



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #580

### Position and Funding Reductions (Secretary of State)

[LFB 2015-17 Budget Summary: Page 399 thru 401, #2 thru #6]

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#### CURRENT LAW

Under Article VI of the Wisconsin Constitution, the Secretary of State (SOS) must keep a fair record of the official acts of the Legislature and Executive Department and, when requested, must present these records before either branch of the Legislature. The SOS is the competent authority for the state of Wisconsin to issue apostilles and authorizations in accordance with international law to verify that documents are accurate. The Secretary must perform other duties as assigned by law, such as recording and filing municipal boundary changes. In addition, state law requires the SOS to:

- a. Affix the Great Seal and countersign all commissions issued and other official acts done by the Governor.
- b. Have custody of all books, records, deeds, bonds, parchments, maps, papers, and other articles and effects belonging to the state and deposited in the Office. The SOS must make such documents available for inspection and examination of the Governor or any committee of either house of the Legislature.
- c. Report biennially all matters pertaining to the Office, including a record of all fees received by the Office.
- d. Safely keep all enrolled laws and resolutions. Such documents cannot be taken out of the Office of the SOS or inspected except in the presence of the SOS.
- e. Bind in suitable volumes the original laws enacted, and joint resolutions adopted, at each session of the Legislature.

f. Make a copy of any law, resolution, deed, bond, record, document or paper in exchange for a fee.

g. Receive and file the signature and an impression of the official seal or rubber stamp of all county clerks and registers of deeds.

h. Publish in the official state paper, on the first Tuesday of August, September, and October immediately preceding any general election, proposed constitutional amendments as were approved for the first time by the Legislature preceding the election.

i. Publish in the official state newspaper within 10 days after the date of publication of an Act a notice certifying the number of each act, the number of the bill which it originated, the date of publication and the relating clause, including a notice of where the full text of each act can be obtained.

j. Notify the Legislature if a constitutional amendment has been approved within 30 days after the Government Accountability Board records the approval.

The Office of the Secretary of State has base level funding of \$513,500 PR and 4.0 PR positions (the Secretary and three full-time staff). The SOS also employs one 75% LTE position. The largest source of funding is an annual transfer of \$325,000 from the Department of Financial Institutions (DFI). The remaining revenues are generated from charges for services provided by the Office, primarily for apostilles and authentications. At the close of each fiscal year, any balance of revenues in the Office's program fees appropriation account that exceeds 10% of that year's expenditures lapses to the general fund.

## **GOVERNOR**

Make the following changes regarding the Secretary of State:

a. Delete funding of \$143,100 PR and 2.0 FTE annually to reflect elimination of the Assistant Secretary of State and an office operations associate position in each year. Delete statutes authorizing the appointment of an Assistant Secretary.

b. Delete supplies and services funding of \$78,900 PR annually to reflect rental savings associated with relocating SOS from 30 West Mifflin Street to the State Capitol.

c. Reduce supplies and services funding by an additional \$48,100 in 2015-16 and \$49,800 in 2016-17 to more accurately reflect the Office's funding needs under the bill.

d. Transfer record-keeping functions regarding municipal boundary changes from the SOS to the Department of Administration (DOA).

In total, these provisions would decrease funding by \$270,100 PR in 2015-16 and \$271,800 PR in 2016-17 and eliminate 2.0 positions in each year.

## DISCUSSION POINTS

### Position Reductions

1. As noted, the bill would eliminate two positions from the SOS. The two positions that would be deleted are the Assistant SOS and an office operations associate. According to DOA, the only substantive duties of the SOS that would exist under the bill are: (a) being a member of the Board of Commissioner of Public Lands (BCPL); (b) keeping a fair record of official acts of the Legislature and the Governor; (c) affixing the Great Seal to official acts of the Governor; and (d) issuing authentications and apostilles. The administration believes that the 1.0 FTE position retained by the Office in addition to the SOS himself should provide sufficient staffing to complete these duties. The bill also provides \$35,400 per year for the Office to retain its one 75% LTE position.

2. Current law permits the SOS to appoint an assistant, who may perform and execute any of the Secretary's duties, except as a member of the BCPL. The Assistant must take and subscribe the Oath of Office, as prescribed under the state constitution, and must give bond to the SOS in the sum and with the conditions prescribed by the Secretary, conditioned for the faithful discharge of the duties. The Oath must be filed and preserved in the Office of the Governor. The bill would eliminate these provisions and the SOS would no longer have an Assistant who could perform and execute the Secretary's duties.

