

**2009 DRAFTING REQUEST**

**Bill**

Received: **11/19/2008**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Dombrowski**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters: **rchampag**

Subject: **Employ Pub - miscellaneous**

Extra Copies:

Submit via email: **NO**

**Pre Topic:**

DOA:.....Dombrowski, BB0232 -

**Topic:**

Attorney consolidation

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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**Topic:**

Attorney consolidation

**Instructions:** *Take out Commerce; used DATCP for chief legal advisor*  
 See attached *16.004 (15) (a) exclude DOJ & DPI*

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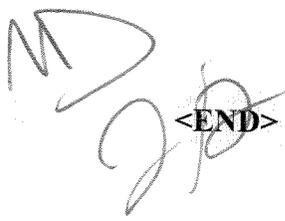
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/P2	rchampag 11/24/2008	kfollett 11/24/2008	phenry 11/24/2008	_____	sbasford 11/24/2008		State
/1	rchampag 01/17/2009	kfollett 01/17/2009	jfrantze 01/19/2009	_____	mbarman 01/20/2009		State
/2	rchampag 01/22/2009	kfollett 01/22/2009	rschluet 01/22/2009	_____	sbasford 01/22/2009		State

14/58  
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 1/23/09

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	rchampag 01/22/2009	kfollett 01/22/2009	rschluet 01/22/2009	_____	cduerst 01/22/2009		

FE Sent For:

<END>

**2009 DRAFTING REQUEST**

**Bill**

Received: 11/19/2008

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Dombrowski**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters: **rchampag**

Subject: **Employ Pub - miscellaneous**

Extra Copies:

Submit via email: **NO**

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**Pre Topic:**

DOA:.....Dombrowski, BB0232 -

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**Topic:**

Attorney consolidation

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**Instructions:**

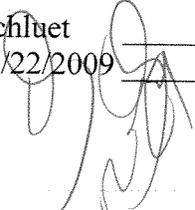
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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1			phenry 11/21/2008	_____	mbarman 11/21/2008		State
/P2	rchampag 11/24/2008	kfollett 11/24/2008	phenry 11/24/2008	_____	sbasford 11/24/2008		State
/1	rchampag 01/17/2009	kfollett 01/17/2009	jfrantze 01/19/2009	_____	mbarman 01/20/2009		State
/2	rchampag 01/22/2009	kfollett 01/22/2009	rschluet 01/22/2009	_____	sbasford 01/22/2009		

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1/22



Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

**<END>**

2009 DRAFTING REQUEST

Bill

Received: 11/19/2008

Received By: chanaman

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Dombrowski

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters: rchampag

Subject: Employ Pub - miscellaneous

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Dombrowski, BB0232 -

Topic:

Attorney consolidation

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 11/20/2008	kfollett 11/21/2008		_____			State
/P1			phenry 11/21/2008	_____	mbarman 11/21/2008		State
/P2	rchampag 11/24/2008	kfollett 11/24/2008	phenry 11/24/2008	_____	sbasford 11/24/2008		State
/1	rchampag 01/17/2009	kfollett 01/17/2009	jfrantze 01/19/2009	_____	mbarman 01/20/2009		

FE Sent For:

Handwritten signatures and dates: 12kf 1/22 and a signature dated 01/20/09.

### 2009 DRAFTING REQUEST

#### Bill

Received: 11/19/2008

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Dombrowski**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters: **rchampag**

Subject: **Employ Pub - miscellaneous**

Extra Copies:

Submit via email: **NO**

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#### Pre Topic:

DOA:.....Dombrowski, BB0232 -

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#### Topic:

Attorney consolidation

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#### Instructions:

See attached

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1			phenry 11/21/2008	_____	mbarman 11/21/2008		State
/P2	rchampag 11/24/2008	kfollett 11/24/2008	phenry 11/24/2008	_____	sbasford 11/24/2008		

FE Sent For:

11/19/08  
11/19/08  
Jb  
Jb/Self  
<END>

### 2009 DRAFTING REQUEST

#### Bill

Received: 11/19/2008

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Dombrowski**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters: **rchampag**

Subject: **Employ Pub - miscellaneous**

Extra Copies:

Submit via email: **NO**

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#### Pre Topic:

DOA:.....Dombrowski, BB0232 -

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#### Topic:

Attorney consolidation

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#### Instructions:

See attached

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

*by ph*  
*by pt/m*  
<END>

**2009 DRAFTING REQUEST**

**Bill**

Received: 11/19/2008

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Dombrowski**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters: **rchampag**

Subject: **Employ Pub - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

---

**Pre Topic:**

DOA:.....Dombrowski, BB0232 -

---

**Topic:**

Attorney consolidation

---

**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman	1/11/gf 11/21	W ph	1/1 ph/ms			

FE Sent For:

<END>

## 2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Attorney Consolidation
- Tracking Code: BB0232
- SBO team: GGED
- SBO analyst: Cindy Dombrowski <sup>WD</sup>
  - Phone: 266-5878
  - Email: cynthia.dombrowski@wisconsin.gov
- Agency acronym: DOA
- Agency number: 505
- Priority (Low, Medium, High): High

### Intent:

1. The following cabinet agency general legal counsel positions shall now be unclassified. Each agency should have 1.0 positions added to the list of allowed unclassified positions:

~~DATCP, DOA, COMMERCE, DFI, OCI, DRL, DNR, DOT, DOC, DHS, DOF, and DOR.~~

2. Create a new Office of Legal Services attached to the Department of Administration, Office of the Secretary.
3. The new Office shall be headed by an unclassified position.
4. Transfer positions from the following agencies into the newly formed Office. The transferred positions, if filled, shall maintain the same rights under the new agency as were given in the original agency. (There is standard language used for transfer of employees -- this is what should be used here).

<del>DATCP</del>	<del>1.5</del>
<del>DFI</del>	<del>1.5</del>
<del>OCI</del>	1.5
<del>DRL</del>	<del>2.0</del>
<del>DNR</del>	<del>3.0</del>
<del>DOT</del>	<del>1.5</del>
<del>DOC</del>	<del>1.0</del>
<del>DHS</del>	<del>3.5</del>
DOA	5.0
<del>DOR</del>	<del>2.5</del>

DCF?  
Commerce

5. Create language allowing DOA to charge agencies for services provided by the new Office. Also, create a new PRS continuing appropriation in DOA to receive the charges.

0863/P1

Dambrowski  
BB0272

DOA:.....Pawasarat, BB0250 - Attorney consolidation and transfer to DOA  
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

from DATCP, DOC, DFI, DHS,  
DNR, DRL, DOR, DOT, and  
PRL, OCL  
also creates on unclassified

1 AN ACT ...; relating to: the budget.

**Analysis by the Legislative Reference Bureau**

**STATE GOVERNMENT**

**OTHER STATE GOVERNMENT**

This bill creates a division of legal services in DOA that is authorized to provide legal services to executive branch agencies. With certain exceptions, this bill transfers all attorney positions and all legal staff positions in executive branch agencies to the Division of Legal Services effective on July 1, 2008. This bill also transfers all positions identified as hearing examiners, hearing officers, or administrative law judges, other than such positions in DWD, to the Division of Hearings and Appeals in DOA. Attorney positions in DOJ, the Office of the State Public Defender, the PSC, the UW System, the Employment Relations Commission, the State of Wisconsin Investment Board, the Government Accountability Board, and the Office of the Governor are exempt, as are all state employees working in an office of a district attorney. In addition, the bill retains a general counsel of lead attorney position in each of 18 major state agencies and offices.

Under this bill, executive branch agencies that are authorized or required to employ or retain an attorney may do so only in the following ways: (1) employ an attorney in a position authorized by law; (2) contract with DOA for legal services; (3) allow DOJ to furnish legal services if DOJ is required by law to furnish the services; (4) allow or contract with the Division of Hearings and Appeals to furnish legal services if the Division of Hearings and Appeals is required or authorized by law to

10  
the Department of Commerce, DOR, DFI, DHS, DOR, DOT, and OCL

furnish the services; or (5) employ or retain any attorney who is not a state employee, subject to the approval of the governor.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           SECTION 1. 15.04 (4) of the statutes is created to read:

2           15.04 (4) LEGAL SERVICES. If a department or independent agency is authorized  
3 or required to employ or retain an attorney, the department or independent agency  
4 may do so only in the following ways:

5           (a) Employ an attorney in a position authorized under s. 16.505.

