

## 2007 DRAFTING REQUEST

### Bill

Received: **10/06/2006**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-8219**

By/Representing: **Harshner**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - social services**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **robin.ryan@legis.wisconsin.gov**

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### Pre Topic:

DOA:.....Harshner, BB0112 -

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### Topic:

Vocational rehabilitation; maximizing federal assistance

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### Instructions:

See Attached

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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>
/?	dkennedy 10/22/2006	jdyer 10/23/2006		_____			S&L
/1			nmatzke 10/23/2006	_____	lparisi 10/23/2006		

FE Sent For:

<END>

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~~farbanc@dhs.state.wi.us~~

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forsaac@dhfs.state.wi.us

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BB0112

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/?	dkennedy	1 10/23 jld	nwn 10/2003	nwn/jf 10/23			

FE Sent For:

<END>

## 2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Maximizing Federal Assistance for the Vocational Rehabilitation Program
- Tracking Code: BB0112
- SBO team: Education
- SBO analyst: Sam Harshner
  - Phone: 266-8219
  - Email: Samuel.Harshner@wisconsin.gov
- Agency acronym: DWD
- Agency number: 445
- Priority (Low, Medium, High): Medium

## Statutory Modifications

### Department of Workforce Development 2007-2009 Biennial Budget

**DI Number:** 5601

**Topic:** Maximizing Federal Assistance for the Vocational Rehabilitation Program

#### Description Of Change

The department is seeking modification to the appropriation type for s. 20.445(5)(a) from Annual to Continuing by changing the statutory language from "The amounts in the schedule for..." to "As a continuing appropriation, the amounts in the schedule for...". Retain language that allows GPR funds to be transferred between fiscal years but modify current language to ensure that all funds transferred may be expended until fully depleted or repealed by subsequent action of the legislature.

The federal Title 1-B award allows one-year-to-obligate with two-years-to-spend. Individualized Plan for Employment (IPE) for consumer services typically spans more than one fiscal year (the average IPE takes approximately 2.5 years to complete).

In addition, the modification would provide a waiver of section VI - Revenues, sub-section 6 - Refund of Expenditures in the State Accounting Manual as it pertains to DVR's GPR. Under current procedures, any refund of expenditures from prior fiscal year must be coded to Earned Revenue in Appropriation 500 and then lapsed back to the General Fund.

#### Justification

The modification in statutory language would allow DVR to utilize the GPR match funds from prior years in the current fiscal year to match federal funds for services under the program thus increasing services to individuals with disabilities. Increasing the number of DVR consumers served, and reducing the service waiting list, is consistent with the Governor's and legislature's plan outlined in the 2005-07 biennial budget.

By definition, an annual appropriation requires unspent match funds, at the end of a fiscal year, to lapse from the program to the general fund. Annual appropriations also have a requirement that prior-year refunds must lapse to the general fund rather than being returned to the program. In the case of DVR, any GPR lapse means the GPR is no longer available for use as match to draw federal funds. Using an annual appropriation structure for match expenditures has the effect of constraining the program by not allowing the draw of federal funds especially when the federal funds allow for one-year-to-obligate with two-years-to-spend and Individualized Plans for Employment (IPEs) for consumer services typically span more than one fiscal year (the average IPE takes approximately 2.5 years to complete).

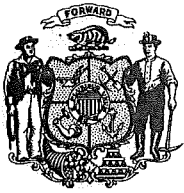
It would also maintain the necessary GPR match within the program to draw the available federal funds to be used to address the caseload demand which crosses fiscal years.

