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Transfer of Cash Balance (Financial Institutions)

[LFB 2005-07 Budget Summary: Page 168, #9]

CURRENT LAW

The Department of Financial Institution's (DFI's) appropriation for gifts, grants, settlements, and publications is a continuing program revenue appropriation. The appropriation consists of all moneys received from the following: (a) gifts, grants, bequests, and settlements; (b) fees or other charges by DFI for photocopying, microfilm copying, generation of copies of documents from optical disk storage, sales of books, and other services provided in carrying out the functions of the Department; and (c) forfeitures for failure of certain persons making or soliciting consumer credit transactions or collecting payments from customers arising out of consumer credit transactions to comply with requirements to register with DFI and pay associated registration fees. The statutes require all moneys received under these provisions to be used for the purposes for which made or received. In the case of forfeitures related to consumer credit transactions, the statutes specify that such moneys must be used for consumer or merchant education programs only. Currently, any unencumbered balance in the appropriation at the end of a fiscal year is retained in the appropriation and becomes the starting balance in the subsequent fiscal year.

GOVERNOR

Provide that on June 30, 2006, and on June 30, 2007, $125,000 PR of the cash balance in DFI's appropriation for gifts, grants, settlements, and publications is to be lapsed to the general fund unless the lapse would violate a condition imposed by the federal government on the expenditures or if the lapse would violate state or federal law.

DISCUSSION POINTS

1. According to DFI, the appropriation for gifts, grants, settlements, and publications (appropriation 129) is used primarily for the following purposes: (a) to account for sales of publications and tapes in the Division of Corporate and Consumer services; (b) the use of settlement money that is to be spent for a specified purpose; and (c) payments by state employees to cover parking costs, which DFI subsequently remits to the owner of the parking spaces.

2. Under current law and AB 100, the Chapter 20 schedule for appropriation 129 shows expenditure authority of $65,000 in each year. However, as described above, the appropriation is a continuing appropriation, and at times the actual amount in the appropriation has been considerably larger than the amount shown in the schedule.

3. DFI was created when several separate state agencies that were responsible for regulating parts of the financial industry were combined into one regulatory structure, effective July 1, 1996. At that time, a continuing appropriation for gifts, grants, and publications under the Office of the Commissioner of Banking was transferred to a similar appropriation (for gifts, grants, settlements, and publications) under the new department. DFI reports that, over time, unexpended revenue accumulated in the appropriation. However, the Department also indicates that, more recently, fees have been adjusted to more closely match expenditures from the appropriation, even though it is difficult to estimate shares of printing and other costs with precision. In addition, it has not always been clear how to appropriately use the relatively small amounts received from settlements that are to be used for investor education. For example, $25,000 was received in 2002-03 from a settlement related to the Wisconsin Consumer Act (WCA). Settlements associated with WCA are supposed to be used for education. However, a specific use for the $25,000 has not yet been identified. DFI indicates that staffs in the Office of Consumer Affairs and the Office of Financial Literacy are currently developing plans to integrate the use of small settlement amounts into the overall education plans of the Department.

4. At the start of 2002-03, the balance in appropriation 129 was $88,200; the opening balance for 2003-04 was $87,100. By the start of 2004-05, the opening balance had increased to $699,200. A significant portion of this amount related to a settlement with the Merrill Lynch securities firm.

5. As part of the settlement, $893,600 was deposited to appropriation 129 during fiscal year 2002-03. Under the terms of the settlement, as provided through an administrative consent order before DFI, this amount was paid to Wisconsin for the enforcement of the Wisconsin Uniform Securities Law and promoting investor protection. The settlement document further specifies that the funds are not to supplant any existing funding available for the specified purpose.

6. Through the end of 2003-04, $308,000 of the settlement amount had been spent by DFI on a project providing for the automation of the securities examination, enforcement, and registration processes to improve regulatory capability. An additional $220,000 of the settlement money has been designated for use in completing the automation project, leaving a balance of

$365,600 from the Merrill Lynch settlement that has not been used or designated for use. However, DFI has indicated that further customization of the automation software to enhance its usefulness for Wisconsin purposes may be desirable, in which case some of the additional settlement moneys could be applied toward that purpose. In addition, it has been DFI's intention to apply any settlement moneys remaining after the completion of the automation project toward investor education. However, there is not currently a specific plan in place for use of the remaining settlement funds.

