

**2003 DRAFTING REQUEST**

**Senate Amendment (SA-SB44)**

Received: **06/05/2003**

Received By: **jkuesel**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau 6-8114**

By/Representing: **Rhodes**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **State Finance - miscellaneous**

Extra Copies: **RAC - 1**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

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**Pre Topic:**

LFB:.....Rhodes -

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**Topic:**

Lapse or transfer of PR and SEG funds for 5th week of vacation as cash

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**Instructions:**

Per motion #709, #9.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 06/06/2003	kfollett 06/06/2003		_____			
/1			chaskett 06/06/2003	_____	sbasford 06/06/2003		
/2	jkuesel	kgilfoy	jfrantze	_____	mbarman		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	06/09/2003	06/09/2003	06/09/2003	_____	06/09/2003		

FE Sent For:

<END>

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/?	jkuesel 06/06/2003	kfollett 06/06/2003					
/1	jkuesel 1/2-6/9 6/9	king	chaskett 06/06/2003		sbasford 06/06/2003		
/2			JK 6/9		JK/PS 6/9		

FE Sent For:

**<END>**

DNOTE

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1/1	jkuesel 6/6	1/1 kjl 6/6		_____			

FE Sent For:

<END>

60357 Rhodes LRB fed fund bloodhound  
60311 Zimmerman Yank <sup>was</sup> separate personal charge

in 2003-04 and \$5,115,000 in 2004-05 under the provisions of SB 44 and estimated decreases of \$3,400,000 in 2003-04 and \$6,200,000 in 2004-05 due to the proposed levy limits).

PLS

6. WTCS Categorical Aids. Provide \$3,700,000 GPR annually for incentive grants and \$3,700,000 GPR annually for health care grants, which would restore the funding deleted by the Committee in a previous action on WTCS.

ent

7. Compensation Reserves. Reduce the total level of funding included in compensation reserves for the 2003-05 biennium by: \$20,000,000 GPR; \$5,104,600 FED; \$3,083,700 SEG; and \$15,361,700 PR. [Note: The funding reductions for fiscal year 2003-04 would be: \$6,660,000 GPR; \$1,699,800 FED; \$1,026,900 SEG; and \$5,115,400 PR. The funding reductions for fiscal year 2004-05 would be: \$13,340,000 GPR; \$3,404,800 FED; \$2,056,800 SEG; and \$10,246,300 PR].

Zimmerman 60310/1

8. Group Health Insurance Premium Payments for Certain Part-Time State Employees. Specify that for permanent or project state employees with appointments between 0.50 FTE and 0.74 FTE, who are Wisconsin Retirement System participants, the state would contribute one-half of the normal state contribution for a full-time employee, commencing January 1, 2004, and the employee would contribute the remainder. Lapse all non-FED fringe benefits savings to the general fund. Stipulate that this requirement would be a prohibited subject of bargaining for the state as an employer and specify that the modification would first apply to employees who are affected by a collective bargaining agreement that contains inconsistent provisions on the day on which the collective bargaining agreement expires, or is extended, modified, or renewed, whichever first occurs. Estimate that \$7,084,600 in 2003-04 (\$3,718,800 GPR-Lapse and \$3,365,800 GPR-REV) and \$14,169,200 in 2004-05 (\$7,437,600 GPR-Lapse and \$6,731,600 GPR-REV) would be credited to the general fund.

STK

9. Fifth Week Vacation Pay. Reduce each state agency's budget for 2003-04 and for 2004-05 by the amounts of funds that were included in each agency's appropriations as a standard budget adjustment for the costs of payments to employees for their fifth week of vacation eligibility as cash rather than time-off. In total, delete \$1,641,700 GPR in 2003-04 and \$1,699,200 GPR in 2004-05; \$177,100 FED in 2003-04 and 2004-05; \$573,200 PR in 2003-04 and \$578,200 PR in 2004-05; and \$353,100 SEG in 2003-04 and 2004-05. In addition, lapse all non-GPR amounts so reduced to the general fund except that no such lapse shall be made for budgeted amounts that were in appropriations that are from federal fund sources or from other fund sources whose lapse to the general fund would be prohibited by state or federal laws or constitutions. Increase estimated GPR-Earned by \$926,300 in 2003-04 and \$931,300 in 2004-05.