#### Statutory Language

**s.s. 20.445(5)(a)** – General program operations; purchased services for clients. As a continuing appropriation, the amounts in the schedule for general program operations, including field services to clients and administrative services, for the purchase of goods and services authorized under ch. 47, and for vocational rehabilitation and other independent living services to persons with disabilities. Notwithstanding ss. 20.001 (3)(a) and 20.002 (1), the department may transfer all funds within this appropriation between fiscal years under this paragraph. ~~All funds appropriated for a particular fiscal year that are transferred to the next fiscal year and are not spent or encumbered by September 30-~~

~~of that next fiscal year shall lapse to the general fund on the succeeding October 1. A credit from a previous fiscal year expenditure, an earned revenue, may be credited to the current fiscal year appropriation account.~~

Note: The LRB drafting attorney may wish to include a nonstatutory provision that will authorize the carryover of funds from the current annual appropriation in the 2<sup>nd</sup> year of the 2005-07 biennium – Authorization for the transfer of funds will be effective upon passage and will be retroactive to the previous fiscal year.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0489/1

DAK:.....

LPS-Fix  
request sheet  
please

Jld

BB0112

DOA:.....Harshner - Vocational rehabilitation; maximizing federal assistance

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

D-note

1 don't gen  
AN ACT ...; relating to: the budget. ✓

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES ✓**

**OTHER HEALTH AND HUMAN SERVICES ✓**

(GPR)

Under current law, the general purpose revenues appropriation account from which DWD provides moneys for vocational rehabilitation services is an annual appropriation but permits transfer of funds between fiscal years. Funds appropriated for a particular fiscal year that are so transferred but are not spent or encumbered by September 30 of that next fiscal year lapse to the general fund on the succeeding October 1. ✓

This bill changes the DWD general purpose revenues vocational rehabilitation services appropriation account from an annual to a continuing, sum certain appropriation. ✓

GPR  
and local

For further information see the state fiscal estimate, which will be printed as an appendix to this bill. ✓

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 20.445 (5) (a) of the statutes is amended to read:

2 20.445 (5) (a) *General program operations; purchased services for clients.* The

3 As a continuing appropriation, the amounts in the schedule for general program

4 operations, including field services to clients and administrative services, for the

5 purchase of goods and services authorized under ch. 47, and for vocational

6 rehabilitation and other independent living services to persons with disabilities.

7 ~~Notwithstanding ss. 20.001 (3) (a) and 20.002 (1), the department may transfer funds~~

8 ~~between fiscal years under this paragraph. All funds appropriated for a particular~~

9 ~~fiscal year that are transferred to the next fiscal year and are not spent or~~

10 ~~encumbered by September 30 of that next fiscal year shall lapse to the general fund~~

11 ~~on the succeeding October 1.~~

**History:** 1971 c. 125 ss. 156, 522 (1); 1971 c. 211, 215; 1971 c. 228 s. 44; 1971 c. 259; 1973 c. 90, 180, 243, 333; 1975 c. 39, 147, 224, 274, 344; 1975 c. 404 ss. 3, 10 (1); 1975 c. 405 ss. 3, 11 (1); 1977 c. 29, 48, 203, 418; 1979 c. 34 ss. 512 to 522, 2102 (25) (a); 1979 c. 189, 221, 309; 1979 c. 329 s. 25 (1); 1979 c. 350 ss. 3, 27 (6); 1979 c. 353, 355; 1981 c. 20, 36, 92, 93, 317, 325, 364; 1983 a. 8; 1983 a. 27 ss. 411 to 425; 1983 a. 98 ss. 1, 31; 1983 a. 192, 384, 388, 410; 1985 a. 17, 29, 153, 313, 332; 1987 a. 27; 1987 a. 38 ss. 2 to 4, 136; 1987 a. 399, 403; 1989 a. 31, 44, 64, 77, 254, 284, 359; 1991 a. 39 ss. 372c, 545r, 545t, 545v, 547, 548, 548g, 548m, 549, 549b, 549g, 549p; 1991 a. 85, 89, 269, 315; 1993 a. 16, 126, 243, 437, 491; 1995 a. 27 ss. 772mm, 772mn, 776p to 778b, 778L, 778n, 778q, 778v, 778z to 780m, 781m to 782p, 782u, 841, 842, 849, 850, 854, 855, 858c, 873 to 876, 878, 880, 890 to 896, 962 to 1014c, 9126 (19), 9130 (4); 1995 a. 113 s. 2t; 1995 a. 117, 201, 216, 225, 289; 1995 a. 404 ss. 4, 6 to 8, 10 to 17; 1997 a. 3; 1997 a. 27 ss. 610 to 642m, 722; 1997 a. 35, 38, 39, 105, 112, 191, 235, 236, 237, 252; 1999 a. 9 ss. 270, 458 to 478; 1999 a. 15, 32; 2001 a. 16, 35, 43, 104, 109; 2003 a. 33, 197; 2005 a. 25, 86, 172; 2005 a. 443 s. 2g.

