

oppaga Progress Report



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Corporations Program Revenues Continue to Be Diverted to Unnecessary Trust Funds

at a glance

The Corporations Program has improved its performance measurement system and implemented modifications to the state's Uniform Commercial Code Secured Transactions process. However,

- the department's data center continues to be funded by the program;
- the program's fee structure remains complex and cumbersome to use; and
- program revenue continues to be diverted to unnecessary trust funds.

Purpose

In accordance with state law, this progress report informs the Legislature of the actions taken in response to the findings and recommendations included in our 2000 justification review of the Department of State's Corporations Program.¹

Background

Businesses must operate within a legal framework established by constitutional,

statutory, and case law. These laws provide that businesses may operate in Florida under a variety of corporate, limited liability, and partnership entities, but must register with the Corporations Program and file annual reports. Persons wishing to use a fictitious name or trademark in a business must also register this information.² These registrations and reports allow corporate officers or partners to be identified by the public and held accountable for their actions as well as help to prevent businesses from misrepresenting themselves in transactions.

Florida's Uniform Commercial Code allows lenders to file liens on property that is held as collateral for loans. This makes the information available to other potential lenders. The 2001 Legislature passed legislation that allows the Corporations Program to contract out maintenance of the database registry of these liens.³ Although actual loan documents and the courts ultimately determine settlements of loan defaults or bankruptcies, the registry assists

² A fictitious name is anything other than an individual's legal name. Registration of that name is required if it is used in business so as to inform the public of who is actually conducting business.

³ Chapter 2001-198, *Laws of Florida*, allows the program to contract out the UCC filing system effective January 1, 2002.

¹ *Corporations Program Operates Well; Its Fee System Needs Streamlining*, OPPAGA [Report No. 00-10](#), September, 2000.

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in preventing the same collateral from unknowingly being used to secure multiple loans.

In calendar year 2001, the program registered nearly 129,000 corporations, over 68,000 fictitious names, and almost 1,300 trademarks. In total, the program's database contains 75 million official records.

The program charges fees for its services, which are used to cover the costs of the program as well as assist in the funding of other state programs.⁴ During Fiscal Year 2000-01, the program collected \$157.2 million in fees and fines and incurred \$12.6 million in operating expenses. Of the remaining revenues, \$26.1 million was transferred to trust funds for other state programs and \$118.5 million was deposited into general revenue. The program was authorized 194 full-time equivalent (FTE) employee positions and was appropriated \$12.4 million for operating expenses.

Prior Findings—————

In our prior review, we determined that the Corporations Program was meeting the needs of businesses and citizens of the state. However, several modifications to its performance measures would reflect more accurately the program's workload and customer satisfaction. We also determined that the program could be improved by

- revising Florida law governing secured transactions under the Uniform Commercial Code;
- creating a central information management center within the department;
- simplifying the fee structure for services provided by the program; and

⁴ The program may also levy administrative fines for such violations as late filing of required annual reports.

- streamlining the accounting process for funds generated by the program.

Performance Measures

Although our prior review concluded that the program's performance measures reasonably could be used to assess its overall performance, we noted several areas where the program could improve its accountability system.

During our prior review, we found that program staff selected which customers to survey to gauge customer satisfaction, allowing for potential result bias. We recommended that the program change the methods it used to conduct customer satisfaction surveys by sending survey forms to a random sample of customers based on proportional sampling of all of its service areas.

We also determined that the unit costs reported by the program did not include all expenses related to handling electronic inquiries (such as support and maintenance of the division's database) even though Internet inquiries were by far the most frequent means of inquiry. We recommended that the program use actual expenditures rather than budget allocations to calculate its unit costs and include all indirect costs in these calculations.

Finally, we determined that the level of program effort required to respond to inquiries varied significantly (e.g., walk-in inquiries took substantially more time to process compared to inquiries made by users via self-directed internet searches). We recommended that the program report its output (workload) measures in terms of effort (whole numbers), not ratios.

Information Management Center

In our prior review, we found that over time the Division of Corporations had increasingly provided automated information systems support to other

department programs without reimbursement for these services. Inaccurate reporting of costs can distort unit cost information reported to the Legislature. We estimate that during Fiscal Year 2000-01, the Corporations Division provided department-wide automated information services at a cost of \$1.5 million, or 11.9% of division's operating expenses.⁵ Consequently, the Corporations Division has been overstating its expenses while the expenses of the other programs within the department had been understated.

