

## Issue Brief – Intent Language

NUMBER CFAS-06-04

### SUMMARY

In July, 2005 the Executive Appropriations Committee adopted the recommendations of a report from the Fiscal Analyst's Office (Intent Language as Used in Appropriations Acts, Jon Ball, June 6, 2005). The report examined the legal foundations of intent language and made recommendations.

Findings of the report included:

- Intent language is legally binding as long as it doesn't conflict with statute (UCA 63-38-13).
- Intent language applies only to a single line item for a single year.
- Intent language is not an appropriation.
- Intent language that is repeated annually or used for more than one line item may be better placed in statute.
- Intent language should be clearly tied to and should concisely clarify an appropriation.
- Intent language making appropriations nonlapsing is better in supplemental bills than in future fiscal year bills.

Adopted recommendations included:

1. Review how nonlapsing balances have changed in the past five years.
2. Review whether there is a need for nonlapsing authority in advance of a fiscal year rather than on a supplemental basis.
3. Review prior-year intent language to determine whether any would be better placed in statute.

### NONLAPSING INTENT LANGUAGE

As a default, authority to expend funds for any fiscal year expires at the end of the fiscal year. Unspent and unencumbered funds lapse back to the fund or account from which they were appropriated. Exceptions are granted either by statute or by intent language.

The Legislature grants nonlapsing funds for at least two reasons. First, they give an incentive to agency managers to be frugal since they can keep their unexpended balances. Second, to avoid stereotypical government end-of-year spending dashes in a "use it or lose it" environment.

Typically the Legislature grants nonlapsing authority through intent language in two ways. First, it may make "supplemental" action three to six months before the end of a fiscal year, identifying specific one-time projects for which nonlapsing funds can be used. The Budgetary Procedures Act (UCA 63-38-8.1) provides clear guidelines for this type of authority. Agencies must submit a list of one-time projects for which nonlapsing authority will be granted.

Second, the Legislature may grant nonlapsing authority sixteen to eighteen months in advance of the end of a fiscal year. Utah law does not stipulate what agencies must do to receive this type of language nor does it provide guidelines for subcommittees to consider when debating this type of language.

Therefore as a matter of policy, the Analyst prefers nonlapsing language that is granted in supplemental action. The Analyst believes that granting nonlapsing authority nearer to the end of a fiscal year allows for better estimation of available balances and provides greater accountability for the potential uses of such balances.

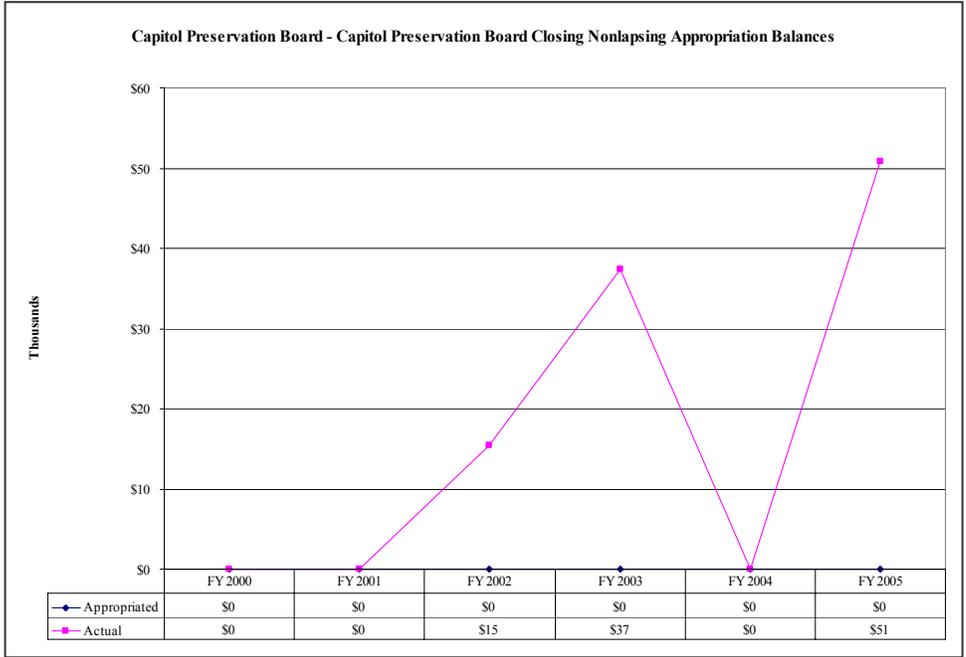
The following pages respond to the recommendations adopted by the Executive Appropriations Committee.

