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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1824/1
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DOA:.....Kraus - BB0438, State attorneys; transfer to DOJ

FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

PP-1, 2, 9, 17
18

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

don't get

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE EMPLOYMENT

With certain exceptions, this bill transfers all attorney positions in executive branch agencies to DOJ effective on October 1, 2003, or on the first day of the third month beginning after the bill is enacted, whichever is later. Attorney positions in the Office of the State Public Defender, the PSC, the UW System, the State of Wisconsin Investment Board, and the Office of the Governor are exempt, as are all positions identified as hearing examiners, hearing officers, or administrative law judges. In addition, the bill retains the chief counsel position in each of 11 major state agencies.

The bill authorizes DOJ to provide legal services to executive branch agencies, and directs the attorney general, ^{jointly} after consultation with the secretary of administration, to determine the DOJ attorneys assigned to furnish legal services to those agencies. The bill also eliminates the authority of the Elections Board to employ an attorney, and permits other agencies to retain counsel (other than the chief counsel in the 11 major state agencies, and the hearing examiners, hearing officers, and administrative law judges, who are not affected by this bill) only with the consent of the attorney general.

The Elections Board, the Ethics Board, the Department of Regulation and Licensing

DRL

in addition to

, including the building commission,

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. 5.05 (1) (a) of the statutes is amended to read:

2 5.05 (1) (a) ~~Employ an executive director outside the classified service and~~
3 ~~employ legal counsel. The executive director shall serve as the chief election officer~~
4 ~~for this state.~~

5 SECTION 2. 16.004 (15) of the statutes is created to read:

6 16.004 (15) LEGAL SERVICES. Annually, the department shall assess each state
7 agency for the cost of the legal services provided to the state agency by the
8 department of justice based upon the itemized statement under s. 165.25 (4) (c). The
9 department shall credit all moneys received from state agencies under this
10 subsection to the appropriation account under s. 20.505 (1) (kr).

11 SECTION 3. 16.009 (3) (bm) of the statutes is amended to read:

12 16.009 (3) (bm) ~~Employ~~ With the advice and consent of the attorney general,
13 retain an attorney for provision of legal services in accordance with requirements of
14 the long-term care ombudsman program under 42 USC 3027 (a) (12) and 42 USC
15 3058g (g).

16 SECTION 4. 20.395 (4) (aq) of the statutes is amended to read:

17 20.395 (4) (aq) ~~Departmental management and operations, state funds.~~ The
18 amounts in the schedule for departmental planning and administrative activities
19 and the administration and management of departmental programs except those
20 programs under subs. (2) (bq), (cq), and (dq) and (3) (iq), including those activities in
21 s. 85.07 and ~~including not less than \$220,000 in each fiscal year to reimburse the~~

1 department of justice for legal services provided the department under s. 165.25 (4)
2 (a) and including activities related to the transportation employment and mobility
3 program under s. 85.24 that are not funded from the appropriation under sub. (1)
4 (bs), (bv) or (bx), the scholarship and loan repayment incentive grant program under
5 s. 85.107, and the Type 1 motorcycle, moped, and motor bicycle safety program under
6 s. 85.30 and to match federal funds for mass transit planning.

7 SECTION 5. 20.455 (1) (k) of the statutes is repealed.

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

8 SECTION 6. 20.455 (1) (km) of the statutes is amended to read:

9 20.455 (1) (km) *Interagency and intra-agency assistance.* The amounts in the
10 schedule to provide legal services to state agencies. All Except as provided in par.
11 (kr), all moneys received from the department or any other state agency for legal
12 services shall be credited to this appropriation.

13 SECTION 7. 20.455 (1) (kr) of the statutes is created to read:

14 20.455 (1) (kr) *Legal services.* All moneys transferred from the appropriation
15 account under s. 20.505 (1) (kr), to provide legal services to state agencies.

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

16 SECTION 8. 20.505 (1) (kr) of the statutes is created to read:

17 20.505 (1) (kr) *Legal services.* All moneys received from assessments levied
18 against state agencies under s. 16.004 (15) for legal services provided by the
19 department of justice, to be transferred to the appropriation account under s. 20.455
20 (1) (kr).

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

21 SECTION 9. 20.867 (3) (w) of the statutes is amended to read:

1 20.867 (3) (w) *Bonding services*. From the capital improvement fund, a sum
2 sufficient to pay the expenses of contracting and managing public debt and revenue
3 obligations issued pursuant to ch. 18, for reimbursing the legislative audit bureau
4 for providing opinion audits of financial statements and the general fund for bond
5 counsel services under s. 165.25 (4) (b) (ag), and for the purchase of any higher
6 education bonds presented for payment prior to maturity under s. 18.83.

7 SECTION 10. 46.03 (18) (d) of the statutes is amended to read:

8 46.03 (18) (d) The department may compromise or waive all or part of the
9 liability for services received. The sworn statement of ~~the~~ any collection and
10 deportation counsel ~~appointed~~ retained under s. 46.10 (7), the department's legal
11 counsel, or the department secretary, shall be evidence of the services provided and
12 the fees charged for such services.

13 SECTION 11. 46.10 (6) of the statutes is amended to read:

14 46.10 (6) The sworn statement of ~~the~~ any collection and deportation counsel
15 retained under sub. (7), the department's legal counsel, or of the secretary, shall be
16 evidence of the fee and of the care and services received by the patient.

17 SECTION 12. 46.10 (7) of the statutes is amended to read:

18 46.10 (7) The department shall administer and enforce this section. ~~It shall~~
19 ~~appoint~~ With the advice and consent of the attorney general, the department may
20 retain an attorney to be designated "collection and deportation counsel" ~~and.~~ The
21 department may appoint other necessary assistants. The department may delegate
22 to the collection and deportation counsel such other powers and duties as it considers
23 advisable. The collection and deportation counsel or any of the assistants may
24 administer oaths, take affidavits and testimony, examine public records, subpoena
25 witnesses and the production of books, papers, records, and documents material to

1 any matter of proceeding relating to payments for the cost of maintenance. The
2 department shall encourage agreements or settlements with the liable person,
3 having due regard to ability to pay and the present needs of lawful dependents.

4 SECTION 13. 46.27 (7g) (h) of the statutes is amended to read:

5 46.27 (7g) (h) The department, with the advice and consent of the attorney
6 general, ~~may contract with or employ~~ retain an attorney to probate estates to recover
7 under this subsection the costs of care.

8 SECTION 14. 49.22 (7m) of the statutes is amended to read:

9 49.22 (7m) The department may contract with or employ a collection agency
10 or other person to enforce a support obligation of a parent who is delinquent in
11 making support payments and, with the advice and consent of the attorney general,
12 ~~may contract with or employ~~ retain an attorney to appear in an action in state or
13 federal court to enforce such an obligation. To pay for the department's
14 administrative costs of implementing this subsection, the department may charge
15 a fee to counties, retain up to 50% of any incentive payment made to this state under
16 42 USC 658 for a collection under this subsection, and retain 30% of this state's share
17 of a collection made under this subsection on behalf of a recipient of aid to families
18 with dependent children or a recipient of kinship care payments under s. 48.57 (3m)
19 or long-term kinship care payments under s. 48.57 (3n).

20 SECTION 15. 49.496 (3) (f) of the statutes is amended to read:

21 49.496 (3) (f) The department, with the advice and consent of the attorney
22 general, ~~may contract with or employ~~ retain an attorney to probate estates to recover
23 under this subsection the costs of care.

24 SECTION 16. 49.682 (6) of the statutes is amended to read:

1 49.682 (6) The department, with the advice and consent of the attorney
2 general, may ~~contract with or employ~~ retain an attorney to probate estates to recover
3 under this section the costs of care.

4 **SECTION 17.** 73.03 (22) of the statutes is amended to read:

5 73.03 (22) To appear ~~by its counsel~~ and represent the state in all matters before
6 the tax appeals commission. ~~Except as provided in ch. 72 and in s. 76.08 (1), the~~
7 ~~department of justice shall provide legal counsel to appear for the department in all~~
8 ~~courts, but with the~~ With the advice and consent of the attorney general a member
9 of the staff of the department may appear for the department.

