NONLAPSING APPROPRIATION BALANCES

A REPORT TO THE
EXECUTIVE APPROPRIATIONS COMMITTEE

OFFICE OF THE LEGISLATIVE FISCAL ANALYST
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OVERVIEW

This report demonstrates that nonlapsing balances in Utah's state government, when adjusted for outlying changes in transportation budgets, have grown by 44% since fiscal year 2003. As a percent of appropriations, non-transportation related balances have increased by 20%. Further, the report shows that balances reported to Legislators in advance of annual appropriations do not accurately predict actual balances, and may lead Legislators to grant nonlapsing authority without full information. The report recommends that the Legislative Fiscal Analyst update the information included herein when nonlapsing balance information is available for fiscal year 2007.

BACKGROUND

As a default, legislative authority to expend funds for a given fiscal year expires at the end of that fiscal year and any unspent and unencumbered funds lapse back to the fund or account from which they were appropriated. The Budgetary Procedures Act states that "on or before August 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…" (UCA 63-38-8).

The Legislature has created multiple exceptions to the year-end lapsing rule, including:

1. appropriations from certain funds as stipulated in statute;
2. appropriations to certain agencies, divisions, or programs, as specified in statute;
3. appropriations for capital equipment if delivery is expected before June 30 of a given fiscal year;
4. appropriations for which the Legislature grants specific nonlapsing authority for one-time projects in a subsequent legislative session under UCA 63-38-8.1; and,
5. "any other" case in which the Legislature grants nonlapsing status through statute or in an appropriations act.

Legislative authorization to carry unspent funds forward into the next fiscal year is referred to as "nonlapsing authority". The purpose of this study is to examine the disposition of nonlapsing funds, including reasons for granting it, trends in nonlapsing fund balances, and variances from estimated nonlapsing amounts.

HOW IS NONLAPSING AUTHORITY GRANTED?

A department, program or activity can receive nonlapsing authority in two ways. The first is **by statute**. For example, the following language is located in Section 9-6-404:

Creation of program -- Use of appropriations.

(1) A Percent-for-Art Program shall be administered by the division.

(2) Any appropriation received by the director shall be used to acquire existing works of art or to commission the creation of works of art placed in or at appropriate state buildings or facilities as determined by the division. Any unexpended funds remaining at the end of the fiscal year shall be nonlapsing and not revert to the General Fund.

Nonlapsing authority can apply to appropriations from any fund or account, not just the General Fund. For example, the following statutory language prevents appropriated but unexpended restricted fund monies from reverting back to their fund of origin:

Tourism Marketing Performance Account.

(1) There is created within the General Fund a restricted account known as the Tourism Marketing Performance Account.

(2) The account shall be administered by the office for the purposes listed in Subsection (5).

(3) (a) The account shall earn interest.

(b) All interest earned on account monies shall be deposited into the account.

(c) Monies in the account are nonlapsing.

When a long-term requirement for nonlapsing authority exists, statutory nonlapsing authority precludes the need for annual appropriation intent language.

The second way in which nonlapsing authority is granted is **by intent language**. Typically, the Legislature provides nonlapsing authority through appropriations intent language in two ways. First, it may take “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. By way of example, the following supplemental grant of nonlapsing authority is included in the Current Fiscal Year Supplemental Appropriations Act (S.B. 1, 2007 General Session):

Under Section 63-38-8.1 of the Utah Code the Legislature intends that up to $75,000 provided by Item 33, Chapter 1, and Item 35, Chapter 366, Laws of Utah 2006 not lapse at the close of Fiscal Year 2007. The use of nonlapsing funds is limited to: current expenses - up to $50,000; child welfare parental defense contracting - up to $25,000.

Second, legislators may grant a priori nonlapsing intent language sixteen to eighteen months in advance of the end of a fiscal year. Such intent language typically looks like this statement included in the New Fiscal Year Supplemental Appropriations Act (H.B. 150, 2007 General Session):

Under Section 63-38-8 of the Utah Code the Legislature intends that any remaining amount of the $68,893,800 provided by Item 72 of House Bill 1, State Agency and Higher Education Base Budget Appropriations (2007 General Session), for Utah State Tax Commission, Tax Administration Line Item not lapse at the close of fiscal year 2008. The use of any nonlapsing funds is limited to costs directly related to the modernization of tax and motor vehicle systems and processes, stream-lined sales tax implementation, and electronic transactions.

As a matter of policy, the Legislative Fiscal Analyst prefers nonlapsing intent language that is granted in supplemental action under 63-38-8.1. The Analyst believes that granting nonlapsing authority nearer to the end of a fiscal year allows for better estimation of available balances, provides greater accountability for the potential uses of such balances, and permits the Legislature more flexibility in prioritizing spending.

HOW ARE NONLAPSING BALANCES CALCULATED?

Nonlapsing balances are calculated differently depending on the type of revenue appropriated. The Budgetary Procedures Act (UCA 63-38) spells out four major revenue types and provides for different ways of lapsing—or not lapsing—appropriated but unexpended balances.

1. **Free Revenue**. Free revenue includes collections deposited in the General Fund, Uniform School Fund, Transportation Fund, or otherwise not restricted or designated by law. Any free revenue funds appropriated by the Legislature that remain unexpended at the end of the fiscal year lapse to the source fund unless the Legislature provides that those funds are nonlapsing.
2. **Restricted Revenue**. Restricted revenue includes collections deposited by law into a separate fund designated for a specific purpose. Any restricted revenue funds appropriated by the Legislature that remain unexpended at the end of the fiscal year lapse to the restricted fund unless the Legislature provides that those funds are nonlapsing.
3. **Dedicated Credits and Federal Revenues**. These are deposited directly into an account for expenditure in a line item or program. If an agency collects more dedicated credits than appropriated, it may expend the excess up to 25 percent of the amount appropriated. However, if an agency's budget is more than 90 percent dedicated credits, it may expend all of its excess collections. Any further excess dedicated credits lapse to the appropriate fund (usually the General Fund) at the end of the fiscal year unless the Legislature has designated the entire program or line item as nonlapsing.
4. **Fixed Collections.** Fixed collections are collections fixed by law or by the appropriation act at a specific amount and required to be deposited into a separate line item and program. If an agency receives fixed collections greater than the maximum amount established by

law, those excess amounts lapse to the General Fund, Uniform School Fund, or Transportation Fund.

If an agency has a line item that is funded by more than one of these major fund types, the agency must expend its dedicated credits and fixed collections first. Therefore, dedicated credit revenues should rarely become part of nonlapsing balances unless the agency is able to collect more than 125 percent of its dedicated credit appropriation and has nonlapsing authority for the entire program or line item.

