

# BRIEFING



## Putting the Trust Back in Trust Funds

April 2013

### The Issue

The Florida Legislature often uses the technique of sweeping trust funds — transferring money to general revenue — to balance the budget. This method of balancing the state budget can break a public trust and can result in the loss of potential job creation, and could reduce important efforts to protect Florida's environment and its citizens.

Trust funds are created by law in order to ensure revenues are available to fund specific needs. Law specifies the revenue sources for the trust funds and designates how the money can be spent. Usually, the revenue source has a relationship to the uses of the funds. For example, gas taxes to fund road building or fees paid by a certain industry to pay for its regulation. This creates a kind of social contract, a pledge to those who pay money to the state that their funds will be used for a specific purpose. However, that trust is not always kept.

The state of Florida's revenues are dependent upon economic activity that fluctuates with business cycles. This can create budgeting challenges, and even budget shortfalls, which can often lead to the Florida Legislature "sweeping" state trust funds — transferring the money to general revenue — to balance the budget or produce general revenue to fund new initiatives. While trust fund sweeps are sometimes appropriate, it must be remembered that in addition to breaking an agreement, trust fund sweeps have the potential to reduce private-sector job creation, along with reducing efforts to protect the Florida environment and Florida citizens by cutting funding for programs that have those responsibilities.

Trust fund appropriations comprise 65 percent of the \$70 billion state budget for FY2012-13; the other 35 percent are general revenue appropriations. Roughly half of the trust funds come from state revenue and half come from federal revenues.

### POLICY STATEMENT

When the Legislature wants to sweep a trust fund, it should be required to introduce a separate general bill for each trust fund sweep. This would allow input from legislators and testimony from concerned parties, and require an up or down vote on each sweep.

Like other bills, a staff analysis would be developed. The analysis should compare what would be funded with and without the sweep and the associated costs and benefits. The analysis should also address the current tax or fee structure that funds the trust fund, and determine if the current levels are appropriate.

Where appropriate, an economic impact estimate using dynamic scoring by the Revenue Estimating Conference should be included.

In fiscal year 2011-12, 165 trust funds in Florida were state-funded, ranging from as low as \$23,035 to a high of \$4.4 billion of state appropriations in fiscal year 2011-12. <sup>1</sup> The total of State and Federal appropriations from these funds was \$45.3 billion in the 2012-13 fiscal year.

The 2011 Legislature transferred \$388.5 million from trust funds to general revenue to help balance the budget. The 2012 Legislature swept \$542 million. More than \$3 billion has been swept since 2008. The Governor's proposed budget for 2013-14 included \$174.2 million in trust fund sweeps.<sup>2</sup>

Almost 65 percent (\$350 million) of the trust fund money swept for the 2012-13 budget was taken from the Lawton Chiles Endowment Fund. An additional \$96.7 million came from the Local Government Housing and State Housing Trust Funds. The sweeps of these three trust funds accounts for more than \$446 million of the \$542 million total.

One of the major problems of raiding these trust funds is that while the swept funds may provide other public benefits, the benefit of their intended purposes may be lost. The State Transportation Trust Fund (STTF) is a frequent and usually contentious target. The 2011 Legislature transferred \$150 million from the STTF to general revenue. The STTF is funded from gas taxes and other transportation related taxes and fees and can only be used to fund transportation projects. Taking money from the STTF reduces funding that could have been used for infrastructure projects that would create jobs in Florida. Another example would be the loss of private-sector jobs created when housing trust fund dollars are swept, and therefore unable to be used to renovate or construct low-income housing.

When regulatory trust funds are swept, the safeguards these regulatory efforts provide to Floridians may be impaired.

Some of the sweeps, such as the one to the Department of Financial Services Anti-Fraud Trust Fund, can potentially cost the state future revenues.

Many of Florida's efforts in eliminating fraud have returned significant amounts of money to the State and to Florida citizens through recoveries, fines and restitution payments.

### Trust Fund Sweeps - 2012-13 budget<sup>3</sup>

Florida Communities TF	\$521,455
Internal Improvement TF	\$5,000,000
Inland Protection TF	\$8,000,000
Land Acquisition TF	\$10,204,349
Solid Waste Management TF	\$3,500,000
Water Management Lands TF	\$10,000,000
Water Quality Assurance TF	\$1,000,000
Fish and Wildlife Conservation Commission Invasive Plant Control TF	\$6,500,000
Marine Resources Conservation TF	\$1,000,000
Public Service Commission Regulatory TF	\$300,000
DBPR Alcoholic Beverages and Tobacco TF	\$317,862
Division of Florida Condominiums, Timeshares and Mobile Homes	\$3,000,000
Hotels and Restaurants TF	\$5,000,000
Professional Regulation TF	\$1,000,000
Department of Financial Services Anti-Fraud TF	\$3,000,000
Financial Institutions Regulatory TF	\$2,000,000
Insurance Regulatory TF	\$5,600,000
Regulatory TF/ Office of Financial Regulation	\$2,500,000
Department of Management Services Operating/Purchasing TF	\$1,500,000
Bureau of Aircraft TF	\$35,651
AHCA Health Care TF	\$12,000,000
Department of Health Medical Quality Assurance TF	\$10,000,000
Department of Economic Opportunity Local Government Housing	\$66,845,000
State Housing TF	\$29,815,000
Div. of Emergency Management Preparedness and Assistance TF	\$3,500,000
State Board of Administration, Lawton Chiles Endowment Fund	\$350,000,000
<b>TOTAL</b>	<b>\$542,139,317</b>