10 **SECTION 18.** 76.08 (1) of the statutes is amended to read:

11 76.08 (1) Notice of the assessments determined under s. 76.07 and of
12 adjustments under s. 76.075 shall be given by certified mail to each company the
13 property of which has been assessed, and the notice of assessment shall be mailed
14 on or before the assessment date specified in s. 76.07 (1). Any company aggrieved
15 by the assessment or adjustment of its property thus made may have its assessment
16 or adjustment redetermined by the Dane County circuit court if within 30 days after
17 notice of assessment or adjustment is mailed to the company under s. 76.07 (3) an
18 action for the redetermination is commenced by filing a summons and complaint
19 with that court, and service of authenticated copies of the summons and complaint
20 is made upon the department of revenue. No answer need be filed by the department
21 and the allegations of the complaint in opposition to the assessment or adjustment
22 shall be deemed denied. Upon the filing of the summons and complaint the court
23 shall set the matter for hearing without a jury. If the plaintiff fails to file the
24 summons and complaint within 5 days of service upon the department, the
25 department may file a copy thereof with the court in lieu of the original. The

1 department may be named as the defendant in any such action and shall appear ~~and~~
2 ~~be represented by its counsel~~ in all proceedings connected with the action ~~but, on the~~
3 ~~request of the secretary of revenue, the attorney general may participate with or~~
4 ~~serve in lieu of departmental counsel.~~ In an action for redetermination of an
5 adjustment, only the issues raised in the department's adjustment under s. 76.075
6 may be raised.

7 SECTION 19. 87.12 (6) of the statutes is amended to read:

8 87.12 (6) The board shall have the power to institute and prosecute in the
9 manner provided in ch. 32 of the statutes such eminent domain proceedings as may
10 be necessary in the construction of said improvement. When necessary for that
11 purpose, this right of eminent domain shall be dominant over the rights of eminent
12 domain of public or private corporations or governmental agencies. The board shall
13 also have the power to acquire any lands or interest therein necessary for the
14 aforesaid purpose, by gift, purchase or lease. Any title acquired by condemnation or
15 gift, purchase or lease shall be held in the name of the flood control board in trust for
16 the several towns, villages and cities and contributing, as provided in s. 87.10 (1) (c)
17 and (d), in proportion to the amounts of their several contributions. The board shall
18 have the power to employ engineers, ~~attorneys~~, agents, assistants, clerks, employees
19 and laborers and, with the advice and consent of the attorney general, retain
20 attorneys as it may deem advisable for the proper execution of its duties, and to fix
21 their compensation.

22 SECTION 20. 93.22 (2) of the statutes is amended to read:

23 93.22 (2) The department may, with the approval of the governor, ~~appoint~~
24 special and the advice and consent of the attorney general, retain counsel to
25 prosecute or assist in the prosecution of any case arising under chs. 88 and 93 to 100.

1 The cost of such special counsel shall be charged to the appropriation for the
2 department.

3 SECTION 21. 102.81 (2) of the statutes is amended to read:

4 102.81 (2) The department may retain an insurance carrier or insurance
5 service organization to process, investigate and pay claims under this section and
6 may obtain excess or stop-loss reinsurance with an insurance carrier authorized to
7 do business in this state in an amount that the secretary determines is necessary for
8 the sound operation of the uninsured employers fund. In cases involving disputed
9 claims, the department, with the advice and consent of the attorney general, may
10 retain an attorney to represent the interests of the uninsured employers fund and
11 to make appearances on behalf of the uninsured employers fund in proceedings
12 under ss. 102.16 to 102.29. Section 20.918 and subch. IV of ch. 16 do not apply to an
13 attorney hired retained under this subsection. The charges for the services retained
14 under this subsection shall be paid from the appropriation under s. 20.445 (1) (hp).
15 The cost of any reinsurance obtained under this subsection shall be paid from the
16 appropriation under s. 20.445 (1) (sm).

17 SECTION 22. 108.14 (3m) of the statutes is amended to read:

18 108.14 (3m) In any court action to enforce this chapter the department, the
19 commission and the state may be represented by any licensed attorney who ~~is an~~
20 employee of, with the advice and consent of the attorney general, is retained by the
21 department or the commission and is designated by either of them for this purpose
22 ~~or at the request of either of them by the department of justice~~. If the governor
23 designates special counsel to defend, in behalf of the state, the validity of this chapter
24 or of any provision of Title IX of the social security act, the expenses and

1 compensation of the special counsel and of any experts employed by the department
2 in connection with that proceeding may be charged to the administrative account.

3 SECTION 23. 165.25 (3r) of the statutes is amended to read:

4 165.25 (3r) AVOID CONFLICT OF INTEREST. Require that attorneys in different
5 organizational subunits in the department prosecute violations of chs. 562 to 569 or
6 Indian gaming compacts entered into under s. 14.035 and defend any department,
7 agency, official, employee or agent under subs. (1), (4) (a) (ag) and (6).

8 SECTION 24. 165.25 (4) (a) of the statutes is renumbered 165.25 (4) (ag) and
9 amended to read:

10 165.25 (4) (ag) The department of justice shall may furnish all legal services
11 required by the investment board, the lottery division in the department of revenue,
12 the public service commission, the department of transportation, the department of
13 natural resources, the department of tourism and the department of employee trust
14 funds to state agencies, together with any other services, including stenographic and
15 investigational, as are necessarily connected with the legal work. Except as provided
16 in s. 165.065, the attorney general ~~after consultation with~~ ^{and} the secretary of
17 administration, ^{jointly} shall determine the attorneys employed by the department of justice
18 who are assigned to furnish legal services to state agencies.

19 SECTION 25. 165.25 (4) (ad) of the statutes is created to read:

20 165.25 (4) (ad) In this subsection, "state agency" means an office, commission,
21 department, independent agency, or board in the executive branch of state
22 government, ^{and includes the building commission}

23 SECTION 26. 165.25 (4) (am) of the statutes is repealed.

24 SECTION 27. 165.25 (4) (ar) of the statutes is repealed.

25 SECTION 28. 165.25 (4) (b) of the statutes is repealed.

1 SECTION 29. 165.25 (4) (bn) of the statutes is repealed.

2 SECTION 30. 165.25 (4) (c) of the statutes is amended to read:

3 165.25 (4) (c) The department shall, at the end of each fiscal year, ~~except for~~
4 ~~programs financed out of the general fund and except for services required to be~~
5 ~~provided by statute other than this subsection, render~~ submit to the respective
6 ~~agencies enumerated in this subsection~~ department of administration an itemized
7 statement of the total cost of the legal services, including stenographic and
8 investigational, that are necessarily connected with the legal work, and other
9 services, including travel expenses and legal expenses enumerated in s. 20.455 (1)
10 (d), provided to a state agency in that fiscal year.

11 SECTION 31. 165.25 (4) (d) of the statutes is repealed.

12 SECTION 32. 186.235 (11) (dg) of the statutes is amended to read:

13 186.235 (11) (dg) *Special deputies.* The office of credit unions may appoint one
14 or more special deputies as agent to assist in the duty of liquidation and distribution
15 of the assets of one or more credit unions whose business and property the office of
16 credit unions holds. A certificate of appointment shall be filed in the office of credit
17 unions and a certified copy in the office of the clerk of the circuit court for the county
18 in which the credit union is located. The office of credit unions may ~~employ~~ retain
19 counsel, with the advice and consent of the attorney general, and may procure expert
20 assistance and advice as necessary in the liquidation and distribution of the assets
21 of the credit union, and may retain any officers or employees of the credit union that
22 the office of credit unions considers to be necessary. The special deputies and
23 assistants shall furnish security for the faithful discharge of their duties in an
24 amount that the office of credit unions considers to be necessary. The special
25 deputies may execute, acknowledge and deliver any deeds, assignments, releases or

1 other instruments necessary to effect any sale and transfer or encumbrance of real
2 estate or personal property and may borrow money for use in the liquidation after
3 the liquidation has been approved by the office of credit unions and an order obtained
4 from the circuit court of the county in which the credit union is located.

5 SECTION 33. 214.72 (1) (b) of the statutes is amended to read:

6 214.72 (1) (b) "Financial regulator" means the department secretary and
7 deputy secretary, and an administrator, a supervisor of data processing, ~~legal counsel~~
8 and a financial institution examiner employed by the department and the
9 department's legal counsel and includes any member of a financial regulator's
10 immediate family, as defined in s. 19.42 (7).

