



Legislative Fiscal Bureau

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

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Joint Committee on Finance

Paper #581

Lapses of Program Revenue Balances (Safety and Professional Services)

[LFB 2011-13 Budget Summary: Page 386, #7]

CURRENT LAW

Credentialing fees (initial and renewal fees) for professions currently regulated directly by the Department of Regulation and Licensing (DRL) [renamed the Department of Safety and Professional Services (DSPS) under the bill] or by a board or examining board attached to DRL are deposited into one of two appropriations: (a) the professions regulated by the Medical Examining Board; and (b) the credential fees for all other occupations and businesses that are regulated by the Department of its attached boards and examining boards.

Ninety percent of these revenues are deposited into one of the two corresponding general program operations appropriations. The remaining 10% is deposited into the general fund as GPR-Earned.

GOVERNOR

Modify the program revenue appropriations for the Medical Examining Board operations [s. 20.165(1)(hg) of the statutes] and the general agency operations of the Department [s. 20.165(1)(g) of the statutes] to specify that unencumbered balances that are in excess of 10% of the expenditures made from those appropriations in the previous year would be lapsed to the general fund. Specify that fines and forfeitures would not be considered part of the received revenue.

DISCUSSION POINTS

1. Prior to 2007 Act 20, DRL licensing fees were statutorily established. However, as a result of Act 20, beginning with license applications for the 2009-11 biennium, DRL was required to set initial and renewal credential fees for occupational and professional credentials administratively. These administratively established fees are not subject to administrative rule

procedures. Instead, the revised fees are subject to a 14-day passive review by the Joint Committee on Finance.

2. Under current law, DRL must determine the fee level for each initial credential for which no examination is required, for reciprocal credentials, and for all credential renewals, based on the administrative costs of the Department that are attributable to the regulation of each occupation or business regulated by the agency. The Department is required to complete this recalculation by January 31 of each odd-numbered year.

3. The Department must send a report to the Co-chairs of Joint Committee on Finance, within 14 days of completing the proposed fee adjustments. The Committee then has 14 working days after the submission of the report to notify the Secretary of the Department of Regulation and Licensing that the Committee has scheduled a meeting for review the proposed adjustments. If notification is not provided by the Committee, within 14 days of receiving the report, the proposed fee changes will be approved. Once the fees are approved, the Department must post the fee adjustments on the DRL Internet web site and in credential renewal notices sent to affected credential holders.

4. Current law specifies that DRL must determine the fee level for each initial and renewal credential based upon the costs of regulating the specific occupations and businesses. It could be argued that cost of regulation is equal to the amounts appropriated for administration and enforcement of activities related to these occupations and businesses, and that excessive balances for deposits into the general fund should not be made.

5. Alternatively, it could be argued that the previous administrations and Legislatures have required DRL to make lapses to the general fund, thus authorizing the use of credential fees for purposes other than regulation of occupations and businesses that are regulated by DRL. As the table below shows, a total of approximately \$19.0 million has been lapse from DRL since the 2003-04 fiscal year. As of this writing, a lapse amount for 2010-11 have not been announced by DOA.

**Department of Regulation and Licensing Lapses to the General Fund
(2003-04 through 2009-10)**

<u>Fiscal Year</u>	<u>Lapse Amount</u>
2003-04	\$1,969,900
2004-05	1,969,900
2005-06	3,084,600
2006-07	1,790,300
2007-08	3,602,000
2008-09	1,702,900
2009-10	<u>4,844,100</u>
Total	\$18,963,700

6. It could be further argued that there is a public good aspect to the regulation of businesses and occupations. To this end, regulated professionals benefit from funds provided for other state programs and that it is, therefore, appropriate for portions of the fees paid by these businesses and occupations to be lapsed to the general fund to provide for GPR funded state

programs.

7. Alternatively, it could be argued that, even if the specified one-time lapses have been appropriate, including an ongoing lapse requirement reduces the Legislature's ability to specify lapses from balances when it is deemed fiscally necessary and its ability to use balances to reduce agency costs in future biennia when lapses may not be needed. As a result, the Governor's recommendation could be deleted.

8. Under the current fee schedule that was approved by the Committee on March 17, 2011, it is estimated that \$35.5 million of initial and credential fees would be assessed over the biennium. This assumes that professions that were not specifically identified under the Department's fee schedule would be assessed \$75 for initial fees and \$82 for renewal fees, although these amounts have not been specifically authorized by the Committee. Of this amount, approximately \$3.5 million would initially be deposited into the general fund from the current law requirement to deposit 10% of these fees into the general fund.

9. Under the Governor's proposal to lapse year end revenue balances in excess of 10% of the previous year's expenditures, DRL would be able to retain PR balances of approximately \$1,017,100 under the general operations (non-MEB professions) appropriation and balances of \$197,900 under the MEB general program operations appropriation (assuming that the appropriated level under the bill would be equal to the amounts ultimately expended). Under this assumption, an additional \$5,261,500 (revenue in excess of 10% of prior year expenditures) would be deposited into the general fund over the 2011-13 biennium. This would equate to 24.8% of all DRL/DSPS credential fees collected being deposited into the general fund.

10. Under the bill, there is no GPR-Earned estimate related to this provision. However, potential revenues of nearly \$5.3 million under this provision would only be realized if the balances initially remained within the appropriation. Under the bill, the DOA Secretary would also be required to lapse \$145 million in the 2011-13 and 2013-15 biennia from unencumbered balances of GPR and PR appropriations in executive branch agencies. If the DOA Secretary were to lapse any of the amounts that made up the balances from the general program operations appropriations of DRL, the amount of balances that would be realized under this provision would be reduced. Therefore, it is unknown how much additional GPR-Earned would be provided under this provision. Since the bill does not specify an amount it could be assumed that the administration does not believe any excess funds would be lapsed under this provision in the 2011-13 biennium.

ALTERNATIVES

1. Approve the Governor's recommendation to modify the program revenue appropriations for the Medical Examining Board operations [s. 20.162(1)(hg) of the statutes] and general agency operations [s. 20.162(1)(g) of the statutes] to specify that unencumbered balances that are in excess of 10% of the expenditures made from those appropriations in the previous year would be lapsed to the general fund.

2. Delete the Governor's recommendation.

Prepared by: Darin Renner