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

12

(END)

D-NOTE



## D-NOTE

To Sam Harshman:

This request seeks a change in appropriation type for s. 20.445(5)(a),<sup>✓</sup> stats, from annual to continuing, seeks authority to transfer funds between fiscal years, and seeks to ensure that all funds transferred may be expended until fully depleted or repealed by subsequent action of the legislature. These requests are met by converting the appropriation to a continuing appropriation. Please see s. 20.001(3)(c),<sup>✓</sup> stats.<sup>↑</sup> Note that I have repealed the "notwithstanding" language of s. 20.445(5)(a),<sup>✓</sup> stats.; that language is appropriate for an annual appropriation but is unnecessary for a continuing appropriation.

DAK



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

LRB-0489/1dn  
DAK:jld:nwn

October 23, 2006

To Sam Harshner:

This request seeks a change in appropriation type for s. 20.445 (5) (a), stats., from annual to continuing, seeks authority to transfer funds between fiscal years, and seeks to ensure that all funds transferred may be expended until fully depleted or repealed by subsequent action of the legislature. These requests are met by converting the appropriation to a continuing appropriation. Please see s. 20.001 (3) (c), stats. Note that I have repealed the "notwithstanding" language of s. 20.445 (5) (a), stats.; that language is appropriate for an annual appropriation but is unnecessary for a continuing appropriation.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: [debora.kennedy@legis.wisconsin.gov](mailto:debora.kennedy@legis.wisconsin.gov)

**Kennedy, Debora**

---

**From:** Natzke, Noah  
**Sent:** Tuesday, November 21, 2006 2:23 PM  
**To:** Kennedy, Debora  
**Subject:** FW: LRB Draft: 07-0489/1 Vocational rehabilitation; maximizing federal assistance

Debora:

Someone at the DOA thinks I'm a drafter! Below is feedback from an analyst on a bill.

Noah Natzke  
Legislative Reference Bureau  
266-0132

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**From:** Harshner, Samuel  
**Sent:** Tuesday, November 21, 2006 1:18 PM  
**To:** Natzke, Noah  
**Subject:** RE: LRB Draft: 07-0489/1 Vocational rehabilitation; maximizing federal assistance

Noah,

Sorry it took so long to get back to you on this draft, I wanted to get agency comments before I responded.

Anyway there are two issues I'd like to mention in reference to your draft.

