

BRIEFING

Putting the Trust Back in Trust Funds

MARCH 2014

DEAR TAXPAYER,

Each year, lawmakers make difficult decisions on which services to fund with limited resources while crafting Florida's state budget. It is an immense undertaking, especially in tight budget years or when the Legislature is facing a budget shortfall. Tough choices are even made when there is a little extra money to go around, because many Floridians depend on core government services, and competition for these dollars to fund new initiatives and programs is fierce.

Many of these services are funded with General Revenue (GR), tax dollars, which can be allocated to any program the Legislature, deems necessary. However, the Legislature routinely transfers money from trust funds to shore up GR to spend in other areas.

Trust Funds are designed to provide revenue for specific purposes, and there is usually a connection between the revenue and the spending, such as gas taxes for building road. Sweeping trust funds breaks that trust and can have real implications, such as reducing job creation and turning fees that are paid for specific services into general taxes.

While TaxWatch acknowledges that Trust Fund sweeps may be occasionally necessary to ensure certain core services don't feel budgetary shortfalls more than others, the Legislature should consider the impact of the sweeps on all areas of the budget before taking that step.

This report recommends that when the Legislature wants to sweep a fund, it should weigh each proposal and determine the need to sweep funds on a case-by-case basis, and each sweep should be approved by the full Legislature in a separate bill.



Dominic M. Calabro
President & CEO

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. Currently, a legislator cannot vote against a trust fund sweep without voting against the entire budget.

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.

INTRODUCTION

This *Briefing* marks the second detailed look in two years by Florida TaxWatch at the issue of trust fund sweeps.¹

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; not just Florida's, but those of the U.S. and to a smaller extent, the countries of foreign visitors. 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 Florida citizens

¹ Putting the Trust Back in Trust Funds. Florida TaxWatch Briefing. April 2013.

by cutting funding for programs designed to protect them and Florida's environment.

Trust funds comprise around 64 percent of Florida's \$74.2 billion budget for FY 2013-14; the other 36 percent were general revenue appropriations. Just over 44 percent of trust funds come from state revenue and just under 56 percent come from federal revenues.²

The 2013 Legislature transferred \$385.5 million from trust funds to general revenue to help balance the budget. The 2012 Legislature swept \$542.1 million. The proposed budget for 2014-15 includes \$174.2 million in trust fund sweeps. More than \$3.4 billion has been swept since 2008.

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

When housing trust funds are swept, there could be a loss of private-sector jobs when low-cost housing construction or renovation projects are scaled back due to the loss of funds.

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

revenues. This is because 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.

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. Requiring a separate general bill to sweep a trust fund would allow the legislature to examine all options and consider them on a case by case basis.

² Fiscal Analysis in Brief: 2013 Legislative Session, Florida Legislature. <http://edr.state.fl.us/Content/revenues/reports/fiscal-analysis-in-brief/FiscalAnalysisinBrief2013.pdf>

Trust Fund Sweeps - 2012-13 and 2013-14 budgets

	FY2013-14	FY2012-13
<i>Department of Environmental Protection</i>		
Inland Protection Trust	21,000,000	8,000,000
Solid Waste Management Trust Fund	2,000,000	3,500,000
<i>Department of Business and Professional Regulation</i>		
Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund	4,500,000	3,000,000
Professional Regulation Trust Fund	1,000,000	1,000,000
<i>Department of Financial Services</i>		
Anti-Fraud Trust Fund	3,200,000	3,000,000
Financial Institutions Regulatory Trust Fund	1,500,000	2,000,000
Insurance Regulatory Trust Fund	7,800,000	5,600,000
Regulatory Trust Fund/Office of Financial Regulation	3,000,000	2,500,000
<i>Agency for Health Care Administration</i>		
Health Care Trust Fund	5,000,000	12,000,000
Grants and Donations Trust Fund	90,000,000	\$ -
<i>Department of Health</i>		
Medical Quality Assurance Trust Fund	10,300,000	10,000,000
<i>Department of Highway Safety and Motor Vehicles</i>		
Highway Safety Operating Trust Fund	7,000,000	\$ -
<i>Department of Economic Opportunity</i>		
Local Government Housing Trust Fund	151,400,000	66,845,000
State Housing Trust Fund	52,730,000	29,815,000
State Economic Enhancement and Development Trust Fund	24,900,000	\$ -
State Board of Administration, Lawton Chiles Endowment Fund	-	\$350,000,000
Other Trust Funds	-	\$44,879,317
Totals	\$385,330,000	\$542,139,317

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 the trust fund to determine if the current levels are appropriate. Where appropriate, an economic impact estimate by the Revenue Estimating Conference should be required, including 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.

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As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

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