

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 Finance and Tax

BILL: SB 510

INTRODUCER: Senators Hooper and Polsky

SUBJECT: State Funds

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Kim</u>	<u>Babin</u>	<u>FT</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 510 exempts the State Housing Trust Fund and the Local Government Housing Trust Fund from a provision authorizing the Legislature, in the General Appropriations Act, to transfer unappropriated cash balances from specified trust funds to the Budget Stabilization Fund and General Revenue Fund.

The Revenue Estimating Conference estimates that the bill has no fiscal impact.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Florida Housing Finance Corporation

The 1997 Legislature created the Florida Housing Finance Corporation (FHFC) as a public-private entity to replace the Florida Housing Finance Agency, with the purpose of reducing bureaucracy and streamlining administrative processes.¹ The FHFC is now a public corporation that is housed within the Department of Economic Opportunity.² The goal of the FHFC is to increase the supply of safe, affordable housing for individuals and families with very low to moderate incomes. To do this, the FHFC uses federal and state resources to finance the development of affordable homes and rental housing and assist first-time homebuyers through various programs.³

¹ Chapter 97-167, Laws of Fla.

² Section 420.504(1), F.S.

³ Further information on the FHFC's Multifamily Development, Special Programs, and Homeownership programs is available at <https://www.floridahousing.org/about-florida-housing> (last visited February 08, 2021).

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues that are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.⁴ The FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the federal government.⁵

State Housing Trust Fund

The 1988 Legislature created the State Housing Trust Fund “to be used for new construction and substantial rehabilitation of housing, to improve the state’s ability to serve first-time homebuyers, and to increase the affordability and availability of the housing stock in the State of Florida.”⁶ In 1992, the Legislature passed the William E. Sadowski Affordable Housing Act (Sadowski Act), which created a dedicated source of revenue from documentary stamp tax revenues for affordable housing.⁷ The Sadowski Act increased documentary stamp tax rates and provided for a certain proportion of documentary stamp tax revenues to be distributed to the State Housing Trust Fund. The trust fund is now administered by the FHFC.⁸

Local Government Housing Trust Fund

The Local Government Housing Trust Fund was created in 1992 by the Sadowski Act to be used to fund the State Housing Initiatives Partnership Program, which was created “for the purpose of providing funds to local governments as an incentive for the creation of partnerships to produce and preserve affordable housing.”⁹ The Sadowski Act provided for a certain proportion of documentary stamp tax revenues to be distributed to the Local Government Housing Trust Fund. The trust fund is now administered by the FHFC.¹⁰

Documentary Stamp Tax

The documentary stamp tax imposes an excise tax on deeds or other documents that convey an interest in Florida real property. The tax comprises two taxes imposed on different bases at different tax rates. The first tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interests that are granted, assigned, transferred, conveyed or vested in a purchaser.¹¹ The second tax rate is 35 cents per each \$100 of consideration for certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements.¹²

⁴ Section 201.15, F.S.

⁵ See ss. 420.507(33) and 159.608, F.S.

⁶ Chapter 88-376, s. 2, Laws of Fla.; s. 420.003(5), F.S. (1988).

⁷ Chapter 92-317, ss. 1-35, Laws of Fla.

⁸ Section 420.0005, F.S.

⁹ Chapter 92-317, s. 32, Laws of Fla.; s. 420.9072, F.S. (1992).

¹⁰ Section 420.9079, F.S.

¹¹ Section 201.02(1), F.S.

¹² Sections 201.07 and 201.08, F.S.

