

Nonlapsing Authority
Office of the Legislative Fiscal Analyst
May 16, 2000

**Nonlapsing Funds
Study Overview**

This report examines the disposition of lapsing and nonlapsing funding. The report evaluates funding from FY 1990 through FY 2000. Though the focus of the report is nonlapsing funding, the impact on lapsing funds and the budgetary process are also considered.

The Budgetary Procedures Act of Utah outlines the disposition of unexpended balances at the end of a fiscal year in two sections of the code. State statute, 63-38-8 UCA, details the use of unexpended appropriation balances. Section 63-38-8.1 UCA passed by the 1994 Legislature to define, clarify, and outline nonlapsing authority. (See Appendix A for the citation narrative.)

This study evaluates the number of line items with nonlapsing authority, the impact that this has on revenue and expenditures, and the reasons why nonlapsing authority is approved and used.

Background

A department, program or activity can receive nonlapsing authority one of several ways. The first is by statute. Legislation can be sponsored and passed in both houses to change an entity's nonlapsing status. The second is by intent language in either the appropriations bill or the supplemental appropriations bill. It is in effect for one year. Intent language can give unrestricted nonlapsing authority, limit the authority to specific programs or activities, or place conditions on that authority. All of these aspects were considered for the study. Only the major issues related to nonlapsing status are reported.

**Monitoring of
Nonlapsing Funds**

Lapsing and nonlapsing balances are monitored by the program, the department, the Governor's Office of Planning and Budget and the Office of the Legislative Fiscal Analyst. Some agencies use the planning process to monitor nonlapsing balances. The expenditure of funds can be tracked and monitored through a variety of reports and verified in the Division of Finance Accounting System (FINET). These can be reported to the Legislature in the annual budget review or during an interim appropriations subcommittee meeting. This is an important part of budget preparation.

UCA 63-38-8.1

The 1994 Legislature passed House Bill 80 (Budgetary Procedures Act – Nonlapsing Authority). The bill provided a procedure for agencies to retain a specified amount of savings as nonlapsing. This money could be used only for expenditures as identified in an appropriations act. It did not grant unrestricted nonlapsing authority.

The impact of this bill did not reduce the number of line items with nonlapsing authority. In fact, the number continued to increase. It also did not result in an increase in nonlapsing funds being carried forward or a significant decrease in lapsing funds to the General Fund, Uniform School Fund or Transportation Fund. (The Uniform School Fund and Transportation Fund are generally covered by statutory nonlapsing authority.)

Nevertheless, the Analyst continues to support the provisions of the code as noted in the recommendations section of this report.

Alternatives to Nonlapsing Status

Alternatives to nonlapsing authority are:

- supplemental appropriations;
- greater flexibility through line item consolidation;
- greater use of UCA 63-38-8.1(2) identifying specific projects and funding levels.

Although alternatives exist, restricting or reducing nonlapsing authority could have a significant fiscal impact on some agencies. The challenge that the first alternative presents is the uncertainty of obtaining the needed funding. The second alternative may decrease the ability of the Legislature to assess accountability. The third alternative may encourage over estimates of program funds to make carry over available to fund specific projects.

Study Data and Methods

Five key sets of data were gathered and evaluated for the purposes of this study. These included:

1. A survey of information from State Agencies;
2. A survey of information provided by budget analysts from the Governor's Office of Planning and Budget;
3. A survey of information provided by fiscal analysts from the Office of the Legislative Fiscal Analyst;
4. Expenditure, nonlapsing, and lapsing financial data from the Comprehensive Annual Financial Report compiled and published by the Division of Finance; and
5. The main Appropriations Bills as recorded in the Laws of Utah.

The surveys were done to understand the rationale for nonlapsing authority used by the agencies that request this authority and those who evaluate those requests, in the Executive Branch and the Legislative Branch.

Financial data from the Comprehensive Annual Financial Report was used to assure the data was accurately and uniformly reported over the evaluation period. Though Subcommittee assignments have changed over the years, the Division of Finance has maintained the same reporting groupings of agencies and departments throughout the evaluation period. In each of the tables listed in the Appendices, an evaluation row at the bottom of the page compares each year to the base year of FY 1990. Funds are not adjusted for inflation.