**ACTIONS REQUIRED BY EAC**

**1. Review how nonlapsing balances have changed in the past five years.**

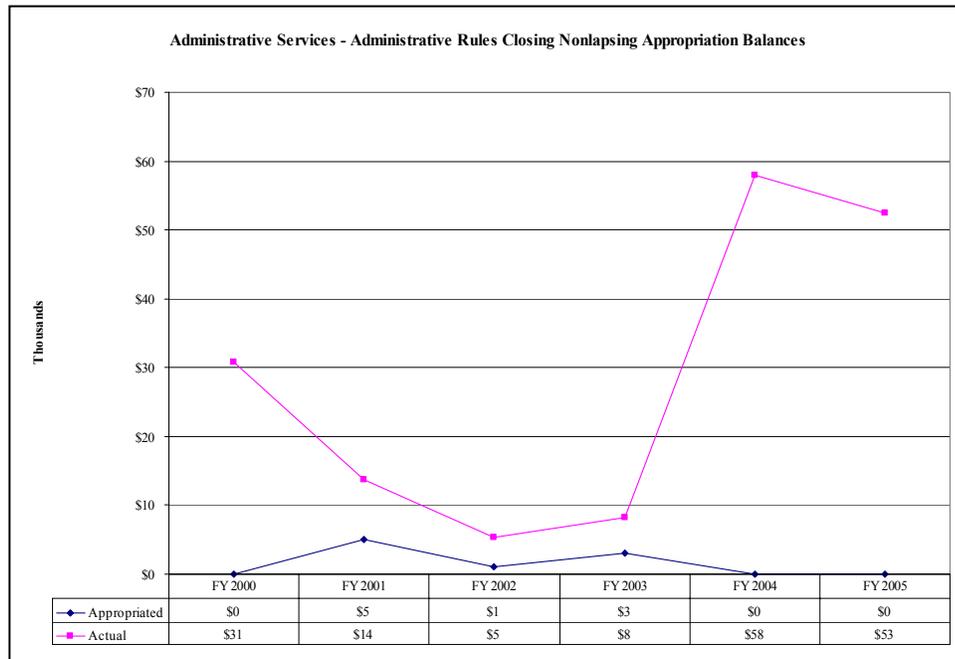
Nonlapsing balances held by agencies in the Capital Facilities and Administrative Services Appropriations Subcommittee are relatively small. The only exception is the Division of Finance, which is undergoing development of new accounting systems and has nonlapsing authority tied to completion of the systems. Capital Projects administered by DFCM are statutorily nonlapsing.

Capitol Preservation Board



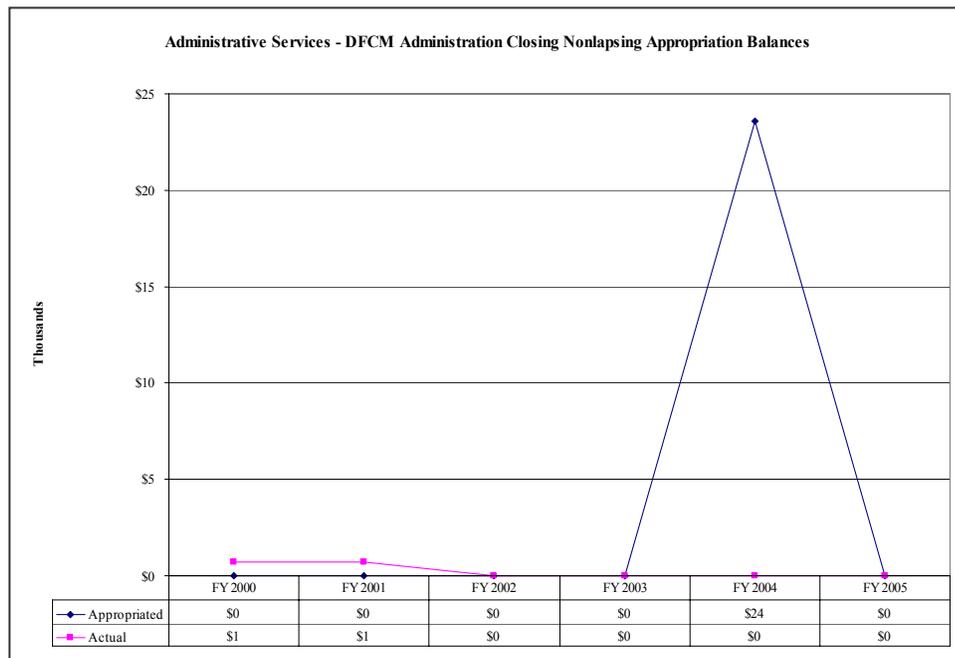
Variations in balances from year to year appear large in the chart due to a small scale. Nonlapsing balances totaled \$51,000 at the end of FY 2005. The board may use these funds for some of its priorities as it prepares for the opening ceremonies of the Capitol.

