

ISSUES WITH UNUSED FUNDS

NATURAL RESOURCES, AGRICULTURE, & ENVIRONMENTAL QUALITY APPROPRIATIONS SUBCOMMITTEE
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ISSUE BRIEF

The purpose of this document is to address issues with unused funds at the end of a fiscal year. Some entities have spent disproportionately in favor of their restricted accounts, returning to the General Fund either none or very little of the unused funding, without meeting the requirements of the statutory exception of the Budgetary Procedures Act. Under that exception, the Legislature could use legislative intent language as authorization for disproportionate lapsing and to provide clarification for nonlapsing amounts by funding source.

Statutory Requirement for Proportionate Spending with Exceptions

The Budgetary Procedures Act, which dictates how state agencies should spend mixed-funding sources, allows for certain exceptions. UCA [63J-1-104 \(4\)](#) directs agencies with funding from the General Fund and restricted account(s) to spend their funding proportionately:

“... when an agency has a program or line item that is funded by both free revenue and restricted revenue, an agency shall expend those revenues based upon a proration of the amounts appropriated from each of those major revenue types.”

The following table provides an example with proportionate spending (50/50).

A	B	C	D	E
	Appropriated	Proportionately		Returned/Lapsing
	=	Spent	+ Unspent	
1 General Fund	\$500,000	\$300,000	\$200,000	\$200,000
2 Restricted	\$500,000	\$300,000	\$200,000	\$200,000
3 Total	\$1,000,000	\$600,000	\$400,000	\$400,000

In the above example, the entity received equal amounts from the General Fund and a restricted account and returns back to the two funding sources the unused amount by the same proportions (50/50).

The same statute also provides an exception, allowing agencies to spend disproportionately by funding source: “*Unless otherwise specifically provided by law, when an agency has a program or line item that is funded by both free revenue and restricted revenue, an agency shall expend those revenues based upon a proration of the amounts appropriated from each of those major revenue types.*”

The example in the following table illustrates how an entity using the exception could spend more of its General Fund appropriation and therefore return less than 50% of its unspent amount back to the General Fund. (This exception would need to be provided by law, as stated above.)

A	B	C	D	E
	Appropriated	Exemption		Returned/Lapsing
	=	Spent	+ Unspent	
4 General Fund	\$500,000	\$400,000	\$100,000	\$100,000
5 Restricted	\$500,000	\$200,000	\$300,000	\$300,000
6 Total	\$1,000,000	\$600,000	\$400,000	\$400,000

In this example, the entity expended more from its General Fund (cell C4 in the above table) and ended up returning (or lapsing) \$100,000 to the General Fund and \$300,000 to its restricted account.

\$1.2 Million in Forfeited Revenues to the General Fund

As we tested how well the agencies in this subcommittee have implemented 63J-1-104(4), we identified that some entities have spent disproportionately their funding without qualifying for the statutory exception. Based on our calculations, the entities listed in the table below were returning most or all of their left-over money to their restricted accounts, and very little or none to the General Fund (see column F). The General Fund should have received \$1.2 million from lapsing amounts in FY 2019 (see column I).

Lapsing Balances, FY 2019

A Line Item	B Appropriated* from:		D Restricted	E Lapsing Total	F Lapsing to General Fund			I Difference
	C General Fund	10%			Actual	G Should Have	H	
DEQ Waste Management & Radiation Control	760,200	10%	6,947,300	683,857	-	0%	67,400	67,400
Wildlife Resources	6,606,000	12%	49,015,500	2,731,824	24,564	1%	324,500	299,900
DWR Capital Facilities	649,400	35%	1,205,000	687,731	-	0%	240,800	240,800
Parks & Recreation	4,588,600	12%	34,685,200	3,039,118	75,000	2%	355,100	280,100
Public Lands Policy Office	4,923,100	81%	1,125,600	181,076	-	0%	147,400	147,400
Ag Predator Animal Control	939,100	58%	679,400	187,546	80,001	43%	108,800	28,800
Office of Energy Development	3,873,700	92%	342,700	117,290	1,220	1%	107,800	106,600
	22,340,100	43%	94,000,700	7,628,442	180,785	7%	1,351,800	1,171,000

**Note: the appropriated amounts are only from appropriation units with Lapsing Balances*

Misinterpretations of the Exception Provision

In majority of the cases, program managers explained that they spent disproportionately because they thought their program qualified for the statutory exemption. They excluded some General Fund building blocks from the final calculations: either because they thought they should treat them as exempted or because they thought that the definition of a program includes unit level of accounting. Based on our review, these claims for the statutory exemption did not appear to be supported by the provisions of the current statute.