11 SECTION 34. 215.32 (3) of the statutes is amended to read:

12 215.32 (3) EMPLOYMENT RETENTION OF COUNSEL; RETENTION OF OFFICERS AND
13 EMPLOYEES OF ASSOCIATION. The division may employ retain necessary counsel, with
14 the advice and consent of the attorney general, and may employ experts in a
15 liquidation under this section and may retain any officer or employee of the
16 association.

17 SECTION 35. 220.08 (4) of the statutes is amended to read:

18 220.08 (4) The division may appoint one or more special deputies, as agent or
19 agents, to assist the division in the duty of reorganization, consolidation, liquidation
20 and distribution, the certificate of appointment to be filed with the division and a
21 certified copy in the office of the clerk of the circuit court for the county in which such
22 bank or banking corporation is located. Such special deputies may execute,
23 acknowledge and deliver any and all deeds, assignments, releases or other
24 instruments necessary and proper to effect any sale and transfer or encumbrance of
25 real estate or personal property after the same has been approved by the division,

1 and an order obtained from the circuit court of the county in which the bank
2 concerned is located. The division may from time to time authorize a special deputy
3 to perform such duties connected with such reorganization, consolidation,
4 liquidation and distribution as the division deems proper. The division may ~~employ~~
5 retain such counsel, with the advice and consent of the attorney general, and may
6 procure such expert assistance and advice as may be necessary in the reorganization,
7 consolidation, liquidation and distribution of the assets of such banks or banking
8 corporations. The division may retain such of the officers or employees of such banks
9 or banking corporations as necessary.

10 SECTION 36. 287.91 (4) of the statutes is repealed.

11 SECTION 37. 299.95 of the statutes is amended to read:

12 **299.95 Enforcement; duty of department of justice; expenses.** The
13 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
14 ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
15 approvals, permits, and water quality certifications of the department, except those
16 promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except as
17 provided in s. 285.86. The circuit court for Dane county or for any other county where
18 a violation occurred in whole or in part has jurisdiction to enforce chs. 281 to 285 and
19 289 to 295 or this chapter or the rule, special order, license, plan approval, permit,
20 or certification by injunctive and other relief appropriate for enforcement. For
21 purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or
22 the rule, special order, license, plan approval, permit or certification prohibits in
23 whole or in part any pollution, a violation is considered a public nuisance. The
24 department of natural resources may enter into agreements with the department of
25 justice to assist with the administration of chs. 281 to 285 and 289 to 295 and this

1 chapter. ~~Any funds paid to the department of justice under these agreements shall~~
2 ~~be credited to the appropriation account under s. 20.455 (1) (k).~~

3 SECTION 38. 301.03 (18) (d) of the statutes is amended to read:

4 301.03 (18) (d) Compromise or waive all or part of the liability for services
5 received as the department considers necessary to efficiently administer this
6 subsection, subject to such conditions as the department considers appropriate. The
7 sworn statement of the any collection and deportation counsel appointed retained
8 under s. 301.12 (7), the department's legal counsel, or the secretary, shall be evidence
9 of the services provided and the fees charged for those services.

10 SECTION 39. 301.12 (6) of the statutes is amended to read:

11 301.12 (6) The sworn statement of the any collection and deportation counsel
12 retained under sub. (7), of the department's legal counsel, or of the secretary, shall
13 be evidence of the fee and of the care and services received by the resident.

14 SECTION 40. 301.12 (7) of the statutes is amended to read:

15 301.12 (7) The department shall administer and enforce this section. ~~The With~~
16 the advice and consent of the attorney general, the department shall appoint may
17 retain an attorney to be designated "collection and deportation counsel" ~~and.~~ The
18 department may appoint other necessary assistants. The department may delegate
19 to the collection and deportation counsel such other powers and duties as the
20 department considers advisable. The collection and deportation counsel or any of the
21 assistants may administer oaths, take affidavits and testimony, examine public
22 records, subpoena witnesses and the production of books, papers, records, and
23 documents material to any matter of proceeding relating to payments for the cost of
24 maintenance. The department shall encourage agreements or settlements with the

1 liable person, having due regard to ability to pay and the present needs of lawful
2 dependents.

3 SECTION 41. 564.02 (3) (c) of the statutes is repealed.

4 SECTION 42. 655.27 (5) (a) 3. of the statutes is amended to read:

5 655.27 (5) (a) 3. If, after reviewing the facts upon which the claim or action is
6 based, it appears reasonably probable that damages paid will exceed the limits in s.
7 655.23 (4), the fund may appear and actively defend itself when named as a party in
8 an action against a health care provider, or an employee of a health care provider,
9 that has coverage under the fund. In such action, the fund, with the advice and
10 consent of the attorney general, may retain counsel and pay out of the fund attorney
11 fees and expenses including court costs incurred in defending the fund. The attorney
12 or law firm retained to defend the fund shall not be retained or employed by the board
13 of governors to perform legal services for the board of governors other than those
14 directly connected with the fund. Any judgment affecting the fund may be appealed
15 as provided by law. The fund may not be required to file any undertaking in any
16 judicial action, proceeding or appeal.

17 SECTION 43. 767.29 (1) (dm) 1m. of the statutes is amended to read:

18 767.29 (1) (dm) 1m. The department or its designee may collect any unpaid fees
19 under s. 814.61 (12) (b), 1997 stats., that are shown on the department's automated
20 payment and collection system on December 31, 1998, and shall deposit all fees
21 collected under this subdivision in the appropriation account under s. 20.445 (3) (ja).
22 The department or its designee may collect unpaid fees under this subdivision
23 through income withholding under s. 767.265 (2m). If the department or its designee
24 determines that income withholding is inapplicable, ineffective, or insufficient for
25 the collection of any unpaid fees under this subdivision, the department or its

1 designee may move the court for a remedial sanction under ch. 785. The department
2 or its designee may contract with or employ a collection agency or other person for
3 the collection of any unpaid fees under this subdivision and, notwithstanding s.
4 20.930 and with the advice and consent of the attorney general, ~~may contract with~~
5 ~~or employ~~ retain an attorney to appear in any action in state or federal court to
6 enforce the payment obligation. The department or its designee may not deduct the
7 amount of unpaid fees from any maintenance, child or family support, or arrearage
8 payment.

9 SECTION 44. 863.39 (3) (a) of the statutes is amended to read:

10 863.39 (3) (a) Within 10 years after the date of publication under s. 177.18, any
11 person claiming any amount deposited under sub. (1) may file in the probate court
12 in which the estate was settled a petition alleging the basis of his or her claim. The
13 court shall order a hearing upon the petition, and 20 days' notice of the hearing and
14 a copy of the petition shall be given by the claimant to the department of revenue and
15 to the attorney general, ~~who may appear for the state at the hearing~~. If the claim is
16 established it shall be allowed without interest, but including any increment which
17 may have occurred on securities held, and the court shall so certify to the department
18 of administration, which shall audit the claim. The state treasurer shall pay the
19 claim out of the appropriation under s. 20.585 (1) (j). Before issuing the order
20 distributing the estate, the court shall issue an order determining the death tax due,
21 if any. If real property has been adjudged to escheat to the state under s. 852.01 (3)
22 the probate court which made the adjudication may adjudge at any time before title
23 has been transferred from the state that the title shall be transferred to the proper
24 owners under this subsection.

25 SECTION 45. 880.295 (1) (a) of the statutes is amended to read:

1 880.295 (1) (a) When a patient in any state or county hospital or mental
2 hospital or in any state institution for the mentally deficient, or a resident of the
3 county home or infirmary, appears in need of a guardian, and does not have a
4 guardian, the department of health and family services ~~by its collection and~~
5 ~~deportation counsel~~, or the county corporation counsel, may apply to the circuit court
6 of the county in which the patient resided at the time of commitment or to the circuit
7 court of the county in which the facility in which the patient resides is located for the
8 appointment of a guardian of the person and estate, or either, or for the appointment
9 of a conservator of the estate, and the court, upon the application, may appoint the
10 guardian or conservator in the manner provided for the appointment of guardians
11 under ss. 880.08 (1) and 880.33 or for the appointment of conservators under s.
12 880.31.