STK

Zimmerman 60310/1

10. Cigarette Tax Refunds. Reduce, from 70% to 30%, the percentage of cigarette tax collections from sales of cigarettes on reservations or trust lands to non-tribal members that are refunded to Native American tribes. Reduce the estimated cost of cigarette tax refunds to Native American tribes by \$6,000,000 GPR in each year.

STK

11. Four-year-old Kindergarten. Provide that, for revenue limit and general school aid membership purposes, pupils enrolled in a K4 program who are not considered children with

105,19

S:\lfb share\lar\budget draft - fifth week vacation lapse.doc

**DRAFT FOR STATE AGENCY FIFTH WEEK VACATION LAPSE**

**Section ????? Required State Agency Appropriation Account Lapses and Fund Transfers.**

(a) In this subsection:

1. "Secretary" means the secretary of administration.
2. "State agency" means any office, department or independent agency in the executive branch of Wisconsin state government, the legislature and the courts.

(b) During the 2003-04 and 2004-05 fiscal years, the secretary shall determine the amounts from state agencies' budgets that would have been funded from appropriation accounts funded from program revenues or from segregated fund balances for purpose of funding a budget category known as "standard budget adjustment for fifth week of vacation as cash" but which funds were removed from agencies' appropriations during the 2003-05 biennial budget process.

(c) During the 2003-04 and the 2004-05 fiscal years, the secretary shall ensure that each state agency lapses from the its appropriate program revenue service or program revenue-service appropriation account to the general fund the program revenue amounts as determined by the secretary under paragraph (b).

(d) During the 2003-04 and the 2004-05 fiscal years, the secretary shall ensure that each state agency transfers from its appropriate segregated fund to the general fund the segregated fund revenue amounts as determined by the secretary under paragraph (b).

(e) Notwithstanding paragraphs (b), (c) and (d), no state agency shall be required to make any lapse from program revenue appropriation accounts to the general fund or to make any transfer from a segregated fund to the general fund, if the amounts to be lapse would be from federal fund sources or would be in violation of state or federal law or the state or federal constitution

2003

Date (time) needed

NOTE

LRB b 0386, 1

LFB BUDGET AMENDMENT [ONLY FOR LFB]

JTK : KJ :

See form AMENDMENTS — COMPONENTS & ITEMS.

LFB AMENDMENT TO 2003 SENATE BILL 44

>>FOR JT. FIN. SUB. — NOT FOR INTRODUCTION<<

At the locations indicated, amend the bill as follows:

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :



2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBb0386/lins  
JTK.....

1. Page 1105, line 19: after that line insert:

*3f*  
“(A) LAPSE OR TRANSFER OF CERTAIN APPROPRIATION ACCOUNT AND SEGREGATED  
FUND BALANCES. (a) In this subsection:

1. “Executive branch agency” has the meaning given in section 16.70 (4) of the statutes.

2. “Federal revenues” has the meaning given in section 20.001 (2) (e) of the statutes.

3. “Program revenues” has the meaning given in section 20.001 (2) (b) of the statutes.

4. “Program revenues—service” has the meaning given in section 20.001 (2) (c) of the statutes.

5. “Secretary” means the secretary of administration.

6. “Segregated fund revenues” has the meaning given in section 20.001 (2) (d) of the statutes.

*sem dash*  
7. “Segregated fund revenues<sup>sem dash</sup>—service” has the meaning given in section 20.001 (2) (da) of the statutes. *1 X*

(b) During the 2003-04 and 2004-05 fiscal years, the secretary shall determine the amount from each appropriation to an executive branch agency made from program revenues, program revenues—service, segregated fund revenues, or segregated fund revenues<sup>sem dash</sup>—service that was allocated by the governor for the purpose of funding a budget category designated as “Standard budget adjustment for fifth week of vacation as cash” but which amount was removed from that appropriation during legislative consideration of the 2003-05 executive budget bill. *X*

(c) Except as provided in paragraph (e), during the 2003-04 and 2004-05 fiscal years, the secretary shall ensure that each executive branch agency lapses from any appropriation made to the agency ~~made~~ from program revenues or program revenues-service an amount equal to the amount determined for that appropriation under paragraph (b).

(d) Except as provided in paragraph (e), during the 2003-04 and 2004-05 fiscal years, the secretary shall transfer from the segregated fund from which any appropriation from segregated fund revenues or segregated fund revenues-service identified under paragraph (b) is made to the general fund the amount determined for that appropriation under paragraph (b).

