



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #820

Transfers and Lapses from the Educational Approval Board's Operations Appropriation (DVA -- Educational Approval Board)

[LFB 2005-07 Budget Summary: Page 524, #2]

CURRENT LAW

The Educational Approval Board (EAB) regulates more than 130 for-profit postsecondary schools, Wisconsin nonprofit postsecondary institutions incorporated after January 1, 1992, and out-of-state nonprofit colleges and universities. The EAB's operations are supported from a variety of fixed and variable fees charged to the institutions that it regulates.

The Board charges fixed fees for such actions as the approval of new schools and the approval of new or revised programs of study. The amount of the fee is based on the type of degree program being offered.

The general costs of EAB's operations are supported by annual renewal fees that are comprised of: (1) a fixed \$500 payment; and (2) a proportionate fee sufficient to cover the Board's regulatory costs, less revenues from all other fees. Each institution's fee is based on its proportionate share of adjusted gross annual revenue to total adjusted gross annual revenues of all regulated schools times an annual assessment factor set to generate the required funding need. Currently, this assessment factor is \$3.2785 per \$1,000 of an institution's adjusted gross annual revenues.

The statutes also authorize the EAB to require regulated schools to post surety bonds. The purpose of the bond is to reimburse students, parents, or other sponsoring agents in the event that the institution is unable to fulfill its contractual education obligations to the student.

The EAB also imposes a separate student protection fee on regulated institutions. The fee is credited to a separate student protection fund appropriation account. This fund may be used to reimburse students, parents, or other sponsoring agents if the surety bonds posted by a regulated institution are insufficient to pay refunds for unfulfilled educational services contracts. Currently, the assessment factor for the student protection fund is \$0.50 per \$1,000 of an

institution's adjusted gross annual revenues. The EAB may continue to make annual assessments for the student protection fund until the balance in the fund is \$1,000,000. At that point, no additional assessments may be made unless the balance in the fund again falls below \$1,000,000.

GOVERNOR

Modify the Educational Approval Board's general program operations PR annual appropriation to provide for the following ongoing transfer and lapse provisions: (1) authorize the EAB to retain in the appropriation's account balance at the end of each fiscal year an unencumbered balance amount that does not exceed 20% of the amounts appropriated to the EAB under the appropriation for the next fiscal year; and (2) following the retention of the 20% reserve amount in the unencumbered year-end balance, direct that 50% of the remaining unencumbered balance be transferred to the student protection fund appropriation account and 50% of the remaining unencumbered balance be lapsed to the general fund. Modify the student protection fund appropriation to reflect the receipt of these transferred funds. Lapse \$250,000 to the general fund from this appropriation account in 2005-06.

DISCUSSION POINTS

1. The EAB's 2005-07 biennial budget request originally proposed that at the end of a fiscal year, the Board be authorized to retain unencumbered balances in its general program operations appropriation that did not to exceed 20% of the amounts appropriated for the following fiscal year and transfer all of the remaining unencumbered balances to the student protection fund.

2. The ostensible reason for requesting a reserve equal to 20% of the following year's authorized expenditures was that the agency was concerned that if a major regulated institution went out of business, the Board might not be able to assess sufficient amounts to cover its operating expenses for the year. The reserved unencumbered revenue balance would help ensure that the Board would have sufficient operating revenues under such a contingency.

3. However, in recent years, the agency has credited assessment and fee revenues to this appropriation account that have exceeded the Board's authorized expenditure authority. In 2003-04, the Board expended \$410,000 PR, while revenue collections amounted to \$478,000. In 2004-05, the Board's budgeted expenditure authority is \$463,600 PR, and the agency has already collected \$614,200 in revenues through March 31, 2005.

4. The amount of excess revenues currently being received by the Board would appear to be sufficient to cover situations in which a major regulated institution might fail and not be able to pay its assessment to the Board. Further, since the statutes require that the Board establish its assessments at a level sufficient to cover the Board's costs of regulation, it would appear that the Board already has the authority to set its assessment levels sufficient to accommodate any revenue loss from an institution that might be in financial difficulty. Consequently, the Committee could conclude that granting the EAB the authority to establish a reserve equal to 20% of the following year's authorized expenditures is unnecessary, and the provision could be deleted.

5. The student protection fund was established under the 2003-05 biennial budget act,

and the first assessments for the fund have been made during this fiscal year. Through March 31, 2004, \$55,700 has been credited to the fund. The EAB will continue to make annual assessments for the student protection fund until such time as the fund balance reaches \$1,000,000. At that time, further assessments will cease unless the fund balance again falls below \$1,000,000.

