



2007 DRAFTING REQUEST

Bill

Received: **12/19/2006**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Pawasarat**

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

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **State Govt - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Pawasarat, BB0250 -

Topic:

Attorney consolidation and transfer to DOA

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 12/29/2006	kfollett 01/04/2007		_____			State
/P1			jfrantze 01/04/2007	_____	sbasford 01/04/2007		State
/P2	chanaman 01/22/2007	kfollett 01/24/2007	jfrantze 01/24/2007	_____	mbarman 01/24/2007		State
	chanaman 01/30/2007	chanaman 01/30/2007		_____			
	chanaman 01/31/2007	kfollett 01/31/2007		_____			
/P3	chanaman	csicilia	rschluet	_____	cduerst		State

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	02/05/2007	02/05/2007	01/31/2007	_____	01/31/2007		
/P4	chanaman 02/06/2007	lkunkel 02/06/2007	jfrantze 02/06/2007	_____	sbasford 02/06/2007		State
/P5			rschluet 02/06/2007	_____	cduerst 02/06/2007		

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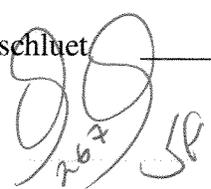
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	chanaman 01/31/2007	kfollett 01/31/2007		_____			
/P3			rschluet	_____	cduerst		

Handwritten notes: /P4 jg 2/5 07

Handwritten signatures and dates: 2/9/06, 2/6

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

01/31/2007 _____

01/31/2007

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/P1		1P2kf 1/24	jfrantze 01/04/2007	_____	sbasford 01/04/2007		

FE Sent For:

jfrantze 1/24

 sbasford 1/24

 [Signature] 1/24

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/?	chanaman	1/1 1/4	1/4	1/4			

FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Attorney consolidation
- Tracking Code: BB0250
- SBO team:
- SBO analyst: Jane Pawasarat, Policy Initiatives Advisor
 - Phone: 267-6921
 - Email: Jane.Pawasarat@Wisconsin.gov
- Agency acronym:
- Agency number: Priority (Low, Medium, High): High

Please draft statutory language for an attorney consolidation and transfer to DOA, using the attached 05-07 language as a starting point. Thanks! Jane

-1182/P1

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DOA:.....Rhodes, BB0252 - Attorney consolidation; transfer to DOA
FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

This bill creates a division of legal services in DOA that is authorized to provide legal services to executive branch agencies. With certain exceptions, this bill transfers all attorney positions and all legal staff positions in executive branch agencies to the division of legal services effective on January 1, 2006. This bill also transfers all positions identified as hearing examiners, hearing officers, or administrative law judges, other than such positions in DWD, to the division of hearings and appeals in DOA. Attorney positions in DOJ, except for two attorney positions with tax-litigating duties, the Office of the State Public Defender, the PSC, the UW System, the Employment Relations Commission, the State of Wisconsin Investment Board, the Elections Board, the Ethics Board, and the Office of the Governor are exempt, as are all state employees working in an office of a district attorney. In addition, the bill retains a general counsel or lead attorney position in each of 17 major state agencies and offices.

X
X

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

X
X

8

X services if the division of hearings and appeals is required or authorized by law to furnish the services; or (5) employ or retain any attorney who is not a state employee, subject to the approval of the governor.

X This bill also requires the secretary of administration to lapse or transfer to the general fund from the unencumbered balances of agency appropriations, other than sum sufficient appropriations and appropriations of federal revenues, an amount equal to \$724,900 during the 2005-07 fiscal biennium. The secretary of administration shall lapse or transfer these moneys from allocations for agency legal services that would have been provided in that fiscal biennium with funding from those appropriations.

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

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

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

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

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

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

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

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

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

1 (e) Employ or retain any attorney who is not a state employee, subject to s.
2 20.930.

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

4 15.103 (1g) DIVISION OF LEGAL SERVICES. There is created in the department of
5 administration a division of legal services. The administrator of the division shall
6 be appointed by the secretary of administration in the unclassified service.

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

8 16.004 (15) LEGAL SERVICES. (a) In this subsection, "state agency" means an
9 office, commission, department, independent agency, or board in the executive
10 branch of state government, and includes the building commission.