1. The draft legislation eliminates the provision "Notwithstanding ss.20.002(3)(a) and 20.002 (1), the department may transfer funds between fiscal years under this paragraph. All funds appropriated for a particular fiscal year that are transferred to the next fiscal year and are not spent or encumbered by September 30 of that next fiscal year shall lapse to the general fund on the succeeding October 1."
  - a. The elimination to the reference to s. 20.002(3)(a) is fine since this refers only to annual appropriations.
  - b. There may be some reason for maintaining the reference to 20.002(1). The department believes this provides flexibility should legislative amendments or the biennial budget not be enacted on or before June 30th of odd numbered years.
  - c. In recent years, the language "the department may transfer funds between fiscal years" has allowed them to cover shortfalls in even numbered years, by using odd numbered year budget authority. We would like to see this language retained in the current legislative language.
2. The department included language in its draft that stated "The department may transfer all funds within this appropriation between fiscal years under this paragraph." The two underlying phrases were included because 20.445(5)(a) includes multiple numeric appropriations (used by budget office and accounting staff). The department would like to ensure that they will be able to move funds within these appropriations. I'm not sure whether that necessitates any legislative assurance though. It strikes me that this is more of an accounting issue. In any case perhaps you could shed some light on the subject.
3. DWD's language included a provision that reads "A credit from a previous fiscal year expenditure, an earned revenue, may be credited to the current fiscal year appropriation account." Essentially, under current law, funds that are obligated in a prior year and then deobligated in another are counted as prior year expenditures and are lapsed to the general fund. This happens on a regular basis in Vocational Rehabilitation services because Individual Plans for Employment run across multiple fiscal years and there is a good deal of uncertainty about whether and when purchases of goods and services need to be made. Not sure if

something like this necessitates legislative language or if it should more properly be done through internal agreement between DOA and DWD. Again, any insight you have would be appreciated.

Thanks for your help Noah, and please feel free to email or call me if there are any questions. I'm guessing there will be. My phone number is (608)-266-8219

Sam

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**From:** Natzke, Noah [mailto:Noah.Natzke@legis.wisconsin.gov]  
**Sent:** Monday, October 23, 2006 10:40 AM  
**To:** Harshner, Samuel - DOA  
**Cc:** Hanle, Bob - DOA; Hanaman, Cathlene; Palchik, Laurie A - DOA  
**Subject:** LRB Draft: 07-0489/1 Vocational rehabilitation; maximizing federal assistance

Following is the PDF version of draft 07-0489/1.

**Kennedy, Debora**

---

**To:** Harshner, Samuel - DOA  
**Subject:** RE: LRB draft 07-0489/1, Vocational rehabilitation;maximizing federal assistance

Sam--

I have to be leaving for the afternoon, so will reply in more depth to your latest e-mail tomorrow morning. I'll address the first paragraph then. As to your second paragraph, your question is essentially correct; the money is appropriated for the second year of the biennium, which begins on July 1 of that second year, and by law is not available during the first year of the biennium.

Debora

*1/24/07 From Sam Harshner: Leave draft as is in h.*

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**From:** Harshner, Samuel - DOA  
**Sent:** Tuesday, January 23, 2007 2:40 PM  
**To:** Kennedy, Debora  
**Subject:** RE: LRB draft 07-0489/1, Vocational rehabilitation;maximizing federal assistance

Debora,

I certainly understand your concerns. Please note, however, that we are not transferring money without a valid appropriation in law in the proceeding year. Our interpretation is that this language gives us the same sort of authority a biennial appropriation does and that it would allow us to transfer between years as long as there was an appropriation specified in law.

For my own edification, since we are only transferring money from one statutorily authorized appropriation to another, how does Article VIII, Sec. 2 relate to the issue? Is it because the second year's appropriation doesn't technically exist until the second year of the biennium begins?

In any case, would it be a problem to have you draft the language as initially submitted? Please drop me a line if this is going to be a problem.

Thank you very much for your help on this.

Sam Harshner

---

**From:** Kennedy, Debora [<mailto:Debora.Kennedy@legis.wisconsin.gov>]  
**Sent:** Tuesday, January 23, 2007 2:23 PM  
**To:** Harshner, Samuel - DOA  
**Subject:** RE: LRB draft 07-0489/1, Vocational rehabilitation;maximizing federal assistance

Sam--

I understand that the LAB might not raise this issue; in another instance I am aware of, LAB objected to a transfer that reached into the next year of a biennium, but only because the statutory language did not appear to permit the transfer. The concern that I am raising does not rest on the statutes, however; it rests on the constitution (Article VIII, Sec. 2, as I previously referenced). The LAB auditors are not necessarily attorneys, and it is possible that they would not be attuned to this constitutional issue. Nevertheless, it remains a problem. The language permitting transfer between fiscal years in several appropriations in the statutes was originally intended, for annual appropriations, to prevent the automatic lapse at the end of a fiscal year. It was not intended to authorize an unconstitutional reach forward, for purposes of the first year of a biennium, into moneys appropriated for the second year of a biennium or to reach into the first year of a subsequent biennium.

