



Legislative Fiscal Bureau

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

February 28, 2007

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 39/Assembly Bill 72: Discussion Points

On February 19, this office distributed a summary of each of the provisions of SB 39/AB 72 -- 2006-07 budget adjustment legislation.

While the February 19 document explains each of the bill's provisions, this memorandum has been prepared to provide additional information on some of the items contained within the bills.

Lapses and Transfers to the General Fund by the DOA Secretary

The bills would require the Secretary of the Department of Administration (DOA) to lapse or transfer funds totaling \$15,132,000 in 2006-07 to the general fund. The lapses or transfers would be made from the unencumbered balances of state operations appropriations. The bills would specify that transfers could not be made from federal or sum sufficient appropriations, and the lapse or transfer could not violate a condition imposed by the federal government or the federal or state constitutions. No specific agencies or appropriations are identified under the bills. Thus, as drafted, the Secretary would be given the authority to direct the lapse or transfer from any agency or agencies.

In a memorandum to agency heads dated February 1, 2007, the DOA Secretary indicated that a 2% reduction would be made to state operations administrative appropriations in the largest executive branch agencies for 2006-07. The memorandum indicated that agencies will have to fund the reductions either through reductions to sum certain state operations appropriations or transfers or lapses from non-GPR state operations appropriations. These amounts, by agency, are identified below.

<u>Agency</u>	<u>Lapse or Transfer Amount</u>
Administration	\$1,067,600
Agriculture, Trade and Consumer Protection	381,700
Commerce	264,000
Corrections	802,000
Financial Institutions	343,600
Health and Family Services	1,674,700
Office of the Commissioner of Insurance	382,400
Justice	445,600
Natural Resources	264,300
Public Instruction	294,300
Regulation & Licensing	134,600
Revenue	1,730,200
Transportation	4,130,700
UW System Administration	2,920,000
Workforce Development	<u>296,300</u>
Total	\$15,132,000

Given that the bills only identify a total lapse amount and do not specify the affected agencies or the required lapse amounts, the Committee may want to have some oversight of the determination of the reductions. In order to accomplish this, the bills could be amended to specify the agencies and amounts as proposed under the February 1, 2007, memorandum. Before any lapse or transfer could occur, the DOA Secretary could be required to submit a plan to the Committee by May 1, 2007, under a 14-day passive review process, identifying the amounts, fund sources, and appropriations from which lapses or transfers would occur. Subsequent to approval of the plan, the lapses or transfers could occur.

Transfers to the General Fund

Petroleum Inspection Fund. It is expected that, with the \$5 million transfer to the general fund under the bills, the petroleum inspection fund (PIF) will have a June 30, 2007, balance of approximately \$10.9 million. Under the bills and past actions, a total of \$60.2 million would be transferred from the petroleum inspection fund to the general fund through June 30, 2007. [Under the Governor's 2007-09 budget recommendations, an additional \$4.0 million would be transferred from PIF to the general fund in 2007-08.]

The petroleum inspection fund is expected to receive revenue of approximately \$74.4 million in 2006-07. Revenues are primarily from the 2¢ per gallon fee assessed on all petroleum products that enter the state, but also from certain petroleum tank license and inspection charges, and investment income. The main use of the fund is the petroleum environmental cleanup fund award (PECFA) program, which reimburses owners and operators for a portion of cleanup costs of discharges from petroleum product storage systems. Expenditures in 2006-07 are expected to total

\$107.9 million, including: (a) \$33.5 million for debt service costs for PECFA revenue obligations issued to pay PECFA claims; (b) \$24.3 million for PECFA claims and administration; (c) \$25.1 million for non-PECFA programs; (d) a \$20.0 million transfer to the general fund under 2005 Act 25; and (e) a \$5.0 million transfer to the general fund under the bills. The estimated PIF condition statement for 2006-07 is shown below.

**2006-07 Petroleum Inspection Fund Condition Statement
(in Millions)**

Opening Balance, July 1	\$44.4
Revenues	<u>74.4</u>
Total Available	\$118.8
Expenditures	\$82.9
Transfers to the General Fund	
• 2005 Act 25	20.0
• 2007 SB 39/AB 72	<u>5.0</u>
Total Expenditures	\$107.9
Balance, June 30	\$10.9

A cumulative total of \$387 million in PECFA revenue obligations has been issued as of February, 2007. Outstanding revenue obligation principal is expected to total approximately \$252 million in July, 2007. Debt service will continue at approximately \$33.5 million annually for the next several years, assuming the state would continue to make the minimum required principal and interest payments for \$110 million of long-term obligations and interest only payments on \$142 million in short-term obligations. However, any undesignated petroleum inspection fund balances can be used to pay additional debt service beyond the minimum required amounts. Petroleum inspection fund balances transferred to the general fund will extend the time required to retire PECFA debt through the dedicated 2¢ per gallon petroleum inspection fee.

