



## Legislative Fiscal Bureau

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June 1, 2005

Joint Committee on Finance

Paper #110

### **Consolidation of Attorneys and Legal Staff Under DOA (DOA -- Transfers to the Department)**

[LFB 2005-07 Budget Summary: Page 33, #1; Page 66, #20; Page 72, #4; Page 103, #4; Page 123, #7; Page 154, #8; Page 166, #6; Page 227, #10; Page 315, #14; Page 321, #6 and #7; Page 348, #6; Page 388, #3; Page 410, #4; Page 422, #4; Page 432, #4; Page 434, #10; Page 494, #4; Page 508, #5; and Page 533, #3]

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#### **CURRENT LAW**

Currently, state agency "in-house" legal counsel positions are authorized and budgeted under each individual agency. Further, a Division of Hearings and Appeals, attached administratively to the Department of Administration (DOA), provides hearing examiner and administrative law judge services for contested administrative proceedings before a variety of state agencies. Finally, a Division of Legal Services under the Department of Justice (DOJ) provides legal representation and advice to the Governor, the Legislature, other state officers and state agencies. This DOJ unit represents the state's interest in state and federal courts, represents the state in all felony and other significant criminal cases on appeal, has primary responsibility to take court action to enforce state environmental, anti-trust, consumer protection and Medicaid fraud laws, and defends state employees, state officers and state agencies in civil proceedings such as tort and employment-related matters.

#### **GOVERNOR**

*Consolidation of Certain Authority and Legal Staff Positions Under DOA.* Provide \$8,086,000 PR and -1.0 GPR, 145.2 PR, and -1.0 SEG positions in 2005-06 and \$12,842,800 PR and -1.0 GPR, 119.2 PR, and -1.0 SEG positions in 2006-07 under DOA for personnel costs associated with the transfer of certain executive branch state agency attorney and legal staff positions to the agency, effective January 1, 2006.

*Create Division of Legal Services.* Provide for the creation of the Division of Legal Services within DOA and authorize 1.0 PR unclassified division administrator position appointed by the Secretary of DOA. Increase by one the number of unclassified division administrators under DOA in the statutory enumeration of unclassified state positions.

*Attorneys and Legal Staff Transferred.* Transfer all attorney and legal staff positions in executive branch state agencies to the new Division of Legal Services effective January 1, 2006, unless otherwise specified. Define legal staff as those individuals that provide support services for attorneys, as determined by the Secretary of DOA.

Specify that the state agencies subject to this transfer requirement would be any office, commission, department, independent agency, or board in the executive branch, including the Building Commission. However, exclude the Public Service Commission, the Public Defender Board, the UW System Board of Regents, the University of Wisconsin Hospitals and Clinics Board, the State of Wisconsin Investment Board, the Office of the Governor, the Elections Board, the Ethics Board, the Department of Justice, and the Employment Relations Commission from these transfer requirements. Specify further that two DOJ attorney positions with duties entailing tax litigation would be transferred to DOA's Division of Legal Services. The Secretary of DOA would be authorized to identify the DOJ positions to be transferred.

In addition to the agencies listed above that would be exempted from the attorney transfer provisions, specify that the following attorney and legal staff positions would also not be transferred to DOA: (1) employees of district attorneys; (2) one lead attorney at the Office of State Employment Relations (whose duties include negotiation of collective bargaining agreements for labor relations); and (3) one "general counsel" or lead attorney at the Departments of Administration; Agriculture, Trade, and Consumer Protection; Commerce; Corrections; Employee Trust Funds; Financial Institutions; Health and Family Services; Military Affairs; Natural Resources; Public Instruction; Regulation and Licensing; Revenue; Transportation; Veterans Affairs; and Workforce Development; and at the Office of the Commissioner of Insurance.

*Transfer of Hearing Examiners and Administrative Law Judges.* Specify that all hearing officers, hearing examiners, and administrative law judges would be transferred to DOA's Division of Hearings and Appeals on January 1, 2006, except for such employees working for the Department of Workforce Development.