We recommended that the Department of State follow the model used by other state agencies and create a central information management center that serves all department users and allows for all programs within the department to bear appropriate information systems costs.

Uniform Commercial Code

During our prior review, the National Conference of Commissioners on Uniform State Laws developed a proposed revision to the secured transaction portion of the Uniform Commercial Code. Although Florida's law governing secured transactions had not been significantly revised since 1966, there was debate about the proposed revision and whether it would improve the system in place in Florida.

We recommended that, if the Legislature wished to adopt the proposed revision into Florida law, legislative staff work with program management and business representatives to develop a modification to the proposed revision that would best meet the needs of state government, businesses, and the public.

⁵ OPPAGA's estimate is based on budgeted direct labor cost of \$0.7 million for 22 FTE positions, \$0.2 million for benefits, and \$0.6 million for other operational expenses.

Fee Schedule

Our prior review determined that the fee structure for the program's services had become highly complex and cumbersome for both customers and program management, with differing fees charged for similar services. For example, fees for certified copies of corporation documents were \$8.75 for the first 8 pages and \$1 for each additional page with a maximum charge of \$52.50; however, certified copies of partnership documents were \$52.50 for 15 or fewer pages and \$1 for each additional page. Simplifying fee structures reduces the potential for erroneous filings, which require returned documents, delays, and costly special handling by staff.

We recommended that the department propose and the Legislature approve a revised fee schedule that is simpler to use, but revenue neutral.

Trust Funds

Our prior review determined that most fees paid to the Division of Corporations were deposited into the Corporations Trust Fund. Funds that were not appropriated for program operations were then by law either transferred to specific trust fund accounts external to the program or to general revenue.⁶ For example, during Fiscal Year 2000-01, \$26.1 million was transferred to other programs, while \$118.5 million was transferred to general revenue. The transfer of program-generated funds directly to external programs limits the Legislature's budget flexibility because it cannot readily appropriate these funds to other priority programs.

⁶ Section 607.1901, *F.S.*, requires that program-generated funds be transferred to the Corporation Tax Administration Trust fund, Cultural Institutions Trust Fund, Historical Resources Operating Trust Fund, and the Grants and Donations Trust Fund. Section 15.09, *F.S.*, establishes the Public Access Data Systems Trust Fund which is used for various department program operating expenses.

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We recommended that the Legislature increase its budget flexibility by requiring all program-generated funds not needed for Corporation Program operations be deposited directly into general revenue rather than transferred to external programs. This change would allow the Legislature to make specific appropriations to the external programs from general revenue, eliminate the need for some trust funds, and simplified the accounting function at both the state and program levels.

Current Status

The Corporations Program has improved its performance measurement system and implemented modifications to the state's Uniform Commercial Code Secured Transactions process. However, the department's data center continues to be funded by the program, the program's fee structure remains complex and cumbersome to use, and program revenue continues to be diverted to unnecessary trust funds.

Performance Measures

Program management has significantly improved how it conducts its customer satisfaction surveys and now uses actual

expenses rather than budgeted expenses to report unit costs. Both actions were consistent with OPPAGA recommendations and have resulted in more accurate reporting of performance. (Exhibit 1 provides the program's performance information for Fiscal Year 2000-01.)

However, the measures used by the program to report workload reflect the ratios of work performed by processing method (telephone, mail, etc.) instead of the number of work units performed by method. Ratios mask whether increases or decreases in inputs (resources expended) result in changes in production. We continue to recommend that the program report its output (workload) measures in terms of effort (whole numbers), not ratios.

Uniform Commercial Code

The department worked with legislative staff to draft a revision to Florida's Uniform Commercial Code for secured transactions that was passed by the Legislature.⁷ The department reports that, at this time, it is not aware of any needed amendments to the law.

⁷ Chapter 2001-198, *Laws of Florida*.