6. While the EAB is unable to predict if or when there might be a draw on the fund, the Board believes that it would be prudent to provide additional revenues to it at this time. The Board's original biennial budget request proposed to transfer each year those unobligated revenue balances in the agency's general program operations appropriation account in excess of the 20% reserve amount to the student protection fund. The Board argued that this transfer would provide an influx of revenues that could be used to aid students, parents, and sponsoring agents in the event that there were significant school closings before the student protection fund has built sufficient reserves.

7. The Governor modified the Board's request and provided that one-half of the remaining unreserved balance would be transferred to the student protection fund. The other half of the remaining unreserved balance would be lapsed to the general fund. Under the bill, \$250,000 was estimated to lapse to the general fund, suggesting that \$250,000 would also be transferred to the student protection fund. If the Committee chooses to provide for transfers to the student protection fund on a permanent basis, it may wish to modify the provision to stipulate that no further transfers would occur any time the student protection fund balance exceeded \$1,000,000.

8. The estimated allocations under the bill are large because of the current size of the unobligated balance in the agency's appropriation. Future significant transfers to the student protection fund are unlikely to occur unless another large fund balance builds in the appropriation account. Because of this fact, the Committee could conclude that the transfer of \$250,000 to the student protection fund should be made on a one-time basis in 2005-06 only. Such a one-time transfer would serve to increase the reserves in the fund. Future annual assessments for the fund would continue under current law procedures.

9. However, since there is already an assessment mechanism in place to gradually build up the reserves in the new student protection fund, the Committee could also conclude that no additional transfers to the fund should be authorized. Further, since the EAB currently assesses regulated institutions to pay both the agency's operating costs and to fund the student protection fund reserves, an argument could be made that transferring unobligated balances from the Board's general program operations account to the student protection fund would constitute a type of double-assessment for the same purpose. If the Committee finds this undesirable, it could delete any transfer of unobligated balances to the student protection fund.

10. Based on the current unobligated balance in EAB's general program operations appropriation account, revenue collections through March 31, 2004, and total projected expenditures in 2004-05 based on the Board's appropriated expenditure authority, the 2004-05 year-end unobligated balance in the appropriation is estimated at \$748,600. Assuming that revenues credited to the appropriation in 2005-06 would parallel recommended expenditures of \$484,900 PR in that fiscal year, the 2005-06 unobligated ending balance is estimated to be at least this same amount (\$748,600).

11. Using this estimate, the \$748,600 would be allocated under the bill as follows.

Allowing for a reserve of 20% of the following year's appropriation (\$97,000), a total of \$651,600 would remain. Under the bill, the projected transfer to the student protection fund at the end of 2005-06 would be estimated at \$325,800, with \$325,800 also lapsed to the general fund. This would represent an additional revenue in that year to the general fund of \$75,800 compared to the bill.

12. If the Committee chooses not to provide for the retention of a 20% reserve amount in the Board's appropriation, the entire \$748,600 would then be subject to the lapse or transfer treatment. In this case, the projected transfer to the student protection fund at the end of 2005-06 would be estimated at \$374,300, with \$374,300 also lapsed to the general fund. This scenario would represent an additional revenue in that year to the general fund of \$124,300 compared to the bill.

13. However, if the Committee were also to provide a one-time transfer to the student protection fund of only \$250,000 (consistent with the original estimate by the Governor), the amount lapsed to the general fund in 2005-06 would be \$498,600, representing an additional revenue in that year to the general fund of \$248,600 compared to the bill. Further, if no transfer to the student protection fund is made, the amount lapsed to the general fund in 2005-06 would be the full \$748,600, representing an additional revenue in that year to the general fund of \$498,600 compared to the bill.

14. In future years, the amounts that would be available for possible transfer to the student protection fund and lapse to the general fund would likely be much more modest. This is because the large current unobligated balance would have been liquidated and in future years it would appear reasonable to project that revenues and expenditures would each be more in line. Consequently, large additional transfers and lapses would be less likely to occur. Because of these dynamics, no transfer to the student protection fund or lapse to the general fund for 2006-07 would be projected at this time, and no such estimates have been included in the bill.

15. If the Committee is interesting in establishing a more reliable source of GPR-Earned from the EAB, it could consider establishing the agency's general program operations appropriation like those created for such agencies as the Department of Regulation and Licensing, the Office of the Commissioner of Insurance, and the Public Service Commission. Under these agencies' operating appropriations, 90% of the fee or assessment revenue is credited to the appropriation account and the remaining 10% of the fee or assessment revenue is credited to the general fund. Historically, this 10% earmark to the general fund has been justified as a means for reimbursing the general fund for various GPR-supported administrative and budgetary services that were provided to these PR-funded agencies. This approach has the further advantage in that a reasonably predictable revenue stream to the general fund can be projected. This would not be the case under the Governor's ongoing lapse proposal.