13 **SECTION 46.** 880.295 (2) of the statutes is amended to read:

14 880.295 (2) Any guardian heretofore or hereafter appointed for any such
15 inmate, who, having property of his or her ward in his or her possession or control
16 exceeding \$200 in value, fails to pay within 3 months after receipt of any bill thereof
17 for the ward's care and support from the department of health and family services
18 or the agency established pursuant to s. 46.21, shall, upon application of the
19 ~~collection and deportation counsel of said~~ department or in counties having a
20 population of 500,000 or more, the district attorney, forthwith be removed.

21 **SECTION 9160. Nonstatutory provisions; other.**

22 (1) **TRANSFER OF ATTORNEY POSITIONS.**

23 (a) In this subsection, "state agency" means an office, commission, department,
24 independent agency, or board in the executive branch of state government, except the
25 following:

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1. The public service commission.

2. The public defender board.

3. The Board of Regents of the University of Wisconsin System.

4. The University of Wisconsin Hospitals and Clinics Board.

5. The state of Wisconsin investment board.

6. The office of the governor.

(b) Except as provided in paragraph (c), on the effective date of this paragraph all attorney positions in state agencies are transferred to the department of justice.

(c) 1. Paragraph (b) does not apply to any position identified by the secretary of administration as a hearing officer, hearing examiner, or administrative law judge.

2. One attorney position in each of the following state agencies, identified by the secretary of administration as the chief counsel position, ^{is} shall not be transferred under paragraph (b):

a. Department of administration.

b. Department of agriculture, trade and consumer protection.

c. Department of commerce.

d. Department of corrections.

e. Department of financial institutions.

f. Department of health and family services.

g. Department of natural resources.

h. Department of public instruction.

i. Department of workforce development.

j. Department of transportation.

k. Office of the commissioner of insurance.

7. The elections board.

8. The ethics board.

9. The department of regulation and licensing.

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

9 **SECTION 9460. Effective dates; other.**

10 (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 5.05 (1) (a),
11 16.004 (15), 16.009 (3) (bm), 20.395 (4) (aq), 20.455 (1) (k), (km), and (kr), 20.505 (1)
12 (kr), 20.867 (3) (w), 46.03 (18) (d), 46.10 (6) and (7), 46.27 (7g) (h), 49.22 (7m), 49.496
13 (3) (f), 49.682 (6), 73.03 (22), 76.08 (1), 87.12 (6), 93.22 (2), 102.81 (2), 108.14 (3m),
14 165.25 (3r) and (4) (a), (ad), (am), (ar), (b), (bn), (c), and (d), 186.235 (11) (dg), 214.72
15 (1) (b), 215.32 (3), 222.08 (4), 287.91 (4), 299.95, 301.03 (18) (d), 301.12 (6) and (7),
16 564.02 (3) (c), 655.27 (5) (a) 3., 767.29 (1) (dm) 1m., 863.39 (3) (a), and 880.295 (1) (a)
17 and (2) of the statutes and SECTION 9160 (1) of this act take effect on October 1, 2003,
18 or on the first day of the 3rd month beginning after publication, whichever is later.

19 (END)

LRB-1824 Dan

pg: cmh

DN

date

Jenny -

At your request,
this redraft makes the following changes:

1. It ^{excludes} explicitly excludes the Electors Board, ~~and~~
the Ethics Board, and the Department of Regulation
and Licensing.

2. It ~~explicitly~~ ^{includes} includes the Building
Commission in the definition of "state agency" in

s. 165.25 (4) (a), rather than resurrecting

s. 65.25 (4) (b).

PG

~~The redraft does not explicitly exempt the
Department of Regulation and Licensing or the
Employment Relations Commission because your
spreadsheet ^{indicates} shows agencies are hearing examiners. If that's not
the case, let me ^{also} know and I'll change the draft.~~

~~The redraft does not change the treatment of
s. 20.395 (4) (a), under the draft, DOT is
treated like all other agencies: DSA assesses~~

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

LRB-1824/2dn
PG:cmh:rs

February 2, 2003

Jenny

At your request, this redraft makes the following changes:

1. It explicitly excludes the Elections Board, the Ethics Board, and the Department of Regulation and Licensing.
2. It includes the Building Commission in the definition of "state agency" in s. 165.25 (4) (ad), rather than resurrecting s. 165.25 (4) (b).

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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1824/2

PG/RJM/RPN:kmg&cmh:rs

DN

P-17

DOA:.....Kraus - BB0438, State attorneys; transfer to DOJ

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1

AN ACT ^{Don't CAT GEN. CAT} relating to: the budget.

state employees of the office of a district attorney and all

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE EMPLOYMENT

With certain exceptions, this bill transfers all attorney positions in executive branch agencies to DOJ effective on October 1, 2003, or on the first day of the third month beginning after the bill is enacted, whichever is later. Attorney positions in the Office of the State Public Defender, the PSC, the UW System, the State of Wisconsin Investment Board, the Elections Board, the Ethics Board, DRL, and the Office of the Governor are exempt, as are all positions identified as hearing examiners, hearing officers, or administrative law judges. In addition, the bill retains the chief counsel position in each of 11 major state agencies.

The bill authorizes DOJ to provide legal services to executive branch agencies, including the building commission, and directs the attorney general and the secretary of administration jointly to determine the DOJ attorneys assigned to furnish legal services to those agencies. The bill also permits agencies to retain counsel (in addition to the chief counsel in the 11 major state agencies, and the hearing examiners, hearing officers, and administrative law judges, who are not affected by this bill) only with the consent of the attorney general.

the office within DOA that provides management assistance to district attorney offices;

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. 16.004 (15) of the statutes is created to read:

2 16.004 (15) LEGAL SERVICES. Annually, the department shall assess each state
3 agency for the cost of the legal services provided to the state agency by the
4 department of justice based upon the itemized statement under s. 165.25 (4) (c). The
5 department shall credit all moneys received from state agencies under this
6 subsection to the appropriation account under s. 20.505 (1) (kr).

7 SECTION 2. 16.009 (3) (bm) of the statutes is amended to read:

8 16.009 (3) (bm) Employ With the advice and consent of the attorney general,
9 retain an attorney for provision of legal services in accordance with requirements of
10 the long-term care ombudsman program under 42 USC 3027 (a) (12) and 42 USC
11 3058g (g).

12 SECTION 3. 20.395 (4) (aq) of the statutes is amended to read:

13 20.395 (4) (aq) *Departmental management and operations, state funds.* The
14 amounts in the schedule for departmental planning and administrative activities
15 and the administration and management of departmental programs except those
16 programs under subs. (2) (bq), (cq), and (dq) and (3) (iq), including those activities in
17 s. 85.07 and ~~including not less than \$220,000 in each fiscal year to reimburse the~~
18 ~~department of justice for legal services provided the department under s. 165.25 (4)~~
19 ~~(a)~~ and including activities related to the transportation employment and mobility
20 program under s. 85.24 that are not funded from the appropriation under sub. (1)
21 (bs), (bv) or (bx), the scholarship and loan repayment incentive grant program under

1 s. 85.107, and the Type 1 motorcycle, moped, and motor bicycle safety program under
2 s. 85.30 and to match federal funds for mass transit planning.

3 SECTION 4. 20.455 (1) (k) of the statutes is repealed.

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

4 SECTION 5. 20.455 (1) (km) of the statutes is amended to read:

5 20.455 (1) (km) *Interagency and intra-agency assistance*. The amounts in the
6 schedule to provide legal services to state agencies. All Except as provided in par.
7 (kr), all moneys received from the department or any other state agency for legal
8 services shall be credited to this appropriation.

9 SECTION 6. 20.455 (1) (kr) of the statutes is created to read:

10 20.455 (1) (kr) *Legal services*. All moneys transferred from the appropriation
11 account under s. 20.505 (1) (kr), to provide legal services to state agencies.

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

12 SECTION 7. 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) for legal services provided by the
15 department of justice, to be transferred to the appropriation account under s. 20.455
16 (1) (kr).