DAS – Division of Administrative Rules



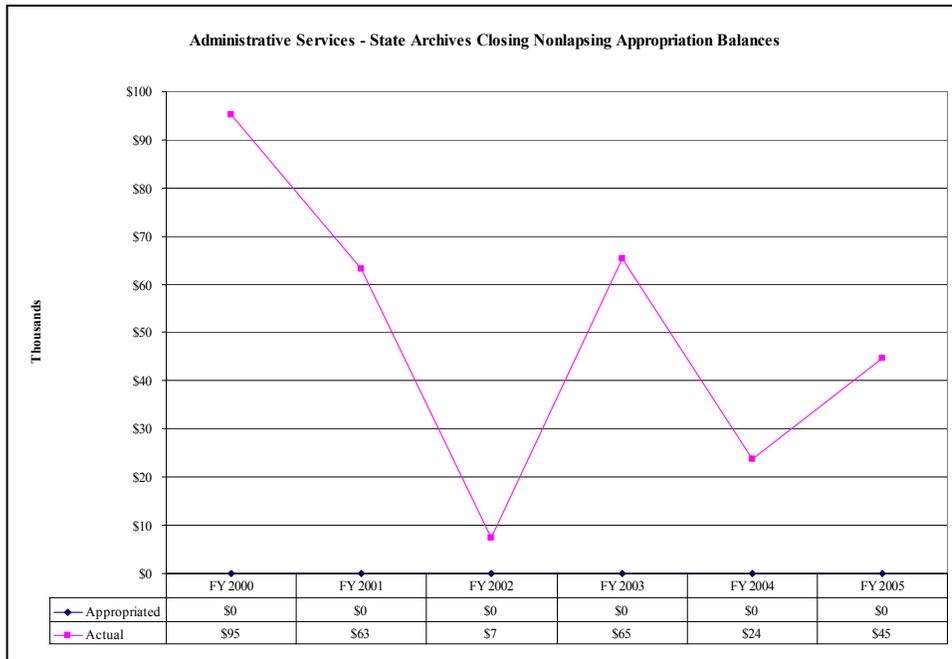
Nonlapsing balances peaked in FY 2004 due to a supplemental one-time appropriation to hire a temporary rules editor. Supplemental appropriations are made three months before the end of a fiscal year. Balances in FY 2005 are tied to a one-time private grant for Alternative Dispute Resolution that was administratively assigned to the division. Again, variations in balances from year to year appear large in the chart due to a small scale.

