

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.)

Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

BILL: SB 1892

INTRODUCER: Senator Diaz

SUBJECT: Emergency Preparedness and Response Fund

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	MS	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

SB 1892 creates the Emergency Preparedness and Response Fund within the Executive Office of the Governor. The fund is to be used as a depository for reimbursements of state expenditures received from the Federal Emergency Management Agency (FEMA), unless otherwise appropriated by the Legislature and for other moneys specifically appropriated to the fund. The moneys deposited in the fund are available as a primary funding source for the Governor for purposes of preparing or responding to an 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 agency responsible for the administration of the trust fund 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.¹

The bill takes effect July 1, 2021.

II. Present Situation:

Overview

Florida has experienced an increase in the number, the severity, and the duration of all types of emergencies. When a State of Emergency is ordered by the Governor, predetermined plans

¹ Section 215.3207, F.S.

become effective. One piece of the emergency plans is to provide resources necessary to protect and mitigate the effects of a disaster. Funding for the resources generally come from funds regularly appropriated to state and local agencies. 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. The state, affected local governments, and other eligible entities may apply to FEMA for grants for reimbursement or additional funds through the Florida Division of Emergency Management. FEMA then sends funds to the state which are deposited in the US Contributions Trust Fund from which payments are disbursed to the approved grantees. can stress the budgets of state and local governments.

General Revenue

The General Revenue Fund consists of all moneys received by the state from every source whatsoever, except for those funds designated to be deposited into trust funds or the budget stabilization fund. The moneys are to be expended pursuant to General Revenue Fund appropriations acts, transferred from the Budget Stabilization fund,² 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.³

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 only⁴, 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.⁵

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.⁶ By law, the Legislature may set a shorter time period for which any trust fund is authorized.⁷

² See s. 215.32(2)(c), F.S.

³ Section 315.32(2)(a), F.S.

⁴ Not required for trust funds being re-created by the Legislature.

⁵ Section 215.3207, F.S.

⁶ FLA. CONST. art. III, s. 19(f)(2).

⁷ *Id.*

Review of Trust Funds

The Legislature must review all state trust funds at least once every 4 years,⁸ prior to the regular session of the Legislature immediately preceding the date on which any executive or judicial branch trust fund is scheduled to be terminated,⁹ or such earlier date as the Legislature may specify.¹⁰

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, must recommend to the President of the Senate and the Speaker of the House of Representatives whether the trust fund should be allowed to terminate or should be re-created.¹¹ Each recommendation must be based on a review of the purpose and use of the trust fund and a determination of whether the trust fund will continue to be necessary.¹² 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.¹³

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.¹⁴ The Legislature may also provide for the distribution of moneys in that trust 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.¹⁵

Trust Fund Operation

Trust funds consist of monies 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.¹⁶

Emergency Management

Powers of the Governor

The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.¹⁷ In the event of an emergency beyond local control, the Governor may assume direct operational control over all or any part of the emergency management functions within this state, and is authorized to delegate such powers as she or he may deem prudent.¹⁸ The Governor

⁸ Section 215.3208(1), F.S.

⁹ Pursuant to FLA. CONST. art. III, s. 19(f).

¹⁰ Section 215.3206(1), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 215.3208(2)(a), F.S.

¹⁵ Section 215.3208(2)(b), F.S.

¹⁶ Section 215.32(9)(b)1., F.S.

¹⁷ Section 252.36(1)(a), F.S.

¹⁸ *Id.*

may issue executive orders, proclamations, and rules and may amend or rescind them. The executive orders, proclamations, and rules have the force and effect of law.¹⁹

The Governor declares a state of emergency by executive order or proclamation if an emergency is found to have occurred or that the occurrence or the threat is imminent.²⁰ 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.²¹ The state of emergency is terminated by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.²² If at any time the Legislature by concurrent resolution terminates a state of emergency, the Governor shall issue an executive order or proclamation ending the state of emergency.²³

All executive orders or proclamations issued must indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination.²⁴ An executive order or proclamation is promptly disseminated by means calculated to bring its contents to the attention of the general public. The order or proclamation is filed promptly with the Department of State and in the offices of the county commissioners in the counties to which the order or proclamation applies.²⁵²⁶

An executive order or proclamation of a state of emergency:

- Activates the emergency mitigation, response, and recovery aspects of the state, local, and interjurisdictional emergency management plans applicable to the political subdivision or area in question; and²⁷
- Is authority for the deployment and use of any forces to which the plan or plans apply and for the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant the requirements of the State Emergency Management Act or any other provision of law relating to emergencies.²⁸
- Identifies whether the state of emergency is due to a minor, major, or catastrophic disaster.²⁹
 - For a major or catastrophic disaster, the proclamation is authority for a health care practitioner licensed in another state to assist in providing health care in the disaster area according to the provisions specified in the proclamation.³⁰
 - For a catastrophic disaster, the proclamation constitutes a formal request for mobilization of the military, which is communicated to the President of the United States.³¹

¹⁹ Section 252.36(1)(b), F.S.