6           (b) Contract with the department of administration for legal services under s.  
7 16.004 (15).

8           (c) Allow the department of justice to furnish legal services if the department  
9 of justice is required by law to furnish the services.

10           (d) 1. Allow the division of hearings and appeals created under s. 15.103 (1) to  
11 furnish legal services if the division of hearings and appeals is required or authorized  
12 by law to furnish the services.

13           2. Contract under s. 227.43 (1m) for contested case hearing services with the  
14 division of hearings and appeals if the department or independent agency is not  
15 prohibited by law to do so.

16           (e) Employ or retain any attorney who is not a state employee, subject to s.  
17 20.930.

18           SECTION 2. 15.103 (1g) of the statutes is created to read:

1           15.103 **(1g)** DIVISION OF LEGAL SERVICES. There is created in the department of  
2 administration a division of legal services. The administrator of the division shall  
3 be appointed by the secretary of administration in the unclassified service.

4           **SECTION 3.** 16.004 (15) of the statutes is created to read:

5           16.004 **(15)** LEGAL SERVICES. (a) In this subsection, “state agency” means an  
6 office, commission, department, independent agency, or board in the executive  
7 branch of state government, and includes the building commission.

8           (b) The department may provide legal services to state agencies. Annually, the  
9 department shall assess each state agency for the cost of the legal services provided  
10 to the state agency. The department shall credit all moneys received from state  
11 agencies under this paragraph to the appropriation account under s. 20.505 (1) (kr).

12           **SECTION 4.** 20.505 (1) (kr) of the statutes is created to read:

13           20.505 **(1)** (kr) *Legal services.* All moneys received from assessments levied  
14 against state agencies under s. 16.004 (15) (b) for legal services provided by the  
15 department of administration to be used for providing those legal services.

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

16           **SECTION 5.** 73.01 (4) (b) of the statutes is amended to read:

17           73.01 **(4)** (b) Any matter required to be heard by the commission may be heard  
18 by any member of the commission or its a hearing examiner and reported to the  
19 commission, and hearings of matters pending before it shall be assigned to members  
20 of the commission or its the hearing examiner by the chairperson. Cases other than  
21 small claims cases shall be decided by the full commission, except that if one or more  
22 members of the commission are unavailable, cases other than small claims cases  
23 shall be decided by the member or members assigned by the chairperson prior to the

1 hearing. If the parties have agreed to an oral decision, the member or members  
2 conducting the hearing may render an oral decision. Hearings shall be open to the  
3 public and all proceedings shall be conducted in accordance with rules of practice and  
4 procedure prescribed by the commission. Small claims cases shall be decided by one  
5 commissioner assigned by the chairperson prior to the hearing.

6 **SECTION 6.** 73.01 (4m) (b) of the statutes is amended to read:

7 73.01 (4m) (b) No member of the commission, including the chairperson, or its  
8 a hearing examiner may receive any salary unless he or she first executes an  
9 affidavit at the end of each salary period stating that he or she has complied with the  
10 deadlines in par. (a). The affidavit shall be presented to and filed with every official  
11 who certifies, in whole or in part, the salary.

12 **SECTION 7.** 73.01 (4m) (c) of the statutes is amended to read:

13 73.01 (4m) (c) If a member of the commission, including the chairperson, or its  
14 a hearing examiner is unable to comply with the deadline under par. (a), that person  
15 shall so certify in the record, and the period is then extended for one additional period  
16 not to exceed 90 days.

17 **SECTION 8.** 85.013 (2) (a) of the statutes is amended to read:

18 85.013 (2) (a) The secretary shall designate employees of the department as  
19 hearing examiners to preside over all hearings arising under ch. 344.

20 **SECTION 9.** 230.08 (2) (e) 1. of the statutes is amended to read:

21 230.08 (2) (e) I. Administration — 13 14.

22 **SECTION 10.** 230.08 (2) (eg) of the statutes is created to read:

23 230.08 (2) (eg) A general counsel position in each of the following agencies:

- 24 1. Department of administration.
- 25 2. Department of agriculture, trade and consumer protection.

