

27h1

Administration

General Statutory Provisions

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Gov Agency: Administration—Authority to Transfer Positions Within DOA
Without Legislative Approval

Recommendations:

Paper No. 180 Alternative 2

Comments: DOA wants authority to change, without legislative approval, the funding for any PR positions within the majority of DOA's PR appropriations. Secretary Bugher wants this authority so he can have more immediate flexibility in reallocating positions. He thinks this approach would be more efficient and responsive. However, under s. 16.515, all agencies have the ability to increase position authority outside of the budget process. Just doesn't seem like a good precedent to set by giving this authority to one agency and not others. DOA should have to follow the process just like everyone else.

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Joint Committee on Finance

Paper #180

Authority to Transfer Positions Within DOA Without Legislative Approval (DOA -- General Statutory Provisions)

[LFB 1999-01 Budget Summary: Page 73, #1]

CURRENT LAW

In general, under current law, program revenue positions may only be created, abolished, or transferred to another funding source if authorized by: (a) the Legislature by law; (b) the Joint Committee on Finance under ss. 13.10 or 16.515; or (c) for positions funded from federal funds, by the Governor without approval of the Legislature.

There are, in addition, two other special exceptions provided. One exception allows the UW Board of Regents to unilaterally change the number of positions authorized for the UW System--but only for positions funded from certain program revenue or federal revenue accounts. A second exception allows the UW Hospital and Clinics Board to unilaterally change the number of positions authorized for the Board funded from program revenues. The UW Board of Regents and the UW Hospitals and Clinics Board are required to report quarterly to the Department of Administration and Joint Committee on Finance on position changes made under these provisions.

GOVERNOR

Authorize DOA to change, without seeking legislative approval, the funding source for any positions funded in whole or in part from program revenue, within any of DOA's program revenue appropriations except for those listed under "Committees and Interstate Bodies," "Attached Divisions, Boards, Councils and Commissions," "Office of Justice Assistance" and "College Tuition Prepayment Program," which are all entities attached to DOA for administrative purposes except for the College Tuition Prepayment Program. Affected positions would include classified as well as unclassified positions and full or part-time positions. This authority would be available during the period from the effective date of the budget to June 30,

2001, or on the date of publication of the 2001-03 budget, whichever is later. During this period, DOA would be required only to report quarterly to the Co-chairs of the Joint Committee on Finance concerning any position changes made during the previous quarter under this authority. The reports would be required to include, for each position, the position type, and the appropriations between which each position was shifted. Although the authority to shift positions in this manner without legislative approval would expire upon enactment of the next biennial budget, all position changes made during the period would remain in effect after the period of authorization expires.

DISCUSSION POINTS

1. DOA has base level program revenue (PR) position authority for a total of 862.86 positions for the program appropriations that would be affected by this proposed flexibility language. In general, DOA views itself as a state services agency that should be run similar to a business in that the other state agencies (or internal divisions within DOA) are to be viewed as customers to whom DOA provides goods and services and from whom DOA collects revenues by billing for the costs of its provided services and goods. However, DOA has additional powers over these customers (other state agencies) that a private business does not, including the ability in many cases to require the agencies to "purchase" the desired goods or services from DOA, the ability to force the agencies to pay the amounts billed by DOA for those goods or services based on the rates it sets to recover its cost. Further, as the Governor's budget and management agency, DOA has derived governing powers over other state agencies that no outside business has. As a consequence, it can be argued that DOA's "business enterprises" that may be generally represented as its programs or activities supported by assessed program revenues and for which DOA seeks position transfer flexibility, impact not just DOA program operations but also can impact other agencies. Therefore, allowing DOA the ability to move positions among these programs or activities could affect the costs assessed these agencies.

2. Among the types of program revenue activities that would be affected by this proposal would be the following: (a) services provided to nonstate governmental units; (b) information technology processing services to nonstate entities; (c) materials and services to state agencies and certain districts; (d) transportation services; (e) capital planning and building construction services; (f) printing, document sales, mail distribution and records services; (g) telecommunications and data processing services; (h) financial services; (i) information technology processing services to state agencies; (j) risk management administration; (k) facilities operation and maintenance, police and protection functions; (l) parking; (m) general program operations: racing; (n) general program operations: Indian gaming; and (o) general program operations: charitable and crane games. Some of these program activities have large budgets and a considerable number of positions currently budgeted while others have relatively small budgets and may have few or no positions currently budgeted to their program appropriations.

3. DOA has advanced the following reasons for needing this proposed language:

- At DOA's agency briefing before the Committee, Secretary Bugher indicated the reason the Governor proposed this provision was to provide the Secretary of DOA with more immediate flexibility to reallocate positions as necessary to conduct the various program revenue activities of the Department. He stated that such immediate position reallocation authority would make DOA more efficient and responsive to its customers.