²⁰ Section 252.36(2), F.S.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Unless the circumstances attendant upon the emergency prevent or impede such filing.

²⁶ Section 252.36(2), F.S.

²⁷ Section 252.36(3)(a), F.S.

²⁸ Section 252.36(3)(b), F.S.

²⁹ Section 252.36(3)(c), F.S.

³⁰ Section 252.36(3)(c)1., F.S.

³¹ Section 252.36(3)(c)2., F.S.

Financing

The policy of the state is that funds to meet emergencies must always be available.³² The first recourse for funding is to be made to funds regularly appropriated to state and local agencies.³³ If the Governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, she or he may make funds available:

- By transferring and expending moneys appropriated for other purposes;
- By transferring and expending moneys out of any unappropriated surplus funds; or
- From the Budget Stabilization Fund.³⁴

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.³⁵ The Governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery should not be construed to be limited by these financing provisions.³⁶

If the Federal Government³⁷ offers to the state³⁸ services, equipment, supplies, materials, or funds by way of gift, grant, or loan for the purposes of emergency management, the state³⁹, or the political subdivision,⁴⁰ may accept the offer. Upon acceptance, the division or the presiding officer or governing body of the political subdivision may authorize receipt of the gift, grant, or loan on behalf of the state or the political subdivision, subject to the terms of the offer and the rules and regulations of the agency making the offer.⁴¹

Whenever any person, firm, or corporation offers to the state⁴² services, equipment, supplies, materials, or funds by way of gift, grant, loan, or other agreement for the purpose of emergency management, the state⁴³ or the political subdivision⁴⁴ may accept the offer. Upon acceptance, the division or the presiding officer or governing body of the political subdivision may authorize receipt of the gift, grant, or loan on behalf of the state or the political subdivision, subject to the terms of the offer.⁴⁵

Unless otherwise specified in the General Appropriations Act:

- Whenever the state accepts financial assistance from the Federal Government or its agencies under the federal Public Assistance Program and the financial assistance is conditioned upon a requirement for matching funds, the state shall provide the entire match requirement for

³² Section 252.37(1), F.S.

³³ Section 252.37(2), F.S.

³⁴ *Id.*

³⁵ Section 252.37(2), F.S.

³⁶ Section 252.37(3), F.S.

³⁷ Or any agency or officer of the Federal Government.

³⁸ Or to any political subdivision of the state.

³⁹ Acting through the division.

⁴⁰ Acting with the consent of the Governor or the Governor's authorized representative.

⁴¹ Section 252.37(4)(a), F.S.

⁴² Or to any political subdivision of the state.

⁴³ Acting through the division.

⁴⁴ Acting through its governing body or a local emergency management agency.

⁴⁵ Section 252.37(4)(b), F.S.

state agencies and one-half of the required match for grants to local governments. The affected local government is required to provide one-half of the required match prior to receipt of such financial assistance.⁴⁶

- The Executive Office of the Governor may approve a waiver, subject to the requirement for legislative notice and review under s. 216.177, F.S., of all or a portion of the required match for public assistance projects for local governments if the Executive Office of the Governor determines that such a match requirement cannot be provided, or that doing so would impose a documented hardship on the local government, and if the local government applies for the waiver within the first 18 months after the disaster is declared.⁴⁷

Whenever the state accepts financial assistance from the Federal Government or its agencies under the federal Hazard Mitigation Assistance Grant Program and the financial assistance is conditioned upon a requirement for matching funds, the eligible subgrantee recipient is required to provide the full amount of the required match prior to receipt of the financial assistance unless otherwise specified in the General Appropriations Act.⁴⁸

Federal Emergency Management Agency (FEMA)

Public Assistance (PA) is FEMA's grant program that provides funds to assist communities responding to and recovering from major disasters or emergencies declared by the President. The program provides funding for emergency assistance to save lives and protect property, and assists with funding for permanently restoring community infrastructure affected by a federally declared incident.⁴⁹ Eligible applicants include states, federally recognized tribal governments, U.S. territories, local governments, and certain private non-profit (PNP) organizations.