After expending its dedicated credits, if an agency is funded by more than one major fund type including both free revenue and restricted revenue, an agency must expend those sources based upon a proration of the amounts appropriated from each revenue type. Therefore, if an agency's appropriated budget is half General Fund and half restricted funds, it should spend them proportionately throughout the fiscal year and any nonlapsing balance at the end of the year should consist of half General Fund and half restricted funds.

WHY IS NONLAPSING AUTHORITY GRANTED?

The Legislature grants nonlapsing authority to agencies for a variety of reasons. Some of the reasons include:

1. Some appropriations pay for multi-year projects, such as capital projects, software development, or grants.
2. It avoids end-of-year spending sprees by agencies.
3. It creates greater budget flexibility.
4. It encourages planning.
5. It enables better decision making by not imposing an arbitrary calendar date for losing resources (sometimes unusual circumstances delay a project or activity).
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 without requesting money from the Legislature.
8. The public would be less inclined to donate funds or pay fees for service if they knew the funds might lapse to the state.
9. Programs or activities started with a supplemental appropriation may not be able to make the necessary expenditures before the supplemental fiscal year ends.
10. It avoids micro-management.

Various reasons exist for not granting nonlapsing authority, including:

1. To protect an agency's base budget.
2. It reduces funds available to be re-appropriated.
3. It could reduce control of funds by the Legislature.
4. It increases the need for monitoring and follow-up on appropriations.

5. It may allow an agency to fund a special need (or want) without requesting funding from the Legislature.

HOW ARE NONLAPSING BALANCES ANALYZED?

The Fiscal Analyst's policy is that a recommendation on nonlapsing authority should be based on thoughtful review of agency budgets. Recommendations and justifications are written for each subcommittee in the Analyst's annual budget briefs and the Compendium of Budget Information (COBI). During the 2005 Interim, the Executive Appropriations Committee heard a report in which the Analyst suggested:

- Shifting nonlapsing intent language from line items in advance of a fiscal year to line items in the supplemental year (with specific limitations on its use)
- Revising the Budgetary procedures Act to include more specific guidelines for granting nonlapsing authority prior to the start of a fiscal year, and
- Placing repeated nonlapsing intent language in statute

The Analyst has been moving in the direction of these recommendations. Additionally, during the 2007 General Session the Analyst, with guidance from legislative counsel and the EAC co-chairs, standardized the wording of nonlapsing intent language across appropriation subcommittees.

WHAT HAS BEEN THE TREND IN NONLAPSING BALANCES?

Figures 1 and 2 show appropriated versus actual nonlapsing balances for the state as a whole from fiscal year 2001 to fiscal year 2006. At first glance, it appears that balances have declined over the past three years, in both monetary and percentage terms.

