Legislative Fiscal Bureau

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May 17, 2007 Joint Committee on Finance Paper #170

Authority to Lapse or Transfer Funds to the General Fund (Budget Management and Compensation Reserves)

Base Item

[LFB 2007-09 Budget Summary: Page 66, #2]

CURRENT LAW

Under current law, moneys that remain unencumbered at the end of the fiscal year or biennium lapse or revert back to the balance of the underlying fund or account for annual and biennial appropriations. In the case of continuing appropriations, moneys remain expendable until fully depleted or repealed by subsequent action of the Legislature. Available balances of segregated funds or program revenue accounts may be transferred to the general fund only through legislation.

GOVERNOR

Require the Secretary of the Department of Administration (DOA) to lapse or transfer $40,000,000 annually to the general fund from the unencumbered balances of state operations appropriations, other than sum sufficient appropriations and federal appropriations, during each fiscal year of the 2007-09 and 2009-11 fiscal biennia. Specify that these transfers or lapses would occur notwithstanding the following: (a) current law governing the treatment of unexpended appropriation balances; and (b) current law limiting the use of moneys from the transportation fund. Specify the DOA Secretary would not be allowed to lapse or transfer moneys if the lapse or transfer would: (a) violate a condition imposed by the federal government on the expenditure of the moneys; or (b) violate the federal or state constitutions.

DISCUSSION POINTS

1. The Secretary of Administration can direct all state agencies except the Legislature and the Courts to reduce spending below budgeted levels, except from appropriations for general school aids, shared revenue and tax relief, and for supplemental appropriations under the Joint Committee on Finance. This authority cannot be used if the Secretary determines that previously authorized expenditures will exceed revenues in the current or forthcoming fiscal year by more than 0.5% of GPR appropriations for that fiscal year. In this case, the Secretary is prohibited from taking administrative action to reduce expenditures. Instead, the Governor is required to submit a bill to address the imbalance.

2. For GPR funded agencies, if expenditures are less than budgeted amounts, these savings accrue to the general fund, as the unexpended moneys lapse or revert to the balance of the general fund, except for continuing appropriations and biennial appropriations in the first fiscal year of the biennium. For PR and SEG funded agencies, any savings accrue to the benefit of the relevant PR account or SEG fund, unless separate legislation is enacted to transfer these savings to the general fund. SB 40 would authorize the Secretary of Administration to make this type of transfer, including PR and SEG, of up to $40 million annually from state operations appropriations to the general fund.

3. The Legislative Reference Bureau prepared a drafter's note that is relevant to the SB 40 provision. To quote from the drafter' note: "The secretary of administration, alone and without standards or direction from the legislature, is authorized under the bill, for all intents and purposes, to reduce expenditure authority for any state agency or any program of state government [relating to state operations] the secretary chooses. …There may not be money in their appropriation account to fund programs authorized by law and for which specific amounts of moneys were previously appropriated. Because the bill affects the appropriation authority of state agencies and because the bill provides no standards for the secretary to follow in determining the lapses or transfers of moneys, such as a limit or purpose, an issue is raised as to whether the bill is an improper delegation of the legislative authority to appropriate state moneys to the secretary of administration."

4. To address this concern about delegating legislative authority over state appropriations to the Secretary of Administration, the Legislature could simply delete this provision. Instead, the Legislature could rely upon the current law authority of the Secretary of Administration to generate these savings, passing separate legislation to complete the lapses or transfers as needed. Using this approach, under his current law authority, the Secretary could reduce spending by the executive branch to generate $40 million of annual savings during the 2007-09 biennium. For most GPR appropriations, these savings would accrue to the benefit of the general fund automatically under current law. If a portion of the savings would be generated from GPR continuing or biennial appropriations or from SEG or PR moneys, the administration could request separate legislation with specific bill provisions itemizing the needed lapses or transfers to the general fund to reach the annual goal of $40 million of savings.

5. A process where a bill would be enacted after the proposed reductions have been

identified would be similar to the procedure used for the 2006-07 budget adjustment bill (2007 Act 5). Prior to the introduction of the budget adjustment legislation, the Secretary of Administration imposed 2% reductions on state operations appropriations in the largest executive branch agencies. After the Secretary had issued this directive to state agencies, companion bills were introduced to codify these reductions and make other SEG and PR transfers to the general fund.

6. The provision under SB 40 would not be restricted to executive branch agencies. Instead, under the bill, the Secretary of Administration could reduce funding for agencies under the Legislature and the Courts that are funded from sum certain appropriations. To avoid having an official of the executive branch imposing reductions on agencies that serve the legislative or judicial branches, the bill could be modified to refer to executive branch agencies. In addition, to achieve some level of legislative oversight, the bill provision could be modified to require the Secretary of Administration to submit the proposed lapses to the Committee for its approval or modification and approval under a 14-day passive review process. However, one issue relating to this approach is that these limitations could be item-vetoed by the Governor.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to require the Secretary of DOA to lapse or transfer $40 million annually to the general fund from the unencumbered balances of state operations appropriations, other than sum sufficient and federal appropriations, during each fiscal year of the 2007-09 and 2009-11 biennia.

ALT 1	Change to Bill Funding	Change to Base Funding
GPR-Lapse	$0	$80,000,000

2. Approve Alternative 1 with two modifications, including: (a) specify that it only applies to executive branch agencies; and (b) require that the Secretary of Administration submit the proposed lapses to the Committee for its approval or modification and approval under a 14-day passive review process.

ALT 2	Change to Bill Funding	Change to Base Funding
GPR-Lapse	$0	$80,000,000

3. Instead of Alternatives 1 or 2, include $40 million of annual lapses as part of the general fund condition statement. Under this alternative, there would be no bill provisions; instead, the Secretary of Administration would use his authority under current law to limit spending by executive branch agencies to generate $40 million of annual savings. If any of these savings

amounts would accrue from continuing GPR appropriations or from SEG or PR moneys, subsequent legislation could authorize any lapses or transfers to the general fund needed to reach the goal.

ALT 3	**Change to Bill** Funding	**Change to Base** Funding
GPR-Lapse	$0	$80,000,000

4. Maintain current law.

ALT 4	**Change to Bill** Funding	**Change to Base** Funding
GPR-Lapse	- $80,000,000	$0

Prepared by: Dave Loppnow