- The DOA Budget Office has also indicated that it believes that increased flexibility to reallocate base positions would allow DOA to request fewer new positions because PR positions could be shifted to those areas that need additional personnel rather than requesting additional personnel.

- Further, DOA argues that authority to shift program revenue positions without legislative approval would aid the Department in meeting its strategic mission to promote enterprise-wide services, resources and perspectives in a responsive and responsible manner.

- Lastly, DOA argues that it has requested only temporary authority, rather than permanent authority, because it recognizes the Legislature's current authority and interest in the allocation of positions within the Department. It is stated that the sunset of the authority at the end of the next biennium and quarterly reporting requirements were proposed to ensure the Legislature's oversight ability.

4. The following considerations, however, may be advanced in opposition to granting the proposed flexibility authority:

- For any PR appropriation, there already exists the ability for any agency, including DOA, to submit a request for increases in position authority (and expenditure authority as well) under the 14-day passive review process authorized under ss. 16.505 and 16.515 of the statutes. DOA does not have to wait for a budget bill, enactment of separate legislation or a quarterly meeting of the Joint Committee on Finance under s. 13.10 to be able to adjust the number of positions in a given program revenue appropriation. Unless the Committee finds problems with the proposed change in the number of authorized positions for an appropriation, the agency request is approved within 14 working days after its submittal to the Committee.

- Many of the appropriations in DOA which would be covered by this transfer language are already broad program appropriations which cover a number of distinct activities or programs within DOA. For example, there is a PR appropriation entitled "printing, document sales, mail distribution and records services." This appropriation provides funding primarily for the Bureau of Integrated Document Services within DOA's Division of State Agency Services. However, within that Bureau, there are major separate activities for: document sales and distribution, mail services, records management, printing services and publishing services, plus general Bureau and section management staff administrative costs. The Secretary of DOA already has complete flexibility in this case to transfer positions funded by this appropriation between these various activities on either a permanent or temporary basis without any legislative approval.

- Even though DOA generally tries to adhere to having its PR positions both functionally and budgetarily aligned, there are occasions where the perceived functional needs of the agency have resulted in a decision by the DOA Secretary to immediately meet a functional or organizational requirement of the agency without being constrained by an arguably incorrect alignment of what the funding source for a given position is.

- One current situation may be cited as an example. Until recently, the Bureau of Information Presentation Management in DOA's Division of Technology Management had a geographic services unit staffed with 2.0 FTE positions. However, in keeping with several initiatives that are underway or proposed for Office of Land Information Services (OLIS) in the DOA Secretary's office, these positions and the GIS function are now located in OLIS. When the positions were in the Division of Technology Management they were funded from the telecommunications services appropriation which funds many of the positions in that Division. They continue to be funded from that appropriation at the current time even though the remainder of the OLIS staff and activities are funded from other PR sources, primarily revenues from direct assessment of certain agencies and from the state share of county register of deeds recording fees. DOA staff have indicated that a budgetary realignment of funding sources for these positions will be examined at a later date.

- DOA argues in supporting budget material that the proposed requirement for the DOA Secretary to report quarterly to the Committee on any transfer of funding sources for PR positions safeguards legislative oversight. However, what oversight would remain is questionable. Under the proposed language, the remaining oversight that is left the Committee is, according to DOA, the authority to "question the rationale of the Secretary and to require the Secretary to respond to any concerns raised by the Committee." Two counter arguments can be made with regard to this assertion. First, the Committee has no power to initiate on its own outside of a budget process a correction to any action of the Secretary under this reporting requirement. Any change to an action would require separate legislation or a change in a budget bill to reverse an action by the Secretary with which the Committee disagreed. Further, even if separate legislation were to be passed to change such an action, so long as the proposed language was in effect, there would be nothing to prevent a Secretary from again making the desired change in funding source.

- Finally, DOA argues that this proposed language, although included as a statutory rather than non-statutory provision, has a sunset provision (authority ends on June 30, 2001, or the general effective date of the publication of the 2001-03 biennial budget act) and therefore, the Legislature can be assured that it would be able to decide whether to renew this authority in the succeeding biennial legislative session. DOA's budget backup materials, however, indicate that it is not necessarily DOA's intent that this language be solely provided as one-time authority. It is indicated that "a review and evaluation of the use and effectiveness of the flexible approach [that would be] permitted by this language would be made before considering re-creation of the authority for a second biennium." While perhaps unlikely, with a Governor's item veto, the sunset of this language could be eliminated and the provision turned into permanent law by simply deleting the limited effective period language.

ALTERNATIVES

1. Approve the Governor's recommendation to allow the Secretary of DOA to change the funding source for any positions funding from program revenue within certain enumerated appropriations without legislative approval.
2. Maintain current law.

Prepared by: David Worzala

MO# Alt 2.

2 BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

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