**Reported Rationale
for Unrestricted
Nonlapsing
Authority**

The surveys reported a variety of reasons why nonlapsing authority was requested by an agency, approved by the Governor's Office, and supported by the Legislative Fiscal Analyst. Some reasons cited are:

1. Specific projects have a multi-year time frame (especially capital projects);
2. To improve program management practices by operating the program or activity on a cost reimbursement basis creating greater fiscal control;
3. It creates greater budget flexibility;
4. It encourages planning;
5. It enables multi-year planning;
6. It provides an agency the ability to react to emergency situations as they occur;
7. It sometimes provides funding which enables a department the ability to address special needs not funded by the Legislature;
8. It enables better decision making by not imposing an arbitrary calendar date for losing resources, (sometimes unusual circumstances delay a project or activity);
9. The public would be less inclined to donate funds for special projects if they knew the funds might lapse to the State;
10. The probability is increased that the funds will be spent for the purpose for which it was originally appropriated;
11. To attempt what is perceived as a private sector fiscal practice in government to correct a disincentive on the part of State agencies to spend excess funds at year end;
12. It is an effort to protect the funding of the base budget;
13. Programs or activities started with a supplemental appropriation may not be able to make the necessary expenditures before the spending authority lapses;
14. A method used to avoid micro-management;
15. To provide for grant cycles that do not correspond to the fiscal year;
16. To provide funding for one-time projects when new revenues are not available;
17. To ensure a constant base budget as costs fluctuate from year to year.

**Rationale Against
Unrestricted
Nonlapsing
Authority**

The following citations outline some reasons why unrestricted nonlapsing authority has not or should not be granted. Some of the reasons given as to why nonlapsing authority has been approved may be the same reasons nonlapsing authority has not or should not be granted. These reasons include:

1. Authority is granted as a courtesy;
2. Because an agency asks for it;
3. It is an effort to protect the funding of the base budget;
4. Nonlapsing authority reduces the funds available to be used as carryover and new supplemental appropriations;
5. It could reduce control of funds by the Legislature;
6. It increases the need for monitoring and follow-up on appropriations;
7. It sometimes provides funding which enables a department the ability to address special needs (or wants) not funded by the Legislature.

Sample of Major Shifts

There has been fluctuation in lapsing and nonlapsing funding over the years. A few agencies have had a significant impact on the amounts of these changes. A few examples are:

1. Transportation Funding – Both lapsing and nonlapsing balances have fluctuated due to projects planned and implemented.
2. Department of Health – UCA 26-18-402 grants authority for General Fund to lapse to a restricted account. This has amounted to over \$8 million dollars at times. Use of these funds must be reauthorized by the Legislature.
3. Government Operations – Still lists the Tax Commission with this set of budgets. Carryover funding for the UTAX project explains the most recent increase listed in FY 1998 and FY 1999.

Financial Analysis Findings

The fiscal years evaluated for the purpose of this study were from FY 1990 to FY 2000. The primary documents used were the Comprehensive Annual Financial Report and the Laws of Utah. The following findings are reported:

1. While the number of line items increased 10.93 percent (from 247 to 274), the number of line items with unrestricted nonlapsing authority have increased 500 percent (from 12 to 72). (See Appendix B)
2. The number of line items with program specific nonlapsing authority increased from 5 to 21.
3. Those line items with conditional nonlapsing authority have decreased from 14 to 12.
4. Some of the new line items with nonlapsing authority are the result of a division of one line item into two or more line items, all with the same nonlapsing authority of the original line item.
5. Some of the line items reported as gaining nonlapsing authority during the evaluation period actually had statutory nonlapsing authority the entire time.
6. Expenditures have increased approximately 87.42 percent since FY 1990 while unrestricted nonlapsing balances have increased 25.11 percent. (See appendix C.)
7. Even though expenditures made a steady increase over the evaluation period, the amount of nonlapsing balances varied over the same period.
8. The dollar amount of the Nonlapsing and Lapsing totals has increased proportionally, but not in a linear fashion.
9. Nonlapsing funds and balances are monitored by the Agency, the Governor's Office and the Fiscal Analyst regularly throughout each year.

