
MEMORANDUM

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To: *Public Safety Subcommittee*

From: *John Borden, Legislative Fiscal Office*
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Date: May 9th, 2013

Subject: *Legislative Authority Related to Revenue Established for Specified Purposes*

The purpose of this memorandum is to outline legislative authority over revenue that is established for specified purposes.

The power of the Legislative Assembly to enact laws, which includes the power to repeal, amend or ignore laws, is restricted only by the state and federal constitutions. "Within constitutional limitations, the legislature may dispose of the assets of a statutory fund in any manner that it sees fit." Within this broad authority taxes and fees have been established for specified purposes. If the Legislative Assembly had not enacted laws creating taxes and fees, there would be no revenue for distribution.

While statutes specify that taxes and fees are to be used for specific purposes, the legislature has within in its authority the ability to repeal, amend, or ignore the statutes that created the tax or fee. There is nothing in the Oregon or United States Constitutions that generally prohibits the Legislative Assembly from transferring or re-appropriating ("sweeping") such state moneys from one statutorily created purpose or account into another. The exceptions involve constitutionally directed fees, such as fees that are deposited into the Highway Fund, and fees distributed under contractual obligations, such as to the Public Employees Retirement Fund.

There are well established precedents where the Legislature has transferred moneys in from one state account to another and has used the transferred moneys for governmental purposes other than those originally authorized. With limited exceptions, the Legislature considers any money authorized by statute as state money available for governmental purposes. This legislative flexibility in the use of state moneys is required to maintain constitutionally mandated programs and services, and to meet federal matching fund and maintenance of effort requirements. This authority also enables the Legislature to maintain budgetary equity between state entities regardless of the fund source of state programs. The legislature uses this budgetary authority to ensure that there is a systemic approach to prioritizing the allocation of scarce resources across all state funded purposes in times of a General Fund revenue shortfall. Other Funded entities may not be held harmless when General Fund entities are required to take budget reductions.