INS  
4-22

- 1        3. ~~2~~m. Department of children and families. ✓
- 2        4. ~~3~~. Department of commerce. ✓
- 3        5. ~~4~~. Department of corrections. ✓
- 4        6. ~~5~~. Department of financial institutions. ✓
- 5        7. ~~6~~. Department of health and family services. ✓
- 6        8. ~~7~~. Department of natural resources. ✓
- 7        9. ~~8~~. Department of regulation and licensing. ✓
- 8        10. ~~9~~. Department of revenue. ✓
- 9        11. ~~10~~. Department of transportation. ✓
- 10       11. Department of workforce development. ✓
- 11       12. Office of the commissioner of insurance. ✓

\*\*\*\*NOTE: This is reconciled s. 230.08 (2) (eg), which has been affected by LRB-1182/P2 and -1261.

MS  
5-11

12       **SECTION 11.** 343.33 (2) of the statutes is amended to read:

13       343.33 (2) Upon the hearing, the department or its a hearing examiner may  
 14       administer oaths, issue subpoenas for the attendance of witnesses and the  
 15       production of relevant books and papers and may require a reexamination of the  
 16       licensee. No law enforcement officer or other witness produced by the person who  
 17       has requested a hearing to testify on his or her behalf shall be paid a witness fee by  
 18       the department nor shall any law enforcement officer called to appear for the  
 19       department be paid any witness fee. All testimony shall be taken and transcribed.

20       **SECTION 9155. Nonstatutory provisions; Other.**

21       <sup>create</sup>  
<sup>auto</sup>  
<sup>ret</sup> (b) (1) TRANSFER OF ATTORNEY AND LEGAL STAFF POSITIONS.

22       (a) *Definitions.* In this subsection:

1 1. "Legal staff" means the individuals as determined by the secretary of  
2 administration who provide support services for attorneys.

3 2. "State agency" means an office, commission, department, independent  
4 agency, or board in the executive branch of state government, except the following:

- 5 a. The public service commission.
- 6 b. The public defender board.
- 7 c. The Board of Regents of the University of Wisconsin System.
- 8 d. The University of Wisconsin Hospitals and Clinics Board.
- 9 e. The state of Wisconsin investment board.
- 10 f. The office of the governor.
- 11 g. The government accountability board.
- 12 h. The department of justice.
- 13 i. The employment relations commission.

14 ~~(b)~~ *(b)* *State agency attorneys and legal staff* Except as provided in paragraph (c)  
 15 and subject to paragraph (d), on the effective date of this paragraph ~~all~~ *the following* attorney  
 16 positions in state agencies and all legal staff positions in state agencies are  
 17 transferred to the division of legal services in the department of administration.

18 (c) *Hearing officers, hearing examiners, and administrative law judges.*

19 1. Except as provided in subdivision 2. and subject to paragraph (d), on the  
 20 effective date of this subdivision all positions identified by the secretary of  
 21 administration as hearing officers, hearing examiners, or administrative law judges  
 22 are transferred to the division of hearings and appeals in the department of  
 23 administration.

24 2. Subdivision 1. does not apply to hearing officers, hearing examiners, or  
 25 administrative law judges in the department of workforce development.

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a

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'6-17

1 (d) *Exceptions.* Paragraphs (b) and (c) do not apply to any of the following:

2 1. State employees working in an office of a district attorney under section  
3 978.12 (1) (b) or (c) of the statutes.

4 2. One lead attorney in the office of state employment relations whose duties  
5 include the negotiation and interpretation of collective bargaining agreements  
6 entered into under subchapter V of chapter 111 of the statutes.

7 3. One attorney position in each of the following state agencies, identified by  
8 the secretary of administration as the general counsel or lead attorney position:

9 a. Department of administration.

10 b. Department of agriculture, trade and consumer protection.

11 c. Department of children and families.

12 d. Department of commerce.

13 e. Department of corrections.

14 f. Department of employee trust funds.

15 f g. Department of financial institutions.

16 g h. Department of health and family services.

17 i. Department of military affairs.

18 w j. Department of natural resources.

19 k. Department of public instruction.

20 l. Department of regulation and licensing.

21 m. Department of revenue.

22 n. Department of transportation.

23 o. Department of veterans affairs.

24 p. Department of workforce development.

25 q. Office of the commissioner of insurance.