3. According to the SOS, the Assistant currently oversees all administrative functions of the Office. The SOS states that the Assistant: (a) manages work schedules and leave times; (b) handles bill receipts and processing that are submitted to DOA; (c) develops and oversees IT contracts with an external vendor for services such as records digitalization and preservation, maintenance of agency electronic databases, and website hosting and updates; (d) directs IT equipment procurement, service, and maintenance, as needed, to meet the needs of the Office; (e) responds to the Office's email, manages phone lines and voicemail, and oversees all agency personnel and payroll matters; (f) serves as agency public relations contact; and (g) develops and maintains the Office's continuing operation plan and serves as the Office's incident commander. In addition, the SOS indicates that the Assistant serves as a back up to front office staff in answering customer phone calls and inquiries and providing services to walk-in customers.

4. The SOS employs two full-time positions in addition to the Assistant SOS. According to the SOS, authentications and apostilles take up most of the time for these two full-time positions. Currently, the office operations associate primarily handles standard requests and more complicated questions, and communicates with Spanish speaking customers. The Division Administrator primarily handles expedited requests for authentications and apostilles, but also performs other office functions such as printing of bills, signing and sealing gubernatorial documentation, and supervisory functions. During sessions of the Legislature, the Division Administrator is responsible for printing and binding of Legislative Acts. In addition, the SOS employs one LTE position, who serves as the primary contact for customer calls and counter service, provides support for authentication and apostille requests, handles filings of oaths, deeds, and county records, and is the person assigned to handle the filing and recording of municipal boundary changes.

5. As noted, authentications and apostilles make up the majority of the workload for employees of the SOS. Requests for authentications/apostilles are submitted by businesses and citizens for confirmation that each document has been properly verified and notarized and follows Wisconsin standards. The Secretary states that businesses, adoption agencies, and funeral homes are some of the more common requestors of authentications and apostilles. These verifications allow a business or an individual to have documentation that is accepted in other countries as being verified by the appropriate agency. Under the Hague Convention on Private International Law, the Secretary of State is generally considered the designated authority for which public documents issued by U.S. states are determined to be legal under international law.

6. Over the past five fiscal years, the Office has processed an annual average of approximately 16,400 authentications and apostilles, generating average annual revenues of approximately \$255,000. For regularly processed authentications/apostilles, the SOS charges a fee of \$10. For expedited requests, a fee of \$35 applies. In 2013-14, expedited requests were approximately 37% of all such requests.

7. According to the SOS, if the two positions are eliminated, as recommended by the Governor, the remaining staff would not be sufficient for the Office to keep up with the demands of the Legislature, businesses, and other citizens. The Secretary states that the Office generally does not have a backlog of requests, except for when an unexpected staffing shortfall occurs due to illness. Under the bill, the SOS believes that a backlog of authentication and apostille requests would arise and grow, particularly during a Legislative session when certain annual projects are required, such as binding the Acts of the Legislature and other requirements associated with being the custodian of legislative and executive branch records.

8. The SOS notes that transferring the municipal record keeping functions to DOA would reduce some of the Office's workload. However, the Secretary reports that municipal filings account for approximately 300 hours of work per year, which equates to approximately 0.15 FTE position.

9. The Committee could choose to restore one or both of the positions to address the SOS's concerns regarding the potential inability to keep up with requests for authentications and apostilles. The Committee could also choose to restore statutory authority and responsibilities for the Assistant Secretary of State if the Committee wanted to allow the SOS to appoint an Assistant who could perform and execute duties on behalf of the Secretary, other than acting as a BCPL member.

### **Reduced Funding for Relocation to the State Capitol**

10. The bill reduces funding for supplies and services of the SOS by \$78,900, annually, to reflect savings from moving the Office from its current location at 30 West Mifflin Street into a shared office with the State Treasurer in the basement of the State Capitol. The bill does not contain any statutory or nonstatutory provision specifying where the SOS would be relocated.

11. The administration notes that, under the SOS's current lease agreement, 4,000 square feet is provided for the Office. The SOS estimates that approximately 3,000 square feet of its office

is currently used for storage of documents, work space for the Secretary and his four staff, and a reception area for persons entering the Office. The current lease expires June 30, 2015 and costs \$78,860 (\$19.71 per square foot), annually, including the cost of utilities. As noted, five people currently work in the Office of the SOS, including the Secretary. The bill would reduce the number of positions and authorize only one full time classified employee in addition to the Secretary. The administration notes that funding is provided under the bill for the Office to retain its one 75% LTE position.