Summary

The use of intent language granting nonlapsing authority has increased in both the number of line items involved and the dollars expended. It does not appear that nonlapsing authority has been given without thought or review in most cases. Appropriations Subcommittees must approve all intent language and submit it for final approval to the Executive Appropriations Committee. It must then receive subsequent approval of both houses.

The biggest shifts in lapsing/nonlapsing funding occur in Public Education and Transportation, neither of which are impacted by nonlapsing intent language. Financial data seems to indicate that conscious decisions are being made regarding the nonlapsing funding.

Conclusion

The Legislature has the authority to grant nonlapsing status by enacting statute or adding intent language to specific appropriations. Although the Legislature seems to be using this power with some degree of discretion, there has been an increase in the number of line items with nonlapsing authority over the last ten years. However, this has not disproportionately increased the amount of funds that are carried over from one year to the next nor significantly decreased the funds available from unrestricted lapsing balances.

The evaluation indicated that the nonlapsing and lapsing totals are not inconsistent with increases in the total budget. The appropriations subcommittees have the authority necessary to evaluate the nonlapsing needs of any particular agency. This may vary from subcommittee to subcommittee. The Executive Appropriations Committee also reviews all intent language.

Recommendations

The Analyst makes four recommendations.

1. During the regular budget review the fiscal analyst for each appropriation subcommittee should prepare a recommendation and justification regarding lapsing/nonlapsing status for each line item that does not have statutory nonlapsing authority. Appropriation Subcommittee Chairs should ensure that appropriate time is allocated in the 2001 General Session for review of these recommendations. Each fiscal Analyst should also indicate in the budget review, those line items having statutory nonlapsing authority.
2. A checklist should be prepared for all legislators assigned to appropriations subcommittees to assist in the evaluation of lapsing/nonlapsing status for each line item.
3. The Legislative Fiscal Analyst (LFA) and Governor's Office of Planning and Budget (GOPB) should work together to develop more detailed agency request and reporting forms for the budget preparation process.
4. The LFA will provide more detailed follow-up on items authorized under 63-38-8.1 UCA.

Determination Checklist

A checklist for the Legislature may be helpful in determining the lapsing/nonlapsing status of any particular line item. Some possible criteria to be evaluated by the checklist are:

1. Are there one-time needs in this line item that might be met using nonlapsing funds?

2. Can one-time needs be adequately quantified?
3. Are there obligations within this budget that carry-over from one year to the next?
4. What is the time frame of the project/activity under consideration?
5. How much funding may be available at the end of the year verses what is needed?
6. Is the project/activity that is requested cost effective?

Appendix A

63-38-8. End of fiscal year -- Unexpended balances -- Funds not to be closed out -- Pending claims -- Transfer of amounts from item of appropriation.

(1) As used in this section, "transaction control number" means the unique numerical identifier established by the Department of Health to track each medical claim, which indicates the date upon which the claim is entered.

(2) On or before July 31 of each fiscal year, the director of the Division of Finance shall close out to the proper fund or account all remaining unexpended and unencumbered balances of appropriations made by the Legislature, except:

(a) those funds classified under Title 51, Chapter 5, Funds Consolidation Act as:

- (i) enterprise funds;
- (ii) internal service funds;
- (iii) trust and agency funds;
- (iv) capital projects funds;
- (v) college and university funds; and
- (vi) debt service funds;

(b) appropriations made to the Legislature and its committees;

(c) acquisition and development funds appropriated to the Division of Parks and Recreation;

(d) funds encumbered to pay purchase orders issued prior to May 1 for capital equipment if delivery is expected before June 30;

(e) unexpended and unencumbered balances of appropriations that meet the requirements of Section 63-38-8.1; and

(f) any other appropriations excepted by statute or by an annual appropriations act.

