

Issue Brief – Department of Health Intent Language

DEPARTMENT OF HEALTH

NUMBER DOH IB 07-33

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 does not 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 the 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 the 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. In the case of the Department of Health, the nonlapsing authority is usually for Dedicated Credit Revenue resulting from penalties, fines, fees and other collections designated for a specific purpose. It is sometimes for grant programs that span more than one fiscal year.

Therefore, as a matter of policy, the Analyst generally prefers nonlapsing language that is granted in supplemental action. Granting nonlapsing authority nearer to the end of the fiscal year generally allows for better examination of available balances and provides greater accountability for the potential uses of such balances. In the case of the Department Health, the Analyst recommends that most of the nonlapsing intent language be placed in statute.

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

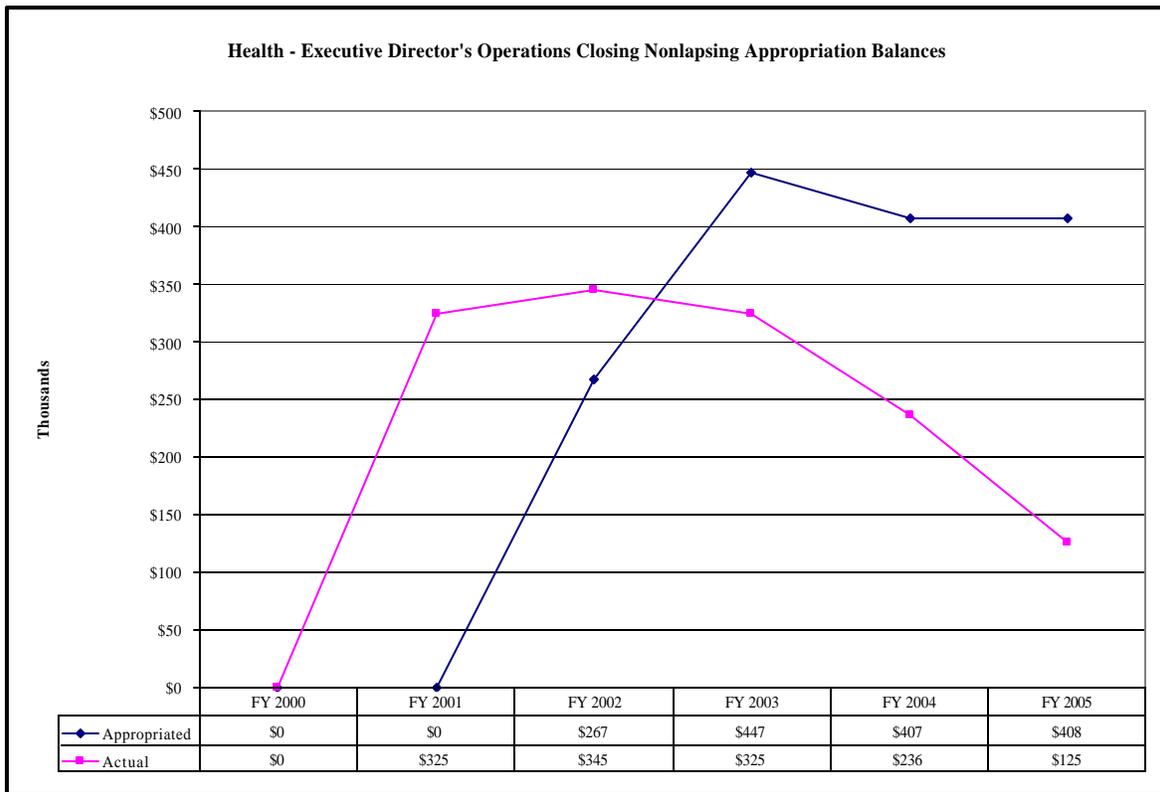
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ACTIONS REQUIRED BY THE EAC