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

17 SECTION 8. 20.867 (3) (w) of the statutes is amended to read:

18 20.867 (3) (w) *Bonding services*. From the capital improvement fund, a sum
19 sufficient to pay the expenses of contracting and managing public debt and revenue
20 obligations issued pursuant to ch. 18, for reimbursing the legislative audit bureau
21 for providing opinion audits of financial statements and the general fund for bond

1 counsel services under s. 165.25 (4) ~~(b)~~ (ag), and for the purchase of any higher
2 education bonds presented for payment prior to maturity under s. 18.83.

3 SECTION 9. 46.03 (18) (d) of the statutes is amended to read:

4 46.03 (18) (d) The department may compromise or waive all or part of the
5 liability for services received. The sworn statement of ~~the~~ any collection and
6 deportation counsel ~~appointed~~ retained under s. 46.10 (7), the department's legal
7 counsel, or the department secretary, shall be evidence of the services provided and
8 the fees charged for such services.

9 SECTION 10. 46.10 (6) of the statutes is amended to read:

10 46.10 (6) The sworn statement of ~~the~~ any collection and deportation counsel
11 retained under sub. (7), the department's legal counsel, or of the secretary, shall be
12 evidence of the fee and of the care and services received by the patient.

13 SECTION 11. 46.10 (7) of the statutes is amended to read:

14 46.10 (7) The department shall administer and enforce this section. ~~It shall~~
15 ~~appoint~~ With the advice and consent of the attorney general, the department may
16 retain an attorney to be designated "collection and deportation counsel" ~~and.~~ The
17 department may appoint other necessary assistants. The department may delegate
18 to the collection and deportation counsel such other powers and duties as it considers
19 advisable. The collection and deportation counsel or any of the assistants may
20 administer oaths, take affidavits and testimony, examine public records, subpoena
21 witnesses and the production of books, papers, records, and documents material to
22 any matter of proceeding relating to payments for the cost of maintenance. The
23 department shall encourage agreements or settlements with the liable person,
24 having due regard to ability to pay and the present needs of lawful dependents.

25 SECTION 12. 46.27 (7g) (h) of the statutes is amended to read:

1 46.27 (7g) (h) The department, with the advice and consent of the attorney
2 general, may ~~contract with or employ~~ retain an attorney to probate estates to recover
3 under this subsection the costs of care.

4 SECTION 13. 49.22 (7m) of the statutes is amended to read:

5 49.22 (7m) The department may contract with or employ a collection agency
6 or other person to enforce a support obligation of a parent who is delinquent in
7 making support payments and, with the advice and consent of the attorney general,
8 may ~~contract with or employ~~ retain an attorney to appear in an action in state or
9 federal court to enforce such an obligation. To pay for the department's
10 administrative costs of implementing this subsection, the department may charge
11 a fee to counties, retain up to 50% of any incentive payment made to this state under
12 42 USC 658 for a collection under this subsection, and retain 30% of this state's share
13 of a collection made under this subsection on behalf of a recipient of aid to families
14 with dependent children or a recipient of kinship care payments under s. 48.57 (3m)
15 or long-term kinship care payments under s. 48.57 (3n).

16 SECTION 14. 49.496 (3) (f) of the statutes is amended to read:

17 49.496 (3) (f) The department, with the advice and consent of the attorney
18 general, may ~~contract with or employ~~ retain an attorney to probate estates to recover
19 under this subsection the costs of care.

20 SECTION 15. 49.682 (6) of the statutes is amended to read:

21 49.682 (6) The department, with the advice and consent of the attorney
22 general, may ~~contract with or employ~~ retain an attorney to probate estates to recover
23 under this section the costs of care.

24 SECTION 16. 73.03 (22) of the statutes is amended to read:

1 73.03 (22) To appear ~~by its counsel~~ and represent the state in all matters before
2 the tax appeals commission. ~~Except as provided in ch. 72 and in s. 76.08 (1), the~~
3 ~~department of justice shall provide legal counsel to appear for the department in all~~
4 ~~courts, but with the~~ With the advice and consent of the attorney general a member
5 of the staff of the department may appear for the department.

6 SECTION 17. 76.08 (1) of the statutes is amended to read:

7 76.08 (1) Notice of the assessments determined under s. 76.07 and of
8 adjustments under s. 76.075 shall be given by certified mail to each company the
9 property of which has been assessed, and the notice of assessment shall be mailed
10 on or before the assessment date specified in s. 76.07 (1). Any company aggrieved
11 by the assessment or adjustment of its property thus made may have its assessment
12 or adjustment redetermined by the Dane County circuit court if within 30 days after
13 notice of assessment or adjustment is mailed to the company under s. 76.07 (3) an
14 action for the redetermination is commenced by filing a summons and complaint
15 with that court, and service of authenticated copies of the summons and complaint
16 is made upon the department of revenue. No answer need be filed by the department
17 and the allegations of the complaint in opposition to the assessment or adjustment
18 shall be deemed denied. Upon the filing of the summons and complaint the court
19 shall set the matter for hearing without a jury. If the plaintiff fails to file the
20 summons and complaint within 5 days of service upon the department, the
21 department may file a copy thereof with the court in lieu of the original. The
22 department may be named as the defendant in any such action and shall appear ~~and~~
23 ~~be represented by its counsel~~ in all proceedings connected with the action ~~but, on the~~
24 ~~request of the secretary of revenue, the attorney general may participate with or~~
25 ~~serve in lieu of departmental counsel.~~ In an action for redetermination of an

1 adjustment, only the issues raised in the department's adjustment under s. 76.075
2 may be raised.

3 SECTION 18. 87.12 (6) of the statutes is amended to read:

4 87.12 (6) The board shall have the power to institute and prosecute in the
5 manner provided in ch. 32 of the statutes such eminent domain proceedings as may
6 be necessary in the construction of said improvement. When necessary for that
7 purpose, this right of eminent domain shall be dominant over the rights of eminent
8 domain of public or private corporations or governmental agencies. The board shall
9 also have the power to acquire any lands or interest therein necessary for the
10 aforesaid purpose, by gift, purchase or lease. Any title acquired by condemnation or
11 gift, purchase or lease shall be held in the name of the flood control board in trust for
12 the several towns, villages and cities and contributing, as provided in s. 87.10 (1) (c)
13 and (d), in proportion to the amounts of their several contributions. The board shall
14 have the power to employ engineers, ~~attorneys~~, agents, assistants, clerks, employees
15 and laborers and, with the advice and consent of the attorney general, retain
16 attorneys as it may deem advisable for the proper execution of its duties, and to fix
17 their compensation.

18 SECTION 19. 93.22 (2) of the statutes is amended to read:

19 93.22 (2) The department may, with the approval of the governor, ~~appoint~~
20 special and the advice and consent of the attorney general, retain counsel to
21 prosecute or assist in the prosecution of any case arising under chs. 88 and 93 to 100.
22 The cost of such special counsel shall be charged to the appropriation for the
23 department.

24 SECTION 20. 102.81 (2) of the statutes is amended to read:

1 102.81 (2) The department may retain an insurance carrier or insurance
2 service organization to process, investigate and pay claims under this section and
3 may obtain excess or stop-loss reinsurance with an insurance carrier authorized to
4 do business in this state in an amount that the secretary determines is necessary for
5 the sound operation of the uninsured employers fund. In cases involving disputed
6 claims, the department, with the advice and consent of the attorney general, may
7 retain an attorney to represent the interests of the uninsured employers fund and
8 to make appearances on behalf of the uninsured employers fund in proceedings
9 under ss. 102.16 to 102.29. Section 20.918 and subch. IV of ch. 16 do not apply to an
10 attorney ~~hired~~ retained under this subsection. The charges for the services retained
11 under this subsection shall be paid from the appropriation under s. 20.445 (1) (hp).
12 The cost of any reinsurance obtained under this subsection shall be paid from the
13 appropriation under s. 20.445 (1) (sm).

14 **SECTION 21.** 108.14 (3m) of the statutes is amended to read:

15 108.14 (3m) In any court action to enforce this chapter the department, the
16 commission and the state may be represented by any licensed attorney who ~~is an~~
17 employee of, with the advice and consent of the attorney general, is retained by the
18 department or the commission and is designated by either of them for this purpose
19 ~~or at the request of either of them by the department of justice~~. If the governor
20 designates special counsel to defend, in behalf of the state, the validity of this chapter
21 or of any provision of Title IX of the social security act, the expenses and
22 compensation of the special counsel and of any experts employed by the department
23 in connection with that proceeding may be charged to the administrative account.