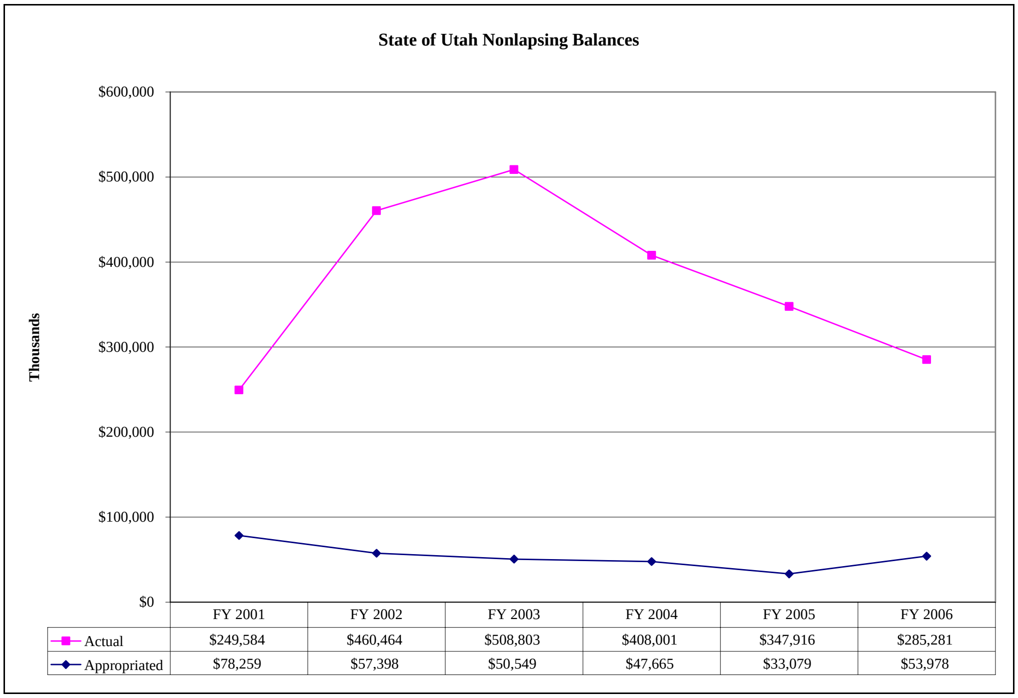


Figure 1

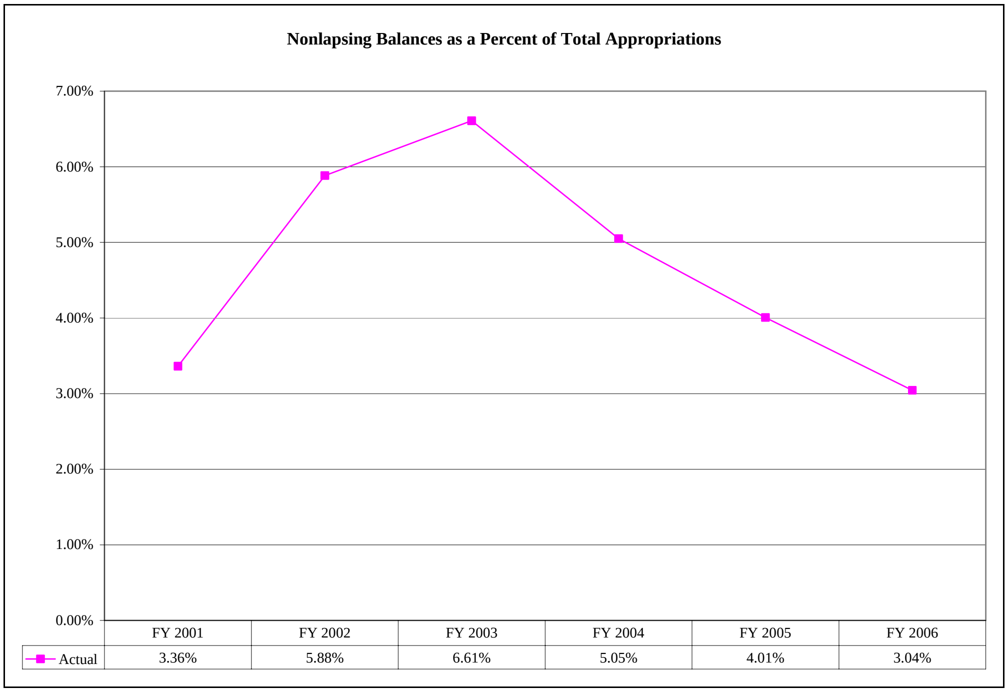
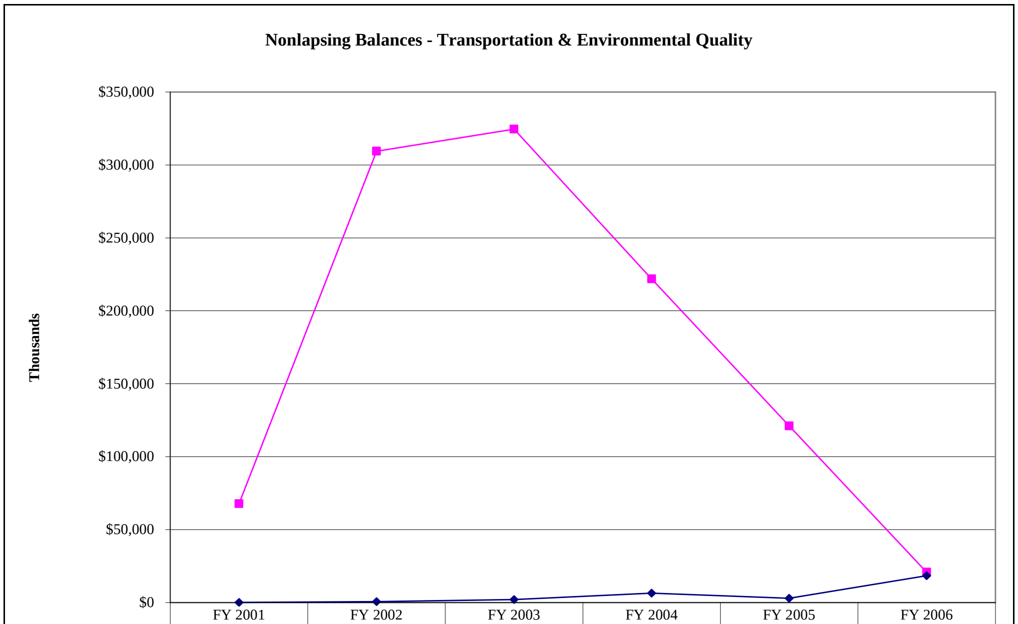


Figure 2

However, changes in nonlapsing balances for the Transportation and Environmental Quality subcommittee alone account for about $100 million per year in declines (see figure 3).



	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual	$67,865	$309,499	$324,596	$221,960	$121,176	$20,810
Appropriated	$32	$597	$2,047	$6,392	$2,913	$18,329

Figure 3

The Legislature's Transportation Analyst attributes balance draw-downs in the Transportation and Environmental Quality Subcommittee to progress made on the Legacy Highway. The Utah Department of Transportation received funding for the project, but could not spend that money until legal issues were resolved, thus it carried-forward large balances in FY 2002 and FY 2003 before beginning to spending those balances in FY 2004.

Not including the Transportation and Environmental Quality subcommittee, statewide nonlapsing balances have been increasing since having been drawn down during the recession of FY 2002 and FY 2003 (see figures 4 and 5). In fact, since FY 2003, non-transportation related balances have grown by 44%. As a proportion of total appropriations, balances for programs outside the Transportation and Environmental Quality appropriations subcommittee have increased from 2.7% to 3.25%.