*DOA Authorized to Provide Legal Services.* Authorize DOA to provide legal services to state agencies. Specify that any attorney employed by DOA would be authorized to prosecute or defend state actions regarding tax litigation.

Require DOA to annually assess each state agency for legal services provided to that agency and create a new PR continuing legal services appropriation for the receipt of moneys paid by state agencies for legal services.

*General Counsel Unclassified Positions.* Create 12.0 unclassified general counsel positions [6.0 GPR, 5.0 PR, and 1.0 SEG positions annually] to serve as the only agency legal counsel for the following executive branch agencies: (1) Department of Administration; (2) Department of Agriculture, Trade, and Consumer Protection; (3) Department of Commerce; (4) Department of Corrections; (5) Department of Financial Institutions; (6) Department of Health and Family Services; (7) Department of Natural Resources; (8) Department of Regulation and Licensing; (9) Department of Revenue; (10) Department of Transportation; (11) Department of Workforce Development; and (12) the Office of the Commissioner of Insurance. Include an unclassified general counsel position in these agencies under the statutory enumeration of unclassified positions in state service.

*Limitations on Agency Attorney Use.* Specify that if any executive branch department or independent agency is authorized or required to retain an attorney, the agency must: (1) use a state employee, unless the agency contracts with DOA's Division of Legal Services or its Division of Hearings and Appeals; or (2) be furnished with legal services from the Department of Justice or DOA's Division of Hearings and Appeals. The Department of Health and Family Services would retain the right to hire non-state attorneys to recover certain medical assistance costs from estates.

*Transitional Provisions.* Specify that all transferred attorneys and legal staff would have the same rights and status at DOA as in the agency in which they originated. Specify that attorneys and legal staff who have obtained permanent status would not have to undergo a probationary period in DOA. Specify that all equipment, supplies, and furniture related to the duties of the transferred employees, as specified by the Secretary of DOA, would also be transferred to DOA on January 1, 2006.

*Required Lapses.* Direct the Secretary of DOA to lapse or transfer \$724,900 (all funds) to the general fund during the 2005-07 biennium, as a result of the net reduction of 13.0 FTE attorney and legal services positions in 2006-07. Specify that these lapses or transfers would be made from unencumbered balances of amounts appropriated specifically for state agency legal services. Specify that these amounts could not be lapsed from sum sufficient or FED appropriations. Prohibit the Secretary from lapsing or transferring moneys to the general fund, if the lapse or transfer would violate a federal condition of expenditure, or would violate the state or federal constitution.

Table 1 summarizes the attorney and legal staff position transfers and other adjustments recommended by the Governor:

**TABLE 1****Attorney and Legal Staff Positions Transferred to DOA**

<u>Agency</u>	<u>Current Positions Subject to Transfer</u>	<u>Positions Transferred to DOA</u>	<u>Positions Retained in Agencies</u>		
			<u>Existing Classified Attorney Positions*</u>	<u>New Unclassified General Counsel Positions</u>	<u>Total Legal Staff Before Position Reductions</u>
Administration	3.00	3.00	0.00	1.00	4.00
Board on Aging and Long-Term Care	1.00	1.00	0.00	0.00	1.00
Agriculture, Trade and Consumer Prot.	7.50	7.50	0.00	1.00	8.50
Commerce	3.00	3.00	0.00	1.00	4.00
Corrections	7.80	7.80	0.00	1.00	8.80
Employee Trust Funds	2.00	1.00	1.00	0.00	2.00
Financial Institutions	7.00	7.00	0.00	1.00	8.00
Health and Family Services	22.95	22.95	0.00	1.00	23.95
Insurance	5.70	5.70	0.00	1.00	6.70
Justice**	2.00	2.00	0.00	0.00	2.00
Military Affairs	1.00	0.00	1.00	0.00	1.00
Natural Resources	17.50	17.50	0.00	1.00	18.50
Office of State Employment Relations	2.00	1.00	1.00	0.00	2.00
Public Instruction	4.00	3.00	1.00	0.00	4.00
Regulation and Licensing	29.00	29.00	0.00	1.00	30.00
Revenue	16.75	16.75	0.00	1.00	17.75
Transportation	11.00	11.00	0.00	1.00	12.00
Veterans Affairs	3.00	2.00	1.00	0.00	3.00
Workforce Development	<u>3.00</u>	<u>3.00</u>	<u>0.00</u>	<u>1.00</u>	<u>4.00</u>
Total 2005-06 FTE (All Agencies)	149.20	144.20	5.00	12.00	161.20
New DOA Division of Legal Services Administrator Position		1.00	0.00	0.00	1.00
Total 2006-07 FTE Reduction (in DOA)		-26.00	0.00	0.00	-26.00
Total 2006-07 FTE (All Agencies)		119.20	5.00	12.00	136.20
All Agencies Net Reduction (Current Positions Compared to 2006-07 FTE)					-13.00

\*An existing classified attorney would be retained in the indicated agency and designated as the lead attorney for the agency.

\*\*Only those attorneys with duties entailing tax litigation would be transferred.

**DISCUSSION POINTS**

1. The Governor's attorney consolidation initiative would reorganize the provision of "in-house" legal services under a number of state agencies by transferring 144.2 FTE attorney and legal staff positions from various state agencies to DOA, providing 12.0 FTE unclassified general

counsel positions to the cabinet agencies, and creating 1.0 FTE unclassified division administrator for a newly created Division of Legal Services in DOA, beginning in 2005-06. Further, 26.0 FTE attorney positions transferred to DOA in 2005-06 would be deleted in 2006-07, resulting in a net position reduction of 13.0 FTE in that fiscal year.

2. On a statewide, all-executive branch agency basis, the attorney consolidation initiative would make the following adjustments: (a) net amounts of \$2,514,800 GPR, \$841,300 FED, \$1,979,400 PR, and \$1,330,800 SEG in 2005-06 and \$5,029,200 GPR, \$1,681,700 FED, \$3,958,100 PR, and \$2,661,100 SEG in 2006-07 would be shifted from salaries and fringe benefits to supplies and services funding under 18 agencies to pay for DOA-provided legal services (there would be no net fiscal change associated with these offsetting transfers); (b) net position authority deletions of 48.14 GPR, 16.26 FED, 43.3 PR, and 24.5 SEG state agency attorney positions would be deleted beginning January 1, 2006; and (c) \$8,086,00 PR in 2005-06 and \$12,842,800 PR in 2006-07 and 145.2 PR positions 2005-06 and 119.2 PR positions in 2006-07 would be provided under DOA. As a result of these adjustments, the total number of attorney and legal staff affected by the initiative would increase from the base by 13.0 FTE positions in 2005-06 but would then decrease by 13.0 FTE positions from the base in 2006-07.

3. While the bill would transfer most attorney positions from executive branch agencies, five state agencies [the Departments of Employee Trust Funds, Military Affairs, Public Instruction, and Veterans Affairs and the Office of State Employment Relations] would all retain 1.0 classified attorney position to act as the agency's lead attorney. Generally, these agencies are headed by an elected or appointed official who serves a fixed term, are non-cabinet agencies administered by a separate board, or have specific duties that are singled out under the bill [the attorney in the Office of State Employment Relations whose duties include the negotiation and interpretation of state employee collective bargaining agreements.]

4. In addition, the bill would authorize the Office of the Commissioner of Insurance and 11 cabinet agencies to retain 1.0 FTE newly created unclassified general counsel position each. The cabinet agencies subject to this provision are: DOA, DATCP, Commerce, Corrections, DFI, DHFS, DNR, Regulation and Licensing, DOR, DOT, and DWD. As the bill is drafted, all attorneys in these agencies would be transferred to DOA, but a separate unclassified general counsel would also be authorized under each agency.

