OLR Bill Analysis
sHB 5316

AN ACT ESTABLISHING A FARMERS' RETIREMENT SAVINGS TRUST.

SUMMARY

This bill creates the Farmers' Retirement Savings Trust ("the trust") to hold the assets of a 401(k) plan as a retirement plan for state residents who are farmers (i.e., employees or owners of businesses primarily engaged in agriculture or farming). The bill exempts the property of the trust and its earnings from state and local taxation.

Under the bill, the state comptroller must administer the trust and, among other things, invest its money prudently and keep it in compliance with federal and state laws governing 401(k) plans. It also requires the comptroller to report on the operations of the trust, including any recommendations for improvement, to the governor and the Banking Committee, by December 31 annually, and make copies available to depositors and beneficiaries. (Presumably the comptroller's annual reporting requirement starts by December 31, 2023.)

Additionally, the bill requires the Department of Revenue Services (DRS) commissioner to conduct a study on creating a tax deduction equal to the amount a farmer contributes to the trust, up to 5% of the farmer's annual income. The commissioner must submit his findings and recommendations to the Banking Committee by January 1, 2023.

EFFECTIVE DATE: January 1, 2023, except the provision on the DRS study is effective July 1, 2022.

TRUST REQUIREMENTS (§ 2)

The bill expressly states that the trust is not a department, institution, or agency of the state. Under the bill, the trust is an instrumentality of the state performing essential governmental functions. It receives and holds all deposits, gifts, bequests, endowments, government grants, and other sources of funds, and the earnings on those funds, until they are disbursed.

Funds in the trust are not state property, they cannot be combined with state funds, and the state has no claim on them. Similarly, contracts and obligations associated with the trust are not state debts or obligations. Under the bill, the state has no obligation to designated beneficiaries or others on account of the trust. Also, amounts obligated to be paid from the trust are limited to what is deposited in it and amounts for disbursements can only be made according to the bill's provisions.

The bill requires the trust to exist as long as it has deposits or obligations and until terminated by law. Once terminated, unclaimed assets must return to the state under the abandoned property statute (CGS § 3-61a).

Under the bill, all deposits must be made in cash. Depositors and beneficiaries cannot direct the investment of their contributions or amounts in the trust, but may choose specific fund options that the comptroller may establish within the trust.

COMPTROLLER'S AUTHORITY (§ 3)

The bill authorizes the comptroller, on behalf of the trust and to carry out its purposes, to:

1. receive and invest the trust's money consistent with the requirements described in § 4 below;

2. establish consistent terms for each participation agreement (defined below), bulk deposit, coupon, or installment payments, such as (a) payment method (e.g., payroll deduction or bank transfer); (b) withdrawal, termination, or transfer of payments; (c) penalties for improper distribution or use of funds; (d) changing beneficiaries; and (e) administration charges or fees;

3. enter contractual agreements for services (e.g., legal, accounting, advisory) for the trust and pay for them with the trust's gains and

earnings;

4. procure insurance;
5. apply for, receive, and spend public or private gifts grants, or donations to enable the trust to achieve its objectives;
6. adopt implementing regulations;
7. sue (the comptroller may also be sued);
8. establish funds within the trust and maintain separate accounts for each designated beneficiary; and
9. take other necessary action to carry out the bill’s purposes, including those that are incidental to the comptroller’s duties.

Under the bill, a “participation agreement” is an agreement between a depositor and the trust regarding the terms of the depositor's participation in the trust for a designated beneficiary. A “depositor” is any farmer making a deposit to the trust according to a participation agreement, but does not include the state.

INVESTMENT REQUIREMENTS (§ 4)

The bill requires the comptroller to invest the trust’s funds in a reasonable way to achieve its objectives and exercise a prudent person’s care and discretion. She must also consider things like rate of return; risk; maturity; portfolio diversification; liquidity; projected disbursements and expenditures; and expected deposits, payments, contributions, and gifts. The comptroller must not require the trust to invest directly in any investment or fund she administers or any obligation of the state or any of its political subdivisions. The trust’s assets must be continuously invested and reinvested in a manner consistent with the trust’s objectives until they are (1) disbursed to a designated beneficiary in accordance with federal law governing 401(k) plans, (2) expended on expenses incurred by the trust’s operations, or (3) refunded to the depositor or designated beneficiary pursuant to the participation agreement’s conditions.

OFFERING AND SOLICITATION (§ 5)

The bill requires the comptroller to get written advice from counsel or the Securities and Exchange Commission, or both, that the trust and offering of participation in it are not subject to federal securities laws. However, participation in the trust and the offering and solicitation of the trust are exempt from certain state securities laws so that material intended for distribution to prospective investors does not have to be filed with the banking commissioner (CGS § 36b-22) and investments do not have to be registered with him (CGS § 36b-16).

COMPTROLLER'S ANNUAL REPORT (§ 6)

The comptroller's annual financial report to the governor and Banking Committee must include the trust's receipts, disbursements, assets, investments, liabilities, administrative costs, and recommendations, if any, for improving the trust.

STATE PLEDGE (§ 8)

The bill allows the trust, on behalf of the state, to include a pledge in its participation agreements and other contracts or obligations that the state will not limit or alter the rights of participants until all its obligations are fully met and discharged and contracts performed, unless the law makes adequate provision for the protection of the depositors, designated beneficiaries, or contractors. The bill itself provides for this pledge by the state.

LEGAL COMPLIANCE (§ 9)

The bill requires the comptroller to do what is necessary to ensure that the trust complies with federal and state laws so that its 401(k) plan is a qualified retirement plan under federal law.

TREATMENT OF TRUST ASSETS (§ 10)

The bill prohibits the state from considering funds someone holds in the Farmers' Retirement Savings Trust when determining the person's eligibility for the (1) Temporary Family Assistance program, (2) Low-Income Home Energy Assistance Program, or (3) need-based institutional grants offered at the state's public colleges and universities.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute				
Yea	17	Nay	0	(03/15/2022)