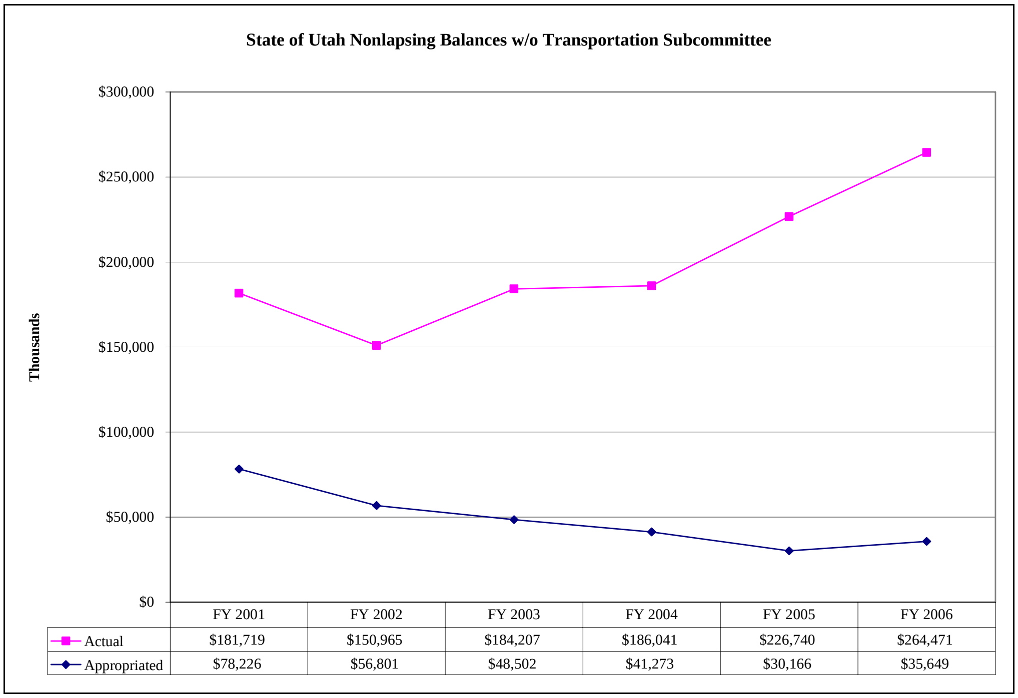


Figure 4

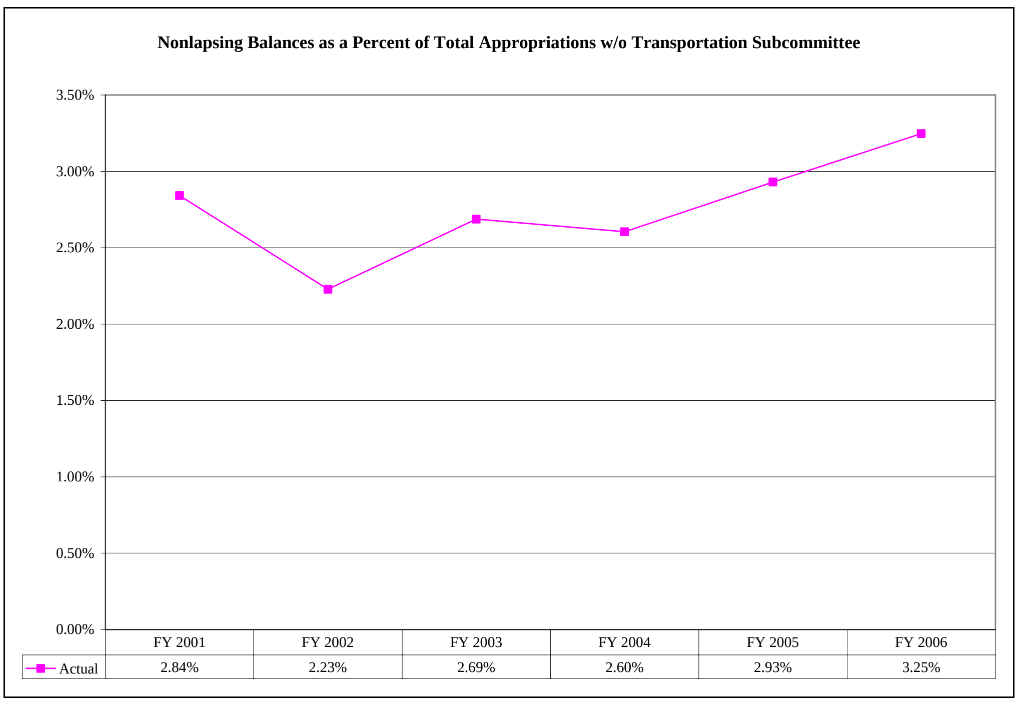


Figure 5

Appendix A contains nonlapsing balance trend analyses for each of the Legislature's appropriations subcommittees. Appendix B shows balances for fiscal year 2006 by agency and as a percentage of overall budgets.

HOW WELL DO AGENCIES PREDICT BALANCES WHEN SUBMITTING BUDGETS?

The lower lines in figures 1, 3, and 4 represent projected nonlapsing balance amounts reported to the Legislature in advance of annual appropriations.

These “appropriated” nonlapsing balances are significantly lower in almost all cases than the actual nonlapsing balances experienced by agencies.

As appropriated nonlapsing balances are estimated at least 18 months in advance of a fiscal year’s end, it is understandable that agencies may not accurately project the outcome. In some cases, agencies do not even attempt to estimate a balance. Instead, agencies report to the Legislature that all authorized funds will be spent in the next fiscal year, even though experience may prove otherwise.

As noted on page 2, one way in which Legislators grant agencies authority to carry-forward funds is through intent language included with an initial appropriation. The bottom line on Figure 4 demonstrates that nonlapsing balance information available to Legislators at the time of an initial appropriation may indicate that balances are declining as a percent of appropriations. However, actual balances as a percent of appropriation, the top line in Figure 4, have increased in the end.

As recommended in the previously mentioned 2005 interim report, the Fiscal Analyst continues to believe that the Legislature should wait to grant nonlapsing authority until better information on balances is available. Legislators could do so by granting authority through intent language in a supplemental appropriation – not in the initial appropriation.

CONCLUSIONS

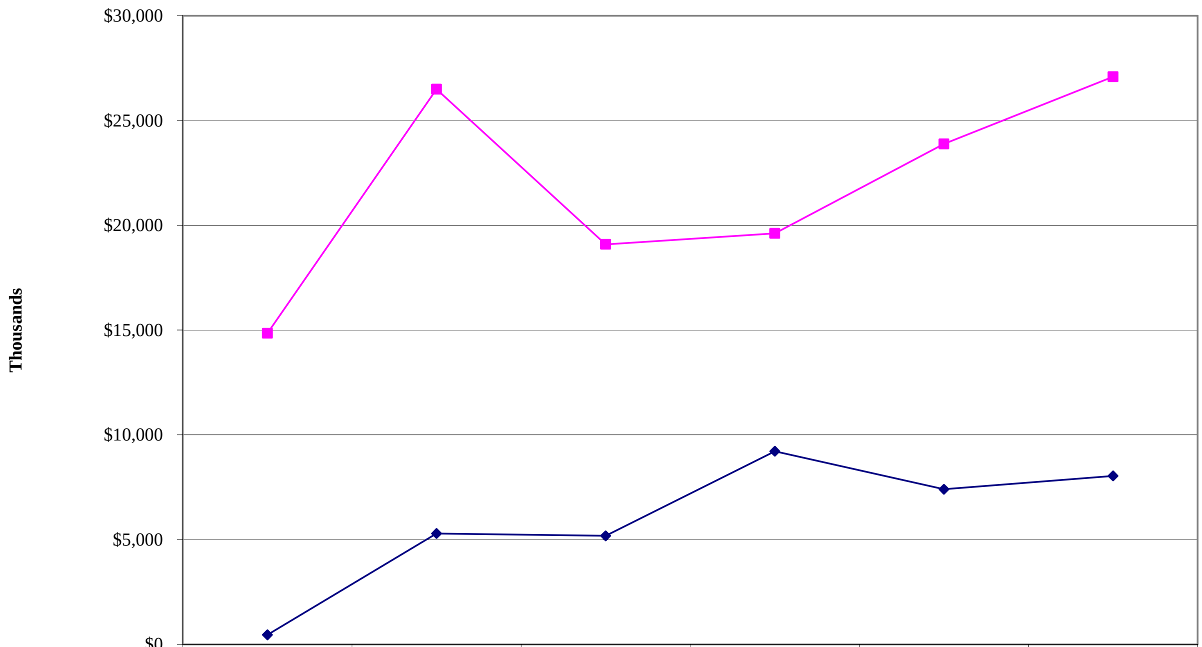
An examination of nonlapsing balances from Fiscal Years 2001 through 2006 revealed the following:

1. With the exception of large balance decreases attributed to Legacy Highway progress, nonlapsing balances statewide have increased by 44% from FY 2003 to FY 2006.
2. As a proportion of total appropriations, non-transportation related balances have increased from 2.7% to 3.25% (a 20% increase) from FY 2003 to FY 2006.
3. State agencies do not accurately predict balances when submitting initial appropriations requests, thus legislators may believe balances are declining when they grant nonlapsing authority.

RECOMMENDATION

As has been noted above, nonlapsing balance information is not calculated by Utah’s Division of Finance until August of each calendar year. As such, this report shows information through the end of fiscal year 2006. The Analyst recommends an update of this report be prepared for the Executive Appropriations Committee when nonlapsing balance information is available for fiscal year 2007.