1 (e) *Incumbents.* All incumbent employees holding positions that are  
 2 transferred under paragraphs (b) and (c) are transferred on the effective date of this  
 3 paragraph to the department of administration. Employees transferred under these  
 4 paragraphs have all the rights and the same status under subchapter V of chapter  
 5 111 and chapter 230 of the statutes in the department of administration that they  
 6 enjoyed in their respective state agencies immediately before the transfer.  
 7 Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who  
 8 has attained permanent status in class is required to serve a probationary period.

9 (f) *Materials.* On the effective date of this paragraph, all equipment, supplies,  
 10 and furniture required for the provision of legal services by employees transferred  
 11 under paragraphs (b) and (c) are transferred to the department of administration.  
 12 The secretary of administration shall identify the equipment, supplies, and  
 13 furniture to be transferred.

14 **SECTION 9455. Effective dates; Other.**

15 (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 15.04 (4), 15.103  
 16 (1g), 16.004 (15), 20.505 (1) (kr), 73.01 (4) (b) and (4m) (b) and (c), 85.013 (2) (a),  
 17 230.08 (2) (e) 1. and (eg), and 343.33 (2) of the statutes and SECTION 9155 (1) of this  
 18 act take effect on July 1, 2008.

19 10 (END)

*NOTE*  
 \*\*\* Please let us know if this is the effective date you want.

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0863/?ins  
CMH&RAC:.....

1

2

Insert 4-22

3

SECTION 1. 230.08 (2) (e) 1. of the statutes is amended to read:

4

230.08 (2) (e) 1. Administration — 14 15.

**History:** 1971 c. 40, 270; 1973 c. 333, 335; 1977 c. 29, 187; 1977 c. 196 ss. 34, 108, 130 (5); 1977 c. 272, 418, 449; Stats. 1977 s. 230.08; 1979 c. 34, 189, 221, 356, 361; 1981 c. 20, 347, 374; 1983 a. 27 ss. 1605o to 1609am, 2200 (15); 1983 a. 189 s. 329 (27); 1983 a. 371, 378; 1985 a. 29; 1987 a. 27, 119, 204, 354, 399, 403; 1989 a. 31, 107, 119, 122, 169, 208, 219, 336; 1991 a. 39, 250, 269; 1993 a. 16, 349, 399; 1995 a. 27 ss. 6245 to 6277m, 9126 (19), 9130 (4); 1995 a. 216; 1997 a. 3, 27, 179, 194, 237; 1999 a. 9, 42, 87, 186; 2001 a. 16, 19, 109; 2003 a. 33 ss. 2392 to 2407b, 9160; 2003 a. 91, 326; 2005 a. 22, 25; 2007 a. 1; 2007 a. 20 ss. 3006 to 3014, 9121 (6) (a).

5

6

Insert 5-11

\*\*\*\*NOTE: These positions are in the unclassified service; if an incumbent keeps a position that is converted from classified to unclassified, case law indicates that his or her rights are grandfathered in. *Bahr v. State v. Investment Board*, 186 Wis. 2d 379, 521 N.W.2d 152 (Ct. App. 1994).

7

8

Insert 6-17

\*\*\*\*NOTE: Assuming an agency may have more attorney positions than those transferred here, should the secretary of administration identify which positions of those are to be transferred?

9

1. From the department of agriculture, trade and consumer protection, 1.5

10

FTE positions.

11

2. From the department of corrections, 1.0 FTE position.

12

3. From the department of financial institutions, 1.5 FTE positions.

13

4. From the department of health services, 3.5 FTE positions.

14

5. From the department of natural resources, 3.0 FTE positions.

15

6. From the department of regulation and licensing, 2.0 FTE positions.

16

7. From the department of revenue, 2.5 FTE positions.

17

8. From the department of transportation, 1.5 FTE positions.

18

9. From the office of the commissioner of insurance, 1.5 FTE positions.



DOA:.....Dombrowski, BB0232 - Attorney consolidation

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

*- do not gen*

*a number of*

1 AN ACT ...; relating to: the budget.

---

*Analysis by the Legislative Reference Bureau*  
**STATE GOVERNMENT**  
**OTHER STATE GOVERNMENT**

This bill creates a division of legal services in DOA that is authorized to provide legal services to executive branch agencies. This bill transfers attorney positions from DATCP, DOC, DFI, DHS, DNR, DRL, DOR, DOT, and OCI to the Division of Legal Services effective on July 1, 2010. The bill also creates an unclassified general counsel position in DOA, DATCP, DCF, the Department of Commerce, DOC, DFI, DHS, DNR, DRL, DOR, DOT, and OCI.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 15.04 (4) of the statutes is created to read:  
3 15.04 (4) LEGAL SERVICES. ~~If a department or independent agency is authorized~~  
4 ~~or required to employ or retain an attorney, the department or independent agency~~  
5 ~~may do so only in the following ways:~~

**SECTION 1**

1 (a) Employ an attorney in a position authorized under s. 16.505.

