

**SENATE FISCAL AGENCY  
 MEMORANDUM**

**DATE:** October 14, 2009  
**TO:** Members of the Senate  
**FROM:** Gary S. Olson, Director  
**RE:** Transfer of Enacted Appropriations

Over the past day, news reports in Michigan have suggested that Governor Jennifer Granholm is considering using transfers of appropriations to fund her priorities in the FY 2009-10 State budget that were not funded in the enrolled appropriation bills approved by the Legislature. This memorandum provides background information on the two statutory mechanisms that can be used to transfer appropriations from one line-item appropriation to another in the same department.

**Appropriation Transfers by the Legislature**

The traditional method of transferring existing appropriations from one line-item appropriation to another is referred to as "legislative appropriation transfers". This transfer authority is provided in Section 393(2) of the Management and Budget Act (MCL 18.1393) (attached). This statute provides the authority to transfer existing appropriations from one line-item appropriation to another line-item appropriation, within a specific department. There is no authority to transfer appropriations from one line item in a department to a line item in a different department. The law provides that these legislative appropriation transfers take effect when the transfers are approved by a majority vote in both the Senate and House Appropriations Committees. Through October 13, 2009, the Appropriation Committees have approved \$682.6 million of legislative appropriation transfers for FY 2008-09.

**Appropriation Transfers by the State Administrative Board**

The second statutory method of appropriation transfers between line-item appropriations within a State department rests with the State Administrative Board. This transfer authority is provided in Section 3 of the State Administrative Board Act (MCL 17.3) (attached). The State Administrative Board, under this statutory authority, has the ability to make appropriation transfers from one line item to another line item within a State department. There is no authority to transfer appropriations from one line item in a department to a line item in a different department. The members of the State Administrative Board are the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, the State Treasurer, the State Superintendent of Public Instruction, and the Director of the Michigan Department of Transportation.

During the recent history of the State, the Senate Fiscal Agency (SFA) is aware only of one instance in which the State Administrative Board used its authority to transfer appropriations within departments. On May 9, 1991, the State Administrative Board approved a series of transfers that had a significant impact on the FY 1990-91 State budget. At this meeting, the State Administrative Board approved transfers within seven State departments. The largest of these transfers resulted in the elimination of the General Assistance Program in the Department of Social Services effective on June 1, 1991. The transfer moved \$63.3 million of spending authorization,

appropriated by the Legislature for the General Assistance Program, to the Medicaid and State Disability Assistance Program.

The transfer authority granted to the State Administrative Board does not give the Board the legal authority to transfer funds from a line-item appropriation in a department to a program that has not been appropriated by the Legislature. Therefore, the Governor could not recommend to the State Administrative Board the transfer of an existing line-item appropriation funded in FY 2009-10 into a line-item appropriation funded in prior fiscal years but not funded during FY 2009-10.

### **Legal Challenge to State Administrative Board Transfer Authority**

Following the action of the State Administrative Board on May 9, 1991, individual members of the Legislature, including Speaker of the House Lewis Dodak, Chair of the House Appropriations Committee Dominic Jacobetti, Senate Minority Leader Arthur Miller, and Vice-Chair of the Senate Appropriations Committee David Holmes, brought a lawsuit against Governor John Engler and the members of the State Administrative Board challenging the Board's authority to transfer appropriated funds from one program to another within a department. The Court of Appeals ruled that the statutory authority relied on by the State Administrative Board to transfer funds (MCL 17.3) had been impliedly repealed by subsequent legislation. The Michigan Supreme Court reversed the Court of Appeals ruling on that issue. The Supreme Court stated that there was nothing in the Management and Budget Act (1984 PA 431) that suggested an intent by the Legislature to eliminate power of the State Administrative Board to transfer funds within a department. House Speaker v State Administrative Board, 441 Mich 547; 495 NW2d 539 (1993).

Please let me know if you have any questions regarding the above.

/kjh

Attachments

c: Ellen Jeffries, Deputy Director

**THE MANAGEMENT AND BUDGET ACT (EXCERPT)**  
**Act 431 of 1984**

**18.1393 Administrative transfers of appropriations within department; purpose; notice; prohibited adjustments; approval or disapproval.**

Sec. 393. (1) Administrative transfers of appropriations within any department to adjust for current cost and price variations from the enacted budget items, or to adjust amounts between federal sources of financing for a specific appropriation line item, or to adjust amounts between restricted sources of financing for a specific appropriation line item, or to pay court judgments, including court approved consent judgments, or to pay all settlements and claims may be made by the state budget director not less than 30 days after notifying each member of the senate and house appropriations committees. Administrative transfers shall not include adjustments that have policy implications or that have the effect of creating, expanding, or reducing programs within that department. Those transfers may be disapproved by either appropriations committee within the 30 days and, if disapproved within that time, shall not be effective.