DFCM Administration



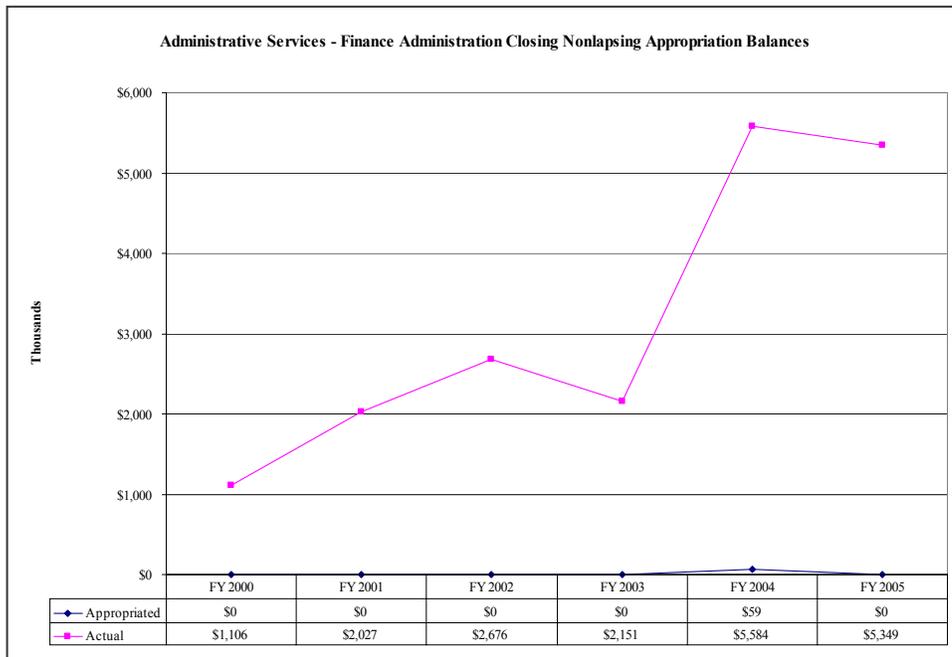
DFCM Administration lapses all funds. Funds lapse back to the accounts from which they were appropriated, including the Capital Improvement Fund and capital project reserve funds. In FY 2004 it was estimated that \$24,000 in Capital Improvement dollars would carry forward in the Roofing and Paving program, but actual figures were zero (funds lapsed back to the fund).

Division of Archives



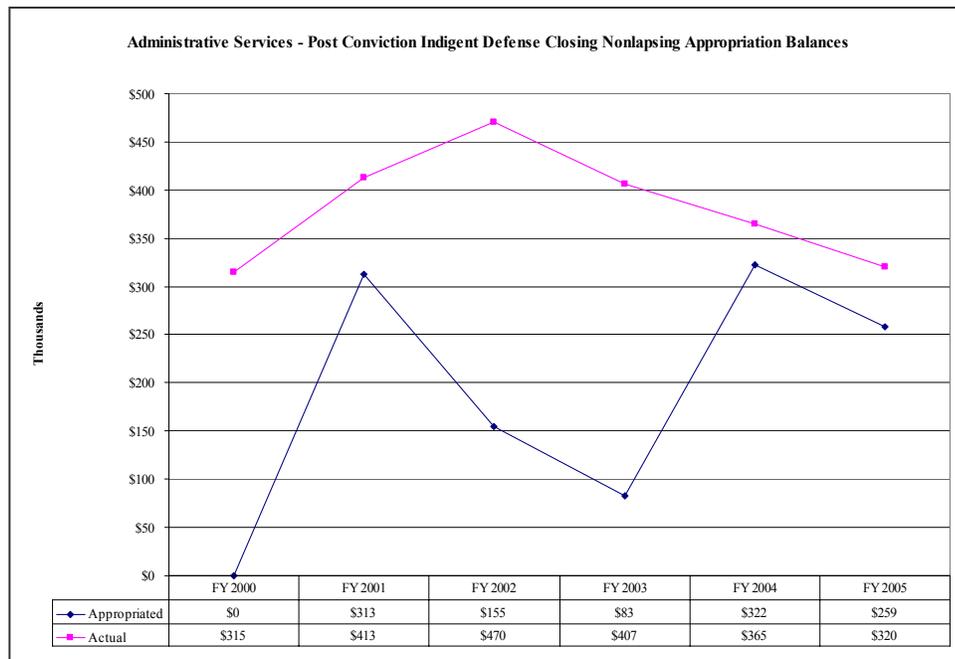
Variations in balances from year to year appear large in the chart due to a small scale. FY 2005 actual nonlapsing balances of \$45,000 are directed by the intent language toward archiving documents generated by former Utah governors.