Agricultural Chemical Cleanup Program. Under the bills, \$1,000,000 would be transferred from the agricultural chemical cleanup (ACCP) fund to the general fund.

Since 2003, DATCP has been required to adjust ACCP surcharge amounts as necessary in order to end each fiscal year with a balance of not more than \$2.5 million in the fund. However, the ACCP fund had a June 30, 2006, balance of over \$2.8 million. At its February, 2007, meeting, the Board of the Department of Agriculture, Trade and Consumer Protection (DATCP) adopted a scope statement to begin the process to modify administrative rule ATCP 40 to lower ACCP surcharges. DATCP officials estimate this process could take the agency up to 24 months to complete. However, the statutes also allow DATCP to promulgate a fee reduction by emergency rule after

completing a Joint Committee on Finance 14-day passive review procedure. Under current law, the ACCP would be expected to have a July 1, 2007, balance of approximately \$3.6 million, compared to \$2.6 million under the bills.

Further, the Governor's 2007-09 biennial budget recommendations would: (a) transfer a total of \$600,000 from the ACCP fund to DATCP's food regulation and animal health appropriations; and (b) authorize increased expenditures of \$250,000 annually from the ACCP fund for financial assistance to businesses for the costs of capital improvements designed to prevent pollution from agricultural chemicals. As a result, under the Governor's 2007-09 biennial budget recommendations and the \$1 million transfer in 2006-07 under these bills, it is unlikely that any ACCP fee reductions would occur in the 2007-09 biennium.

Prison Contract Bed Funding

The bills would provide a total of \$7,477,000 for contract bed funding. Inmates in contract beds are housed in county jails and federal facilities. As of February 16, 2007, there were 636 such inmates -- 29 in federal facilities and 607 in Wisconsin county jails. The current contract daily rate is \$51.46.

The current appropriation for contract beds is \$4,521,800, with an estimated utilization of 165 contract beds in 2006-07. With the additional amount provided under the bills, the appropriation for 2006-07 would increase to \$11,998,800 for utilization of 706 contract beds by the end of the fiscal year. Given the number of contract beds and projections for the remainder of the fiscal year, the amounts in the bills appear reasonable.

As drafted, however, the bills would place \$1,477,000 of the contract bed funding in Corrections' general program operations appropriations and \$6,000,000 in the contract appropriation. The bill should be modified to place the entire amount in the contract appropriation.

Serious Juvenile Offender Program

The bills would provide \$1,000,000 GPR for the serious juvenile offender program appropriation. Based on an updated review of the program's expenditures and populations to date, however, the Department of Corrections indicates that current appropriation amounts are sufficient to fund the program (\$14,401,200 GPR). As such, the \$1.0 million could be deleted from the bills.

Restore Positions at the State-Owned Power Plants and Wastewater Treatment Facilities

The bills would restore 270.92 power plant positions in six agencies. Ten of these positions would be for the Department of Public Instruction (DPI) at the School for the Deaf and the Center

for the Blind and Visually Impaired. However, the positions would be restored to the Department's general program operations appropriation [s. 20.255(1)(a) of the statutes] rather than the general program operations appropriation for schools [s. 20.255(1)(b) of the statutes]. If the Committee wishes to approve the restoration of the power plant and wastewater treatment facility positions for DPI, it should modify the bills to restore the positions to the s. 20.255(1)(b) appropriation.

State Crime Laboratory Funding and Position Authority

In recent years the Department of Justice (DOJ) has seen a significant expansion in its deoxyribonucleic acid (DNA) analysis caseload. The following table shows annual DNA analysis caseloads for calendar years 2003 through 2006, as well as the annual growth in these caseloads. In recent years, incoming cases received have exceeded cases completed. At the end of calendar year 2006, the state crime laboratories had a DNA analysis backlog of 1,785 cases.

State Crime Laboratories DNA Analysis Caseload

<u>Calendar Year</u>	<u>Caseload</u>	<u>Percent Change</u>
2003	1,199	
2004	1,239	3.3%
2005	1,944	56.9
2006	2,226	14.5

In order to address the caseload growth, the bills would provide \$96,600 GPR in 2006-07, to support the creation of 15.0 GPR DNA analysis positions on April 1, 2007. Currently, DOJ is authorized 29.0 DNA analysts. While not specified in the bills, the intent, as identified by DOA staff, would be to provide one month of funding (\$77,200 GPR) to support 11.0 DNA analysts and 4.0 DNA technicians. The remaining \$19,400 GPR in funding would be provided to offset one month of training and supply costs for the 15.0 DNA analysis positions.