Additionally, for a qualified⁵⁰ PNP-operated facility to be eligible for assistance, the PNP must demonstrate the facility provides a critical service or provides a non-critical, but essential government service and is open to the general public. A facility that provides a critical service is defined as one used for an educational, utility, emergency, or medical purpose.⁵¹

FEMA processes PA grant funding according to the type of work the applicant undertakes. Eligible work must be required as a result of the declared incident, be located in the designated area, be the legal responsibility of the applicant, and be undertaken at a reasonable cost.⁵² Eligible work is classified into the following categories:

- Emergency Work⁵³
 - Category A: Debris removal
 - Category B: Emergency protective measures

⁴⁶ Section 252.37(5)(a), F.S.

⁴⁷ Section 252.37(5)(b), F.S.

⁴⁸ Section 252.37(6), F.S.

⁴⁹ 42 U.S.C. s. 5170(b) (2019).

⁵⁰ PNPs must have an effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

⁵¹ 42 U.S.C. s. 5172 (2019) and 44 CFR s. 206.221(e) (2001).

⁵² 42 U.S.C. s. 5170(b) (2019).

⁵³ *Id.*

- Permanent Work
 - Category C: Roads and bridges
 - Category D: Water control facilities
 - Category E: Public buildings and contents
 - Category F: Public utilities
 - Category G: Parks, recreational, and other facilities.⁵⁴

After a federal declaration, the recipient (i.e., state, tribe, or territory) conducts Applicant Briefings to inform potential applicants (i.e., state, local, tribal, territorial, and PNP officials) of the assistance available and how to apply. Applicants must then file a Request for Public Assistance within 30 days after date their respective area is designated by the federal declaration.

Following the approved request, FEMA and the applicants will conduct additional meetings to discuss disaster damage and project formulation. Applicants must identify and report damages to FEMA within the 60-day regulatory timeframe. FEMA, the recipient, or the applicant will then prepare project worksheets for eligible work and eligible facilities based on actual or estimated project costs.

The federal share of assistance will not be less than 75 percent of the eligible cost for emergency measures and permanent restoration. The recipient determines how the non-federal share of 25 percent will be dispersed to its applicants. Recipients are responsible for managing the funds obligated to them by FEMA, including disbursement to applicants. FEMA will continue to monitor the recovery progress to ensure the timely delivery of eligible assistance, and compliance with federal laws and regulations.⁵⁵

Florida Division of Emergency Management Public Assistance Grant Program

According to the Florida Division of Emergency Management website⁵⁶:

The objective of the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Grant Program is to provide assistance to state, tribal, local governments and certain types of private non-profit organizations so that communities can quickly respond to and recover from major disasters or emergencies declared by the president. The State of Florida manages this program as the grantee from FEMA (grantor) for all sub-grants awarded to local eligible jurisdictions and agencies within the State of Florida. To be eligible for assistance from this grant program, prospective applicants must fill out a Request for Public Assistance (RPA) through the State of Florida's Public Assistance Web Portal, www.FloridaPA.org.

⁵⁴ FEMA, *Public Assistance Program and Policy Guide*, available at <https://www.fema.gov/assistance/public>. (last visited March 9, 2021).

⁵⁵ FEMA, *Public Assistance FACT SHEET*, available at https://www.fema.gov/sites/default/files/2020-07/fema_public-assistance-fact-sheet_10-2019_0.pdf (last visited Mar. 9, 2021).

⁵⁶ Fl. Div. of Emergency Management, *Public Assistance Grant Program*, available at <https://www.floridadisaster.org/dem/recovery/public-assistance-program/> (last visited Mar. 9, 2021).

III. Effect of Proposed Changes:

SB 1892 creates the Emergency Preparedness and Response Fund within the Executive Office of the Governor. The fund is to be used as a depository for reimbursements of state expenditures received from the Federal Emergency Management Agency (FEMA), unless otherwise appropriated by the Legislature and for other moneys specifically appropriated to the fund. The moneys deposited in the fund are available as a primary funding source for the Governor for purposes of preparing or responding to an emergency that exceeds regularly appropriated funding sources.

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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.⁵⁷

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 Article VII, Section 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, subsection 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 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.

⁵⁷ 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:

Having a fund that the Governor may use for necessary spending during a declared emergency may preserve the monies otherwise appropriated in General Revenue and other Trust 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.

VII. Related Issues:

The requirement to deposit reimbursements of state expenditures received from the Federal Emergency Management Agency may be problematic in the funding for the ongoing projects from previous emergencies.

VIII. Statutes Affected:

This bill creates section 252.3711 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