12. According to DOA, the proposed relocation of the SOS to share space with the State Treasurer would reduce the space available to the SOS from 4,000 square feet for five people working in the Office under its current lease agreement to 661 square feet for four people total (three people working for the Office of the SOS plus the State Treasurer) in the basement of the State Capitol. As noted, the SOS is required under the State Constitution to keep a fair record of official acts of the Legislature and state departments and to make available such records when requested by either branch of the Legislature. Records that must be kept by the SOS, but that do not need to be accessed on a daily basis, would have to be stored in other storage space in the capitol. The administration would have to find a location to store the records that must be transferred with the SOS to the State Capitol. DOA has stated that much of the SOS's existing furniture and stored items either would not fit in the relocated space or would not be needed following the relocation.

13. Under current law, the Board of Commissioner of Public Lands is comprised of the SOS, the State Treasurer, and the Attorney General. The Board is required to manage the School Trust Fund. Under the state open records law, every meeting of a governmental body must be preceded by public notice and must be held in open session. If a sufficient number of members of the governmental body are assembled to determine the body's course of a meeting, this could trigger the open meetings law requirements. There have been concerns raised that requiring the Treasurer and the SOS to share an office space could constitute a quorum of the BCPL, which could create a violation of the open meetings law requirements.

According to attorneys at the Legislative Council and the Legislative Reference Bureau, even though the State Treasurer and the SOS would constitute a majority of the BCPL, they would need to engage in business within the purview of the BCPL to trigger the public notice requirement under the open records law. Case law generally provides that, when one half or more of the members of a governmental body, such as the BCPL, are present, those members must be able to rebut the claim that they engaged in discussion of BCPL business. There would likely need to be an agreement between the SOS and the Treasurer not to discuss matters that are under the authority of the BCPL. The Legislative Council and the Legislative Reference Bureau note that it would not be considered impossible or patently in violation of the law for these two members of the Board to share an office space; however, rebutting the presumption on a daily basis that they discussed any business under the purview of the BCPL could be considered impractical.

14. If the Committee were to adopt the Governor's proposal to eliminate funding associated with rent costs of the SOS, the Committee could choose to specify in the bill that the SOS could not be located in the same room as, or an adjoining room to, the State Treasurer. Under this option, the SOS and the State Treasurer would not have to rebut the presumption that discussions of business related to the BCPL occurred during daily interaction, which could violate

the prior notice requirement of the state open meetings law. The administration has indicated that it is possible to relocate the State Treasurer to another room in the basement of the State Capitol.

15. The Committee could choose to restore annual funding of \$78,900 PR for rental costs of the SOS. Under this alternative, the SOS would have funding and sufficient space to maintain its current staffing levels, storage of records, and space for the Office's current furniture and reception area.

16. According to DOA, agencies typically are expected to absorb move costs associated with a relocation or move conducted by the Department. However, the administration has determined that the SOS does not have sufficient funding to absorb the relocation costs under the bill. DOA has stated that the Division of Facilities Management would categorize the relocation as a forced move and would absorb reasonable moving costs on behalf of the SOS.

### **Transfer Municipal Boundary Record Keeping to DOA**

17. The bill would transfer municipal boundary record keeping functions from the SOS to DOA on the effective date of the bill. As noted under Paper #581, a technical modification would also transfer all of the SOS's exiting municipal boundary records to DOA.

18. According to the SOS, its one LTE currently performs all of the municipal recording functions, which accounts for approximately 300 hours (7.5 full time work weeks) of that employee's work per year. In addition, the SOS maintains an external IT contract with Northern Micrographics for scanning and digitizing newly filed municipal records and deeds. This contract would also be transferred to DOA and the SOS's LTE would no longer be required to perform these functions.

19. The Committee could choose to retain these municipal recording functions with the SOS, as the Office has experience with recording these municipal boundary changes and making them available in digital form on its website. Under this alternative, DOA would need to find additional storage space in the State Capitol for these municipal records. The Committee could also choose to provide the SOS with some additional expenditure authority or FTE authority if the Committee chose to retain municipal recording functions with the SOS.

### **Reduce Funding for Supplies and Services Needed Under the Bill**

20. The bill would reduce the Office's supplies and services funding by \$48,100 PR in 2015-16 and \$49,800 PR in 2016-17. The administration states that this reduction would more accurately reflect funding needed by the Office under the bill. As noted under Point #16, DOA has determined that the proposed level of funding for the SOS does not provide sufficient funds to absorb relocation costs associated with moving to the basement of the State Capitol. The Committee could choose to restore some, or all, of the funding that was deleted under this provision to provide a buffer for unexpected one-time expenses (such as for relocation costs) of the SOS.