Exhibit 1

Division of Corporations Legislative Performance Measures, Fiscal Year 2000-01

Performance Measure	Measure Type	Performance 2000-01	Recommended Modifications
Percent of client satisfaction with division's services	Outcome	91.4%	OPPAGA recommendation implemented.
Average cost/corporate filing	Output	\$4.84	OPPAGA recommendation implemented.
Average cost/UCC filing	Output	\$1.75	
Average cost/inquiry	Output	\$.04	
Percent of total inquires handled by telephone	Output	8.4%	Measures should be expressed in whole numbers, not ratios, to reflect any change in program effort. These measures could also be used as internal management measures, rather than legislative performance measures.
Percent of total inquires handled by mail/walk-in	Output	3.3%	
Percent of total inquires handled by electronic means	Output	88.3%	

Source: Florida Legislature's website *On-line Sunshine* and Department of State reports.

Information Management Center

The department has established a central data center. However, its configuration allows for the center to be fully funded within the Corporations Program budget. This allows other department programs to continue to avoid bearing their share of information systems costs and to continue to understate their expenditures.⁸ OPPAGA continues to recommend that the Department of State develop a model that allows for all programs within the department to bear costs of information systems costs consistent with use.

Fee Schedule

No changes have been made to the program's fee schedule. Although the department's position is that the Legislature must authorize any changes in fees, OPPAGA continues to recommend that the department initiate the process by proposing a simplified, revenue neutral fee structure that can be adopted by the Legislature.

⁸ The 2002 Legislature passed HB 1681 that transfers the Division of Licensing from the Department of State to the Department of Agriculture and Consumer Services effective January 3, 2003, which will lessen the effect of this issue. At the time of publication of this report, the Governor had not yet received the bill for consideration.

While the current instability of the economy may warrant delay of a major overhaul of the program's fee structure, OPPAGA believes that some adjustment can be made now to simplify citizen interaction with the program at minimal risk for significant impact on program income.⁹ Exhibit 2 provides our recommendations for immediate fee changes and the related statutory references.

Trust Funds

Several state programs continue to receive direct transfers from the Corporations Trust Fund. OPPAGA continues to recommend that these transfers be eliminated and replaced with direct appropriations to the external programs from the general revenue account, allowing more oversight and improved budget flexibility for the Legislature in times of limited funding. Exhibit 3 discusses the trust funds that would be affected by this recommendation.

⁹ There are significant differences in some of the current fee structures. For example, filing fee for a corporation is \$35 but the filing fee for a limited partnership can be as high as \$1,750. Instability and slowdown of the economy makes it more difficult to predict revenue neutral fee changes, which in turn increases the risk of reduced program revenue during a time of already reduced state revenue.

Exhibit 2

Some Fee Adjustment Can Be Made Now to Simplify the System at Minimal Risk to Program Income

Service/Fee	Change	Statute
<i>Certificate of Status</i> Three different fees of \$5, \$8.75, and \$10.	Align all fees to \$8 per certificate.	Chapters 607, 608, 617, 620, and 865, <i>F.S.</i>
<i>Certified Copies of Documents</i> Seven different fee structures ranging from minimum fee of \$8.75 to \$52.50. Some fee structures include per page charges.	Align all fees to \$1 per page, with a \$10 minimum.	Chapters 15, 55, 607, 608, 617, 620, 679, 713, and 865, <i>F.S.</i>

Source: OPPAGA.