Under 2007 Senate Bill 40 (the 2007-09 biennial budget bill), the Governor recommends providing \$1,725,300 and 15.0 positions in 2007-08 (all funds), and \$2,024,700 and 15.0 positions in 2008-09 (all funds), to provide ongoing funding and position authority for this DNA analysis initiative. Specifically, SB 40 would continue the authorization for 11.0 DNA analysts and 4.0 DNA technicians that the Governor recommends be created under the budget adjustment bills. [It should be noted that SB 40 inadvertently only provides nine months of funding for the 15.0 DNA analysis positions in 2007-08. An additional \$234,200 would be needed in 2007-08 to fully fund the DNA analysis positions for the entire state fiscal year.]

The Governor's recommendations under the budget adjustment bills and under SB 40 substantially adopt the DNA analysis initiative that was recommended by the former Attorney General in the Department of Justice's 2007-09 agency budget request. As with the agency budget

request, the Governor's recommendations include funding and position authority for 11.0 DNA analysts and 4.0 DNA technicians. While the agency budget request identified a funding need of \$1,238,400 in 2007-08 (all funds), and \$1,364,000 in 2008-09 (all funds), the Governor's recommendation includes the agency's request and provides an additional \$486,900 GPR in 2007-08, and \$660,700 GPR in 2008-09, to provide additional funding for: (a) DNA training and durable supplies costs, such as instrumentation repairs, and maintenance and calibration of equipment; (b) one-time supply costs for such items as furniture and computers; (c) chemicals and related supplies needed to process DNA cases; and (d) space rental costs. It may be noted that while the former Attorney General requested expansion of the Wausau Crime Laboratory, creation of a night shift at the Madison Crime Laboratory, and additional DNA staff at all three crime laboratories, the Governor intends that DOJ have flexibility in how it proceeds to utilize the resources under SB 40 to implement the DNA analysis initiative.

Subsequent to the submission of its 2007-09 agency budget request, however, the Department of Justice, under the current Attorney General, has provided an updated review of the anticipated growth in demand for DNA analysis by law enforcement agencies, district attorneys, and the courts, and the level of resources that it believes would be required to eliminate the backlog of cases awaiting DNA analysis and address the anticipated demand. The Department of Justice indicates that if 31.0 additional DNA analysis positions were provided to the Department under the budget adjustment bills (29.0 DNA analysts and 2.0 DNA technicians), the Department could accelerate the hiring of DNA staff thereby accelerating efforts to address the backlog and anticipated annual caseloads. The Department estimates that with the additional positions the backlog in DNA cases would be eliminated by the end of 2010. The Department of Justice further states that if this issue was first addressed in conjunction with SB 40, the Department would be delayed in hiring additional DNA staff and would require 37.0 DNA analysis positions (rather than 31.0) to eliminate the backlog by the end of 2010.

The Department of Justice estimates that authorizing 31.0 DNA analysis positions under the budget adjustment bills would permit the Department to hire all additional staff by July 1, 2007, with experienced DNA analysts taking cases October 1, 2007, and entry-level DNA analysts taking cases beginning July 1, 2008. Department of Justice staff indicate that DOJ must provide entry-level DNA analysts one year of training before they are able to begin taking cases. The Department further estimates that it would require funding totaling \$4,114,300 in 2007-08 and \$3,619,700 in 2008-09 to implement this initiative.

The following table identifies DOJ estimates for eliminating the DNA analysis backlog by the end of 2010 through the addition of 31.0 additional DNA analysis positions. The Department assumes that: (a) the DNA analysis caseload will grow by 12% annually; (b) every DNA analyst will have a base productivity of 55 cases annually (average number of cases completed by each DNA analyst in 2006); (c) by July 1, 2009, new robotics technology will have increased the base productivity of every DNA analyst by 50%; (d) 6.0 additional DNA analysts under this initiative will be taking cases effective October 1, 2007; and (e) 23.0 additional DNA analysts under this initiative will be taking cases effective July 1, 2008.

**DOJ Estimate of DNA Analysis Backlog
(31.0 Additional Positions Provided)**

	<u>2006</u> <u>Actual</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
New Cases	2,226	2,493	2,792	3,127	3,503
- Cases Completed	<u>-1,152</u>	<u>-1,547</u>	<u>-3,212</u>	<u>-4,428</u>	<u>-4,620</u>
Cases Added to Backlog	1,074	946	-420	-1,301	-1,117
Ending Backlog	1,785	2,731	2,311	1,010	-107

Department of Justice staff indicate that the new robotics technology will improve DNA analyst productivity by automating the middle steps of DNA testing -- extraction, quantification, amplification, and typing. As indicated earlier, DOJ staff indicate that entry-level DNA analysts will have to undergo one year of in-house training before they will be able to take on DNA analysis cases.

