Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Authority to Lapse or Transfer Moneys to the General Fund (Budget Management and Compensation Reserves)

[LFB 2009-11 Budget Summary: Page 114, #2 and #3, and Page 678, #1]

CURRENT LAW

Under current law, moneys that remain unencumbered at the end of the fiscal year or biennium lapse or revert back to the balance of the underlying fund or account for annual and biennial appropriations. In the case of continuing appropriations, moneys remain expendable until fully depleted or repealed by subsequent action of the Legislature. Available balances of segregated funds or program revenue accounts may be transferred to the general fund only through legislation.

In recent years, two methods have been used to transfer moneys to the general fund from other funds. First, budget legislation has directly transferred moneys from a segregated fund to the general fund. As an example, the provisions of 2005 Act 25 as vetoed, required that the transportation fund transfer $427 million to the general fund.

Second, budget legislation has authorized the Secretary of the Department of Administration (DOA) to lapse or transfer moneys from the unencumbered balances of executive branch state agencies to the general fund, other than sum sufficient appropriations and federal appropriations. In 2007 Act 20, the Secretary of DOA was required to lapse or transfer $200 million biennially to the general fund, during each of the 2007-09 and 2009-11 biennia, excluding the UW System and the Wisconsin Technical College System (WTCS), which had their own separate lapse provisions. These specific provisions required the lapse or transfer of $25 million in each biennium from the UW System and $1 million in each biennium from WTCS. In no case could a lapse or transfer be made if it would violate a condition imposed by the federal government on the expenditure of moneys or if it would violate the federal or state constitution.

More recently, in 2009 Act 2, the Secretary of DOA is required to lapse or transfer $125 million before July 1, 2011, from the unencumbered balances of appropriations to executive branch state agencies (excluding the Investment Board and the Department of Employee Trust Funds), other than sum sufficient and federal appropriations. Act 2 specifies that the DOA Secretary cannot lapse or transfer moneys from the Department of Transportation's (DOT) SEG appropriations for the major highway development, state highway rehabilitation, and southeast Wisconsin freeway rehabilitation programs, except that the Secretary can lapse or transfer such moneys if they are provided for either DOT's operations or for engineering, consulting, surveying, or other specialized services.

Act 2 also requires the Co-chairs of the Joint Committee on Legislative Organization to ensure that before July 1, 2011, $500,000 from GPR appropriations to the Legislature is: (a) lapsed from sum certain appropriations; (b) subtracted from the expenditure estimates of sum sufficient appropriations; or (c) some combination of (a) and (b). Act 2 specifies that this $500,000 will count towards the $125 million total. It is estimated that $38 million of the $125 million will accrue in 2008-09, with the remaining $87 million being realized in the 2009-11 biennium.

GOVERNOR

Require the Secretary of DOA to lapse or transfer $160 million during the 2009-11 biennium to the general fund from the unencumbered balances of appropriations to state agencies, other than from sum sufficient and federal appropriations. Define state agencies as any office, department, or independent agency in the executive branch, excluding the Investment Board and the Department of Employee Trust Funds, and including the Legislature and the Courts. Specify the DOA Secretary would not be allowed to lapse or transfer moneys if the lapse or transfer would: (a) violate a condition imposed by the federal government on the expenditure of the moneys; or (b) violate the federal or state constitutions. Eliminate the 2007 Act 20 requirement that $226 million be lapsed or transferred in the 2009-11 biennium.

Authorize the DOA Secretary to lapse from sum certain appropriations and subtract from the expenditure estimates for sum sufficient and continuing appropriations for the: (a) Office of the Governor; (b) Circuit Courts; (c) Court of Appeals; (d) Supreme Court; and (e) Legislature. Require the Wisconsin Housing and Economic Development Authority (WHEDA) to pay $250,000 to the state in 2010-11 and $250,000 in 2011-12 of its actual surplus in the Authority surplus fund, which would count towards the $160 million total lapse or transfer requirement.

In its general fund condition statement, DOA includes $80 million in 2009-10 and in 2010-11 under departmental revenues from this lapse or transfer provision.

DISCUSSION POINTS

1. The Secretary of Administration can direct all state agencies except the Legislature

and the Courts to reduce spending below budgeted levels, except from appropriations for general school aids, shared revenue and tax relief, and for supplemental appropriations under the Joint Committee on Finance. This authority cannot be used if the Secretary determines that previously authorized expenditures will exceed revenues in the current or forthcoming fiscal year by more than 0.5% of GPR appropriations for that fiscal year. In this case, the Secretary is prohibited from taking administrative action to reduce expenditures. Instead, the Governor is required to submit a bill to address the imbalance.

2. For GPR funded agencies, if expenditures are less than budgeted amounts, these savings accrue to the general fund, as the unexpended moneys lapse or revert to the balance of the general fund, except for continuing appropriations and biennial appropriations in the first fiscal year of the biennium. For PR and SEG funded agencies, any savings accrue to the benefit of the relevant PR account or SEG fund, unless separate legislation is enacted to transfer these savings to the general fund. AB 75 would authorize the Secretary of Administration to make this type of transfer, including PR and SEG, of up to $160 million in the 2009-11 biennium.

3. The AB 75 provision that would allow the Secretary of Administration to reduce appropriations under the Legislature and the Courts raises issues relating to the separation of powers in state government. Authorizing an appointee of the Governor to reduce the budgets of the Legislature and Courts would impair their ability to function as independent branches of government.

4. The budgetary goal of improving the balance in the general fund through lapses and transfers could be accomplished by modifying the provisions of 2009 Act 2, which would not raise the separation of powers issue. Under this approach, Act 2 could be modified to require additional lapses or transfers in the 2009-11 biennium. This would provide the DOA Secretary authority to generate the desired amount of lapses and transfer without affecting the independence of the Legislature and Courts. The Act 2 provisions prohibiting any transfers from certain DOT appropriations could be retained or deleted depending on whether DOT is intended to be subject to this transfer provision. The AB 75 provision requiring WHEDA to transfer $0.5 million to the general fund could be retained.

5. As an example of how the Act 2 provisions could be modified to generate additional savings for the general fund compared to AB 75, Alternative 2 identifies two modifications that could be made to AB 75. Using this approach, a greater lapse and transfer amount would be established that would improve the balance in the general fund by $100 million compared to AB 75. The specific dollar amounts in the alternative could be modified to generate differing amounts of moneys for the general fund.

ALTERNATIVES

1. Approve the Governor's recommendation to require the Secretary of DOA to lapse or transfer $160 million annually to the general fund from the unencumbered balances of state

agencies, including the Legislature and Courts, other than sum sufficient and federal appropriations, in the 2009-11 biennium, including $0.5 million from WHEDA.

2. Delete provision and, instead: (a) modify 2009 Act 2 to require $259.5 million in additional lapses and transfers, as an increase to the $125 million already specified in Act 2; (b) delete the 2007 Act 20 lapse and transfer requirement; and (c) require WHEDA to transfer $250,000 in 2009-10 and $250,000 in 2010-11 of its actual surplus in the Authority surplus fund to the general fund.

ALT 2	**Change to Bill** Revenue
GPR	$100,000,000

3. Delete provision.

ALT 3	**Change to Bill** Revenue
GPR	- $160,000,000

Prepared by: Dave Loppnow