(e) No lapse or transfer shall be made under this subsection from any appropriation account or segregated fund if the moneys to be lapsed or transferred from that account or fund are derived from federal revenues or if the lapse or transfer would be in violation of state or federal law or the state or federal constitution.”

(END)

D Note

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

60386/1 du  
LRB 0135/1 dn  
JTK:kmg:rs  
E: kjf

~~May 8, 2003~~ Date

Ferry Rhodes :  
~~Jero Bauer~~

1. I do not know and I understand that you are not sure whether there are sufficient moneys allocated for information technology projects in general and program revenue supported programs for the 2003-05 fiscal biennium to fund the lapses or transfers proposed in this draft. Unless we are certain that sufficient moneys are available, the draft should address the contingency under which the lapses or transfers cannot be effected, or it could be **inoperative**.

2. This draft would be improved if federal revenues were exempted from any potential lapse or transfer. The use of federal revenues for purposes other than the purpose for which they are provided will likely be contrary to federal law. There may not be an appropriation from which the federal government can be repaid for any disallowance that may result.

3. Generally, the state's authority to regulate a particular occupation or business includes the authority to charge regulated individuals or entities a reasonable fee or tax to defray the cost of regulation, but only to the extent necessary for that purpose, and does not include the authority to impose a fee or tax for the purpose of raising revenue. See *Wis. Tel. Co. v. Public Service Comm.*, 206 Wis. 589 (1932). In determining the validity of such a fee imposed by a state, the burden is on the state to demonstrate that the fee is necessary to cover the reasonable costs of the regulatory system and that the fee is used for no other purpose than to meet those costs. *Milw. Mobilization for Survival v. Milw. County Park Comm.*, 477 F. Supp. 1210, 1220 (D.C. Wis., 1979). Although the Wisconsin Supreme Court has accorded great deference to the legislature's decisions regarding taxing and spending, see *Flynn v. Department of Administration*, 216 Wis. 2d 521 (1998) (upholding lapse of court automation fees to the general fund), this draft may be susceptible to constitutional challenge if it results in the lapse of regulatory fees to the general fund.

4. The diversion of program or segregated revenue that is collected under statutes that authorize the revenue to be collected to recover specific items of costs may be argued to result in unauthorized charges in certain situations, which could potentially entitle the payers to refunds. In some cases, the statutes that authorize program or segregated revenue to be collected are worded so that agencies may charge for their services and the charges need not relate to any particular cost items. See, for example,

or transfer

2.

revenues

s. 16.53 (13), stats., which permits DOA to charge any agency for financial services provided to the agency. In this case, nothing limits the charges solely to recovery of costs of providing financial services. However, under s. 16.53 (1) (d) 2., stats., DOA is permitted to charge agencies *for the department's costs* of estimation, collection, and payment of benefits under ch. 108, stats. See also s. 16.98 (3), stats., which directs that the proceeds of program revenue collected under the federal resource acquisition program be used for specified purposes.

If more than one revenue stream feeds a particular appropriation [as is the case, for example, with s. 20.505 (1) (ka), stats.], then it may be possible ~~for DOA~~ to effect the diversion authorized by this draft by adhering to laws that require or permit charges to be levied to recover specific costs and to fund the diversion from sources where the statutes authorizing charges accord more discretion to ~~DOA~~, and, if the issue is raised, the courts may require ~~DOA~~ to fund the cost of the diversion in this way.

~~5. In preparing this amendment, I noticed that the reference to "chapter" in s. 22.17 (3), stats., should be changed to "subchapter." Since that subsection does not appear in the draft, I did not treat it, but if you wish, we can either include it in this draft or in the LRB technical amendment.~~

And the agency to which an appropriation is made

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb0386/1dn  
JTK:kmg&kjf:cph

June 6, 2003

Terry Rhodes:

1. Generally, the state's authority to regulate a particular occupation or business includes the authority to charge regulated individuals or entities a reasonable fee or tax to defray the cost of regulation, but only to the extent necessary for that purpose, and does not include the authority to impose a fee or tax for the purpose of raising revenue. See *Wis. Tel. Co. v. Public Service Comm.*, 206 Wis. 589 (1932). In determining the validity of such a fee imposed by a state, the burden is on the state to demonstrate that the fee is necessary to cover the reasonable costs of the regulatory system and that the fee is used for no other purpose than to meet those costs. *Milw. Mobilization for Survival v. Milw. County Park Comm.*, 477 F. Supp. 1210, 1220 (D.C. Wis., 1979). Although the Wisconsin Supreme Court has accorded great deference to the legislature's decisions regarding taxing and spending, see *Flynn v. Department of Administration*, 216 Wis. 2d 521 (1998) (upholding lapse of court automation fees to the general fund), this draft may be susceptible to constitutional challenge if it results in the lapse or transfer of regulatory fee revenues to the general fund.