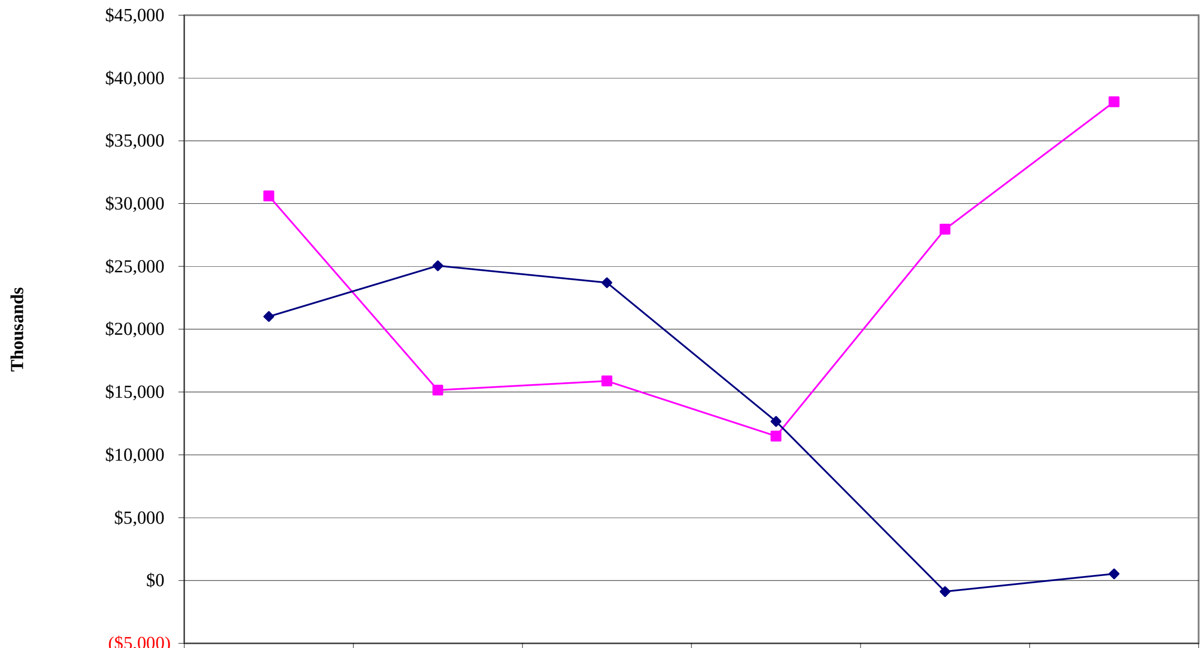
APPENDIX A: NONLAPSING BALANCE TRENDS BY APPROPRIATIONS SUBCOMMITTEE



	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual	$14,850	$26,497	$19,092	$19,617	$23,886	$27,091
Appropriated	$457	$5,293	$5,181	$9,214	$7,402	$8,044

Figure 6

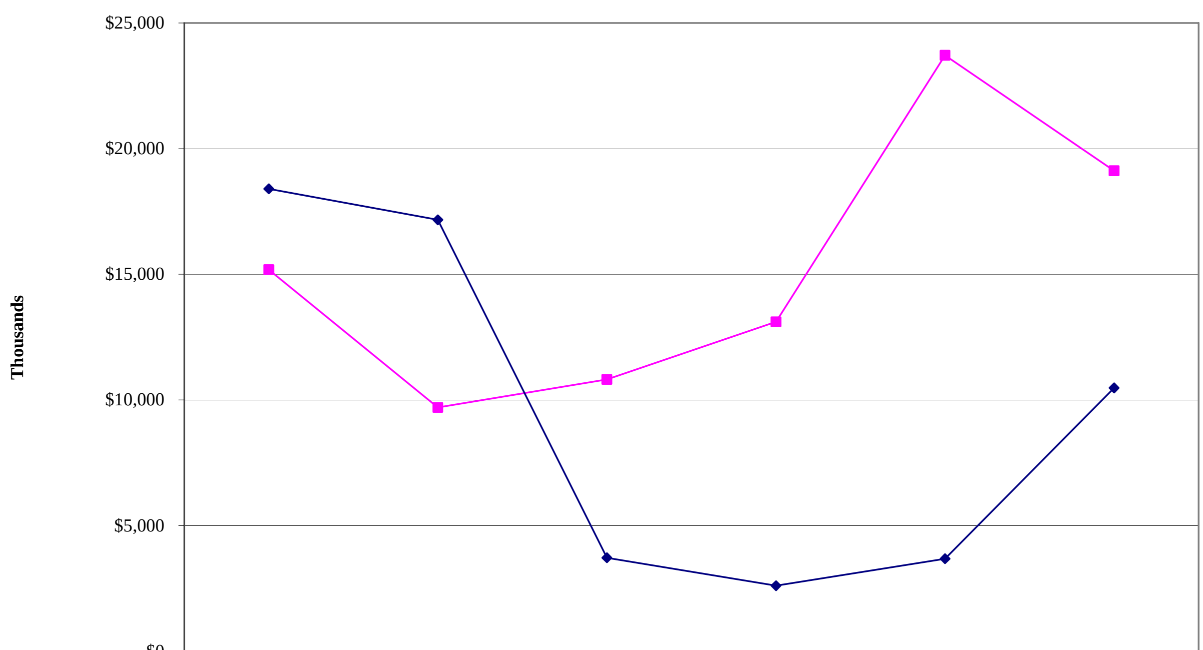
Nonlapsing Balances - Commerce & Workforce Services



	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual	$30,611	$15,156	$15,879	$11,491	$27,961	$38,106
Appropriated	$21,017	$25,055	$23,705	$12,659	($879)	$526