Treating Building Blocks as Exempted

An example from Department of Natural Resources (DNR): "In 63J-1-104(4) it states 'unless otherwise specifically provided by law, when an agency has a program or a line item that is funded by both free revenue and restricted revenue, an agency shall expend those revenues based upon a proration of the amounts appropriated from each of those major revenue types.' In our interpretation, we view all appropriations made from a specific funding source for a specific purpose as 'provided by law' and thus exempt from the proration as described in the above statute (since it was provided for a specific purpose in the funding bill which is law). For example, if a program is funded a million dollars of general funds to specifically fight invasive species and it is placed in a line item with multiple funding sources, it dilutes the appropriation proration mix of that line item. We feel the funding was appropriated for a narrowly defined purpose that is 'specifically provided by law.' Through cost accounting we know what was spent for the specific intent of the funding and thus we remove that from the total prorated amount of the rest of the line item funds and lapse any unused amounts based on the prorated balance according to the law since the other funding is for general operational purposes. By using your method of interpretation, you essentially reduce funding that was appropriated by lawmakers for a specific purpose. This dilutes the desired impact to the program, as appropriated by law, and the legislative intent of the funding."

While we agree with the efforts of the agencies to fulfil the intentions for the Legislature for each building block, we believe the phrase "unless otherwise specifically provided by law" does not apply to building blocks funded in appropriations bills. This is because the appropriations bills do not list the building blocks nor provide details for their purposes. With the exception of few cases, which have detailed legislative intent language attached to an

appropriation, there is generally nothing provided by appropriations bills (the statute reads "unless otherwise *specifically provided by law*") that would indicate that General Fund building blocks are exempted from 63J-1-104(4).

We believe the statutory exemption is mainly intended for restricted accounts with very specific and very restrictive usages outlined in their governing statutes, that *do not allow* an entity to follow 63J-1-104(4) and proportionately spend their appropriations from the General Fund and a restricted account. For example, referring to the second table on page 1, a qualifying exemption would be a restricted account allowed to be used only for emergency cleanup expenses, narrowly defined in the account's governing statute and for nothing else. In this example, there were fewer than anticipated such emergencies, and only \$200,000 from the restricted account could be used during that year (see the amount in column C row 5 in the table).

However, if the governing statute of a restricted account is broad enough and allows the funding to be used for anything in the division (such as the State Park Fees Restricted Account in the Division of Parks and Recreation), we don't believe the exemption for proportionate spending would be applicable.

Entity Tracking the Unexpended Funding on the Unit Level Internally

An example from DNR: "The law above also states 'when an agency has a program or a line item.' You are looking strictly at the line item when you make this calculation. The law states program OR line item. According to this, we are allowed to lapse by a prorated amount by program. Line items may contain several programs with specific funding objectives set by legislation that get combined into a sum total when calculated by line item. In other words, utilizing line item sums for prorating lapsing purposes can unintentionally distort legislative intent for funding provided at the time of the appropriation process. In the example above, invasive species control may be one program which may have been funded totally by general funds in a mix of other line item funding. Because we used cost accounting and know how much we spent for the program, we either used all the funding as intended or lapsed back unused funds proportionately for the funding specifically included in that program.

In the Budgetary Procedures Act ([63J-1-102\(12\)](#)), the definition of a "program" is as follows: "a unit of accounting included on a schedule of programs within a line item used to track budget authorizations, collections, and expenditures on specific purposes or functions." These programs are the programs included in the appropriations bills (under "Schedule of Programs") and not sub-programs used by some entities set up for internal tracking of expenses. The "invasive species control" in the agency's example does not meet the statutory definition of a "program" in the Budgetary Procedures Act.