Division of Finance



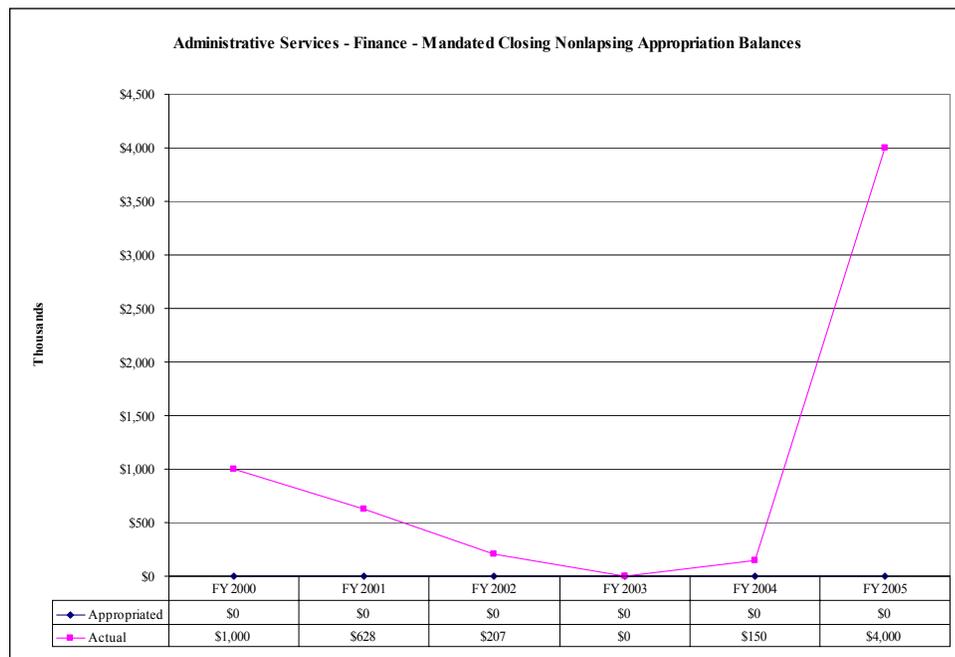
Nonlapsing funds in the Division of Finance are specifically tied by intent language to “development of statewide accounting systems.” The division is almost done upgrading the FINET system and is in the middle of developing the new payroll system. The division will probably spend close to \$6 million for the FINET system even though the Legislature appropriated \$3 million. In the future each system will need additional modules (such as an archiving module) and portals for other systems.

Post-Conviction Indigent Defense Fund



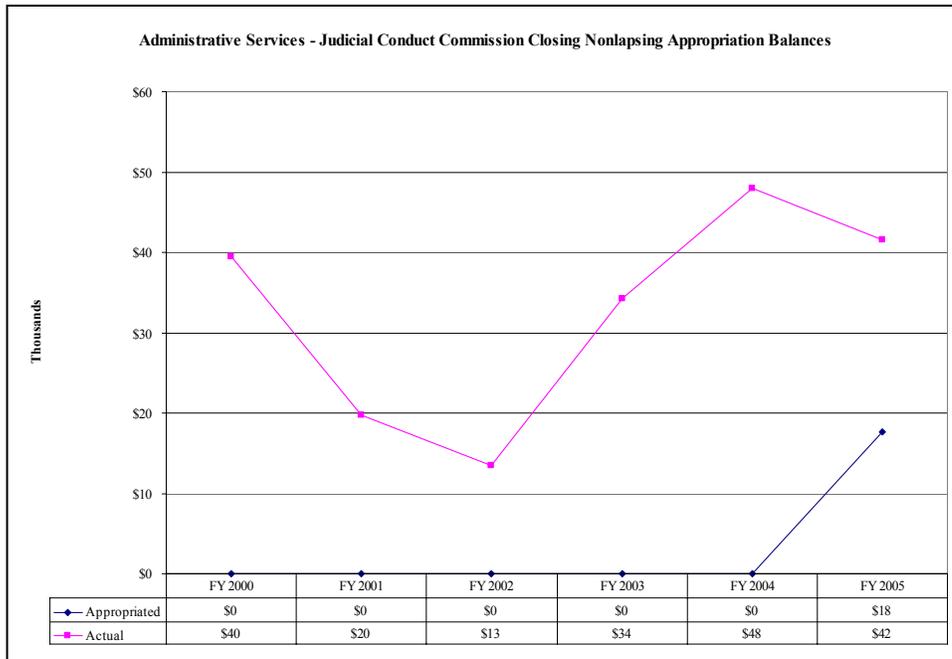
Currently this program is entirely funded with carry-forward balances. Since the peak in FY 2002, funds have been declining at an average of \$44,500 per year. At that pace, nonlapsing balances should be able to fund the program until at least FY 2010. Actual funds are higher than appropriated because appropriations are intentionally slightly high, thus resulting in a lower estimated carry-forward.