5. *Previous Attorney Consolidation Initiatives.* The Governor proposed a similar consolidation of state attorneys initiative as part of the 2003-05 biennial budget bill. That earlier initiative had a number of similar elements to the current proposal, but also differed in important ways.

- The earlier proposal deleted a total of 92.66 FTE attorney positions in 19 executive branch agencies and authorized 69.45 FTE attorney position in DOA, resulting in a deletion of 23.21 FTE attorney positions. Significantly, these 23.21 FTE attorney positions would have been deleted *prior* to their transfer to DOA. Under the current proposal, 26.0 FTE attorney and legal staff positions would be deleted in 2006-07 after these positions are transferred to DOA.

- Legal support staff were not subject to transfer to DOA.
- Agency chief counsels in the Office of the Commissioner of Insurance and the 11 cabinet agencies were not subject to transfer to DOA under the earlier initiative and remained in those agencies as classified attorney positions. Under the current proposal, these positions would be made into unclassified general counsel positions in these agencies.
  - The agencies that were excluded from the transfer requirement were generally the same. However, in the earlier initiative, both the Departments of Regulation and Licensing and Justice were completely excluded. Under the current initiative, all Department of Regulation and Licensing and 2.0 FTE attorneys in DOJ with duties entailing tax litigation would be transferred to DOA.
  - Attorney positions identified by the Secretary of DOA that performed agency hearing officer, hearing examiner, or administrative law judge functions were not subject to transfer under the earlier initiative. Under the current provision, all attorneys excluding those in DWD who are engaged in these types of activities would be transferred. Further, under the current proposal, the Employment Relations Commission, whose attorneys perform many of these types of functions, would be newly listed as an agency not subject to the transfer provisions.
  - No division administrator position was authorized under DOA in connection with the earlier attorney transfer initiative. While it was assumed that some type of organizational restructuring would occur under DOA, the bill did not specify its nature. DOA was similarly authorized to charge agencies for the legal services provided following the transfer; however, in the earlier initiative, agencies would have been billed annually for such services.
  - A similar provision was included authorizing DOA to provide legal services to state agencies. Further, various statutory provisions were deleted that authorize certain executive branch agencies to directly employ legal staff. Under the current proposal, executive branch agencies would generally be required to have their legal services provided by a state employee, unless the agency contracts with DOA's Division of Legal Services or its Division of Hearings and Appeals or the legal services are provided by the Department of Justice or DOA's Division of Hearings and Appeals.

6. During the Committee's deliberations on the 2003-05 biennial budget bill, the attorney consolidation initiative was deleted. Instead, the Secretary of DOA was directed to delete all executive branch attorney positions, other than those at the UW System, that were vacant on January 2, 2004, and lapse or transfer the associated non-FED salary and fringe benefits amounts to the general fund in 2003-04 and in 2004-05. If fewer than 31.0 FTE attorney positions were vacant on that date, the Secretary was authorized to delete sufficient additional attorney positions such that a total of \$1,013,300 in 2003-04 and \$2,026,500 in 2004-05 would be lapsed or transferred to the general fund. The Governor subsequently item vetoed this provision to delete specific reference to the word "attorney," so that the Secretary of DOA could eliminate any 31.0 vacant positions on January 2, 2004.

7. *The Current Attorney Consolidation Initiative.* The *Budget in Brief* states that the current attorney consolidation initiative is being advanced in the interest of streamlining the provision of legal services of most executive branch agencies by transferring attorneys and legal support staff to a new DOA Division of Legal Services what would act as the state's "law firm." The Division would be organized into legal, administrative rules, and contract sections with subject-specific legal teams "that will leverage the expertise and program knowledge of current staff and yet allow management flexibility to distribute workload more evenly." It is further suggested that this arrangement will create opportunities for attorneys in the Division to "broaden their expertise as well as promote cross-training and consistent and improved legal work."