### **Reduce the Transfer of Revenues from DFI to the SOS**

21. The bill would reduce the annual transfer of monies from DFI to the SOS by \$175,000,

annually. This reduction is meant to reflect the reduction of appropriated funds to the SOS under the bill. These monies are transferred from DFI's general program operations appropriation to the SOS's program fees appropriation.

22. If the Committee chose to increase expenditure authority and/or position authority for the SOS, the Committee may wish to increase the transfer from DFI to the SOS in order to provide revenues associated with that expenditure authority. In 2013-14, the transfer from DFI to the SOS represented 56% of revenues available to the Office. Therefore, an increase in expenditure authority would generally require additional revenues to be transferred from DFI (under a separate provision of the budget, DFI would be merged into the Department of Financial Institutions and Professional Standards [DFIPS]). The alternatives below provide adjustments to the statutory transfer, and estimated general fund lapse amounts, from DFI/DFIPS and to the SOS.

23. Under current law, any year-end balance in DFI's general program operations appropriation lapses to the general fund. Also, any year-end balance in excess of 10% of that year's expenditures in the SOS's program fees appropriation lapses to the general fund. If the Committee chose to provide the SOS with additional expenditure authority and transfer additional monies from DFI to the SOS equal to the amount of the increased expenditure authority, those monies would not lapse at year end to the general fund.

**ALTERNATIVES**

1. Approve the Governor's request.
2. Approve the Governor's request, with one or more of the following modifications:
  - a. Restore \$71,600 PR and 1.0 PR position, annually, to the SOS's program fees appropriation. In addition, restore statutory language allowing the SOS to appoint an Assistant who can perform certain functions of the SOS, as authorized under current law. Transfer an additional \$71,600 annually, as compared to the bill, from DFI/DFIPS's general program operations appropriation to the SOS's program fees appropriation. As a result, the estimated year-end lapse to the general fund from DFI/DFIPS would be reduced by \$71,600, annually. The estimated year-end lapse from the SOS would be reduced by \$7,200 in 2015-16.

ALT 2a	Change to Bill	
	Funding	Positions
PR	\$143,200	1.00
GPR-REV	- 150,400	0.00

b. Restore \$71,500 PR and 1.0 PR office operations associate position, annually, to the SOS's program fees appropriation. Transfer an additional \$71,500 annually, as compared to the bill, from DFI/DFIPS's general program operations appropriation to the SOS's program fees appropriation. As a result, the estimated year-end lapse to the general fund from DFI/DFIPS would be reduced by \$71,500, annually. The estimated year-end lapse from the SOS would be reduced by \$7,200 in 2015-16.

ALT 2b	Change to Bill	
	Funding	Positions
PR	\$143,000	1.00
GPR-REV	- 150,200	0.00

c. Restore \$78,900 PR, annually, to the SOS's program fees appropriation for supplies and services. Under this alternative, funding would be provided in the amount currently used to pay for the SOS's rental costs. Transfer an additional \$78,900, annually, as compared to the bill, from DFI/DFIPS's general program operations appropriation to the SOS's program fees appropriation. As a result, the estimated year-end lapse from DFI/DFIPS would be reduced by \$78,900, annually. The estimated year-end lapse from the SOS would be reduced by \$7,900 in 2015-16.

ALT 2c	Change to Bill	
PR	\$157,800	
GPR-REV	- 165,700	

d. Specify that the SOS may not be relocated to a room shared with another member of the BCPL.

e. Delete the budget provisions that would transfer record keeping functions of municipal boundaries from the SOS to DOA.

f. Restore \$48,100 PR in 2015-16 and \$49,800 PR in 2016-17 for supplies and services to the SOS's program fees appropriation. Reestimate the year-end lapse from the SOS to be reduced by \$52,900 in 2015-16 and \$50,000 PR in 2016-17.

ALT 2f	Change to Bill	
PR	\$97,900	
GPR-REV	- 102,900	

3. Delete the Governor's request. Restore \$270,100 PR in 2015-16, \$271,800 PR in 2016-17, and 2.0 PR positions, annually. Restore statutory language allowing the SOS to appoint an Assistant who can perform certain functions of the SOS, as authorized under current law. Specify that \$325,000 must be transferred, annually, from DFI/DFIPS's general program operations appropriation to the SOS's program fees appropriation. Reestimate the year-end lapse from DFI to be reduced by \$175,000, annually. In addition, reestimate the year-end lapse from the SOS to be reduced by \$106,000 in 2015-16 and \$82,000 in 2016-17.

ALT 3	Change to Bill	
	Funding	Positions
PR	\$541,900	2.00
GPR-REV	- 538,000	0.00

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