Division of Finance – Mandated Expenditures



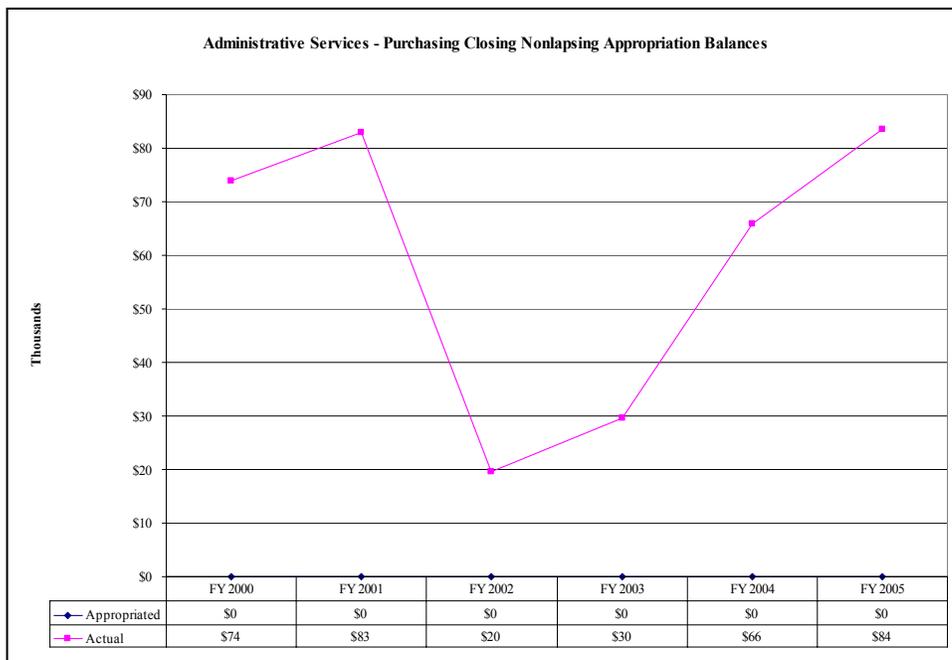
Funds in this line item occasionally carry-forward from one fiscal year to the next from one-time appropriations for special projects. For example, in FY 2004, \$150,000 carried forward until a tuition tax credit study was completed. In FY 2005 \$4 million carried forward until Salt Lake County met the requirements to receive funds appropriated for convention centers.

Judicial Conduct Commission



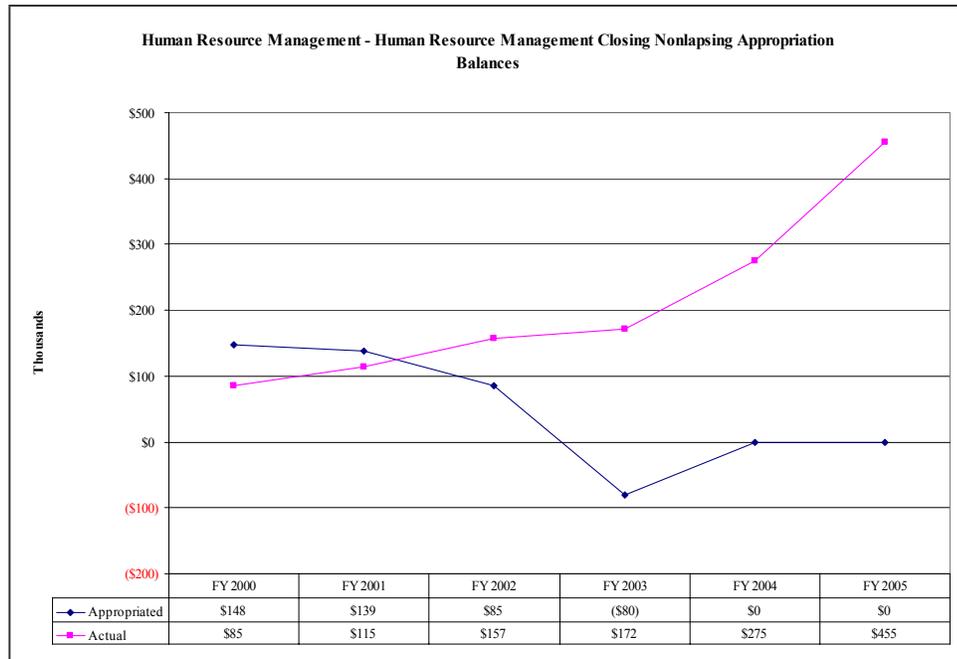
Variations in balances from year to year appear large in the chart due to a small scale. In FY 2005 the commission carried forward \$40,000 from regular operations. Intent language ties these funds to hiring of temporary contractors as needed to meet workload.