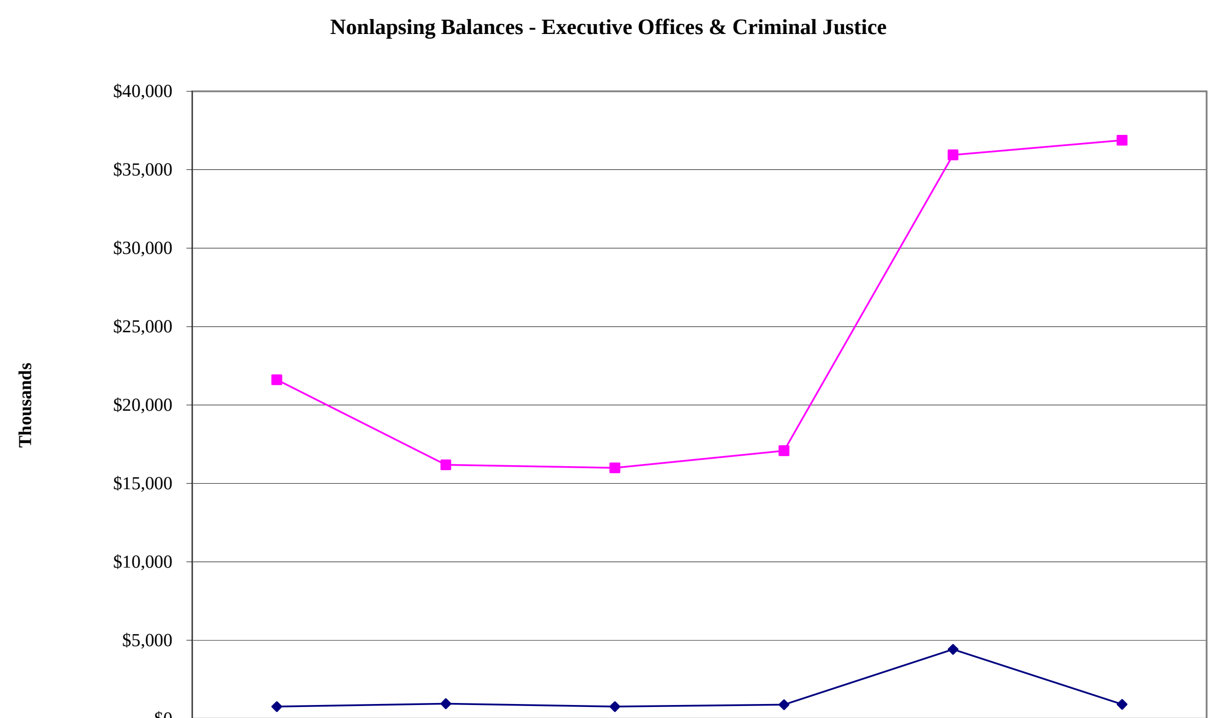
Figure 7

Nonlapsing Balances - Economic Development and Revenue



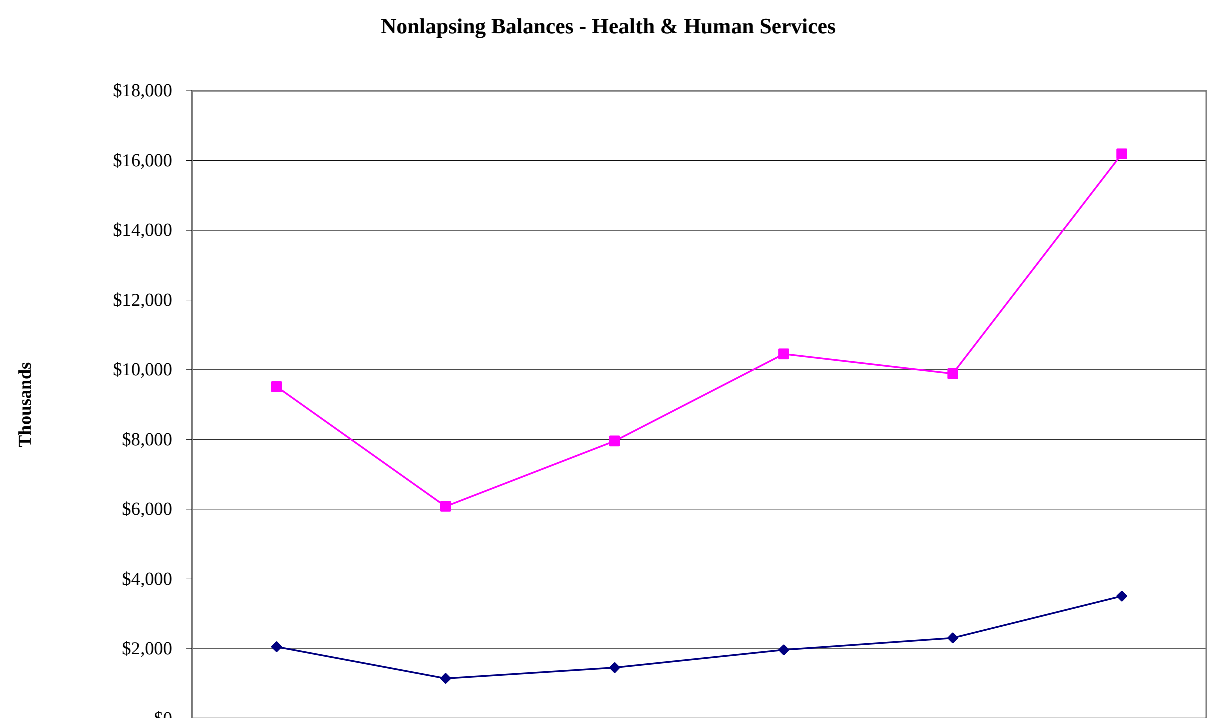
	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual	$15,183	$9,700	$10,815	$13,109	$23,714	$19,120
Appropriated	$18,400	$17,170	$3,721	$2,609	$3,680	$10,481

Figure 8



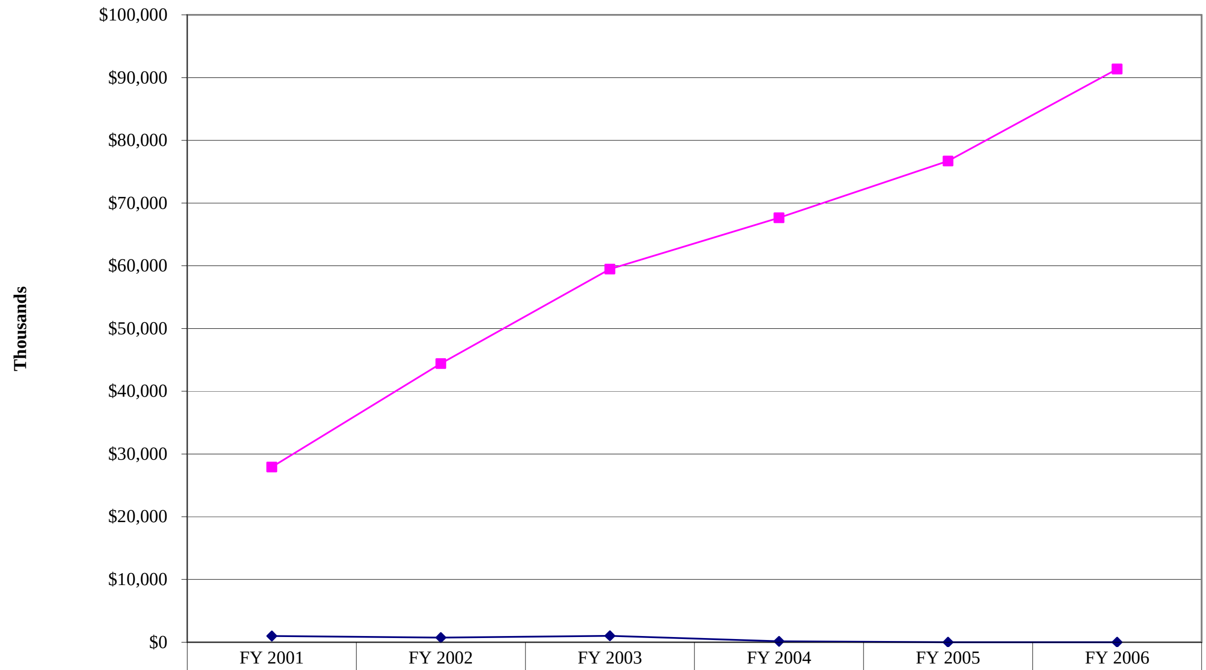
	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual	$21,606	$16,187	$15,993	$17,086	$35,942	$36,877
Appropriated	$768	$952	$765	$891	$4,415	$917

