

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 37 Voluntary Contributions for Public Education Facilities

SPONSOR(S): Raschein

TIED BILLS: **IDEN./SIM. BILLS:** SB 118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	15 Y, 1 N, As CS	Dugan	Langston
2) Appropriations Committee			

SUMMARY ANALYSIS

Current law provides funding to the Public Education Capital Outlay and Debt Service (PECO) Trust Fund from the following sources:

- funds received from the sale of public education bonds;
- certain revenues from the gross receipts tax;
- interest on investments held by the PECO Trust Fund;
- federal interest subsidies;
- amounts appropriated to the PECO Trust Fund; and
- amounts previously appropriated which revert back the PECO Trust Fund when unspent.

Although grants and donations may be made to state trust funds under current law, there is not a voluntary contribution program that specifically directs voluntary contributions to the PECO Trust Fund.

The committee substitute authorizes voluntary contributions from participating businesses to be used as additional funds to the PECO Trust Fund for the construction and maintenance of public education facilities. The participating businesses will register with the Department of Revenue (DOR or department), and remit the contributions to the DOR on a monthly basis.

The committee substitute authorizes the DOR to adopt emergency rules to implement the bill.

On February 20, 2015, the Revenue Estimating Conference reviewed language similar to the committee substitute and estimated a positive indeterminate fiscal impact on the PECO Trust Fund. According to the DOR bill analysis, the department projects operational costs of \$136,065 in non-recurring and \$59,421 in recurring funds in Fiscal Year 2015-16 to implement the provisions of the committee substitute (see fiscal analysis section).

The committee substitute has an effective date of January 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Current law provides funding to the Public Education Capital Outlay and Debt Service (PECO) Trust Fund from the following sources:¹

- funds received from the sale of public education bonds;
- certain revenues from the gross receipts tax;
- interest on investments held by the PECO Trust Fund;
- federal interest subsidies;
- amounts appropriated to the PECO Trust Fund; and
- amounts previously appropriated which revert back the PECO Trust Fund when unspent.

Although grants and donations may be made to state trust funds under current law,² there is not a voluntary contribution program that specifically directs voluntary contributions to the PECO Trust Fund.³

Effect of Proposed Changes

The committee substitute creates s. 215.165, F.S., authorizing a business to solicit and collect voluntary contributions from its customers for the construction and maintenance of public education facilities. In order to participate, a business must register as a participating business with the DOR. To register, the business is required to provide certain identifying information, including the business name, physical and mailing addresses, telephone number, e-mail address, and federal employer identification number.

Once registered, participating businesses may solicit voluntary contributions by any means, including point of sale solicitation and through monthly invoices or billing statements.

A participating business that collects voluntary contributions must file a return and remit the contributions to the DOR by the 20th day of the following calendar month. If the 20th day is a Saturday, Sunday, or legal holiday, the return and contributions are due on the next business day. Returns must include the business's identifying information, as well as the amount of voluntary contributions collected, the amount being remitted and any applicable adjustments. A participating business may make adjustments on the return to correct an error in a prior remittance. If no contributions are collected, no return is required. Returns may be filed and contributions may be paid by mail or electronically.

If the department receives a return from a business that is not registered as a participating business, the department will deposit the contributions and register the business with the information on the return.

The DOR must deposit the contributions into the Public Education Capital Outlay and Debt Service Trust Fund.

The DOR must adopt rules establishing forms and procedures for remitting voluntary contributions. New forms may be created or the required information may be included on existing returns.

¹ s. 1013.65(2)(a), F.S.

² Florida Revenue Estimating Conference, 2015 Florida Tax Handbook, Florida State Treasury Funds, at page 13, available at: <http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/index.cfm>.

³ For example, an applicant for a boat registration may voluntarily contribute between \$2-\$5 to the Save the Manatee Trust Fund on the registration form. *See* s. 328.72(11), F.S.

The bill provides that the voluntary contributions are not subject to audit by the DOR.

The bill provides an effective date of January 1, 2016.

B. SECTION DIRECTORY:

- Section 1. Creates s. 215.615, F.S., to authorize a business that registers with the DOR to solicit and collect contributions from customers for the PECO Trust Fund; provides registration and tax return requirements for a participating business;
- Section 2. Amends s. 1013.65(2)(a), F.S., to authorize deposits into the PECO Trust Fund from voluntary contributions collected pursuant to s. 215.615, F.S.
- Section 3. Provides emergency rulemaking authority to the DOR to implement the provisions of this bill.
- Section 4. Provides an appropriation.
- Section 5. Provides an effective date of January 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On February 20, 2015, the Revenue Estimating Conference reviewed language similar to the committee substitute and estimated a positive indeterminate fiscal impact on the PECO Trust Fund.

2. Expenditures:

The bill provides for a \$136,065 nonrecurring and \$59,421 recurring appropriation from General Revenue for fiscal year 2015-2016.

According to the DOR bill analysis, the department projects the following operational costs in Fiscal Year 2015-16 to implement the provisions of the committee substitute:⁴

- \$81,065 in non-recurring technology costs;⁵
- \$55,000 for a non-recurring cost to create a public announcement to advertise the program; and
- \$59,421 in recurring return and revenue processing costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Participation is voluntary. Businesses that participate will be required to file returns and remit collections to the DOR.

⁴ DOR, Agency Analysis of 2015 HB 37, pages 8-10 (January 22, 2015).

⁵ According to the DOR, the technology costs in the committee substitute would occur in FY 2015-16 because the effective date changed from July 1, 2015 to January 1, 2016.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants the DOR emergency rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Contributions or gifts to a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, for exclusively public purposes may be deducted from a taxpayer's federal income taxes.⁶

However, it is unclear whether contributions under this program will qualify as tax-deductible for either the person making the contribution or the business remitting all of the contributions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2015, the Finance and Tax Committee adopted one strike all amendment and reported the bill favorably as a committee substitute. The amendment made the following revisions to the bill as suggested by the DOR analysis:⁷

- provides the DOR should deposit funds received from an unregistered business into the PECO Trust Fund and register the business using information on the return;
- clarifies that a participating business will receive a taxpayer identification number for purposes of voluntary contributions that is separate from its standard taxpayer identification number;
- changes the phrase "electronic data" to "electronic means;"
- clarifies that a return is only necessary in a reporting period when collections have been made;
- clarifies a participating business may make "adjustments" to the amount of contributions collected caused by an error in a prior remittance; and
- changes the effective date to January 1, 2016.

⁶ 26 U.S.C. § 170(c)(1)

⁷ DOR, Agency Analysis of 2015 HB 37, pages 5-7 (January 22, 2015).