24 **SECTION 22.** 165.25 (3r) of the statutes is amended to read:

1 165.25 (3r) AVOID CONFLICT OF INTEREST. Require that attorneys in different
2 organizational subunits in the department prosecute violations of chs. 562 to 569 or
3 Indian gaming compacts entered into under s. 14.035 and defend any department,
4 agency, official, employee or agent under subs. (1), (4) ~~(a)~~ (ag) and (6).

5 SECTION 23. 165.25 (4) (a) of the statutes is renumbered 165.25 (4) (ag) and
6 amended to read:

7 165.25 (4) (ag) The department of justice shall may furnish all legal services
8 required by the investment board, the lottery division in the department of revenue,
9 the public service commission, the department of transportation, the department of
10 natural resources, the department of tourism and the department of employee trust
11 funds to state agencies, together with any other services, including stenographic and
12 investigational, as are necessarily connected with the legal work. Except as provided
13 in s. 165.065, the attorney general and the secretary of administration jointly shall
14 determine the attorneys employed by the department of justice who are assigned to
15 furnish legal services to state agencies.

16 SECTION 24. 165.25 (4) (ad) of the statutes is created to read:

17 165.25 (4) (ad) In this subsection, "state agency" means an office, commission,
18 department, independent agency, or board in the executive branch of state
19 government, and includes the building commission.

20 SECTION 25. 165.25 (4) (am) of the statutes is repealed.

21 SECTION 26. 165.25 (4) (ar) of the statutes is repealed.

22 SECTION 27. 165.25 (4) (b) of the statutes is repealed.

23 SECTION 28. 165.25 (4) (bn) of the statutes is repealed.

24 SECTION 29. 165.25 (4) (c) of the statutes is amended to read:

1 165.25 (4) (c) The department shall, at the end of each fiscal year, ~~except for~~
2 ~~programs financed out of the general fund and except for services required to be~~
3 ~~provided by statute other than this subsection, render~~ submit to the respective
4 ~~agencies enumerated in this subsection~~ department of administration an itemized
5 statement of the total cost of the legal services, including stenographic and
6 investigational, that are necessarily connected with the legal work, and other
7 services, including travel expenses and legal expenses enumerated in s. 20.455 (1)
8 (d), provided to a state agency in that fiscal year.

9 **SECTION 30.** 165.25 (4) (d) of the statutes is repealed.

10 **SECTION 31.** 186.235 (11) (dg) of the statutes is amended to read:

11 186.235 (11) (dg) *Special deputies.* The office of credit unions may appoint one
12 or more special deputies as agent to assist in the duty of liquidation and distribution
13 of the assets of one or more credit unions whose business and property the office of
14 credit unions holds. A certificate of appointment shall be filed in the office of credit
15 unions and a certified copy in the office of the clerk of the circuit court for the county
16 in which the credit union is located. The office of credit unions may ~~employ~~ retain
17 counsel, with the advice and consent of the attorney general, and may procure expert
18 assistance and advice as necessary in the liquidation and distribution of the assets
19 of the credit union, and may retain any officers or employees of the credit union that
20 the office of credit unions considers to be necessary. The special deputies and
21 assistants shall furnish security for the faithful discharge of their duties in an
22 amount that the office of credit unions considers to be necessary. The special
23 deputies may execute, acknowledge and deliver any deeds, assignments, releases or
24 other instruments necessary to effect any sale and transfer or encumbrance of real
25 estate or personal property and may borrow money for use in the liquidation after

1 the liquidation has been approved by the office of credit unions and an order obtained
2 from the circuit court of the county in which the credit union is located.

3 SECTION 32. 214.72 (1) (b) of the statutes is amended to read:

4 214.72 (1) (b) "Financial regulator" means the department secretary and
5 deputy secretary, and an administrator, a supervisor of data processing, legal counsel
6 and a financial institution examiner employed by the department and the
7 department's legal counsel and includes any member of a financial regulator's
8 immediate family, as defined in s. 19.42 (7).

9 SECTION 33. 215.32 (3) of the statutes is amended to read:

10 215.32 (3) EMPLOYMENT RETENTION OF COUNSEL; RETENTION OF OFFICERS AND
11 EMPLOYEES OF ASSOCIATION. The division may employ retain necessary counsel, with
12 the advice and consent of the attorney general, and may employ experts in a
13 liquidation under this section and may retain any officer or employee of the
14 association.

15 SECTION 34. 220.08 (4) of the statutes is amended to read:

16 220.08 (4) The division may appoint one or more special deputies, as agent or
17 agents, to assist the division in the duty of reorganization, consolidation, liquidation
18 and distribution, the certificate of appointment to be filed with the division and a
19 certified copy in the office of the clerk of the circuit court for the county in which such
20 bank or banking corporation is located. Such special deputies may execute,
21 acknowledge and deliver any and all deeds, assignments, releases or other
22 instruments necessary and proper to effect any sale and transfer or encumbrance of
23 real estate or personal property after the same has been approved by the division,
24 and an order obtained from the circuit court of the county in which the bank
25 concerned is located. The division may from time to time authorize a special deputy

1 to perform such duties connected with such reorganization, consolidation,
2 liquidation and distribution as the division deems proper. The division may employ
3 retain such counsel, with the advice and consent of the attorney general, and may
4 procure such expert assistance and advice as may be necessary in the reorganization,
5 consolidation, liquidation and distribution of the assets of such banks or banking
6 corporations. The division may retain such of the officers or employees of such banks
7 or banking corporations as necessary.

8 SECTION 35. 287.91 (4) of the statutes is repealed.

9 SECTION 36. 299.95 of the statutes is amended to read:

10 **299.95 Enforcement; duty of department of justice; expenses.** The
11 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
12 ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
13 approvals, permits, and water quality certifications of the department, except those
14 promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except as
15 provided in s. 285.86. The circuit court for Dane county or for any other county where
16 a violation occurred in whole or in part has jurisdiction to enforce chs. 281 to 285 and
17 289 to 295 or this chapter or the rule, special order, license, plan approval, permit,
18 or certification by injunctive and other relief appropriate for enforcement. For
19 purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or
20 the rule, special order, license, plan approval, permit or certification prohibits in
21 whole or in part any pollution, a violation is considered a public nuisance. The
22 department of natural resources may enter into agreements with the department of
23 justice to assist with the administration of chs. 281 to 285 and 289 to 295 and this
24 chapter. ~~Any funds paid to the department of justice under these agreements shall~~
25 ~~be credited to the appropriation account under s. 20.455 (1) (k).~~

1 SECTION 37. 301.03 (18) (d) of the statutes is amended to read:

2 301.03 (18) (d) Compromise or waive all or part of the liability for services
3 received as the department considers necessary to efficiently administer this
4 subsection, subject to such conditions as the department considers appropriate. The
5 sworn statement of the any collection and deportation counsel appointed retained
6 under s. 301.12 (7), the department's legal counsel, or the secretary, shall be evidence
7 of the services provided and the fees charged for those services.

8 SECTION 38. 301.12 (6) of the statutes is amended to read:

9 301.12 (6) The sworn statement of the any collection and deportation counsel
10 retained under sub. (7), of the department's legal counsel, or of the secretary, shall
11 be evidence of the fee and of the care and services received by the resident.

12 SECTION 39. 301.12 (7) of the statutes is amended to read:

13 301.12 (7) The department shall administer and enforce this section. ~~The~~ With
14 the advice and consent of the attorney general, the department shall appoint may
15 retain an attorney to be designated "collection and deportation counsel" ~~and.~~ The
16 department may appoint other necessary assistants. The department may delegate
17 to the collection and deportation counsel such other powers and duties as the
18 department considers advisable. The collection and deportation counsel or any of the
19 assistants may administer oaths, take affidavits and testimony, examine public
20 records, subpoena witnesses and the production of books, papers, records, and
21 documents material to any matter of proceeding relating to payments for the cost of
22 maintenance. The department shall encourage agreements or settlements with the
23 liable person, having due regard to ability to pay and the present needs of lawful
24 dependents.