Purchasing and General Services



Intent language currently requires the division’s nonlapsing funds be spent on electronic commerce. The division is attempting to build up enough funds to acquire electronic purchasing (ePurchasing) software without requesting General Funds.

Human Resource Management



DHRM closed FY 2005 with \$455,100 in nonlapsing balances. Of that amount, \$261,000 (57%) was General Fund money which they specifically set aside for upgrading the Human Resource Enterprise (HRE) system. The remainder, \$194,100 is almost entirely from collections in the training program. DHRM expects to draw down these funds when it undergoes consolidation in FY 2007 and will conduct all HR training at field sites, many of which are in rural areas.

**2. Review whether there is a need for nonlapsing authority in advance of a fiscal year rather than on a supplemental basis.**

The Analyst recommends the subcommittee adopt a policy of placing all routine “nonlapsing appropriation” intent language in supplemental appropriation bills. This means removing all such language from appropriation bills that deal with a future fiscal year. Some FY 2006 appropriations already received nonlapsing status through intent language in the 2005 General Session, so a repeat is not necessary in an FY 2006 supplemental bill. Obviously any intent language specifically tied to an FY 2007 appropriation should go in an FY 2007 appropriation bill. Under this policy, only one intent statement would currently be applicable to an FY 2007 appropriation.

Please see the pages 8 and 9 for more information.

**Nonlapsing Intent Language Recommended for moving to Supplemental Appropriations Acts**

	Move to Supplemental Bills?	Already in FY 2006 (2005 G.S.)?
<u>Capitol Preservation Board</u> <i>It is the intent of the Legislature that funds for the Capitol Preservation Board shall not lapse and that those funds shall be used for the design and construction costs associated with Capitol restoration.</i>	Yes	Yes
<u>Career Service Review Board</u> <i>It is the intent of the Legislature that funding for the Career Service Review Board be nonlapsing.</i>	Yes	Yes
<u>DAS - Executive Director's Office</u> <i>It is the intent of the Legislature that funds for the Executive Director's Office be nonlapsing.</i>	Yes	Yes
<u>DAS - Administrative Rules</u> <i>It is the intent of the Legislature that funds appropriated for Administrative Rules shall not lapse and that those funds may be used to fund an FTE or contract position on a temporary basis.</i>	Yes	Yes
<u>DAS - Archives</u> <i>It is the intent of the Legislature that funds for State Archives shall not lapse and that those funds shall be used to digitize and microfilm documents generated by former Utah governors for preservation and access.</i>	Yes	Yes
<u>DAS - Finance</u> <i>It is the intent of the Legislature that funds for the Division of Finance shall not lapse and that those funds shall be used for maintenance, operation, and development of statewide accounting systems. <u>However, funds provided for an actuary study of post-employment benefits which do not lapse shall be used for that purpose.</u></i>	Yes	<u>No</u>
<u>DAS - Finance Mandated</u> <i>It is the intent of the Legislature that funds for the LeRay McAllister Fund shall not lapse.</i>	Yes	Yes
<u>DAS - Post-Conviction Indigent Defense</u> <i>It is the intent of the Legislature that funds for the Post Conviction Indigent Defense Fund shall not lapse.</i>	Yes	Yes
<u>DAS - Judicial Conduct Commission</u> <i>It is the intent of the Legislature that funds for the Judicial Conduct Commission shall not lapse and that those funds shall be used to hire temporary contractors on an as-needed basis.</i>	Yes	Yes
<u>DAS - Purchasing and General Services</u> <i>It is the intent of the Legislature that funds for Purchasing shall not lapse and that those funds shall be used for electronic commerce.</i>	Yes	Yes
<u>Human Resource Management</u> <i>It is the intent of the Legislature that funding for the Division of Human Resource Management be nonlapsing.</i>	Yes	Yes