2 (b) Contract with the department of administration for legal services under s.  
3 16.004 (15).

4 (c) Allow the department of justice to furnish legal services if the department  
5 of justice is required by law to furnish the services.

6 (d) 1. Allow the division of hearings and appeals created under s. 15.103 (1) to  
7 furnish legal services if the division of hearings and appeals is required or authorized  
8 by law to furnish the services.

9 2. Contract under s. 227.43 (1m) for contested case hearing services with the  
10 division of hearings and appeals if the department or independent agency is not  
11 prohibited by law to do so.

12 (e) Employ or retain any attorney who is not a state employee, subject to s.  
13 20.930.

14 **SECTION 2.** 15.103 (1g) of the statutes is created to read:

15 15.103 (1g) DIVISION OF LEGAL SERVICES. There is created in the department of  
16 administration a division of legal services. The administrator of the division shall  
17 be appointed by the secretary of administration in the unclassified service.

18 **SECTION 3.** 16.004 (15) of the statutes is created to read:

19 16.004 (15) LEGAL SERVICES. (a) In this subsection, "state agency" means an  
20 office, commission, department, independent agency, or board in the executive  
21 branch of state government, and includes the building commission.

22 (b) The department may provide legal services to state agencies. Annually, the  
23 department shall assess each state agency for the cost of the legal services provided  
24 to the state agency. The department shall credit all moneys received from state  
25 agencies under this paragraph to the appropriation account under s. 20.505 (1) (kr).

1           **SECTION 4.** 20.505 (1) (kr) of the statutes is created to read:

2           20.505 (1) (kr) *Legal services.* All moneys received from assessments levied  
3 against state agencies under s. 16.004 (15) (b) for legal services provided by the  
4 department of administration to be used for providing those legal services.

      \*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

5           **SECTION 5.** 230.08 (2) (e) 1. of the statutes is amended to read:

6           230.08 (2) (e) 1. Administration — 14 15.

7           **SECTION 6.** 230.08 (2) (eg) of the statutes is created to read:

8           230.08 (2) (eg) A general counsel position in each of the following agencies:

- 9           1. Department of administration.
- 10          2. Department of agriculture, trade and consumer protection.
- 11          3. Department of children and families.
- 12          4. Department of commerce.
- 13          5. Department of corrections.
- 14          6. Department of financial institutions.
- 15          7. Department of health services.
- 16          8. Department of natural resources.
- 17          9. Department of regulation and licensing.
- 18          10. Department of revenue.
- 19          11. Department of transportation.
- 20          12. Office of the commissioner of insurance.

      \*\*\*\*NOTE: These positions are in the unclassified service; if an incumbent ~~keeps~~ a position that is converted from classified to unclassified, case law indicates that his or her rights are grandfathered in. *Bahr v. State v. Investment Board*, 186 Wis. 2d 379, 521 N.W.2d 152 (Ct. App. 1994).

is retained in

21           **SECTION 9157. Nonstatutory provisions; Other.**

1 (1) TRANSFER OF ATTORNEY POSITIONS.

2 (a) *State agency attorneys.* On the effective date of this paragraph the following  
3 attorney positions are transferred to the division of legal services in the department  
4 of administration:

\*\*\*\*NOTE: Assuming an agency may have more attorney positions than those transferred here, should the secretary of administration identify which positions of those are to be transferred?

5 1. From the department of agriculture, trade and consumer protection, 1.5 FTE  
6 positions.

7 2. From the department of corrections, 1.0 FTE position.

8 3. From the department of financial institutions, 1.5 FTE positions.

9 4. From the department of health services, 3.5 FTE positions.

10 5. From the department of natural resources, 3.0 FTE positions.

11 6. From the department of regulation and licensing, 2.0 FTE positions.

12 7. From the department of revenue, 2.5 FTE positions.