<sup>1</sup> [http://edr.state.fl.us/content/revenues/reports/tax handbook/taxhandbook2012.pdf](http://edr.state.fl.us/content/revenues/reports/tax%20handbook/taxhandbook2012.pdf)

<sup>2</sup> Governor's Recommended Budget; <http://www.flgov.com/wp-content/uploads/2013/01/2013-Budget-FAQ.pdf>

<sup>3</sup> General Appropriations Act, FY2012-13, page. 407-408

A portion of the money that goes to trust funds is generated by fees. For example, licensing fees on an industry group go to a trust fund that pays for the regulation of that group.

Florida individuals and businesses pay those fees, expecting them to be used as outlined in law. Therefore, when these types of trust funds are swept and those monies go to the general budget, the fee paid by individuals and businesses becomes more like a tax.

Using unencumbered trust fund balances to address budget shortfalls or to fund other initiatives may be appropriate because trust funds should not carry unneeded balances when vital services like education and health programs are facing cuts. However, when a trust fund is carrying a significant balance, the potential of reducing the fees that go into the fund should be considered before a sweep is authorized.

## Conclusion

The Florida Legislature needs some flexibility when making budget decisions, and trust fund transfers have their place. When there is a budget shortfall, education and human services (which comprise the majority of general revenue spending) typically bear the brunt of budget cuts. Transferring funds from trust funds to general revenue can help share the pain. However, care should be taken that the lawfully-created relationship between trust fund revenues and their uses are considered and the impact of the sweeps should be quantified and evaluated. The authority for trust fund transfers is placed in the General Appropriations Act and can change significantly in the budget conference process, often without a thorough vetting.

One option is to significantly reduce the number of trust funds in Florida, putting more money into general revenue to be used as that year's Legislature sees fit. This would require more government functions to compete for general revenue, allowing more programs to share in the direct effect of budget shortfalls. Another option would be to constitutionally forbid the Legislature to transfer trust fund money to general revenue or repeal the statutory provision that allows for trust fund sweeps. However, this would significantly restrict options to balance the budget.

## Recommendation

When the Legislature intends to sweep a trust fund, introduction of a separate general bill for each trust fund sweep should be required. This would allow input from legislators and testimony from concerned parties, and require an up or down vote on each sweep. Similar to other bills, a staff analysis would be developed. The analysis should compare what would be funded with and without the sweep, the associated costs and benefits, and should address the current tax or fee structure that funds that trust fund to determine if the current levels are appropriate. Where appropriate, an economic impact estimate by the Revenue Estimating Conference should be required, to include dynamic scoring so that long-term benefits and costs are included in the analysis. While maintaining budget flexibility for the Legislature, these added requirements would go a long way toward putting the “trust” back in trust funds.

The idea for this paper was developed by Dr. Jerry D. Parrish during his participation in the Florida Chamber Foundation's Six Pillars Caucus System. Helpful suggestions were provided by fellow Caucus member Joe Magyar, a partner at Crowe Horwath, LLC.

## ABOUT FLORIDA TAXWATCH

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## FLORIDA TAXWATCH RESEARCH LEADERSHIP

Dominic M. Calabro	President & CEO
Robert E. Weissert, Esq.	Vice President for Research & General Counsel
Kurt Wenner	Vice President for Tax Research
Jerry D. Parrish, Ph.D.	Chief Economist
Steve Evans	Senior Advisor

## RESEARCH TEAM FOR THIS *BRIEFING*

This Florida TaxWatch *Briefing* done under the direction of: Dominic M. Calabro, President, CEO & Publisher; Robert E. Weissert, VP for Research & General Counsel; and Kurt Wenner, VP for Tax Research.

Jerry Parrish, Ph.D.	Co-Author
Kurt Wenner	Co-Author
Chris Barry	Layout, Graphics, Publication

## FOR MORE INFORMATION: [WWW.FLORIDATAXWATCH.ORG](http://WWW.FLORIDATAXWATCH.ORG)

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106 N. Bronough St., Tallahassee, FL 32301  
o: 850.222.5052 f: 850.222.7476

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