

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/CS/SB 1892

**INTRODUCER:** Appropriations Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Diaz

**SUBJECT:** Emergency Preparedness and Response Fund

**DATE:** April 2, 2021      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Caldwell</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Shettle/Hrdlicka</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1892 creates the Emergency Preparedness and Response Fund within the Executive Office of the Governor. Moneys specifically appropriated to the fund are available as a primary funding source for the Governor for purposes of preparing or responding to a disaster declared by the Governor as a state of emergency that exceeds regularly appropriated funding sources.

In accordance with Article III, section 19(f)(2) of the Florida Constitution, the Emergency Preparedness and Response Fund terminates on July 1, 2025, unless terminated sooner. Before the fund terminates the Division of Emergency Management and the Governor must recommend to the Legislature whether to recreate the fund or allow it to terminate.

As the Emergency Preparedness and Response Fund is a newly created trust fund, an affirmative vote of three-fifths of the membership of each house is required for passage.

The bill takes effect July 1, 2021.

**II. Present Situation:**

**General Revenue Fund**

The General Revenue Fund consists of all moneys received by the state from every source, except for those funds designated to be deposited into trust funds or the Budget Stabilization Fund. Funds in the General Revenue Fund are expended as provided in the General

Appropriations Act or other legislation, transferred to the Budget Stabilization fund,<sup>1</sup> or maintained as unallocated general revenue. Unallocated general revenue is considered the working capital balance of the state and consists of moneys in the General Revenue Fund that are in excess of the amount needed to meet General Revenue Fund appropriations for the current year.<sup>2</sup>

## **Trust Funds**

### ***Establishment of Trust Funds***

A trust fund may be created by law only by the Legislature and only if passed by a three-fifths vote of the membership of each house of the Legislature. In a separate bill for that purpose only, each trust fund must be created by statutory language that specifies at least the following:

- The name of the trust fund.
- The agency or branch of state government responsible for administering the trust fund.
- The requirements or purposes that the trust fund is established to meet.
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.<sup>3</sup>

### ***Florida Constitution Requirement for Trust Funds***

The Florida Constitution requires that state trust funds must terminate not more than four years after the effective date of the act which authorized the initial creation of the trust fund.<sup>4</sup> By law, the Legislature may set a shorter time period for which any trust fund is authorized.<sup>5</sup>

### ***Review of Trust Funds***

Trust funds scheduled for termination must be reviewed by the agency that is responsible for the administration of the trust fund and either the Governor, for executive branch trust funds, or the Chief Justice, for judicial branch trust funds prior to the regular session immediately preceding the termination date. The agency must review the purpose and use of the trust fund, determine whether the trust fund will continue to be necessary, and recommend to either terminate or re-create the trust fund. A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.<sup>6</sup>

The Legislature must review all state trust funds at least once every 4 years.<sup>7</sup>

When the Legislature terminates a trust fund, the agency or branch of state government that administers the trust fund must pay any outstanding debts or obligations of the trust fund as soon as practicable.<sup>8</sup> The Legislature may also provide for the distribution of moneys in that trust

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<sup>1</sup> See s. 215.32(2)(c), F.S.

<sup>2</sup> Section 315.32(2)(a), F.S.

<sup>3</sup> Section 215.3207, F.S.

<sup>4</sup> FLA. CONST. art. III, s. 19(f)(2).

<sup>5</sup> *Id.*

<sup>6</sup> Section 215.3206, F.S.

<sup>7</sup> Section 215.3208(1), F.S.

<sup>8</sup> See ss. 215.3206(2) and 215.3208(2)(a), F.S.

fund. If no such distribution is provided, the moneys remaining after all outstanding obligations of the trust fund are met must be deposited in the General Revenue Fund.<sup>9</sup>

### ***Trust Fund Operation***

Trust funds consist of moneys received by the state which under law or under trust fund agreement are segregated for a purpose authorized by law. The state agency or branch of state government receiving or collecting such moneys is responsible for their proper expenditure as provided by law.<sup>10</sup>

### **Emergency Management**

#### ***Powers of the Governor***

Florida has experienced an increase in the number, the severity, and the duration of all types of emergencies. The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.<sup>11</sup> In the event of an emergency or threat of one, the Governor may declare a state of emergency by executive order or proclamation. The state of emergency continues until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist. A state of emergency may not continue for longer than 60 days unless renewed by the Governor.<sup>12</sup>