New Intent Language

The Analyst further recommends the following new intent language be placed in the FY 2006 supplemental appropriations act:

**New Intent Language Recommended for FY 2006 Supplemental Bills**

	Put in FY06 Supplemental <u>Bills?</u>	Already in FY 2006 <u>(2005 G.S.)?</u>
<u>DAS - Executive Director's Office</u> <i>It is the intent of the Legislature that the FY 2005 appropriation for the Office of Child Welfare and Parental Defense shall not lapse and that those funds shall be used for contracting.</i>	Yes	No
<u>DAS - Finance Mandated</u> <i>It is the intent of the Legislature that funds appropriated to implement provisions of Unused Sick Leave at Retirement Amendments (H.B. 213, 2005 General Session) shall not lapse.</i>	Yes	No
<u>DAS - Purchasing and General Services ISF</u> <i>It is the intent of the Legislature that proceeds from the privatization and sale of Copy Services equipment be returned to the Division of Purchasing and General Services, less a negotiated fee, to cover the Surplus Property costs for processing and handling.</i>	Yes	No
<u>DAS - Risk Management ISF</u> <i>It is the intent of the Legislature that the Division of Risk Management be allowed to increase their number of vehicles by 1. The division is authorized to transfer the necessary funds to the Division of Fleet Operations.</i>	Yes	No

Unaffected Intent Language

The Analyst recommends maintaining the following intent language in FY 2007. This is currently the only language recommended for insertion in an FY 2007 appropriations bill. It is not language granting nonlapsing authority. It is necessary to put this language in an FY 2007 bill in case circumstances require it early in the fiscal year.

**Intent Language Recommended for FY 2007 Bill**

	Put in FY07 Appropriation <u>Bill?</u>	Already in FY 2006 <u>(2005 G.S.)?</u>
<u>DAS - Facilities Management ISF</u> <i>It is the intent of the Legislature that DFCM's internal service fund be allowed to increase their number of vehicles by 2 for maintenance at the Tooele Courthouse and Ogden Regional Center #2. The division is authorized to transfer the necessary funds to the Division of Fleet Operations.</i>	Yes	No
<i>It is the intent of the Legislature that DFCM's internal service fund may add up to three FTE and up to two vehicles beyond the authorized level if new facilities come on line or maintenance agreements are requested. Any FTE or vehicles will be reviewed and may be approved by the Legislature in the next legislative session.</i>	Yes	Yes

**3. Review prior-year intent language to determine whether any would be better placed in statute.**

The Analyst recommends the following statements, included in previous appropriations acts, should be considered by the appropriations committee for inclusion in statute.

**DAS Post-Conviction Indigent Defense Fund**

*The Legislature intends that funds provided for the Post-Conviction Indigent Defense Fund shall not lapse.*

**DAS Facilities Management ISF**

*DFCM's internal service fund may add up to three FTEs and up to two vehicles beyond the authorized level if new facilities come on line or maintenance agreements are requested. Any added FTEs or vehicles will be reviewed and may be approved by the Legislature in the next legislative session.*

**Division of Finance**

*It is the intent of the Legislature that the Department of Administrative Services develop and implement a mileage reimbursement program that requires agencies to reimburse employees for personal vehicle use at a rate equal to, or less than, the per mile cost of a mid-size sedan operated by the Division of Fleet Operations. It is also the intent of the Legislature that these rules be applied to legislative staff, the judicial branch and the Utah System of Higher Education. The rule should make exception for instances where a state fleet vehicle is not available to the employee, for mileage reimbursements for elected officials of the state and members of boards and commissions who do not have access to the state fleet for use in their official duties.*