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

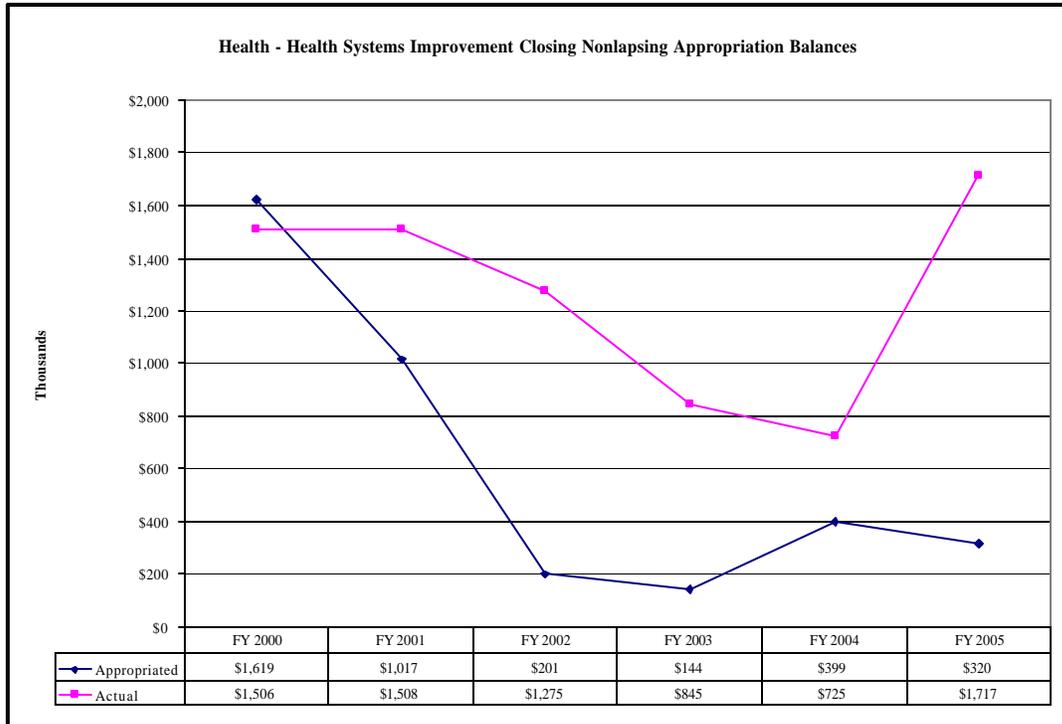
Nonlapsing balances held by the agencies in the Health and Human Services Appropriations Subcommittee by the Health Department are relatively small in relation to the entire agency budget. The Analyst continues to monitor the nonlapsing balances to assure the funds are used for the designated purposes.

Executive Director's Office



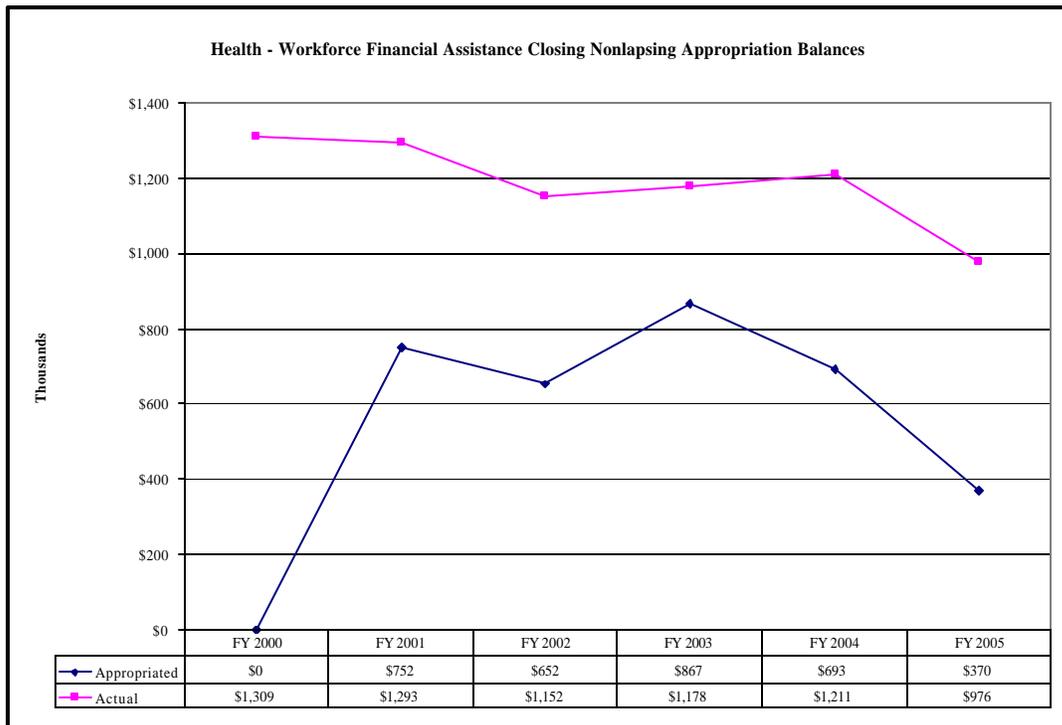
The only program within the Executive Director's Office line item with nonlapsing authority is the Center for Health Data. This program has statutory nonlapsing authority based on the collection of Dedicated Credit Revenue and the uncertainty of the workload. Nonlapsing authority is used to stabilize the funding for the annual workload which is often comes in surges. The last three years, the revenue has been less than estimated in the original appropriation. This is detailed in the table above.

