specific tasks, the Board:

- Serves as the operational oversight committee for Florida's Domestic Security Strategy;
- Sets policy for the Regional Domestic Security Task Forces (RDSTFs);
- Ensures consistency among the RDSTFs;
- Ensures communication between the RDSTFs;
- Ensures accountability of the RDSTFs;
- Sets benchmarks and monitors progress of the RDSTFs;
- Identifies common protocols and needs of the RDSTFs; and
- Ensures that all levels of government (federal, state, and local) are working in concert.

Members of the Board include the Commissioners of the state Departments of Law Enforcement, Education, and Agriculture; the state Fire Marshal; the state Secretary of the Department of Health; the Florida Hospital Association; and the Florida National Guard Adjutant General, among others.

III. Effect of Proposed Changes:

CS/SB 2620 creates the State Homeland Security Trust Fund to be administered by the Department of Emergency Management. Funds shall be credited to the trust funds as provided in s. 288.857(4)(c), F.S.,⁷ to be used for purposes of the "Florida Commerce with Terrorist States Act." Funds transferred to the trust will be used to fund state homeland security, with priority for expenditures not funded by the federal government. Requests for funding must be reviewed by the Domestic Security Oversight Board, which will provide recommended funding priorities.

Any balance remaining in the trust fund at the end of a fiscal year is to remain in the trust fund and to be available for carrying out the purposes of the trust fund.

The trust fund is scheduled to terminate on July 1, 2008, unless terminated sooner. The Legislature is required to review the trust fund before its scheduled termination.

The bill is tied to the passage and enactment of CS/SB 2614 or similar legislation creating the "Florida Commerce With Terrorist States Act." The bill must also meet the constitutional requirements for passage by the Legislature.

⁷ Section 288.857(4)(c), F.S., is created by CS/SB 2614, the companion bill to CS/SB 2620.

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

The legislation does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill creates the State Homeland Security Trust Fund to be administered by the Department of Emergency Management. The bill complies with s. 19(f), Art.III of the State Constitution, relating to creation and termination of trust funds.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None. There is no fiscal impact on state or local governments because the purpose of the bill is only to create the trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.