Debora

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**From:** Harshner, Samuel - DOA  
**Sent:** Tuesday, January 23, 2007 9:39 AM  
**To:** Kennedy, Debora

**Subject:** RE: LRB draft 07-0489/1, Vocational rehabilitation;maximizing federal assistance

Debora,

I'm extremely sorry for the six week gap between emails on this draft. The department has been working on comments for us, and I only received them recently. In terms of the current draft, we would like to see it drafted with the notwithstanding language included despite its redundancy.

In reference to your concerns about the constitutionality of transferring appropriated money in one year back to another we did address this issue with our own accountants earlier this year. My supervisor Bob Hanle, found a LAB report that referenced a transfer of this nature made in FY00. Here is the email:

During our phone conversation yesterday, you asked me how I think LAB would react to a request to transfer funds under s. 20.445(3)(dz) from its FY07 appn to FY06. In October 2000, LAB released an evaluation of DVR that addressed such a reverse transfer (the same one DWD uses to argue that this request is legal). The LAB's statement on that transfer is as follows:

**Consistent with its authority under s. 20.445(5)(bm), Wis. Stats., the Department also transferred GPR designated for program services**

**between the two years of the biennium.** In late April 2000, the Department transferred \$1.5 million from FY 2000-01 to FY 1999-2000,

and officials stated these funds would be used only if all other available funds were exhausted. In August 2000, officials transferred these funds

back to the Division's FY 2000-01 appropriation when it was determined that sufficient funds were available in FY 1999-2000 from federal

sources. (From p. 41, report 00-11)

LAB's statement does not question the legality of April 2000 request. Given that the language under (5)(bm) [which is now under (5)(a) as a result of appropriation consolidations] is virtually identical to the language under (3)(dz), I think it is likely that LAB would not take issue with the transfer that DWD is currently requesting.

Thank you for your help. Please feel free to call or email me with any questions or comments.

Thank you,

Sam Harshner

---

**From:** Kennedy, Debora [<mailto:Debora.Kennedy@legis.wisconsin.gov>]

**Sent:** Thursday, November 30, 2006 3:55 PM

**To:** Harshner, Samuel - DOA

**Subject:** LRB draft 07-0489/1, Vocational rehabilitation;maximizing federal assistance

Sam --

I am replying to your e-mail of November 21 to Noah Natzke of the LRB. I apologize for my delay; I've been ill and out of the office. Noah is a Legislative Processing Specialist, but I am the attorney who drafted the bill and the person to whom you should direct your comments and instructions.

The first item of your e-mail asks two questions:

A. You indicate that the notwithstanding language with respect to s. 20.002 (1) in s. 20.445 (5) (a), stats., should be retained because the department believes this provides flexibility should legislative amendments or the biennial budget not be enacted on or before June 30th of odd numbered years. I believe that the part of s. 20.002 (1), stats., that is intended

to be notwithstanding in the current language of s. 20.445 (5) (a), stats., is the first sentence, which reads, "Unless otherwise provided appropriations shall become effective on July 1 of the fiscal year shown in the schedule under s. 20.005 and shall be expendable until the following June 30." That notwithstanding language would have been drafted in order to allow transfer of funds from one fiscal year to the next fiscal year, despite the fact that the appropriation was an annual appropriation. It is unnecessary to keep this language if the appropriation is made a continuing appropriation, because under s. 20.001 (3) c, stats. (the definition of a continuing appropriation), "The amount of a sum certain continuing appropriation for a given fiscal year consists of the unencumbered balance in the appropriation account at the end of the previous fiscal year, if any, together with any moneys appropriated under s. 20.005 for that fiscal year." Moreover, in the situation in which the biennial budget act is not published before June 30 of an odd-numbered year (an extremely common occurrence), I believe you would NOT want to notwithstanding the rest of s. 20.002 (1), stats., which is the "cost to continue" provision that allows expenditure in the new fiscal year, at the previous fiscal year's levels, despite the lack of enactment.