13 8. From the department of transportation, 1.5 FTE positions.

14 9. From the office of the commissioner of insurance, 1.5 FTE positions.

15 (b) *Incumbents.* All incumbent employees holding positions that are  
16 transferred under paragraph (a) are transferred on the effective date of this  
17 paragraph to the department of administration. Employees transferred under  
18 paragraph (a) have all the rights and the same status under subchapter V of chapter  
19 111 and chapter 230 of the statutes in the department of administration that they  
20 enjoyed in their respective state agencies immediately before the transfer.  
21 Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who  
22 has attained permanent status in class is required to serve a probationary period.

1           (c) *Materials*. On the effective date of this paragraph, all equipment, supplies,  
2 and furniture required by employees transferred under paragraphs (a) are  
3 transferred to the department of administration. The secretary of administration  
4 shall identify the equipment, supplies, and furniture to be transferred.

5           **SECTION 9457. Effective dates; Other.**

6           (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 15.04 (4), 15.103  
7 (1g), 16.004 (15), 20.505 (1) (kr), and 230.08 (2) (e) 1. and (eg) of the statutes and  
8 SECTION 9157 (1) of this act take effect on July 1, 2010.

          \*\*\*\*NOTE: Please let us know if this is the effective date you want.

9

(END)

D-Note

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0863/P2dn  
CMH&RAC:kjf,ph

*Date*

Cindy Dombrowski:

In this second version of the draft, we have removed the creation of s. 15.04 (4) from the draft. This provision was originally drafted a couple of sessions ago and no longer seems necessary in light of the revised instructions we have received from your office.

There is one issue in the draft that raises a fairly significant legal problem and that is the status of the attorneys who currently hold general counsel positions in the classified service in the affected state agencies. The draft does not specify whether these individuals are retained in their current positions once these positions are placed in the unclassified service or whether the positions are vacant and can then be filled by the appointing authority. We advise addressing this issue in the draft, so as to prevent or at least limit any litigation that could occur in the future if an incumbent attorney is not retained in his or her general counsel position.

Rick A. Champagne  
Senior Legislative Attorney  
Phone: (608) 266-9930  
E-mail: rick.champagne@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0863/P2dn  
RAC:kjf:ph

November 24, 2008

Cindy Dombrowski:

In this second version of the draft, we have removed the creation of s. 15.04 (4) from the draft. This provision was originally drafted a couple of sessions ago and no longer seems necessary in light of the revised instructions we have received from your office.

There is one issue in the draft that raises a fairly significant legal problem and that is the status of the attorneys who currently hold general counsel positions in the classified service in the affected state agencies. The draft does not specify whether these individuals are retained in their current positions once these positions are placed in the unclassified service or whether the positions are vacant and can then be filled by the appointing authority. We advise addressing this issue in the draft, so as to prevent or at least limit any litigation that could occur in the future if an incumbent attorney is not retained in his or her general counsel position.

Rick A. Champagne  
Senior Legislative Attorney  
Phone: (608) 266-9930  
E-mail: rick.champagne@legis.wisconsin.gov

## Champagne, Rick

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**From:** Dombrowski, Cynthia A - DOA [cynthia.dombrowski@wisconsin.gov]  
**Sent:** Friday, January 16, 2009 3:22 PM  
**To:** Champagne, Rick  
**Subject:** Re: Attorney consolidation

Hi Rick -

I have a series of changes we'd like for the attorney draft.

1. Please add 1.0 unclassified general legal counsel position each to OSER and PSC.
2. Please delete the non-stat language on the transfer of attorneys.
3. Require that by June 30, 2010, the Secretary of Administration shall identify and delete 14.0 attorney positions.
4. Grant the Secretary of Administration the authority to review each legal services (attorney and attorney support) position that becomes vacant in an agency and transfer that position to the DOA Legal Services division.

Let me know if you have any questions.

Cindy

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**From:** Henry, Patty [mailto:Patty.Henry@legis.wisconsin.gov]  
**Sent:** Monday, November 24, 2008 10:49 AM  
**To:** Dombrowski, Cynthia A - DOA  
**Cc:** Pawasarat, Jane - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA  
**Subject:** LRB Draft: 09-0863/P2 Attorney consolidation

*Following is the PDF version of draft 09-0863/P2.*