25 SECTION 40. 564.02 (3) (c) of the statutes is repealed.

1 SECTION 41. 655.27 (5) (a) 3. of the statutes is amended to read:

2 655.27 (5) (a) 3. If, after reviewing the facts upon which the claim or action is
3 based, it appears reasonably probable that damages paid will exceed the limits in s.
4 655.23 (4), the fund may appear and actively defend itself when named as a party in
5 an action against a health care provider, or an employee of a health care provider,
6 that has coverage under the fund. In such action, the fund, with the advice and
7 consent of the attorney general, may retain counsel and pay out of the fund attorney
8 fees and expenses including court costs incurred in defending the fund. The attorney
9 or law firm retained to defend the fund shall not be retained or employed by the board
10 of governors to perform legal services for the board of governors other than those
11 directly connected with the fund. Any judgment affecting the fund may be appealed
12 as provided by law. The fund may not be required to file any undertaking in any
13 judicial action, proceeding or appeal.

14 SECTION 42. 767.29 (1) (dm) 1m. of the statutes is amended to read:

15 767.29 (1) (dm) 1m. The department or its designee may collect any unpaid fees
16 under s. 814.61 (12) (b), 1997 stats., that are shown on the department's automated
17 payment and collection system on December 31, 1998, and shall deposit all fees
18 collected under this subdivision in the appropriation account under s. 20.445 (3) (ja).
19 The department or its designee may collect unpaid fees under this subdivision
20 through income withholding under s. 767.265 (2m). If the department or its designee
21 determines that income withholding is inapplicable, ineffective, or insufficient for
22 the collection of any unpaid fees under this subdivision, the department or its
23 designee may move the court for a remedial sanction under ch. 785. The department
24 or its designee may contract with or employ a collection agency or other person for
25 the collection of any unpaid fees under this subdivision and, notwithstanding s.

1 20.930 and with the advice and consent of the attorney general, may ~~contract with~~
2 ~~or employ~~ retain an attorney to appear in any action in state or federal court to
3 enforce the payment obligation. The department or its designee may not deduct the
4 amount of unpaid fees from any maintenance, child or family support, or arrearage
5 payment.

6 SECTION 43. 863.39 (3) (a) of the statutes is amended to read:

7 863.39 (3) (a) Within 10 years after the date of publication under s. 177.18, any
8 person claiming any amount deposited under sub. (1) may file in the probate court
9 in which the estate was settled a petition alleging the basis of his or her claim. The
10 court shall order a hearing upon the petition, and 20 days' notice of the hearing and
11 a copy of the petition shall be given by the claimant to the department of revenue and
12 to the attorney general, ~~who may appear for the state at the hearing~~. If the claim is
13 established it shall be allowed without interest, but including any increment which
14 may have occurred on securities held, and the court shall so certify to the department
15 of administration, which shall audit the claim. The state treasurer shall pay the
16 claim out of the appropriation under s. 20.585 (1) (j). Before issuing the order
17 distributing the estate, the court shall issue an order determining the death tax due,
18 if any. If real property has been adjudged to escheat to the state under s. 852.01 (3)
19 the probate court which made the adjudication may adjudge at any time before title
20 has been transferred from the state that the title shall be transferred to the proper
21 owners under this subsection.

22 SECTION 44. 880.295 (1) (a) of the statutes is amended to read:

23 880.295 (1) (a) When a patient in any state or county hospital or mental
24 hospital or in any state institution for the mentally deficient, or a resident of the
25 county home or infirmary, appears in need of a guardian, and does not have a

1 guardian, the department of health and family services ~~by its collection and~~
2 ~~deportation counsel~~, or the county corporation counsel, may apply to the circuit court
3 of the county in which the patient resided at the time of commitment or to the circuit
4 court of the county in which the facility in which the patient resides is located for the
5 appointment of a guardian of the person and estate, or either, or for the appointment
6 of a conservator of the estate, and the court, upon the application, may appoint the
7 guardian or conservator in the manner provided for the appointment of guardians
8 under ss. 880.08 (1) and 880.33 or for the appointment of conservators under s.
9 880.31.

10 SECTION 45. 880.295 (2) of the statutes is amended to read:

11 880.295 (2) Any guardian heretofore or hereafter appointed for any such
12 inmate, who, having property of his or her ward in his or her possession or control
13 exceeding \$200 in value, fails to pay within 3 months after receipt of any bill thereof
14 for the ward's care and support from the department of health and family services
15 or the agency established pursuant to s. 46.21, shall, upon application of the
16 ~~collection and deportation counsel of said department~~ or in counties having a
17 population of 500,000 or more, the district attorney, forthwith be removed.

18 SECTION 9160. Nonstatutory provisions; other.

19 (1) TRANSFER OF ATTORNEY POSITIONS.

20 (a) In this subsection, "state agency" means an office, commission, department,
21 independent agency, or board in the executive branch of state government, except the
22 following:

- 23 1. The public service commission.
- 24 2. The public defender board.
- 25 3. The Board of Regents of the University of Wisconsin System.

1 4. The University of Wisconsin Hospitals and Clinics Board.

2 5. The state of Wisconsin investment board.

3 6. The office of the governor.

4 7. The elections board.

5 8. The ethics board.

6 9. The department of regulation and licensing.

7 (b) Except as provided in paragraph (c), on the effective date of this paragraph
8 all attorney positions in state agencies are transferred to the department of justice.

9 (c) ~~§~~ Paragraph (b) does not apply to any position identified by the secretary
10 of administration as a hearing officer, hearing examiner, or administrative law
11 judge.

12 ~~§~~ 2. One attorney position in each of the following state agencies, identified by
13 the secretary of administration as the chief counsel position, ~~is not transferred under~~
14 ~~paragraph (b).~~

15 a. Department of administration.

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

17 c. Department of commerce.

18 d. Department of corrections.

19 e. Department of financial institutions.

20 f. Department of health and family services.

21 g. Department of natural resources.

22 h. Department of public instruction.

23 i. Department of workforce development.

24 j. Department of transportation.

25 k. Office of the commissioner of insurance.

*of the following:
§ 1. A.*

17-11

12

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

9 **SECTION 9460. Effective dates; other.**

10 (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 16.004 (15),
 11 16.009 (3) (bm), 20.395 (4) (aq), 20.455 (1) (k), (km), and (kr), 20.505 (1) (kr), 20.867
 12 (3) (w), 46.03 (18) (d), 46.10 (6) and (7), 46.27 (7g) (h), 49.22 (7m), 49.496 (3) (f), 49.682
 13 (6), 73.03 (22), 76.08 (1), 87.12 (6), 93.22 (2), 102.81 (2), 108.14 (3m), 165.25 (3r) and
 14 (4) (a), (ad), (am), (ar), (b), (bn), (c), and (d), 186.235 (11) (dg), 214.72 (1) (b), 215.32
 15 (3), 222.08 (4), 287.91 (4), 299.95, 301.03 (18) (d), 301.12 (6) and (7), 564.02 (3) (c),
 16 655.27 (5) (a) 3., 767.29 (1) (dm) 1m., 863.39 (3) (a), and 880.295 (1) (a) and (2) of the
 17 statutes and SECTION 9160 (1) of this act take effect on October 1, 2003, or on the first
 18 day of the 3rd month beginning after publication, whichever is later.

19

(END)

Handwritten notes:
 2/18/04 (5) (c)
 (b) (6) (c)
 attys. who are in any office of a DA
 dep. de's or court de's
 prosecutors employed by DSA

17-11

State employees of the office of a district attorney
2. ~~Attorneys employed by the department of~~

~~administration~~ under section 978.12 (i) (b) or (c)

of the statutes and states

3. ~~State~~ employees in the office within the
department of administration that ^(is) _(is) responsible

for providing personnel, budget, and other
management assistance to district attorney offices.

: King:

DN

This draft exempts ^{from the transfer} deputy and
assistant district attorneys ~~as well as~~ and
those who ^{DOA} administer the office that
manages the ~~of~~ deputy and assistant DA's.

PG

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

LRB-1824/3dn
PG:kmg:jf

February 3, 2003

This redraft exempts from the transfer deputy and assistant district attorneys and those who administer the DOA office that manages the deputy and assistant DA's.