B. You indicate that the language "the department may transfer funds between fiscal years" should be retained because it has allowed the department "to cover shortfalls in even numbered years by using odd numbered year budget authority." I believe that this practice, if it has involved expenditure in one fiscal year of money appropriated for a subsequent fiscal year (instead of transferring to the subsequent year unexpended moneys from the previous fiscal year), is unconstitutional. Article VIII, Sec. 2, of the Wisconsin Constitution, states "No money shall be paid out of the treasury except in pursuance of an appropriation by law." Spending "ahead" violates this prohibition. Changing the appropriation to a continuing appropriation helps resolve the issues concerning carryover of unexpended moneys that existed with an annual appropriation, but does not resolve this issue.

Your second item is related to B. of the first item above. Since the "transfer" language should not be retained for a continuing appropriation, the issue is probably moot, but, to respond, the word "appropriation" covers all the numerics within it.

Your third item concerns DWD's proposed language ("A credit from a previous fiscal year expenditure, an earned revenue, may be credited to the current fiscal year appropriation account.") You indicate that ". . . Under current law, funds that are obligated in a prior year and then deobligated in another are counted as prior year expenditures and are lapsed to the general fund." Since the appropriation we are concerned with is a sum certain appropriation of gpr, I am somewhat confused by the proposed reference to an "earned revenue." Nevertheless, this problem should be resolved by the change from an annual appropriation to a continuing appropriation (please see the nonlapsing language in s. 20.001 (3) c that is specified in A., above).

If you have any other questions or want to discuss the draft or this e-mail further, please don't hesitate to call. I wanted to write out these responses for your reference, but would be happy to talk about them.

*Debra A. Kennedy*  
Managing Attorney  
Legislative Reference Bureau  
(608) 266-0137  
debra.kennedy@legis.state.wi.us



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0489/1

DAK:jld:nwn

DOA:.....Harshner, BB0112 - Vocational rehabilitation; maximizing federal assistance

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

---

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**OTHER HEALTH AND HUMAN SERVICES**

Under current law, the general purpose revenues (GPR) appropriation account from which DWD provides moneys for vocational rehabilitation services is an annual appropriation but permits transfer of funds between fiscal years. Funds appropriated for a particular fiscal year that are so transferred but are not spent or encumbered by September 30 of that next fiscal year lapse to the general fund on the succeeding October 1.

This bill changes the DWD GPR vocational rehabilitation services appropriation account from an annual to a continuing, sum certain appropriation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 20.445 (5) (a) of the statutes is amended to read:



1           20.445 (5) (a) *General program operations; purchased services for clients.* The  
2           As a continuing appropriation, the amounts in the schedule for general program  
3           operations, including field services to clients and administrative services, for the  
4           purchase of goods and services authorized under ch. 47, and for vocational  
5           rehabilitation and other independent living services to persons with disabilities.  
6           ~~Notwithstanding ss. 20.001 (3) (a) and 20.002 (1), the department may transfer funds~~  
7           ~~between fiscal years under this paragraph. All funds appropriated for a particular~~  
8           ~~fiscal year that are transferred to the next fiscal year and are not spent or~~  
9           ~~encumbered by September 30 of that next fiscal year shall lapse to the general fund~~  
10          ~~on the succeeding October 1.~~

        \*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be  
reflected in the revised schedule in s. 20.005, stats.

11

(END)