2. The diversion of program or segregated revenue that is collected under statutes that authorize the revenue to be collected to recover specific items of costs may be argued to result in unauthorized charges in certain situations, which could potentially entitle the payers to refunds. In some cases, the statutes that authorize program or segregated revenue to be collected are worded so that agencies may charge for their services and the charges need not relate to any particular cost items. See, for example, s. 16.53 (13), stats., which permits DOA to charge any agency for financial services provided to the agency. In this case, nothing limits the charges solely to recovery of costs of providing financial services. However, under s. 16.53 (1) (d) 2., stats., DOA is permitted to charge agencies *for the department's costs* of estimation, collection, and payment of benefits under ch. 108, stats. See also s. 16.98 (3), stats., which directs that the proceeds of program revenue collected under the federal resource acquisition program be used for specified purposes.

If more than one revenue stream feeds a particular appropriation [as is the case, for example, with s. 20.505 (1) (ka), stats.], then it may be possible to effect the diversion authorized by this draft by adhering to laws that require or permit charges to be levied to recover specific costs and to fund the diversion from sources where the statutes authorizing charges accord more discretion to the agency to which an appropriation is

made, and, if the issue is raised, the courts may require the agency to fund the cost of the diversion in this way.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778



## Legislative Fiscal Bureau

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

**Date: June 8, 2003**

**DELIVER TO:** Jeff Kuesel

**Addressee Fax #:** 4-6948

**Addressee Phone #:**

**# of Pages, Including Cover:** 2

**Sender's Initials:**

**From:** Terry Rhodes

**Jeff: Attached are exclusionary provisions from two different drafts regarding lapse of non-GPR funds to the general fund. I think we agreed that the language in LRBb 0373/2 is probably the preferable approach re federal funds. If so, please redraft LRBb 0386/1 so that the last two lines re "if the lapse ..." are the same as in LRBb 0372/2. Maybe you can give me a call tomorrow to discuss this first. Thanks.**

2003 - 2004 Legislature

- 3 -

LRBb0386/1  
JTK:kmg&kjf:cph

1 (e) No lapse or transfer shall be made under this subsection from any  
2 appropriation account or segregated fund if the moneys to be lapsed or transferred  
3 from that account or fund are derived from federal revenues or if the lapse or transfer  
4 would be in violation of state or federal law or the state or federal constitution.”.

5

(END)

2003 - 2004 Legislature

- 2 -

LRBb0373/2  
JTK:kjf:cph

10 (c) The secretary of administration shall not lapse or transfer moneys to the  
11 general fund from any appropriation under paragraph (b) if the lapse or transfer  
12 would violate a condition imposed by the federal government on the expenditure of  
13 the moneys or if the lapse or transfer would violate state law or the federal or state  
14 constitution.”.

15

(END)





State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBb0386/z  
JTK: [redacted] kjfcp

LFB:.....Rhodes - Lapse or transfer of PR and SEG funds for 5th week of vacation as cash

FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

SENATE AMENDMENT,  
TO 2003 SENATE BILL 44

→ King  
E  
1

1 At the locations indicated, amend the bill as follows:

2 1. Page 1105, line 19: after that line insert:

3 "(3f) LAPSE OR TRANSFER OF CERTAIN APPROPRIATION ACCOUNT AND SEGREGATED  
4 FUND BALANCES.

5 (a) In this subsection:

6 1. "Executive branch agency" has the meaning given in section 16.70 (4) of the  
7 statutes.

8 1. "Federal revenues" has the meaning given in section 20.001 (2) (e) of the  
9 statutes.

10 2. "Program revenues" has the meaning given in section 20.001 (2) (b) of the  
11 statutes.

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3. ~~4.~~ "Program revenues-service" has the meaning given in section 20.001 (2) (c) of the statutes.

4. ~~5.~~ "Secretary" means the secretary of administration.

5. ~~6.~~ "Segregated fund revenues" has the meaning given in section 20.001 (2) (d) of the statutes.