When a state of emergency is declared by the Governor, predetermined emergency management plans become effective. One piece of the emergency plans is to provide resources necessary to protect and mitigate the effects of a disaster, including the use or distribution of supplies, equipment, and materials.<sup>13</sup>

#### ***Financing***

Funding for the resources generally come from funds regularly appropriated to state and local agencies.<sup>14</sup> The policy of the state is that funds to meet emergencies must always be available.<sup>15</sup>

If these funds are insufficient, the governor may make funds available by transferring and expending moneys appropriated for other purposes, or by transferring and expending moneys out of any unappropriated surplus funds, or from the Budget Stabilization Fund.<sup>16</sup>

Following the expiration or termination of the state of emergency, the Governor may transfer moneys with a budget amendment, subject to approval by the Legislative Budget Commission, to satisfy the budget authority granted for such emergency.<sup>17</sup> The Governor's authority to apply for,

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<sup>9</sup> Section 215.3208(2)(b), F.S.

<sup>10</sup> Section 215.32(2)(b)1., F.S.

<sup>11</sup> Section 252.36(1)(a), F.S.

<sup>12</sup> Section 252.36(2), F.S. The Legislature can terminate a state of emergency by concurrent resolution.

<sup>13</sup> Section 252.36(3), F.S.

<sup>14</sup> Section 252.37(2), F.S.

<sup>15</sup> Section 252.37(1), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 252.37(2), F.S.

administer, and expend any grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery is not limited by these financing provisions.<sup>18</sup>

### **III. Effect of Proposed Changes:**

The bill creates s. 252.3711, F.S., creating the Emergency Preparedness and Response Fund within the Executive Office of the Governor. The fund consists of any money specifically appropriated, and such money is available as a primary funding source for the Governor to use to prepare or respond to a disaster declared by the Governor as a state of emergency that exceeds regularly appropriated funding sources.

In accordance with Art. III, s. 19(f)(2) of the Florida Constitution, the Emergency Preparedness and Response Fund terminates on July 1, 2025, unless terminated sooner. Before the fund terminates, the Division of Emergency Management and the Governor must recommend to the Legislature whether to recreate the fund or allow it to terminate.

As the Emergency Preparedness and Response Fund is a newly created trust fund, an affirmative vote of three-fifths of the membership of each house is required for passage.<sup>19</sup>

The bill takes effect July 1, 2021.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

The Florida Constitution imposes special restrictions on trust funds. A trust fund is a fund created by law for a specific use and having specific funding sources.

Article III, s. 19(f) of the Florida Constitution prohibits the Legislature from creating or re-creating a trust fund unless the trust fund is created or re-created by a law approved by a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only. State trust funds must terminate within 4 years after the effective date of the act authorizing the initial creation of the trust fund.

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<sup>18</sup> Section 252.37(3), F.S.

<sup>19</sup> Section 215.3207, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The availability of a trust fund from which the Governor may use to primarily fund response and recovery activities related to an emergency may reduce the need to use unallocated general revenue or Budget Stabilization Funds.

**VI. Technical Deficiencies:**

Only three types of funds are designated by statute: general revenue, trust funds, and the budget stabilization fund. The purpose of this fund is best defined as a trust fund. Therefore, including the term “trust” in the title would clarify that the Emergency Preparedness and Response Fund is a trust fund.

Section 252.34, F.S., defines the term “emergency” as “any occurrence, or threat thereof, that results or may result in substantial injury or harm to the public or substantial damage to or loss of property.” It can be manmade, natural, or technological. On the other hand, a “disaster” is any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 252.3711 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Appropriations on April 1, 2021:**

The committee substitute clarifies that the uses of the funds are to prepare for or respond to a disaster declared by the Governor as a state of emergency, instead of simply an emergency.

**CS by Military and Veterans Affairs, Space, and Domestic Security on March 23, 2021:**

The CS for SB 1892 revises the purpose of the fund from being used as a depository for reimbursements of state expenditures received from the Federal Emergency Management Agency, unless otherwise appropriated by the Legislature, and for other moneys specifically appropriated to being a depository for moneys specifically appropriated to the fund.

- B. **Amendments:**

None.