Figure 9



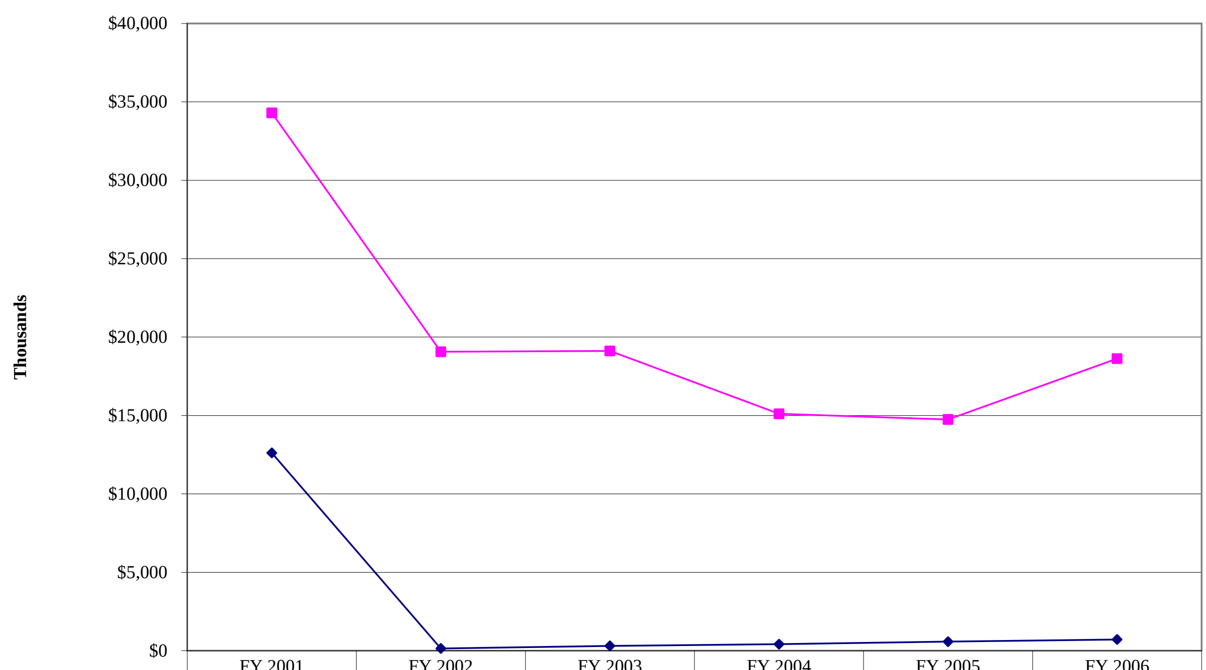
	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual	$9,513	$6,081	$7,955	$10,453	$9,887	$16,189
Appropriated	$2,057	$1,146	$1,458	$1,967	$2,307	$3,507

Figure 10



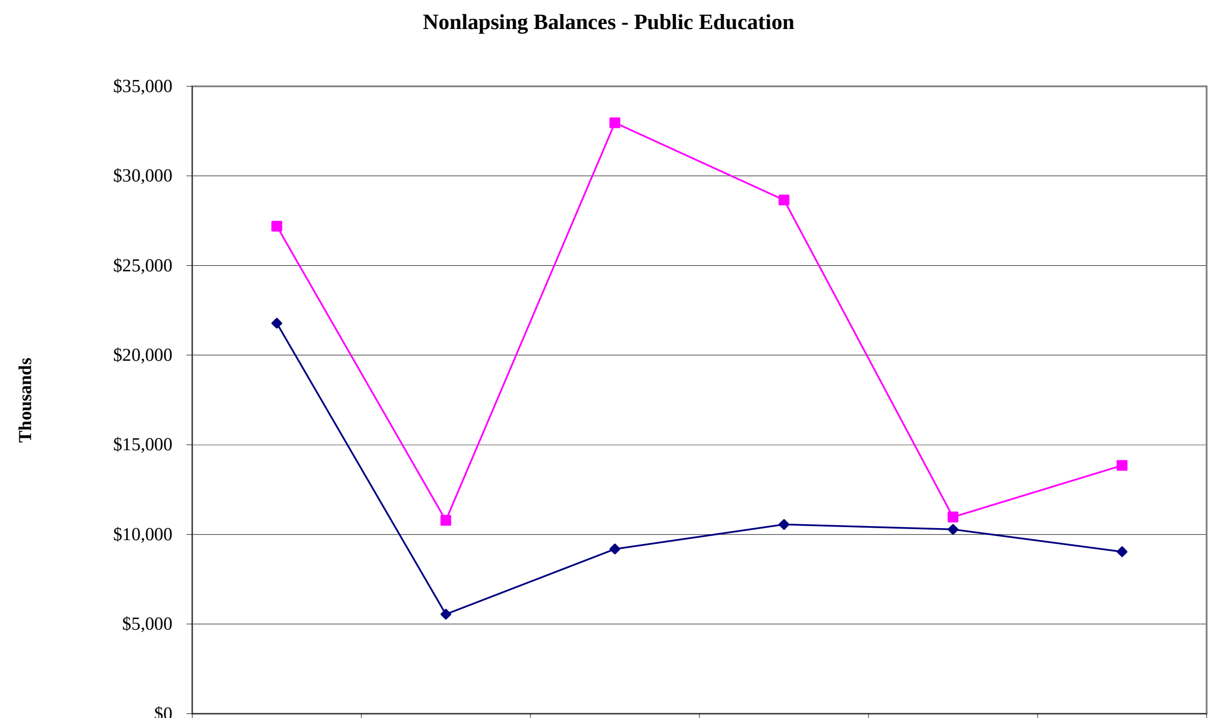
	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual	$27,912	$44,414	$59,468	$67,655	$76,710	$91,358
Appropriated	$991	$745	$1,022	$146	$0	$0