16. If the EAB's general program operations appropriation were converted in this manner, based on the Governor's funding recommendations of \$484,900 PR annually for the Board, additional GPR-Earned collections of \$53,800 annually would be indicated. Under such a modification, the Committee could still provide for either the Governor's proposed transfer to the student protection fund or for the proposed lapse to the general fund on a one-time basis for 2005-06

only, or both, and then be assured of a continuing, reliable revenue stream to the general fund thereafter.

17. Opponents of the Governor's recommended lapse provision, as well as any on-going 10% earmark provision, would argue that the purposes of the EAB's assessments are for the regulation and enforcement of various postsecondary schools and institutions in the state and are not for the support of the general fund. Further, it could be argued that many of the administrative and budgetary services that are provided to the Board are already funded through service charges paid by the Board.

18. However, proponents could argue that it is also the case that the regulatory functions of the EAB are analogous to those performed by those state agencies that are subject to the 10% general fund earmark.

19. Based on the foregoing, the Committee would appear to have several available options:

- It could approve the Governor's recommendation but reestimate the transfer to the student protection fund at \$325,800 and the lapse to the general fund at \$325,800 in 2005-06.

- It could delete the 20% reserve provision, and provide that half of the year-end unobligated balance (\$374,300) be transferred to the student protection fund and the remaining half (\$374,300) be lapsed to the general fund in 2005-06.

- It could delete the 20% reserve provision, provide that only \$250,000 be transferred on a one-time basis to the student protection fund, and provide that the remaining balance (\$498,600) be lapsed to the general fund in 2005-06.

- It could delete the 20% reserve provision, delete the transfer of any unobligated balances to the student protection fund, and provide that the remaining balance (\$748,600) be lapsed to the general fund in 2005-06.

- In addition to any of the above, it could provide that 10% of the total revenues received from fees and assessments credited to the EAB's general program operations appropriation would be credited to the general fund on a permanent basis.

ALTERNATIVES

1. Approve the Governor's recommendation to authorize the Board to retain any unencumbered balance on June 30 of each fiscal year that does not exceed 20% of the amounts appropriated to the EAB for program operations in the next fiscal year and specifying that of the amounts in excess of that 20%, half would be deposited in the student protection fund and half would be credited to the general fund. Reestimate the PR transfer to the student protection fund at \$325,800 in 2005-06 and reestimate GPR-Earned collections at \$325,800 in 2005-06.

Alternative 1	GPR-REV
2005-07 REVENUE (Change to Bill)	\$75,800

2. Modify the Governor's recommendation by deleting the authority of the Board to retain any unencumbered balance on June 30 of each fiscal year that does not exceed 20% of the amounts appropriated to the EAB for program operations in the next fiscal year. Reestimate the PR transfer to the student protection fund at \$374,300 in 2005-06 and reestimate GPR-Earned collections at \$374,300 in 2005-06.

<u>Alternative 2</u>	<u>GPR-REV</u>
2005-07 REVENUE (Change to Bill)	\$124,300

3. Modify the Governor's recommendation by deleting the authority of the Board to retain any unencumbered balance on June 30 of each fiscal year that does not exceed 20% of the amounts appropriated to the EAB for program operations in the next fiscal year and by providing a one-time transfer of \$250,000 in 2005-06 to the student protection fund. Reestimate the PR transfer to the student protection fund at \$250,000 in 2005-06 and reestimate GPR-Earned collections at \$498,600 in 2005-06 (an increase of \$248,600 compared to the bill).

<u>Alternative 3</u>	<u>GPR-REV</u>
2005-07 REVENUE (Change to Bill)	\$248,600

4. Modify the Governor's recommendation by deleting the authority of the Board to retain any unencumbered balance on June 30 of each fiscal year that does not exceed 20% of the amounts appropriated to the EAB for program operations in the next fiscal year and by deleting the transfer of any unobligated balances to the student protection fund. Reestimate GPR-Earned collections at \$748,600 in 2005-06.

<u>Alternative 4</u>	<u>GPR-REV</u>
2005-07 REVENUE (Change to Bill)	\$498,600

5. *In addition to either Alternatives 2, 3, or 4, provide that 10% of the total revenues received from fees and assessments credited to the EAB's general program operations appropriation would be credited to the general fund on a permanent basis. Reestimate GPR-Earned collections by an additional \$53,800 annually. [Under this alternatives any of the lapses or transfers recommended by the Governor for the EAB general program operations appropriation would apply on a one-time basis to 2005-06 only.]*

<u>Alternative 5</u>	<u>GPR-REV</u>
2005-07 REVENUE (Change to Bill)	\$107,600

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