

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 855 Trust Funds/Creation/Title Insurance Regulatory Trust Fund/DFS
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Ambler
TIED BILLS: HB 853 **IDEN./SIM. BILLS:** SB 1840

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	13 Y, 0 N, As CS	Reilly	Cooper
2)	Criminal & Civil Justice Policy Council			
3)	Government Operations Appropriations Committee			
4)	General Government Policy Council			
5)				

SUMMARY ANALYSIS

This bill creates the Title Insurance Regulatory Trust Fund within the Department of Financial Services (DFS). Regulation of the title insurance industry by the DFS is proposed by CS/HB 853.

Fees and charges collected from title insurers and title insurance agents and agencies under s. 637.2031, F.S., are to be deposited into the Title Insurance Regulatory Trust Fund for the sole purpose of carrying out the title insurance regulatory responsibilities of the DFS.

The bill provides for termination and review of the trust fund, in accordance with Florida law, and for the remaining balance at the end of a fiscal year to remain in the trust fund.

Article III, s. 19(f)(1) of the State Constitution specifies that a trust fund of the State of Florida or other public body may only be created or re-created by law in a separate bill. The bill creating or re-creating the trust fund must pass with a three-fifths vote of the membership of each house of the Legislature. Thus, this bill requires a three-fifths vote for passage.

The bill is effective October 1, 2010, if CS/HB 853 (or similar legislation introduced during the 2010 Regular Legislative Session) is enacted into law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The creation, recreation, and termination of trust funds are governed by provisions in both the Florida Constitution and the Florida Statutes (F.S.).

Section 19(f), Article III of the Florida Constitution governs the creation of trust funds. It provides that no trust fund of the state or other public body may be created or re-created without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

The Florida Constitution also specifies that state trust funds shall terminate not more than 4 years after the effective date of the act authorizing the initial creation of the trust fund, unless the Legislature by law sets forth a shorter period. Specified trust funds are exempted from this provision.¹

Section 215.3207, F.S., governs the establishment of trust funds, reiterating the three-fifths vote requirement, and setting forth the statutory language required to create such a trust fund. Namely, the language must specify, at least, the following: (1) The name of the trust fund. (2) The agency or branch of state government responsible for administering the trust fund. (3) The requirements or purposes that the trust fund is established to meet. (4) The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.

Pursuant to s. 215.3206, F.S., before the regular session of the Legislature 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 be allowed to terminate or should be re-created.

¹ Exempt are 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 Governors, 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 chief financial officer 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 the Florida Constitution.

Section 215.32(b), F.S., governs the segregation of trust funds. In order to meet accounting standards established by the Government Accounting Standards Board, this section was amended in 2004 to require that, to the extent possible, each agency shall use certain trust funds as a depository for funds to be used for day-to-day operations. These include the following trust funds:

- Operating trust fund – for program operations funded by program revenues.
- Operations and maintenance trust fund – for client services funded by third-party payors.
- Administrative trust fund – for management activities that are departmental by nature and funded by indirect cost earnings and assessments against trust funds.
- Grants and donations trust fund – for allowable grant or donor agreement activities funded by restricted contractual revenue from private and public non-federal sources.
- Agency working capital trust fund – for the operation of data processing centers.
- Clearing funds trust fund – for collections pending distribution to lawful receipts.
- Federal grant trust fund – for allowable grant activities funded by restricted program revenues from federal sources.

The 2004 revision to s. 215.32, F.S., further required any agencies that did not have the above-specified trust funds, but used other trust funds for the specified purposes of the above-referenced trust funds, to request the creation of the trust fund during the next scheduled review of the agency's trust funds, pursuant to s. 215.3206, F.S.

Section 216.301, F.S., states that any appropriation not identified as an incurred obligation at the end of the fiscal year shall revert back to the fund from which it was appropriated.

Effect of Bill

The bill creates the Title Insurance Regulatory Trust Fund within the Department of Financial Services (DFS). Regulation of the title insurance industry by the DFS is proposed by CS/HB 853.

Fees and charges collected from title insurers and title insurance agents and agencies under s. 637.2031, F.S., are to be deposited into the Title Insurance Regulatory Trust Fund for the sole purpose of carrying out the title insurance regulatory responsibilities of the DFS. The bill provides for termination and review of the trust fund, in accordance with Florida law.

The bill also provides that, notwithstanding the requirement of s. 216.301, F.S., that funds not identified as incurred obligations must revert back to the fund from which it originated, any balance in the Title Insurance Regulatory Trust Fund at the end of the fiscal year shall remain in the trust fund. The bill cites s. 216.351, F.S., as authority for avoiding the mandate of s. 216.301, F.S. Section 216.351., F.S., states that subsequent laws can supersede ch. 216, F.S., but only to the extent that they do so by expressly referencing s. 216.351, F.S.

The bill further states that, in accordance with the State Constitution, the trust fund shall be terminated on July 1, 2014, unless it is terminated sooner. Also, pursuant to Florida Statutes, the trust fund shall be reviewed.

The bill provides an effective date of October 1, 2010, if CS/HB 853 or similar legislation introduced in the 2010 Regular Legislative Session is enacted into law.

B. SECTION DIRECTORY:

Section 1. Creates s. 637.1028, F.S., Title Insurance Regulatory Trust Fund.

Section 2. Provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear whether there is a need for a new trust fund, as the Insurance Regulatory Trust Fund currently is used to fund regulatory costs related to title insurance.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business & Financial Affairs Policy Committee adopted two amendments, which made the following changes:

- Removed reference to a proposed Division of Title Insurance from the bill.
- Changed the effective date to October 1, 2010, to conform to the effective date of CS/HB 853.

The bill was then reported favorably as a committee substitute.