Health Systems Improvement



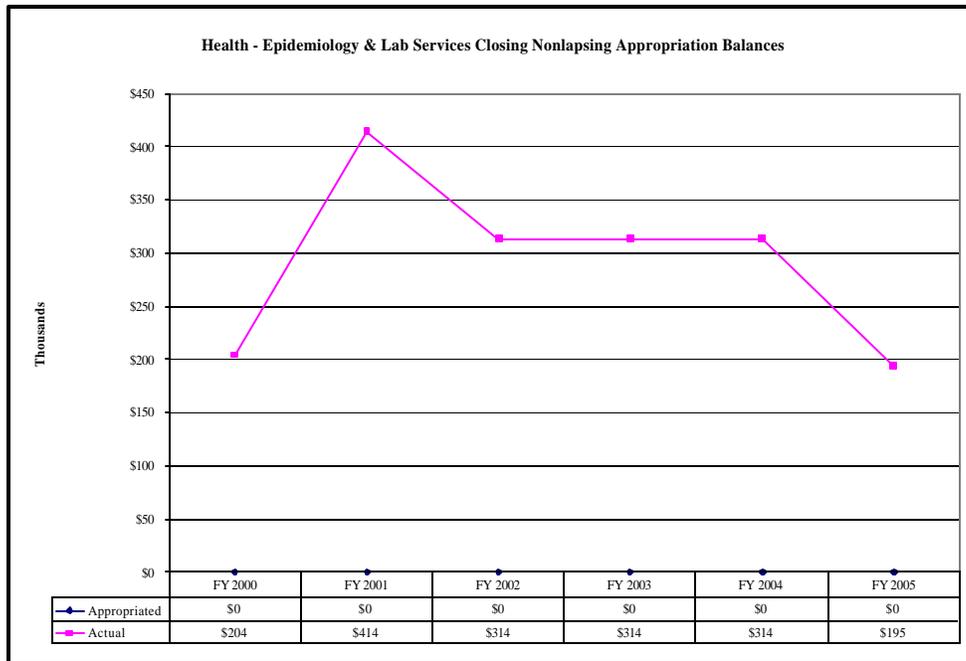
This line item has fees, fines, penalties and grants that are collected in one year and are carried over to fund the program implementation in the next fiscal year. The increase in FY 2005 is the result of increased collections and additional funding received for the grants program. The grant cycle does not correspond to the state fiscal year.

Workforce Financial Assistance



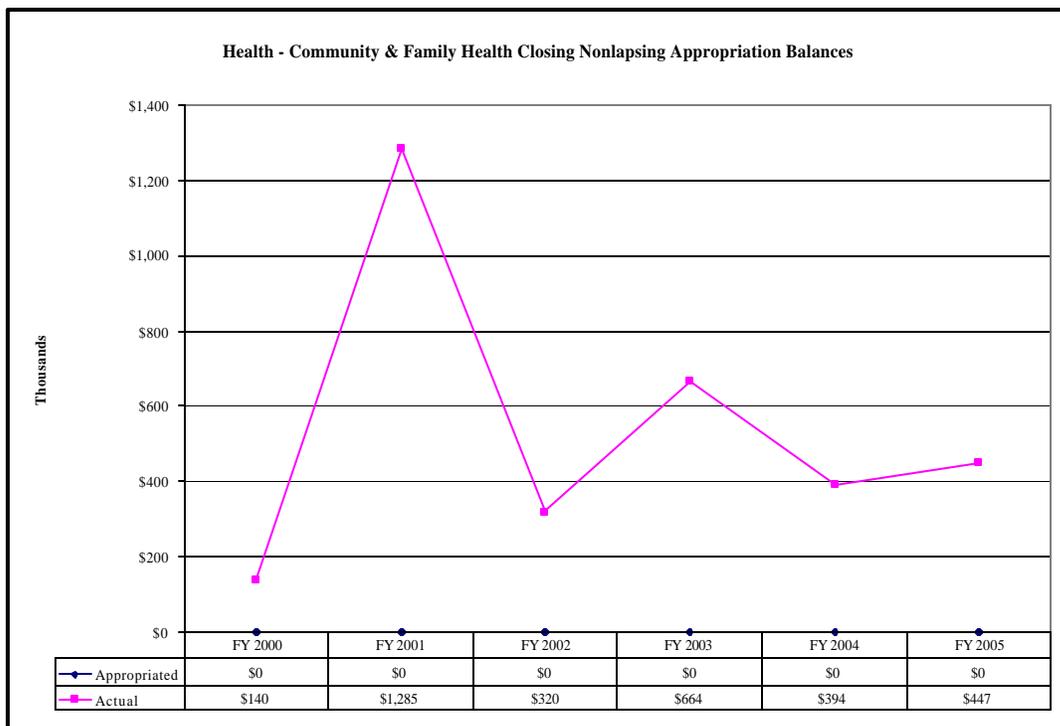
The Workforce Financial Assistance Program has statutory nonlapsing authority. The trends for the appropriated mirrors the actual. Awards made in one year are disbursed in subsequent years.