8. While the exact nature of the Division's organizational structure are still subject to change, it is anticipated that the Division's legal section would be comprised of teams with expertise in the following areas: (a) business and finance; (b) health and justice; (c) regulation; (d) employment and labor; and (e) tax and trust funds.

9. It is further anticipated Division's contract section would work with DOA's Bureau of Procurement and state agencies in an effort to standardize contract language and ensure that state contracts have the appropriate accountability language.

10. The administrative rules section would ensure that state agency administrative rules drafts meet the necessary technical language requirements and formatting before the rules are submitted to the Legislature.

11. The following considerations have been advanced in support of the Governor's attorney consolidation initiative:

- The initiative would result in tangible position reductions and associated cost savings.
- Standardization of the provision of basic "in-house" legal services across agencies would be possible. Such standardization would permit the allocation of legal services to agencies by a cadre of interchangeable attorneys.
- The pooling of attorneys would allow DOA to assign attorneys based of the type of legal expertise that is needed by agencies for specific legal projects. Upon completion of the agency assignment, the DOA attorney could be productively reassigned to duties in another agency.
- The consolidation initiative would enable agencies that currently do not have attorneys on staff to access legal services, as needed, on a more cost-effective basis.
- To the extent that agency attorneys are currently being used for regular administrative duties that could be done by lower-cost state employees, the consolidation initiative would allow DOA to screen the legal services provided.

12. Notwithstanding these considerations, a number of policy, budgetary, and implementation concerns have been raised concerning the feasibility and desirability of the attorney

consolidation initiative. These include:

- It is not clear the degree to which agency "in-house" legal staff would be fully interchangeable at the outset of the transfer initiative. Many, if not most, of these attorneys have developed considerable agency-specific expertise over time. Removal of the attorney for the agency could affect his or her ability to maintain that expertise. However, it is likely that in many cases the transferred attorney would be detailed back to his or her original agency to provide requested legal services. Under such circumstances, a question could also be raised as to why the attorney should be moved to DOA.

- There could be potential staff control issues. Where an agency would continue to retain a classified lead attorney position, that individual would provide overall direction with respect to agency legal matters. The pool attorneys would be DOA employees. It is unknown the degree to which this type of arrangement could present management issues, particularly if DOA and the agency lead counsel had divergent views on whether a particular agency legal matter should proceed. It is also unknown the degree to which this same type of issue might develop in those state agencies that would have an unclassified chief counsel as the agency's principal legal officer.

- A question may be raised whether the centralized assignment of "in-house" agency staff might ever become subject to a decision either not to assign legal staff or to withdraw legal staff to an agency. Further, DOA would have the ability to manage the provision of legal staff to noncabinet executive branch agencies, such as Employee Trust Funds and Veterans Affairs.

- DOA would make decisions with respect to the allocation of "in-house" attorneys to state agencies. Under current procedures, the Legislature, through the budget process, authorizes and funds state agency attorney positions.

- DOA would be in the position of having to provide attorney staffing to different state agencies that might have adverse legal interests. For example, the Departments of Natural Resources and Transportation may have differing views on issues such as the selection of highway construction corridors. Further, DOA "in-house" attorneys could find themselves appearing before hearing examiners who themselves are under the Division of Hearings and Appeals, attached to DOA.

- Currently, state agencies have what is essentially "pre-paid" in-house legal services. Agency staff have the opportunity to consult informally with their attorneys. Further, it tends to be more cost-effective for agencies to commence legal undertakings early in the development of an issue when matters may be more easily resolved than at a later stage. If agencies will be charged for legal services, would agency staff be as likely to consult informally with legal staff or to engage legal services as early?