If additional positions are provided, ongoing salary, fringe benefits, and supplies and services funding for any DNA analysis initiative authorized under the budget adjustment bills will need to be addressed in SB 40 (the 2007-09 biennial budget bill).

Attorney Position Deletion Date

The bills would delay the required deletion date of 13.0 FTE executive agency attorney positions from June 30, 2007, to June 30, 2009. Under 2005 Wisconsin Act 25, the DOA Secretary is required to delete 13.0 FTE executive branch agency attorney positions, other than attorney positions at the University of Wisconsin System, that become vacant before June 30, 2007. If fewer than 13.0 FTE agency attorney positions are vacant on June 30, 2007, the Secretary is authorized to delete additional state agency attorney positions from non-vacancies to ensure that a total of 13.0 FTE state agency attorney positions are deleted by that date. In addition, 2005 Act 25 included an estimated lapse of \$724,900 (all funds) during the 2005-07 biennium associated with the deleted positions.

Since state agencies are required to lapse funding associated with the deleted positions, continuation of the positions into 2007-09 will not have a fiscal effect in 2006-07. However, if the positions are extended, it is estimated that a total of \$1,207,300 (all funds) in salary and fringe benefits annually will be expended for the positions in the 2007-09 biennium. The Governor's 2007-09 budget assumes that 13.0 positions continue in agency budgets and are included as part of an attorney consolidation initiative. The attorney consolidation issue will be addressed during biennial budget consideration.

Highway Program Lapse to the Transportation Fund

The bills include a provision intended to allow the Department of Transportation (DOT) and the Joint Committee on Finance to resolve a projected biennium-ending deficit in the transportation fund, which is primarily due to decreases in the consumption of motor fuel. When it became apparent that transportation fund revenues would fall short of budget projections, the Department initiated a plan to generate savings in various programs. Savings in the Department's administrative programs, for instance, result in lapses to the transportation fund at the end of the fiscal year. However, savings in other programs (most notably, the state highway programs), which are funded with continuing appropriations, do not result in lapses since unencumbered balances in these programs automatically carry over into the following fiscal year. The Department has reduced highway improvement program lets and reduced other program expenditures in order to accumulate unencumbered balances in 2006-07. The bills would allow the Department to submit a request to the Joint Committee on Finance to force these savings in the state highway rehabilitation and major highway development programs to lapse to the transportation fund.

Specifically, the bills would supplement the Joint Finance Committee's current authority to reduce appropriations in the event of decreased revenues. Under current law, the Committee may reduce appropriations to avoid a deficit, but is prohibited from reducing certain appropriations, including the appropriations for state highway programs and any appropriation that distributes money to any county, city, village, town, or school district. The bills would specify that in 2006-07, the Committee may reduce the two affected highway improvement program appropriations upon request of the Department, notwithstanding the current law restriction.

While these bills would address the prohibition against reducing the state highway programs, the Committee would not have the authority under the bills to reduce certain other continuing appropriations where there could potentially be unencumbered balances at the end of 2006-07. In particular, the current law prohibition against reducing appropriations that distribute funding to local governments would preclude the Committee from reducing DOT's local transportation assistance appropriations, even if there were unencumbered balances in these appropriations at the end of 2006-07. If the Committee determines that any plan to address the projected deficit should leave open the option of taking a portion of the necessary appropriation reductions from these programs, the bills could be amended to include DOT's appropriations for local transportation assistance programs. Local assistance appropriations include aeronautics assistance, local bridge assistance, and transportation economic assistance, all of which had unencumbered balances at the end of 2005-06.

This change would not affect local transportation aid programs, such as general transportation aids and mass transit aids. Since these programs distribute funding based on a statutory distribution formula, they generally do not have unencumbered balances at the end of the fiscal year. Furthermore, since these transportation aid programs are funded with annual appropriations, any savings would already lapse to the transportation fund.

It should also be noted that the bills would allow the Joint Committee on Finance to approve any requested reductions, but would not explicitly allow the Committee to modify that reduction plan. To ensure that the Committee has the authority to modify DOT's plan, the bills could be amended to clarify this point.

DOT currently estimates the 2005-07 biennium-ending deficit in the transportation fund, net of lapses from administrative appropriations, at \$48.9 million. The Department indicates that transportation fund revenues and expenditures will continue to be monitored in the coming months to determine the amount of the appropriation reductions needed. Therefore, any request would be submitted near the end of the fiscal year. In addition to having updated information on state revenues and expenditures at that time, the Committee would also have more complete information on any federal aid increases, which could be used to offset the impact of required state appropriation reductions.

BL/sas