Epidemiology and Laboratory Services



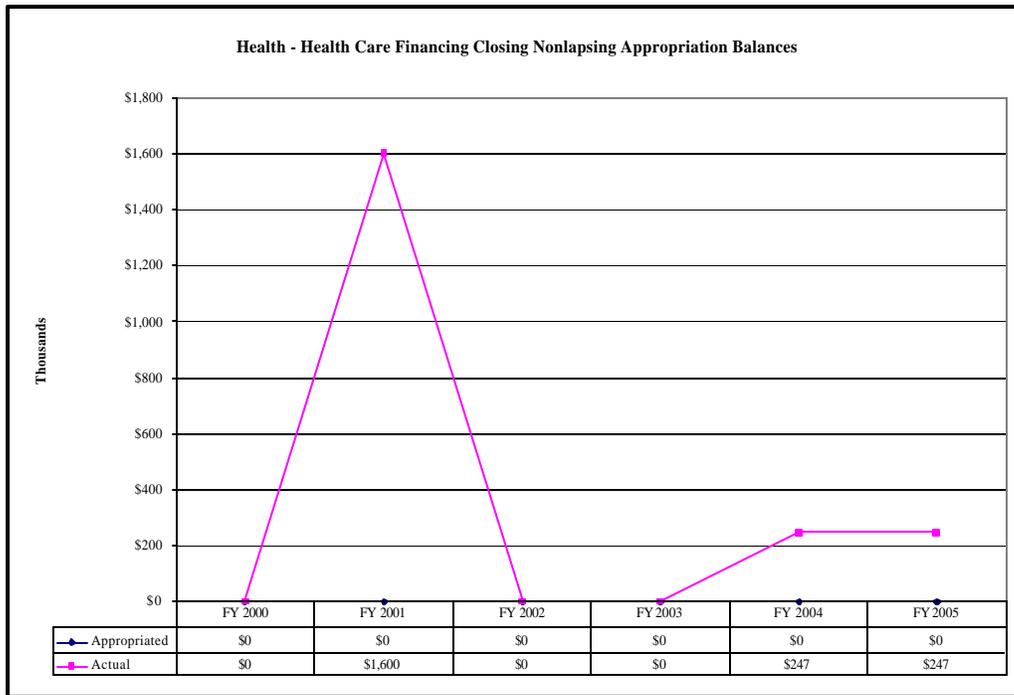
Nonlapsing authority has been granted in the “supplemental year” to enable the Division to use carry-over funds for equipment purchases. There is no base budget for equipment replacement at the present time. The actual carry-over amount shown was the amount requested by the Division for equipment purchases.