- In some state agencies, such as the Department of Regulation and Licensing, attorneys work closely with, and must be directly available to, the regulatory boards and investigators that enforce disciplinary actions against credential holders. It is unknown the

degree to which the use of "pool attorneys" might affect the agency's efforts to maintain consistent enforcement actions. If it is intended instead that attorneys be assigned to Regulation and Licensing on a permanent basis, a question could also be raised as to why the attorney should be moved to DOA.

- The attorney consolidation initiative would reallocate salaries and fringe benefits funding to agency supplies and services lines. To the extent that agencies would not utilize this funding for legal services, these funds would be available for other operational purposes of the agency's choosing.

- Finally, it is unknown how DOA will bill for the legal services provided. While attorney staff and supplies and services costs will undoubtedly be translated into an hourly rate or some other type of charging basis, it is unknown the extent to which other overhead costs might be included in such charges in the future, thereby potentially increasing costs to agencies.

13. *Unclassified Agency Chief Counsel Positions.* The provision under the current attorney consolidation initiative that would authorize 12.0 unclassified general counsel positions at various cabinet agencies and the Office of the Commissioner of Insurance was not an element in the Governor's attorney consolidation initiative in the 2003-05 biennial budget bill. According to the State Budget Office, these general counsel positions were provided to allow these agencies to retain the ability to seek immediate advice on legal issues and decide whether to request additional legal services from DOA.

14. Current cabinet agency chief counsel positions are in the classified service, and most current incumbents have developed considerable agency-specific legal expertise as a result of long service in these positions. While the agency secretary would have the ability to choose his or her chief counsel under the Governor's recommendation, a potential disadvantage of this arrangement could be that the agency chief counsel would be subject to change with each new agency secretary. While the secretary would have the ability to choose a general counsel who would serve as a member of the agency's senior management team, periodic turnover in such a position could adversely affect the incumbent's ability to develop the type of expertise or institutional knowledge that would result from long-term service in such a position.

15. Also, there may be situations in which an agency chief counsel might be required to provide legal advice to the agency management team based on past precedents or practices that might be inconsistent with the policy positions of that management team. This type of situation would be less likely to occur with an unclassified chief counsel position.

16. In general, if the Committee concludes that it would be desirable to have cabinet agency chief counsels be subject to appointment by the secretary of 11 cabinet agencies and the Office of the Commissioner of Insurance, it could approve the Governor's recommendation.

17. However, if the Committee concludes that there concerns cited above are such that this approach should not be taken, it could delete this portion of the Governor's attorney consolidation initiative. Under this alternative, \$445,000 GPR, \$354,700 PR, and \$76,100 SEG in 2005-06 and \$890,000 GPR, \$709,300 PR, and \$152,000 SEG in 2006-07 and 6.0 GPR, 5.0 PR,

and 1.0 SEG unclassified chief counsel positions annually would be deleted in 11 cabinet agencies and the Office of the Commissioner of Insurance and would be replaced with \$389,400 GPR, \$391,400 PR, and \$95,000 SEG in 2005-06 and \$778,700 GPR, \$782,800 PR, and \$189,800 SEG in 2006-07 and 5.2 GPR, 5.5 PR, and 1.3 SEG classified chief counsel positions annually, to reflect the base level funding for these classified positions. Further, 12.0 PR positions annually would be deleted under DOA.

18. *Employee Trust Funds Attorney Transfer.* The Department of Employee Trust Funds (ETF) has advised that the duties of the attorney position that would be transferred to DOA include, in part, providing advice to the ETF Board in the exercise of its fiduciary responsibilities relating to the operation of the Wisconsin Retirement System and related public employee benefit programs. Further, there would be the potential that some or all of the funds from the public employee trust fund used to support this position could be lapsed or transferred to the general fund in violation of the current law requirement that the trust fund be used solely to advance the purposes of the trust and for no other purpose [s. 40.01(2) of the statutes.]