Recommendation

The Legislature may provide directions through legislative intent language with specific details that could qualify a program for an exception included in 63J-1-104(4). For example, the Legislature could include in the base budget bill for the Division of Parks and Recreation's operations line item the following intent language:

The Legislature intends that the General Fund appropriation for the Parks and Recreation line item shall be used for the operations and maintenance of the division's heritage parks, museums, and This Is The Place Heritage Park. Upon request, the division shall provide detailed documentation as to how its appropriation from the General Fund was spent.

Since the base budget bill is a "law," and this example includes specific directions about the General Fund appropriation through the legislative intent language, we believe it would qualify for the exception in UCA 63J-1-104(4). It would allow the division to exclude from its final calculations the General Fund amount spent on its heritage parks, museums, and This Is The Place Heritage Park. And if this were to be all of their General Fund, they

won't have to return any of their unspent funding to the General Fund; all of the unspent funding would go back to the restricted accounts.

Lack of Clarity for Nonlapsing Amounts

The current statute does not specifically address nonlapsing amounts from mixed-funding sources. When the nonlapsing intent language in line items with appropriations from the General Fund and a restricted account does not specify the type of the funding (which is currently the majority of cases), it is unclear what the funding sources for that amount are. This is an example of a typical nonlapsing intent language:

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Division of Oil, Gas, and Mining in Item 68, Chapter 8, Laws of Utah 2019, shall not lapse at the close of FY 2020. Expenditures of these funds are limited to: Mining Special Projects/Studies \$50,000; Computer Equipment/Software \$50,000; Employee Training/Incentives \$50,000; Equipment/Supplies \$50,000.

A designation of funding sources and amounts could make a difference on how much of the unspent funding is returned to the General Fund, as shown in the two scenarios below.

A	B	C	D	E	F
Proportionate Nonlapsing					
	Appropriated	=	Spent	+	Unspent
				-	Nonlapsing
					=
					Returned/Lapsing
7 General Fund	\$500,000		\$300,000	\$200,000	\$100,000
8 Restricted	\$500,000		\$300,000	\$200,000	\$100,000
9 Total	<u>\$1,000,000</u>		<u>\$600,000</u>	<u>\$400,000</u>	<u>\$200,000</u>
Disproportionate Nonlapsing					
	Appropriated	=	Spent	+	Unspent
				-	Nonlapsing
					=
					Returned/Lapsing
10 General Fund	\$500,000		\$300,000	\$200,000	\$150,000
11 Restricted	\$500,000		\$300,000	\$200,000	\$50,000
12 Total	<u>\$1,000,000</u>		<u>\$600,000</u>	<u>\$400,000</u>	<u>\$200,000</u>

The "Proportionate Nonlapsing" calculations in the above table (rows 7-9), results in returning \$100,000 to the General Fund (cell F7). In the "Disproportionate Nonlapsing" calculations (rows 10-12), the General Fund receives only \$50,000 (cell F10).

Recommendation

The Legislature could provide directions by including in the nonlapsing intent language specific amounts and funding sources, as demonstrated in the following example:

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Division of Oil, Gas, and Mining in Item 68, Chapter 8, Laws of Utah 2019, shall not lapse at the close of FY 2020. The funding shall not exceed \$150,000 from the General Fund and \$50,000 from the Oil and Gas Restricted Account. Expenditures of these funds are limited to: Mining Special Projects/Studies \$50,000; Computer Equipment/Software \$50,000; Employee Training/Incentives \$50,000; Equipment/Supplies \$50,000.

This would allow the program, at the end of the fiscal year, to know exactly how much funding from each source to keep as nonlapsing and how much to lapse. The implementation of this recommendation would not require major changes to current practices. The difference would be requesting of agencies to add the specific amounts and identify the funding sources, as shown in the underlined sentence in the above example.