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

15 (c) An attorney employed by the department may prosecute or defend any
16 action brought by or against the state in any matter relating to tax litigation.

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

18 20.505 (1) (kr) *Legal services*. All moneys received from assessments levied
19 against state agencies under s. 16.004 (15) (b) for legal services provided by the
20 department of administration to be used for providing those legal services.

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

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

22 73.01 (4) (b) Any matter required to be heard by the commission may be heard
23 by any member of the commission or its a hearing examiner and reported to the

SECTION 5

1 commission, and hearings of matters pending before it shall be assigned to members
2 of the commission or its the hearing examiner by the chairperson. Cases other than
3 small claims cases shall be decided by the full commission, except that if one or more
4 members of the commission are unavailable, cases other than small claims cases
5 shall be decided by the member or members assigned by the chairperson prior to the
6 hearing. If the parties have agreed to an oral decision, the member or members
7 conducting the hearing may render an oral decision. Hearings shall be open to the
8 public and all proceedings shall be conducted in accordance with rules of practice and
9 procedure prescribed by the commission. Small claims cases shall be decided by one
10 commissioner assigned by the chairperson prior to the hearing.

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

12 73.01 (4m) (b) No member of the commission, including the chairperson, or its
13 a hearing examiner may receive any salary unless he or she first executes an
14 affidavit at the end of each salary period stating that he or she has complied with the
15 deadlines in par. (a). The affidavit shall be presented to and filed with every official
16 who certifies, in whole or in part, the salary.

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

18 73.01 (4m) (c) If a member of the commission, including the chairperson, or its
19 a hearing examiner is unable to comply with the deadline under par. (a), that person
20 shall so certify in the record, and the period is then extended for one additional period
21 not to exceed 90 days.

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

23 85.013 (2) (a) The secretary shall designate ~~employees of the department as~~
24 hearing examiners to preside over all hearings arising under ch. 344.

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

1 230.08 (2) (e) 1. Administration — ~~13~~ 14.

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

3 230.08 (2) (eg) A general counsel position in each of the following agencies:

4 1. Department of administration.

5 2. Department of agriculture, trade and ~~natural resources~~ *consumer protection*

6 3. Department of commerce.

7 4. Department of corrections.

8 5. Department of financial institutions.

9 6. Department of health and family services.

10 7. Department of natural resources.

11 8. Department of regulation and licensing.

12 9. Department of revenue.

13 10. Department of transportation.

14 11. Department of workforce development.

15 12. Office of the commissioner of insurance.

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

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

24 SECTION 9155. *Nonstatutory provisions; other.*

25 (1) TRANSFER OF ATTORNEY AND LEGAL STAFF POSITIONS.

SECTION 9155

1 (a) *Definitions.* In this subsection: ✓

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

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

6 a. The public service commission. ✓

7 b. The public defender board. ✓

8 c. The Board of Regents of the University of Wisconsin System. ✓

9 d. The University of Wisconsin Hospitals and Clinics Board. ✓

10 e. The state of Wisconsin investment board. ✓

11 f. The office of the governor. ✓

12 g. The elections board. ✓

13 h. The ethics board. ✓

14 i. The department of justice. ✓

15 j. The employment relations commission. ✓

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

20 (c) *Department of justice tax litigation attorneys.* On the effective date of this
21 paragraph, 2 attorney positions in the department of justice with duties entailing tax
22 litigation are transferred to the division of legal services in the department of
23 administration. The secretary of administration shall identify the positions to be
24 transferred.

25 (d) *Hearing officers, hearing examiners, and administrative law judges.*

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

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

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

9 1. State employees working in an office of a district attorney under section
10 978.12 (1) (b) or (c) of the statutes.

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

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

16 a. Department of administration.

17

b. Department of agriculture, trade and rural resources.

consumer protection

18 c. Department of commerce.

19 d. Department of corrections.

20 e. Department of employee trust funds.

21 f. Department of financial institutions.

22 g. Department of health and family services.

23 h. Department of military affairs.

24 i. Department of natural resources.