Peter R. Grant
Managing Attorney
Phone: (608) 267-3362
E-mail: peter.grant@legis.state.wi.us

NSW

DOA:.....Kraus - BB0438, State attorneys; transfer to DOJ

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1

Don't Sen.
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE EMPLOYMENT

With certain exceptions, this bill transfers all attorney positions in executive branch agencies to DOJ effective on October 1, 2003, or on the first day of the third month beginning after the bill is enacted, whichever is later. Attorney positions in the Office of the State Public Defender, the PSC, the UW System, the State of Wisconsin Investment Board, the Elections Board, the Ethics Board, DRL, the office within DOA that provides management assistance to district attorney offices, and the Office of the Governor are exempt, as are all state employees of the office of a district attorney and all positions identified as hearing examiners, hearing officers, or administrative law judges. In addition, the bill retains the chief counsel position in each of 11 major state agencies.

The bill authorizes DOJ to provide legal services to executive branch agencies, including the Building Commission, and directs the attorney general and the secretary of administration jointly to determine the DOJ attorneys assigned to furnish legal services to those agencies. The bill ~~also permits agencies to retain counsel (in addition to the chief counsel in the 11 major state agencies, and the hearing examiners, hearing officers, and administrative law judges, who are not affected by this bill)~~ only with the consent of the attorney general.

contract with private

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

2 16.004 (15) LEGAL SERVICES. Annually, the department shall assess each state
3 agency for the cost of the legal services provided to the state agency by the
4 department of justice based upon the itemized statement under s. 165.25 (4) (c). The
5 department shall credit all moneys received from state agencies under this
6 subsection to the appropriation account under s. 20.505 (1) (kr).

7 **SECTION 2.** 16.009 (3) (bm) of the statutes is amended to read:

8 16.009 (3) (bm) ~~Employ~~ With the advice and consent of the attorney general,
9 retain an attorney for provision of legal services in accordance with requirements of
10 the long-term care ombudsman program under 42 USC 3027 (a) (12) and 42 USC
11 3058g (g).

12 **SECTION 3.** 20.395 (4) (aq) of the statutes is amended to read:

13 20.395 (4) (aq) *Departmental management and operations, state funds.* The
14 amounts in the schedule for departmental planning and administrative activities
15 and the administration and management of departmental programs except those
16 programs under subs. (2) (bq), (cq), and (dq) and (3) (iq), including those activities in
17 s. 85.07 and ~~including not less than \$220,000 in each fiscal year to reimburse the~~
18 ~~department of justice for legal services provided the department under s. 165.25 (4)~~
19 ~~(a) and including activities related to the transportation employment and mobility~~
20 program under s. 85.24 that are not funded from the appropriation under sub. (1)
21 (bs), (bv) or (bx), the scholarship and loan repayment incentive grant program under

1 adjustment, only the issues raised in the department's adjustment under s. 76.075
2 may be raised.

3 SECTION 18. 87.12 (6) of the statutes is amended to read:

4 87.12 (6) The board shall have the power to institute and prosecute in the
5 manner provided in ch. 32 of the statutes such eminent domain proceedings as may
6 be necessary in the construction of said improvement. When necessary for that
7 purpose, this right of eminent domain shall be dominant over the rights of eminent
8 domain of public or private corporations or governmental agencies. The board shall
9 also have the power to acquire any lands or interest therein necessary for the
10 aforesaid purpose, by gift, purchase or lease. Any title acquired by condemnation or
11 gift, purchase or lease shall be held in the name of the flood control board in trust for
12 the several towns, villages and cities and contributing, as provided in s. 87.10 (1) (c)
13 and (d), in proportion to the amounts of their several contributions. The board shall
14 have the power to employ engineers, ~~attorneys~~, agents, assistants, clerks, employees
15 and laborers and, with the advice and consent of the attorney general, retain
16 attorneys as it may deem advisable for the proper execution of its duties, and to fix
17 their compensation.

18 → SECTION 19. 93.22 (2) ^{SEC. REP. 93.22 (1) ✓} of the statutes is amended to read:

19 93.22 (2) The department may, with the approval of the governor, ~~appoint~~
20 ~~special~~ and the advice and consent of the attorney general, retain counsel to
21 prosecute or assist in the prosecution of any case arising under chs. 88 and 93 to 100.
22 The cost of such ~~special~~ counsel shall be charged to the appropriation for the
23 department.

24 SECTION 20. 102.81 (2) of the statutes is amended to read:

1 guardian, the department of health and family services ~~by its collection and~~
2 ~~deportation counsel~~, or the county corporation counsel, may apply to the circuit court
3 of the county in which the patient resided at the time of commitment or to the circuit
4 court of the county in which the facility in which the patient resides is located for the
5 appointment of a guardian of the person and estate, or either, or for the appointment
6 of a conservator of the estate, and the court, upon the application, may appoint the
7 guardian or conservator in the manner provided for the appointment of guardians
8 under ss. 880.08 (1) and 880.33 or for the appointment of conservators under s.
9 880.31.

10 **SECTION 45.** 880.295 (2) of the statutes is amended to read:

11 880.295 (2) Any guardian heretofore or hereafter appointed for any such
12 inmate, who, having property of his or her ward in his or her possession or control
13 exceeding \$200 in value, fails to pay within 3 months after receipt of any bill thereof
14 for the ward's care and support from the department of health and family services
15 or the agency established pursuant to s. 46.21, shall, upon application of the
16 ~~collection and deportation counsel of said~~ department or in counties having a
17 population of 500,000 or more, the district attorney, forthwith be removed.

18 **SECTION 9160. Nonstatutory provisions; other.**

19 (1) TRANSFER OF ATTORNEY POSITIONS.

20 (a) In this subsection, "state agency" means an office, commission, department,
21 independent agency, or board in the executive branch of state government, except the
22 following:

- 23 1. The public service commission.
- 24 2. The public defender board.
- 25 3. The Board of Regents of the University of Wisconsin System.

1 4. The University of Wisconsin Hospitals and Clinics Board.

2 5. The state of Wisconsin investment board.

3 6. The office of the governor.

4 7. The elections board.

5 8. The ethics board.

6 9. The department of regulation and licensing.

7 (b) Except as provided in paragraph (c), on the effective date of this paragraph
8 all attorney positions in state agencies are transferred to the department of justice.

9 (c) Paragraph (b) does not apply to any of the following:

10 1. A position identified by the secretary of administration as a hearing officer,
11 hearing examiner, or administrative law judge.

12 2. State employees ~~of the~~ ^{working in the} office of a district attorney under section 978.12 (1)
13 (b) or (c) of the statutes and state employees ^{✓ ✓ ✓} in the office within the department of
14 administration that is responsible for providing personnel, budget, and other
15 management assistance to district attorney offices.

16 3. One attorney position in each of the following state agencies, identified by
17 the secretary of administration as the chief counsel position:

18 a. Department of administration.

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

20 c. Department of commerce.

21 d. Department of corrections.

22 e. Department of financial institutions.

23 f. Department of health and family services.

24 g. Department of natural resources.

25 h. Department of public instruction.

1 i. Department of workforce development.

2 j. Department of transportation.

3 k. Office of the commissioner of insurance.

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

12 **SECTION 9460. Effective dates; other.**

13 (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 16.004 (15),
14 16.009 (3) (bm), 20.395 (4) (aq), 20.455 (1) (k), (km), and (kr), 20.505 (1) (kr), 20.867
15 (3) (w), 46.03 (18) (d), 46.10 (6) and (7), 46.27 (7g) (h), 49.22 (7m), 49.496 (3) (f), 49.682
16 (6), 73.03 (22), 76.08 (1), 87.12 (6), 93.22 (2), 102.81 (2), 108.14 (3m), 165.25 (3r) and
17 (4) (a), (ad), (am), (ar), (b), (bn), (c), and (d), 186.235 (11) (dg), 214.72 (1) (b), 215.32
18 (3), 222.08 (4), 287.91 (4), 299.95, 301.03 (18) (d), 301.12 (6) and (7), 564.02 (3) (c),
19 655.27 (5) (a) 3., 767.29 (1) (dm) 1m., 863.39 (3) (a), and 880.295 (1) (a) and (2) of the
20 statutes and SECTION 9160 (1) of this act take effect on October 1, 2003, or on the first
21 day of the 3rd month beginning after publication, whichever is later.

22 (END)