(2) A transfer of appropriations within any department other than an administrative transfer pursuant to subsection (1) shall not be made by the state budget director unless approved by both the senate and house appropriations committees. If the state budget director does not approve transfers adopted by both the senate and house appropriations committees under this subsection, the state budget director shall notify each member of both the senate and house appropriations committees of his or her action within 15 days after the senate and house appropriations committees' final approval.

(3) A transfer approved by the appropriations committees shall not be effective unless it is identical in terms of funding sources and dollar amounts.

(4) A transfer approved pursuant to this section shall constitute authorization to transfer the amount recommended and approved. However, the amount shall be reduced by the state budget director to be within the current unobligated amount of the appropriation.

(5) Capital outlay appropriations may be transferred from a state agency, community college, or institution of higher education to provide necessary funds for the completion of an authorized capital outlay project, if the transfer is approved by JCOS and the appropriations committees. Operating appropriations shall not be transferred into an existing capital outlay account.

(6) Transfers shall not be authorized under any of the following circumstances:

(a) To create a new line-item appropriation or to create a new state program.

(b) To or from an operating appropriation line-item that did not appear in the fiscal year appropriation bills for which the transfer is being made.

(c) To or from a work project as designated under section 451a.

(d) Between state governmental funds.

(7) Transfers of appropriations for financing sources shall be made concurrently with related transfers of appropriations for line expenditure items.

**History:** 1984, Act 431, Eff. Mar. 29, 1985;—Am. 1988, Act 504, Imd. Eff. Dec. 29, 1988;—Am. 1999, Act 8, Imd. Eff. Mar. 22, 1999.

**Popular name:** Act 431

**Popular name:** DMB

**STATE ADMINISTRATIVE BOARD (EXCERPT)**  
**Act 2 of 1921**

**17.3 Administrative board; supervisory control over administrative departments; limitations as to appropriations; duties of administrative officials.**

Sec. 3. The state administrative board shall exercise general supervisory control over the functions and activities of all administrative departments, boards, commissioners and officers of the state, and of all state institutions: Provided, however, The said board shall not have power to transfer any appropriation to the general fund at any time or use the same for any purpose other than that designated by the legislature: Provided further, That said board shall not have power to allow to any state department, board, commission, officer or institution any funds, not appropriated therefor by the legislature, from any source whatever, except as provided in the emergency appropriation act of 1931; and said administrative board shall not have the power to transfer to any state department, board, commission, officer or institution any sum from the amount appropriated by the legislature for any other purpose, except to inter-transfer funds within the appropriation for the particular department, board, commission, officer or institution. Said board may in its discretion intervene in any matter touching such functions and activities and may, by resolution or order, advise or direct the department, board, commission, officer or institution concerned as to the manner in which the function or other activity shall be performed, and may order an interchange or transfer of employees between departments, boards, commissions and state institutions when necessary. It is hereby made the duty of each and every official and employee connected with any administrative department, office or institution of the state to follow the direction or order so given; and to perform such services in the carrying out of the purposes and intent of this act as may be required by the board. Failure so to do shall be deemed to constitute malfeasance in office and shall be sufficient cause for removal.

**History:** 1921, Act 2, Imd. Eff. Feb. 23, 1921;—Am. 1927, Act 12, Imd. Eff. Mar. 25, 1927;—CL 1929, 203;—Am. 1931, Act 6, Imd. Eff. Mar. 31, 1931;—CL 1948, 17.3.

**Constitutionality:** Individual members of the legislature brought an action challenging the State Administrative Board's authority under MCL 17.3 to transfer appropriated funds from one program to another within a department. The Court of Appeals conferred standing and held that the statutory authority relied upon by the board had been impliedly repealed by subsequent legislative acts. The Michigan Supreme Court agreed that the chairman of the House Appropriations Committee had standing, but reversed the Court of Appeals decision repealing the State Administrative Board's authority to transfer funds. The Michigan Supreme Court held that neither subsequent amendments to the State Administrative Board Act nor the enactment of the Management and Budget Act indicates an intent by the legislature to repeal by implication the Board's authority under MCL 17.3 to transfer funds within a department. *House Speaker v State Administrative Bd*, 441 Mich 547; 495 NW2d 539(1993).