25 j. Department of public instruction.

1 k. Department of regulation and licensing.

2 l. Department of revenue.

3 m. Department of transportation.

4 n. Department of veterans affairs.

5 o. Department of workforce development.

6 p. Office of the commissioner of insurance.

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

15 (g) *Materials.* On the effective date of this paragraph, all equipment, supplies,
16 and furniture required for the provision of legal services by employees transferred
17 under paragraphs (b), (c), and (d) are transferred to the department of
18 administration. The secretary of administration shall identify the equipment,
19 supplies, and furniture to be transferred.

20 (2) LAPSE OR TRANSFER OF CERTAIN APPROPRIATION BALANCES FROM MONEYS
21 ALLOCATED FOR LEGAL SERVICES TO THE GENERAL FUND.

22 (a) Notwithstanding section 20.001 (3) (a) to (c) of the statutes, except as
23 provided in paragraph (b), the secretary of administration shall lapse to the general
24 fund or transfer to the general fund from the unencumbered balances of the
25 appropriations to state agencies, as defined in subsection (1) (a) 2., other than sum

7 9

1 sufficient appropriations and appropriations of federal revenues, an amount equal
 2 to \$724,900 during the 2005-07 fiscal biennium. The secretary of administration
 3 shall lapse or transfer these moneys from allocations for agency legal services that
 4 would have been provided in that fiscal biennium with funding from those
 5 appropriations.

6 (b) The secretary of administration may not lapse or transfer moneys to the
 7 general fund from any appropriation under paragraph (a) if the lapse or transfer
 8 would violate a condition imposed by the federal government on the expenditure of
 9 the moneys or if the lapse or transfer would violate the federal or state constitution.

10 **SECTION 9455. Effective dates; other.**

11 (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 15.04 (4), 15.103
 12 (1g), 16.004 (15), 20.505 (1) (kr), 73.01 (4) (b) and (4m) (b) and (c), 85.013 (2) (a),
 13 230.08 (2) (e) 1. and (eg), and 343.33 (2) of the statutes and SECTION 9155 (1) of this
 14 act take effect on January 1, 2006.

15 (8) (END)

~~****~~ Note: I assume you want ^a new dollar amount
 in this paragraph.

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

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OTHER STATE GOVERNMENT

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

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7 conducting the hearing may render an oral decision. Hearings shall be open to the
8 public and all proceedings shall be conducted in accordance with rules of practice and
9 procedure prescribed by the commission. Small claims cases shall be decided by one
10 commissioner assigned by the chairperson prior to the hearing.

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

12 73.01 (4m) (b) No member of the commission, including the chairperson, or its
13 a hearing examiner may receive any salary unless he or she first executes an
14 affidavit at the end of each salary period stating that he or she has complied with the
15 deadlines in par. (a). The affidavit shall be presented to and filed with every official
16 who certifies, in whole or in part, the salary.

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

18 73.01 (4m) (c) If a member of the commission, including the chairperson, or its
19 a hearing examiner is unable to comply with the deadline under par. (a), that person
20 shall so certify in the record, and the period is then extended for one additional period
21 not to exceed 90 days.

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

23 85.013 (2) (a) The secretary shall designate employees of the department as
24 hearing examiners to preside over all hearings arising under ch. 344.

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

1 230.08 (2) (e) 1. Administration — ~~13~~ 14.

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

3 230.08 (2) (eg) A general counsel position in each of the following agencies:

4 1. Department of administration.

5 2. Department of agriculture, trade and consumer protection.

6 3. Department of commerce.

7 4. Department of corrections.

8 5. Department of financial institutions.

9 6. Department of health and family services.

10 7. Department of natural resources.

11 8. Department of regulation and licensing.

12 9. Department of revenue.

13 10. Department of transportation.

14 11. Department of workforce development.

15 12. Office of the commissioner of insurance.

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

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

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

25 (1) TRANSFER OF ATTORNEY AND LEGAL STAFF POSITIONS.

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

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

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

6 a. The public service commission.

7 b. The public defender board.

8 c. The Board of Regents of the University of Wisconsin System.

9 d. The University of Wisconsin Hospitals and Clinics Board.