Community and Family Health Services



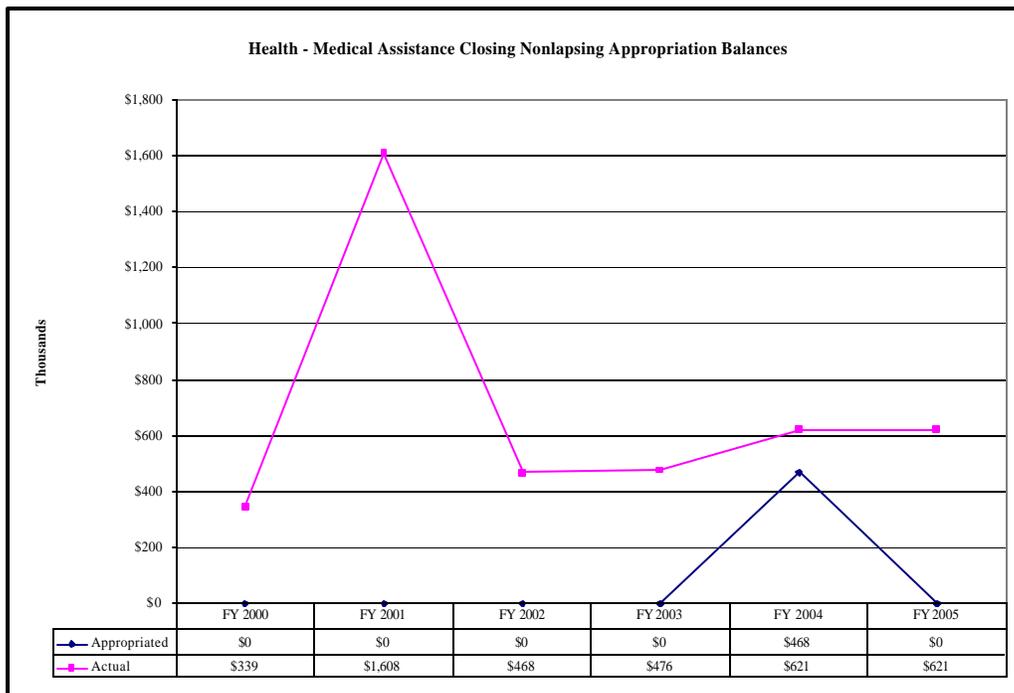
Nonlapsing balances are from the tobacco funds used for a variety of programs. These programs include grants that may be awarded one year and disbursed in the next fiscal year. Nonlapsing authority is through annual intent language. The Analyst recommends that this language be put into statute.

Health Care Financing



The nonlapsing authority for 2004 and FY 2005 were by intent statements for funds related to the eRep project. This intent language has been requested again for FY 2006 and FY 2007.

Medical Assistance



The nonlapsing funds in Medical Assistance are penalty collections from the federal government. The penalties were paid by nursing homes. By federal regulations, they are not lapsing funds and are to be used to pay for costs when the state has to intervene in a nursing home in distress or imminent state take over.

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 Health and Human Services Appropriations Subcommittee adopt the following policies:

- When routine capital expenditures are planned using nonlapsing balances, the intent language authorizing the use of carry-over funds should be put in the supplemental appropriations act.
- Nonlapsing intent language used to carry-over funding awarded but not yet allocated to recipients should have the intent language put into statute. Current intent language that has been approved for the last three years are examples.
- New intent language should be reviewed on a case-by-case basis.

Nonlapsing Intent Language Recommended for the Supplemental Appropriations Acts

Epidemiology and Laboratory Services

Under the terms of UCA 63-38-8.1, the Legislature intends to make nonlapsing item 92, Chapter 8, Laws of Utah 2005. Expenditure of these funds is limited to \$200,000 for laboratory equipment, computer equipment and/or software, and building improvements.

Nonlapsing Intent Language Recommended for Statute

Health Systems Improvement

It is the intent of the Legislature that the fees collected for the purpose of plan reviews by the Bureau of Licensing be considered nonlapsing.

It is the intent of the Legislature that civil money penalties collected for child care and health care provider violations be considered nonlapsing.

It is the intent of the Legislature that funds for the Primary Care Grants Program be considered nonlapsing

The Analyst recommends these intent statements. Funding is carried-over from fees, penalties and grant awards programs.

Community and Family Health Services

It is the intent of the Legislature that the funding for alcohol, tobacco, and other drug prevention reduction, cessation and control programs be considered nonlapsing.

The Analyst recommends this intent statement. Funding carried-over will be used to address the multi-fiscal year funding allocations for program operations.

New Intent Language for Review

Health Systems Improvement

It is the intent of the Legislature that funds appropriated for assistance for people with bleeding disorders be considered nonlapsing.

The Analyst recommends this intent language be included in the FY 2006 Supplemental Appropriations Act and reevaluate the need for the intent language for FY 2007 during the 2007 General Session.

Health Care Financing

It is the intent of the Legislature that funds appropriated for the e-REP enhancements be considered nonlapsing.

The Analyst recommends this intent language be included in the FY 2006 Supplemental Appropriations Act and reevaluate the need for the intent language for FY 2007 as supplement appropriation language during the 2007 General Session.