7. Under the bill, $125,000 from appropriation 129 would be lapsed to the general fund on the last day of each fiscal year of the 2005-07 biennium. However, if the unused moneys from the Merrill Lynch settlement are excluded, the balance in appropriation 129 at the start of fiscal year 2004-05 was $113,600. It is not anticipated that subsequent deposits in 2004-05 or in the 2005-07 would result in a net increase in the balance in the appropriation. As the current balance, excluding the Merrill Lynch settlement, is $136,400 less than the total amount to be transferred under the bill, it would appear that approximately $136,400 of the lapse would have to be covered with amounts received from the settlement.

8. DFI typically allocates a share of indirect costs, such as the costs of accounting, information technology, payroll, and human resources, to each division that generates program revenue. For fiscal year 2004-05, approximately 30% of a division's expenditures are expected to be applied to such indirect costs. If the same approach were taken with respect to the Merrill Lynch settlement, then approximately $268,000 of the $893,600 in settlement moneys received could be considered to be for indirect costs, covering internal agency costs directly and indirectly associated with the automation project funded with the settlement money. Based on this argument, a transfer of $136,400 of the Merrill Lynch settlement to the general fund could be justified as recouping a portion of the indirect agency costs not previously allocated to the automation project. However, it could also be argued that the settlement money is unlike other agency activities that generate program revenues, and should not be assigned a share of the agency's indirect costs.

9. The settlement with Merrill Lynch requires the agreement to be construed and enforced in accordance with, and governed by, the laws of Wisconsin. Based on a review by an attorney with the Legislative Council, an act of law providing for the lapse of such funds to the general fund would take precedence over the terms of an administrative consent order. Therefore, it would appear that the terms of the settlement agreement would not prohibit a lapse of settlement funds to the general fund, as would occur under the Governor's proposal.

10. Another option, however, would be to lapse to the general fund only the $113,600 of the estimated balance in appropriation 129 that is not connected with the securities settlement. The $113,600 could be lapsed at the end of 2005-06. Under this alternative, the lapse to the general fund would be $11,400 less in 2005-06 and $125,000 less in 2006-07 than would be provided under the bill.

11. Under the bill, it is projected that the balance in the appropriation at the end of 2006-07 would be approximately $229,200. Another alternative to the bill would be to approve the Governor's proposal and to also lapse to the general fund all but a small amount of the remaining

estimated balance in the appropriation. Under this option, an additional $219,200 could be lapsed to the general fund, leaving an estimated $10,000 in the appropriation to avoid potential problems with the timing of receipts and expenditures. The total lapse in the biennium would be $469,200 (including $250,000 as provided under the bill and the additional $219,200). The lapse would consist of the following amounts from the current balance in appropriation 129: (a) the entire unencumbered balance of the Merrill Lynch settlement of $365,600; (b) $25,000 received as a WCA settlement in fiscal year 2002-03, and (c) $78,600 in unexpended revenue that has accumulated in the appropriation over time. The additional lapse could take place at the end of 2005-06 along with the $125,000 lapse at that time provided under the bill.

ALTERNATIVES

1. Approve the Governor's proposal to lapse $125,000 from DFI's appropriation for gifts, grants, settlements, and publications to the general fund at the end of each year of the 2005-07 biennium.

2. Approve the Governor's proposal to lapse moneys from appropriation 129 to the general fund. However, modify the amount to be lapsed to $113,600 at the end of 2005-06. As compared to the bill, this alternative would reduce the transfer to the general fund in 2005-06 by $11,400 and would eliminate the $125,000 lapse at the end of 2006-07.

Alternative 2	GPR-REV
2005-07 REVENUE (Change to Bill)	- $136,400

3. Approve the Governor's proposal and also require DFI to lapse an additional $219,200 to the general fund on June 31, 2006.

Alternative 3	GPR-REV
2005-07 REVENUE (Change to Bill)	$219,200

4. Delete the Governor's recommended lapse to the general fund.

Alternative 3	GPR-REV
2005-07 REVENUE (Change to Bill)	- $250,000

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