Documentary stamp tax revenues are divided among the General Revenue Fund and various trust funds according to a statutory formula.¹³ The following table summarizes the distribution of documentary stamp tax collections in the past three fiscal years:¹⁴

	FY 2017-2018	FY 2018-2019	FY 2019-2020
Collections (\$ millions)	2,510.0	2,651.1	2,874.9
Distributions (\$ millions)			
General Revenue Fund	867.2	912.1	983.1
Land Acquisition Trust Fund	824.2	703.1	944.7
State Transportation Trust Fund	297.1	318.2	351.6
Local Government Housing Trust Fund	208.1	222.8	246.2
General Revenue Service Charge	134.7	142.2	154.2
State Housing Trust Fund	88.8	95.1	105.1
State Economic Enhancement and Development Trust Fund (DEO)	75.0	75.0	75.0
Grants and Donations Trust Fund (DEO)	2.2	2.4	2.6
DACS General Inspection Trust Fund, Oyster Management and Restoration	0.3	0.3	0.3

The Legislature's Authority to Transfer Unappropriated Trust Fund Balances

Section 215.32(2)(b)4.a., F.S., authorizes the Legislature to transfer unappropriated cash balances of state trust funds to either the General Revenue Fund or the Budget Stabilization Fund in the General Appropriations Act. The Budget Stabilization Fund is required by the State Constitution and must be maintained at not less than 5 percent of the previous year's General Revenue collections.¹⁵ Moneys in the fund may be used only to cover revenue shortfalls in the General Revenue Fund and for emergencies as defined in s. 252.34, F.S.¹⁶

Currently, the funds listed below are exempt from the trust fund transfer provision in s. 215.32, F.S.:

- Trust funds required by federal programs or mandates;
- Trust funds established for bond covenants, indentures, or resolutions whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body;
- The Division of Licensing Trust Fund in the Department of Agriculture and Consumer Services;
- The State Transportation Trust Fund;
- The trust fund containing the net annual proceeds from the Florida Education Lotteries;
- The Florida Retirement System Trust Fund;

¹³ See Section 201.15, F.S.

¹⁴ Compiled from Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 77 (2020), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Feb. 4, 2021), and Office of Economic and Demographic Research, *Documentary Stamp Tax Collections and Distributions (Millions)*, General Revenue Conference, December 2020, available at <http://www.edr.state.fl.us/Content/conferences/docstamp/docstampresults.pdf> (last visited Feb. 4, 2021).

¹⁵ FLA. CONST. art. III, s. 19(g) and s. 215.32(2)(c)1., F.S.

¹⁶ FLA. CONST. art. III, s. 19(g) and s. 216.222, F.S.

- Trust funds under the management of the State Board of Education or the Board of Governors of the State University System, where such trust funds are for auxiliary enterprises, self-insurance, contracts, grants, and donations, as those terms are defined by general law;
- Trust funds that serve as clearing funds or accounts for the Chief Financial Officer or state agencies;
- Trust funds that account for assets held by the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and
- Other trust funds authorized by the State Constitution.¹⁷

It should be noted that the Legislature itself cannot, by law, bind a future Legislature.¹⁸ In the past, the Legislature has passed legislation that transferred funds from trust funds listed in s. 215.32, F.S., to the General Revenue Fund or the Budget Stabilization Fund as part of the state budget process.

In Fiscal Year 2020-2021, the Legislature appropriated \$370.25 million (\$225 million of which was vetoed by the Governor) to the FHFC.¹⁹

The following table describes the annual funds collected and funds appropriated, as well as amounts “swept” or transferred from the housing trust funds:²⁰

Year	Notes	Total Housing Trust Funds			
		Collections	Appropriations	Legislative Sweep	Cap Sweep / SEED
1992 / 1993		41,006,550	36,200,000	-	-
1993 / 1994		51,033,448	47,000,000	-	-
1994 / 1995		45,536,407	50,666,438	-	-
1995 / 1996		108,049,916	112,916,468	-	-
1996 / 1997		121,471,040	127,369,767	-	-
1997 / 1998		145,209,025	121,033,630	-	-
1998 / 1999		169,882,688	169,389,410	-	-
1999 / 2000		176,464,510	186,576,276	-	-
2000 / 2001		191,415,135	186,671,276	-	-
2001 / 2002		228,117,990	195,521,212	12,000,000	-
2002 / 2003		294,552,125	246,600,168	-	-
2003 / 2004		390,167,300	192,171,717	120,896,937	-
2004 / 2005		502,045,358	192,892,623	220,800,000	-
2005 / 2006		606,244,598	442,892,623	-	-
2006 / 2007		452,308,119	433,000,000	-	-
2007 / 2008	A	243,000,000	390,400,000	-	46,506,007
2008 / 2009	B	167,581,340	69,304,577	440,000,000	-

¹⁷ Section 215.32(2)(b)4.b., F.S.