(3) (a) Liabilities and related expenses for goods and services received on or before June 30 shall be recognized as expenses due and payable from appropriations made prior to June 30.

(b) The liability and related expense shall be recognized within time periods established by the Division of Finance but shall be recognized not later than July 31.

(c) Liabilities and expenses not so recognized may be paid from regular departmental appropriations for the subsequent fiscal year, if these claims do not exceed unexpended and unencumbered balances of appropriations for the years in which the obligation was incurred.

(d) No amounts may be transferred from an item of appropriation of any department, institution, or agency into the Capital Projects Fund or any other fund without the prior express approval of the Legislature.

(4) (a) For purposes of this chapter, claims processed under the authority of Title 26, Chapter 18, Medical Assistance Act, may not be considered a liability to the state for budgetary purposes until they are received by the Division of Health Care Financing.

(b) The transaction control number recorded on each claim invoice by the division is considered the date of receipt and is the date that liability is recognized by the state.

63-38-8.1. Nonlapsing authority.

(1) As used in this section:

(a) (i) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(ii) "Agency" does not include those entities whose unappropriated and unencumbered balances are made nonlapsing by the operation of Subsection 63-38-8(2).

(b) "Appropriation balance" means the unexpended and unencumbered balance of a line item appropriation made by the Legislature to an agency that exists at the end of a fiscal year.

(c) "Nonlapsing" means that an agency's appropriation balance is not closed out to the appropriate fund at the end of a fiscal year as required by Section 63-38-8.

(d) "One-time project" means a project or program that can be completed with the appropriation balance and includes such items as employee incentive awards and bonuses, purchase of equipment, and one-time training.

(e) "One-time project's list" means:

(i) a prioritized list of one-time projects, upon which an agency would like to spend any appropriation balance; and

(ii) for each project, the maximum amount the agency is estimating for the project.

(f) "Program" means a service provided by an agency to members of the public, other agencies, or to employees of the agency.

(2) Notwithstanding the requirements of Section 63-38-8, an agency may:

(a) by following the procedures and requirements of this section, retain and expend any appropriation balance; and

(b) comply with the requirements of Subsections 63-9-67(2) and 63-38-18(2).

(3) (a) Each agency that wishes to preserve any part or all of its appropriation balance as nonlapsing shall include a one-time project's list as part of the budget request that it submits to the governor and the Legislature at the annual general session of the Legislature immediately before the end of the fiscal year in which the agency may have an appropriation balance.

(b) An agency may not include a proposed expenditure on its one-time project's list if:

(i) the expenditure creates a new program;

ii) the expenditure enhances the level of an existing program; or

(iii) the expenditure will require a legislative appropriation in the next fiscal year.

(c) The governor:

(i) may approve some or all of the items from an agency's one-time project's list; and

(ii) shall identify and prioritize any approved one-time projects in the budget that he submits to the Legislature.

(4) The Legislature:

(a) may approve some or all of the specific items from an agency's one-time project's list as authorized expenditures of an agency's appropriation balance;

(b) shall identify any authorized one-time projects in the appropriate line item appropriation; and

(c) may prioritize one-time projects in intent language.

(5) The Legislative Fiscal Analyst shall:

(a) conduct a study of the nonlapsing authority granted in this section and its effects on the budget, the budget process, the source of or reason for the appropriation balance, and the legislative appropriations power; and

(b) report the analysis and any recommendations to the Legislative Management Committee and Interim Appropriations Committee by October 1, 1996.