10 e. The state of Wisconsin investment board.

11 f. The office of the governor.

12 g. The elections board.

13 h. The ethics board.

14 i. The department of justice.

15 j. The employment relations commission.

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

20 (c) *Department of justice tax litigation attorneys.* On the effective date of this
21 paragraph, 2 attorney positions in the department of justice with duties entailing tax
22 litigation are transferred to the division of legal services in the department of
23 administration. The secretary of administration shall identify the positions to be
24 transferred.

25 (d) *Hearing officers, hearing examiners, and administrative law judges.*

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

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

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

9 1. State employees working in an office of a district attorney under section
10 978.12 (1) (b) or (c) of the statutes.

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

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

16 a. Department of administration.

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

18 c. Department of commerce.

19 d. Department of corrections.

20 e. Department of employee trust funds.

21 f. Department of financial institutions.

22 g. Department of health and family services.

23 h. Department of military affairs.

24 i. Department of natural resources.

25 j. Department of public instruction.

1 k. Department of regulation and licensing.

2 l. Department of revenue.

3 m. Department of transportation.

4 n. Department of veterans affairs.

5 o. Department of workforce development.

6 p. Office of the commissioner of insurance.

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

15 (g) *Materials.* On the effective date of this paragraph, all equipment, supplies,
16 and furniture required for the provision of legal services by employees transferred
17 under paragraphs (b), (c), and (d) are transferred to the department of
18 administration. The secretary of administration shall identify the equipment,
19 supplies, and furniture to be transferred.

20 (2) LAPSE OR TRANSFER OF CERTAIN APPROPRIATION BALANCES FROM MONEYS
21 ALLOCATED FOR LEGAL SERVICES TO THE GENERAL FUND.

22 (a) Notwithstanding section 20.001 (3) (a) to (c) of the statutes, except as
23 provided in paragraph (b), the secretary of administration shall lapse to the general
24 fund or transfer to the general fund from the unencumbered balances of the
25 appropriations to state agencies, as defined in subsection (1) (a) 2., other than sum

1 sufficient appropriations and appropriations of federal revenues, an amount equal
2 to \$724,900 during the 2007–09 fiscal biennium. The secretary of administration
3 shall lapse or transfer these moneys from allocations for agency legal services that
4 would have been provided in that fiscal biennium with funding from those
5 appropriations.

****NOTE: I assume you want a new dollar amount in this paragraph.

6 (b) The secretary of administration may not lapse or transfer moneys to the
7 general fund from any appropriation under paragraph (a) if the lapse or transfer
8 would violate a condition imposed by the federal government on the expenditure of
9 the moneys or if the lapse or transfer would violate the federal or state constitution.

10 **SECTION 9455. Effective dates; other.**

11 (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 15.04 (4), 15.103
12 (1g), 16.004 (15), 20.505 (1) (kr), 73.01 (4) (b) and (4m) (b) and (c), 85.013 (2) (a),
13 230.08 (2) (e) 1. and (eg), and 343.33 (2) of the statutes and SECTION 9155 (1) of this
14 act take effect on ~~January~~ *July* 1, 2008.

15 (END)

July

Hanaman, Cathlene

From: Malaise, Gordon
Sent: Wednesday, January 31, 2007 11:11 AM
To: Hanaman, Cathlene
Cc: Kahler, Pam
Subject: Conceptual Reconciliation of Transfer of Attorney Positions (-1182) and Creation of Department of Children and Families (-1261)

Cathlene:

There is a conceptual reconciliation that you will need to do in -1182 to take into account the creation of the Department of Children and Families under -1261.

Specifically, you will need to create a "2m. Department of children and families." in s. 230.08 (2) (eg) and a "bm. Department of children and families." in SECTION 9155 (1) (d) 3.

Originally I thought I would have to amend s. 230.08 (2) (eg) to create 2m. until I looked more closely and realized that -1182 and -1261 have the same effective date. So, for once, no double drafting.