¹⁸ *Neu v. Miami Herald Pub. Co.*, 462 So.2d 821 (Fla. 1985).

¹⁹ Chapter 2020-111, s. 6, Laws of Fla.

²⁰ Email from the Florida Housing and Finance Corporation, *Collections Appropriations & Sweeps Summary*, (February 9, 2021). On file with the Senate Committee on Finance and Tax.

Year	Notes	Total Housing Trust Funds			
		Collections	Appropriations	Legislative Sweep	Cap Sweep / SEED
2009 / 2010		159,088,774	31,279,989	91,900,000	-
2010 / 2011		170,713,220	37,500,000	174,310,000	-
2011 / 2012		186,756,959	-	189,531,109	-
2012 / 2013	C	168,122,265	10,000,000	96,660,000	75,000,000
2013 / 2014	C	193,073,850	-	204,130,000	75,000,000
2014 / 2015	C	238,951,609	167,660,000	106,151,367	75,000,000
2015 / 2016	C	262,033,614	175,000,000	81,000,000	75,000,000
2016 / 2017	C, D	282,850,943	184,330,428	116,914,438	75,000,000
2017 / 2018	C	296,912,132	137,000,000	154,400,000	75,000,000
2018 / 2019	C	318,003,831	123,605,000	182,000,000	75,000,000
2019 / 2020	C	351,308,269	192,600,000	125,000,000	75,000,000
2020 / 2021	C, E, F	406,300,000	145,000,000	-	75,000,000
Totals		6,968,201,016	4,404,581,602	2,315,693,851	721,506,007

Notes:

- A The 2005 Legislature adopted a cap restricting the amount of revenue that could flow into the trust funds to \$243 million/year, with a mechanism for a small increase over time. Collections in excess of the cap amount were swept to general revenue. The cap went into effect in 2007 and was repealed in 2011. Collections shown are funds deposited into the trust funds; they do not include the amounts swept to General Revenue.
- B As a result of the economic recession, the Legislature held a special session in early 2009, adopting SB 2A to address the state budget shortfall. Appropriations are net of SB 2A reductions & collections a shortfall in collections. The \$190 million payback of prior appropriations required by SB 2A is included as a reduction of Appropriations and as an increase in Leg. Sweep.
- C The State Economic Enhancement and Development (SEED) Trust Fund was created in 2011, with funds transferred to it beginning with FY 12/13. SEED funding may be used for infrastructure, job creation, affordable housing in accordance with chapter 420, economic development incentives for job creation and capital investment; and other purposes. The amounts in the Cap Sweep / SEED column represent doc stamp amounts deposited to SEED which would have otherwise been deposited to the housing trust funds.
- D Deposits to the trust funds were less than the full appropriation amount. The appropriation amount on this chart has been reduced to reflect this shortfall in available funds.
- E Collections amount is the December 2020 Revenue Estimating Conference estimate.
- F SHIP appropriation of \$225 million was vetoed by the Governor. These funds remain in the Local Government Housing Trust Fund and were not swept.

III. Effect of Proposed Changes:

The bill amends s. 215.32, F.S., to exempt the State Housing Trust Fund and the Local Government Housing Trust Fund from a provision authorizing the Legislature, in the General Appropriations Act, to transfer unappropriated cash balances from specified trust funds to the Budget Stabilization Fund and General Revenue Fund.

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Article VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill does not create or re-create a trust fund. Therefore, the requirements of Article III, s. 19(f) of the State Constitution do not apply.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Article VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the bill has no fiscal impact.

B. Private Sector Impact:

Entities that build, construct or finance affordable housing in the state may have more available funding since the State Housing Trust Fund and the Local Government Housing Trust Fund could no longer have funds transferred to the Budget Stabilization Fund and the General Revenue Fund.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends s. 215.32, F.S.

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.