Appendix B

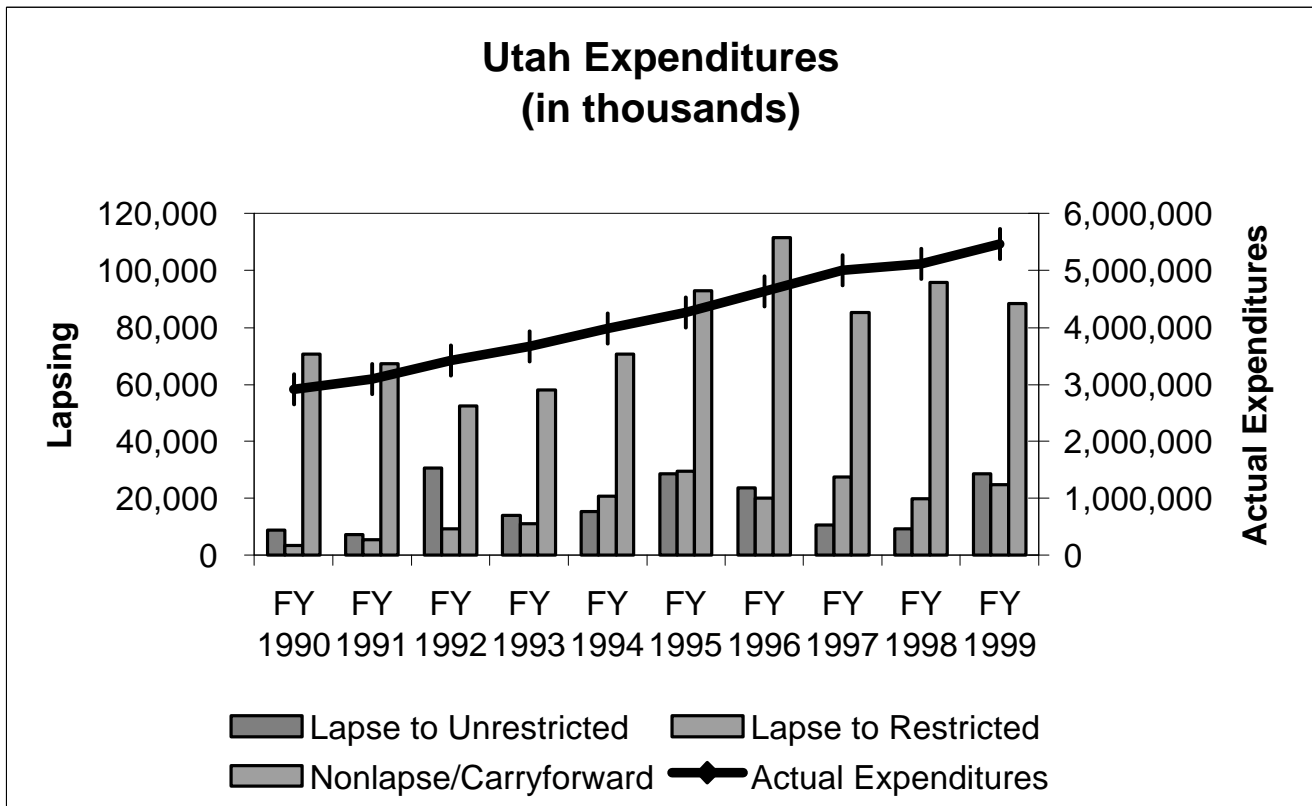
Number of Line Items in the Main Appropriations Bill										
<u>FY 90</u>	<u>FY 91</u>	<u>FY 92</u>	<u>FY 93</u>	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>
247	243	249	252	251	250	260	262	254	267	274

Source: Laws of Utah

Line Item Intent Language Detail (FY 1990 – FY 2000)		
<u>Category</u>	<u>FY 1990</u>	<u>FY 2000</u>
Unrestricted Nonlapsing Status	12	72
Program Specific Nonlapsing Status	5	21
Conditional Nonlapsing Status	14	12
Combination of Numbers 2 and 3	0	1
Line Items with no Funding	0	1
No Direction (which may include statutory nonlapsing)	<u>216</u>	<u>167</u>
Total	<u>247</u>	<u>274</u>

Source: Laws of Utah

Appendix C



Note: The above chart includes all funding sources for the General Fund, Uniform School Fund and Transportation Fund. Funding does not include the Centennial Highway Fund, Special Revenue Funds, Sports Authority Fund, Capital Improvement Funds, Enterprise Funds, Trust and Agency Funds and Internal Service Funds.

Source: Comprehensive Annual Financial Report – Division of Finance