6. ~~7.~~ "Segregated fund revenues — service" has the meaning given in section 20.001 (2) (da) of the statutes.

7. "State agency" has the meaning given in section 20.001 (1) of the statutes.

(b) During the 2003-04 and 2004-05 fiscal years, the secretary shall determine the amount from each appropriation to ~~an executive branch~~ <sup>a state</sup> agency made from program revenues, program revenues-service, segregated fund revenues, or segregated fund revenues — service that was allocated by the governor for the purpose of funding a budget category designated as "Standard budget adjustment for fifth week of vacation as cash," but which amount was removed from that appropriation during legislative consideration of the 2003-05 executive budget bill.

(c) Except as provided in paragraph (e), during the 2003-04 and 2004-05 fiscal years, the secretary shall ensure that each ~~executive branch~~ <sup>state</sup> agency lapses from any appropriation made to the agency from program revenues or program revenues-service an amount equal to the amount determined for that appropriation under paragraph (b).

(d) Except as provided in paragraph (e), during the 2003-04 and 2004-05 fiscal years, the secretary shall transfer from the segregated fund from which any appropriation from segregated fund revenues or segregated fund revenues — service identified under paragraph (b) is made to the general fund the amount determined for that appropriation under paragraph (b).

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(e) No lapse or transfer shall be made under this subsection from any appropriation account or segregated fund if the ~~moneys to be lapsed or transferred~~ <sup>lapse or transfer would</sup> violate a condition imposed by the federal government on the ~~from that account or fund are derived from federal revenues or if the lapse or transfer~~ <sup>expenditure of the moneys or if the lapse or transfer would</sup> ~~would be in violation of state or federal law or the state or federal~~ <sup>violate</sup> constitution.”.

(END)

state  
law  
or the  
federal  
or  
state



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBb0386/2  
JTK:kjf&kmg:jf

LFB:.....Rhodes – Lapse or transfer of PR and SEG funds for 5th week of vacation as cash

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

**SENATE AMENDMENT ,**

**TO 2003 SENATE BILL 44**

1           At the locations indicated, amend the bill as follows:

2           **1.** Page 1105, line 19: after that line insert:

3           “(3f) LAPSE OR TRANSFER OF CERTAIN APPROPRIATION ACCOUNT AND SEGREGATED  
4 FUND BALANCES.

5           (a) In this subsection:

6           1. “Federal revenues” has the meaning given in section 20.001 (2) (e) of the  
7 statutes.

8           2. “Program revenues” has the meaning given in section 20.001 (2) (b) of the  
9 statutes.

10           3. “Program revenues–service” has the meaning given in section 20.001 (2) (c)  
11 of the statutes.

1           4. “Secretary” means the secretary of administration.

2           5. “Segregated fund revenues” has the meaning given in section 20.001 (2) (d)  
3 of the statutes.

4           6. “Segregated fund revenues — service” has the meaning given in section  
5 20.001 (2) (da) of the statutes.

6           7. “State agency” has the meaning given in section 20.001 (1) of the statutes.

7           (b) During the 2003–04 and 2004–05 fiscal years, the secretary shall determine  
8 the amount from each appropriation to a state agency made from program revenues,  
9 program revenues–service, segregated fund revenues, or segregated fund revenues  
10 — service that was allocated by the governor for the purpose of funding a budget  
11 category designated as “Standard budget adjustment for fifth week of vacation as  
12 cash,” but which amount was removed from that appropriation during legislative  
13 consideration of the 2003–05 executive budget bill.

14           (c) Except as provided in paragraph (e), during the 2003–04 and 2004–05 fiscal  
15 years, the secretary shall ensure that each state agency lapses from any  
16 appropriation made to the agency from program revenues or program  
17 revenues–service an amount equal to the amount determined for that appropriation  
18 under paragraph (b).

19           (d) Except as provided in paragraph (e), during the 2003–04 and 2004–05 fiscal  
20 years, the secretary shall transfer from the segregated fund from which any  
21 appropriation from segregated fund revenues or segregated fund revenues — service  
22 identified under paragraph (b) is made to the general fund the amount determined  
23 for that appropriation under paragraph (b).

24           (e) No lapse or transfer shall be made under this subsection from any  
25 appropriation account or segregated fund if the lapse or transfer would violate a

1 condition imposed by the federal government on the expenditure of the moneys or if  
2 the lapse or transfer would violate state law or the federal or state constitution.”

3 (END)