Gordon

p3

Done

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

done for

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

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

This bill creates a division of legal services in DOA that is authorized to provide legal services to executive branch agencies. With certain exceptions, this bill transfers all attorney positions and all legal staff positions in executive branch agencies to the Division of Legal Services effective on July 1, 2008. This bill also transfers all positions identified as hearing examiners, hearing officers, or administrative law judges, other than such positions in DWD, to the Division of Hearings and Appeals in DOA. Attorney positions in DOJ, the Office of the State Public Defender, the PSC, the UW System, the Employment Relations Commission, the State of Wisconsin Investment Board, the Elections Board, the Ethics Board, and the Office of the Governor are exempt, as are all state employees working in an office of a district attorney. In addition, the bill retains a general counsel or lead attorney position in each of 17 major state agencies and offices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 230.08 (2) (e) 1. Administration — ~~13~~ 14.

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

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

24 1. Department of administration.

25 2. Department of agriculture, trade and consumer protection.

— Im. Department of children and families.

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

11 ~~****~~ This is reconciled to 230.07 (2) (eg), which has been amended by LRB-1182/P2 and -12610
SECTION 11. 343.33 (2) of the statutes is amended to read:

12 343.33 (2) Upon the hearing, the department or its a hearing examiner may
13 administer oaths, issue subpoenas for the attendance of witnesses and the
14 production of relevant books and papers and may require a reexamination of the
15 licensee. No law enforcement officer or other witness produced by the person who
16 has requested a hearing to testify on his or her behalf shall be paid a witness fee by
17 the department nor shall any law enforcement officer called to appear for the
18 department be paid any witness fee. All testimony shall be taken and transcribed.

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

20 (1) TRANSFER OF ATTORNEY AND LEGAL STAFF POSITIONS.

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

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

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

- 1 a. The public service commission.
- 2 b. The public defender board.
- 3 c. The Board of Regents of the University of Wisconsin System.
- 4 d. The University of Wisconsin Hospitals and Clinics Board.
- 5 e. The state of Wisconsin investment board.
- 6 f. The office of the governor.
- 7 g. The elections board.
- 8 h. The ethics board.
- 9 i. The department of justice.
- 10 j. The employment relations commission.

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

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

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

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

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

24 1. State employees working in an office of a district attorney under section
25 978.12 (1) (b) or (c) of the statutes.

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

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

6 a. Department of administration.

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

8 ~~c. Department of commerce.~~
 → b.m. Department of children and families.

9 d. Department of corrections.

10 e. Department of employee trust funds.

11 f. Department of financial institutions.

12 g. Department of health and family services.

13 h. Department of military affairs.

14 i. Department of natural resources.

15 j. Department of public instruction.

16 k. Department of regulation and licensing.

17 l. Department of revenue.

18 m. Department of transportation.

19 n. Department of veterans affairs.

20 o. Department of workforce development.

21 p. Office of the commissioner of insurance.

22 (e) *Incumbents.* All incumbent employees holding positions that are
23 transferred under paragraphs (b), and (c) are transferred on the effective date of this
24 paragraph to the department of administration. Employees transferred under these
25 paragraphs have all the rights and the same status under subchapter V of chapter

1 111 and chapter 230 of the statutes in the department of administration that they
2 enjoyed in their respective state agencies immediately before the transfer.
3 Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who
4 has attained permanent status in class is required to serve a probationary period.

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

10 **SECTION 9455. Effective dates; other.**

11 (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 15.04 (4), 15.103
12 (1g), 16.004 (15), 20.505 (1) (kr), 73.01 (4) (b) and (4m) (b) and (c), 85.013 (2) (a),
13 230.08 (2) (e) 1. and (eg), and 343.33 (2) of the statutes and SECTION 9155 (1) of this
14 act take effect on July 1, 2008.

15 (END)

Date

1182/P3dm
cmh:kjf

This draft reconciles LRB-1182/P2 and
-1261e (1131) by adding the Department of Children
and Families to s. 230.08(2)(eg)
and to SECTION 9155 (1)(d)3.

CMH

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1182/P3dn
CMH:kjf:rs

January 31, 2007

This draft reconciles LRB-1182/P2 and -1261 by adding the Department of Children and Families to s. 230.08 (2) (eg) and to SECTION 9155 (1) (d) 3.

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