Figure 11



	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual	$34,293	$19,065	$19,114	$15,105	$14,745	$18,620
Appropriated	$12,612	$143	$307	$419	$578	$713

Figure 12



	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual	$27,192	$10,780	$32,963	$28,656	$10,969	$13,849
Appropriated	$21,780	$5,549	$9,188	$10,560	$10,279	$9,038

Figure 13

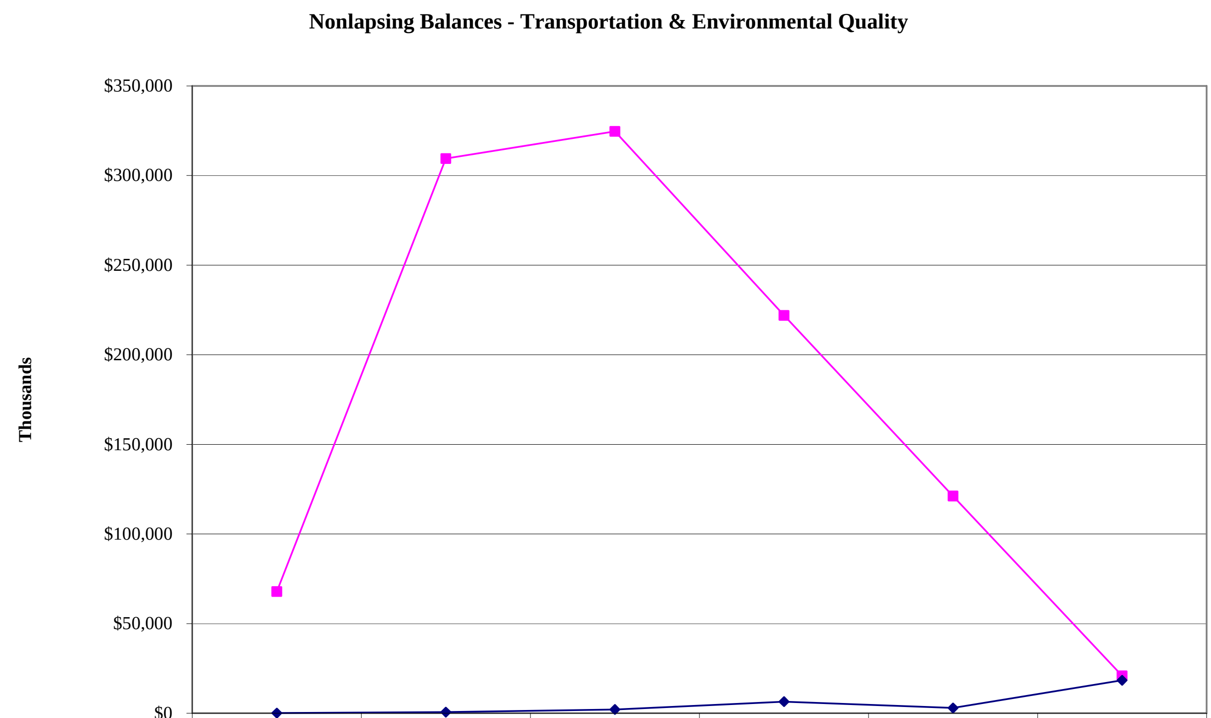


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Figure 14

APPENDIX B: NONLAPSING BALANCES BY AGENCY AND PERCENT OF BUDGET

Fiscal Year 2006 (All Funds)

Agency Name	Nonlapsing Balance	Total Budget	Pct of Total
University of Utah	($28,136,638)	$349,757,124	8.0%
Public Safety	($25,236,400)	$149,824,400	16.8%
Utah State University	($22,748,371)	$202,987,187	11.2%
Insurance	($21,764,500)	$30,906,500	70.4%
Debt Service	($20,722,200)	$235,436,500	8.8%
Transportation	($18,247,900)	$1,093,780,400	1.7%
Natural Resources	($13,968,600)	$148,923,600	9.4%
State Board of Education	($13,849,400)	$481,149,400	2.9%
Public Service Commission	($11,162,800)	$11,620,200	96.1%
Utah Valley State College	($10,684,006)	$93,756,875	11.4%
Tax Commission	($10,577,200)	$70,112,900	15.1%
Health	($9,242,200)	$1,731,513,500	0.5%
Weber State University	($9,115,729)	$97,360,349	9.4%
Salt Lake Community College	($7,680,675)	$95,626,867	8.0%
Human Services	($6,947,100)	$504,522,100	1.4%
Economic Development	($6,052,100)	$30,163,700	20.1%
Corrections	($5,998,300)	$218,684,800	2.7%
Dixie State College	($5,821,391)	$25,485,526	22.8%
Administrative Services	($4,929,400)	$25,511,800	19.3%
Agriculture	($3,472,500)	$25,007,700	13.9%
Southern Utah University	($3,066,378)	$42,718,804	7.2%
Workforce Services	($2,965,800)	$278,079,900	1.1%
Community and Culture	($2,490,200)	$74,351,200	3.3%
Environmental Quality	($2,442,400)	$74,346,400	3.3%
Commerce	($2,212,900)	$19,612,600	11.3%
Governor's Office	($2,017,900)	$21,064,200	9.6%
Courts	($1,687,600)	$111,874,100	1.5%
State Board of Regents	($1,351,719)	$24,796,886	5.5%
Snow College	($1,307,853)	$23,413,806	5.6%
Public Lands Office	($1,179,300)	$2,083,500	56.6%
Juvenile Justice Services	($707,600)	$97,415,600	0.7%
Technology Services	($671,300)	$3,283,600	20.4%
Human Resource Management	($642,800)	$3,225,900	19.9%
Utah College of Applied Technology	($548,301)	$56,904,017	1.0%
Attorney General	($521,000)	$42,265,600	1.2%
Utah Education Network	($515,800)	$28,626,900	1.8%
State Treasurer	($405,000)	$2,236,900	18.1%
Medical Education Program	($292,000)	$738,700	39.5%
State Auditor	($288,300)	$3,954,800	7.3%
Capitol Preservation Board	($124,900)	$2,731,100	4.6%
National Guard	($119,400)	$29,229,200	0.4%
College of Eastern Utah	($88,640)	$16,445,384	0.5%
Board of Pardons and Parole	($16,900)	$2,879,300	0.6%
Career Service Review Board	($200)	$190,500	0.1%

Table 1