Exhibit 3

Program Revenue Continues to Be Diverted to Trust Funds for Other State Programs

Trust Fund	Fund Purpose, Impact, and Remarks	Recommended Action
Corporation Tax Administration Trust Fund	<p>Approximately \$3 million is transferred annually from the Corporations Trust Fund to the Corporation Tax Administration Trust Fund within the Department of Revenue (DOR). DOR routinely uses this transfer to reimburse various expenses within DOR that are not necessarily linked to the collection of the corporate tax and that would be otherwise funded through the department's general revenue appropriation.</p> <p>As the majority of DOR's funding is through general revenue, efficiencies can be gained through elimination of the Corporation Tax Administration Trust Fund and direct funding through general revenue.</p>	<p>Eliminate the requirement that funds from the Corporations Trust Fund be transferred to the Corporation Tax Administration Trust Fund, as mandated in s. 607.1901(2), <i>F.S.</i></p> <p>Abolish the Corporations Tax Administration Trust Fund established in ss. 213.31 and 607.1901(2)(b), <i>F.S.</i></p> <p>Increase general revenue funding of the Department of Revenue's, General Tax Administration Program, by like amount, through the LBR and appropriations process.</p>
Public Access Data Systems Trust Fund	<p>Approximately \$2 million is transferred annually from the Corporations Trust Fund to the Public Access Data Systems Trust Fund within the Department of State.¹ Originally created to facilitate the purchase of data processing equipment in the Department of State, the Public Access Data Systems Trust Fund is now routinely used to fund operational expenses of the department, thus diverting funds that would otherwise flow into general revenue.</p> <p>Elimination of the Public Access Data Systems Trust Fund and direct funding through the general revenue account would improve legislative oversight and eliminate the cost of operating this unnecessary trust fund.</p>	<p>Eliminate the requirement that funds from the Corporations Trust Fund be transferred to the Public Access Data Systems Trust Fund, as mandated in s. 15.09(5), <i>F.S.</i></p> <p>Abolish the Public Access Data Systems Trust Fund established in s. 15.09(5), <i>F.S.</i></p> <p>Increase general revenue funding to the Department of State for the purchase of information systems and equipment, as justified, through the LBR and appropriations process.</p>
Cultural Institutions Trust Fund	<p>Approximately \$15 million is transferred annually from the Corporations Trust Fund to the Cultural Institutions Trust Fund within the Department of State to support the department's Cultural Affairs Program. The Cultural Institutions Trust Fund is also used to account for matching funds and federal grants.</p> <p>Efficiencies as well as increased flexibility and oversight by the Legislature can be gained through direct transfer of these funds to the general revenue account and subsequent appropriation to the Cultural Affairs Program.</p>	<p>Eliminate the requirement that funds from the Corporations Trust Fund be transferred to the Cultural Institutions Trust Fund, as mandated in s. 607.1901(2), <i>F.S.</i></p> <p>Increase general revenue funding of the Department of State's Cultural Affairs Program, by like amount, through the LBR and appropriations process.</p> <p>Continue the Cultural Institutions Trust Fund for the purposes established in Ch. 265, <i>F.S.</i></p>
Historical Resources Operating Trust Fund	<p>Approximately \$4 million is transferred annually from the Corporations Trust Fund to the Historical Resources Operating Trust Fund within the Department of State to support the department's Historical Resources Program. The Historical Resources Operating Trust Fund is also used to account for matching funds and federal grants.</p> <p>Efficiencies as well as increased flexibility and oversight by the Legislature can be gained through direct transfer of these funds to the general revenue account and subsequent appropriation to the Historical Resources Program.</p>	<p>Eliminate the requirement that funds from the Corporations Trust Fund be transferred to the Historical Resources Operating Trust Fund, as mandated in s. 607.1901(2), <i>F.S.</i></p> <p>Increase general revenue funding of the Department of State's Historical Resources Program, by like amount, through the LBR and appropriations process.</p> <p>Continue the Historical Resources Operating Trust Fund for the purposes established in Ch. 267, <i>F.S.</i></p>

Trust Fund	Fund Purpose, Impact, and Remarks	Recommended Action
Grants and Donations Trust Fund ²	<p>Up to \$1.6 million is transferred annually from the Corporations Trust Fund to the Grants and Donations Trust Fund within the Department of State to support the department's Advocating International Business Partnerships Program. The Grants and Donations Trust Fund is also used to account for other transfers in support of the program.</p> <p>Efficiencies as well as increased flexibility and oversight by the Legislature can be gained through direct transfer of these funds to the general revenue account and subsequent appropriation to the Advocating International Business Partnerships Program.</p>	<p>Eliminate the requirement that funds from the Corporations Trust Fund be transferred to the Grants and Donations Trust Fund, as mandated in s. 607.1901(2), <i>F.S.</i></p> <p>Increase general revenue funding of the Department of State's Advocating International Business Partnerships Program, as justified, through the LBR and appropriations process.</p>

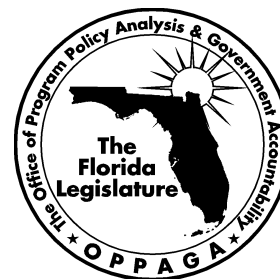
¹ Section 15.09(5), *F.S.*, also requires the Divisions of Licensing and Elections to transfer funds to Public Access Data Systems Trust Fund.

² Transfer of funds to the Grants and Donations Trust Fund began October 1, 2001, and thus the need for this trust fund was not addressed in OPPAGA's original justification review.

Source: OPPAGA.

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