19. In the past, the Legislature has typically exempted ETF and the State of Wisconsin Investment Board from similar mandatory lapse and transfer requirements. The Committee could, therefore, exclude the ETF attorney position from the Governor's recommendation and restore 1.0 SEG position annually to ETF and shift \$60,400 SEG in 2005-06 and \$120,700 SEG in 2006-07 from supplies and services to salaries and fringe benefits to reflect this action. Under DOA, 1.0 PR attorney position and \$60,400 PR in 2005-06 and \$120,700 PR in 2006-07 would also be deleted.

20. The Governor's attorney consolidation recommendation anticipates that \$724,900 would be lapsed or transferred to the general fund in 2006-07 as a result of a net reduction of 13.0 attorney positions in 2006-07. The Department has identified an average salary and fringe benefits cost of an attorney for these deleted positions (\$119,500) for a total cost of \$1,553,500. Following an offset of certain space rental, moving, and furniture master leasing costs, approximately 70% of the indicated savings, representing the non-FED portion of the savings would be available for the lapse or transfer. Table 2 summarizes these calculations.

**TABLE 2**

**Estimated Savings Beginning in 2006-07 Due to Consolidation**

<u>Savings</u>	<u>2006-07</u>
Estimated Savings from Deletion of 13.0 Attorneys	\$1,553,500
<u>Offsetting Costs</u>	
Space Costs	\$422,100
One-time Move	72,500
Furniture Master Lease	<u>23,300</u>
Total Costs	\$517,900
Net Savings	\$1,035,600
Estimated 70% Lapse or Transfer Amount	\$724,900

21. An analysis of the funds shifted to agency supplies and services lines to fund the costs of DOA-provided legal services under the bill indicates that \$6,666,300 (all funds) in 2005-06 and \$13,330,100 (all funds) would be converted to these purposes. The costs of operation of the new Division of Legal Services under the bill would be \$8,086,000 PR in 2005-06 and \$12,842,800 PR in 2006-07. Table 3 summarizes the fiscal impact of these adjustments as they related to the estimated annual change in the cost of attorney services during the next biennium.

**TABLE 3**

**Attorney Costs under DOA Consolidation  
(2005-07)**

	<u>2005-06</u>	<u>2006-07</u>
<u>Available Agency Resources</u>		
Transferred to Supplies and Services*	\$6,666,300	\$13,330,100
<u>DOA Costs</u>		
Division of Legal Services Operations	\$8,086,000	\$12,842,800
Additional Costs (Savings) under the Proposal	\$1,419,700	-\$487,300

\*Represents deleted salary, fringe benefits and turnover amounts transferred to the supplies and services line.

22. Table 3 suggests that the costs of operation of the new DOA Division of Legal Services would exceed available funding reserved in agencies' supplies and services lines for the costs of attorney services by \$1,419,700 (all funds) in 2005-06. However, in the following year, the amounts available in agencies' supplies and services lines would exceed the Division's budgeted costs by \$487,300. The non-FED portion of these savings (estimated at \$341,100) would be available for lapse or transfer, in addition to savings generated by DOA as a result of the consolidation initiative.

23. However, it would appear likely that state agencies would liable for some, if not all, of the additional costs in the 2005-06 fiscal year, if DOA bills agencies for the actual costs of operation of the consolidated attorney function. Further, notwithstanding the identified savings of \$487,300 in 2006-07, the bill would still require agencies to generate an additional lapsable savings to meet the \$724,900 lapse requirement under the bill,

24. Based on all of the foregoing considerations, if the Committee concludes that the attorney consolidation initiative has merit and believes that it would result in operational efficiencies, it could adopt the Governor's recommendation.

25. However, if the Committee concludes that the proposed consolidation of attorneys under DOA would not be desirable as a matter of public policy, or might not generate significant savings over the near-term, the Committee could delete the proposal. Such an action would have the effect of retaining all of the attorney and legal support staff positions subject to transfer under the bill in their respective home agencies, deleting the conversion of agency chief counsels to the

unclassified service, deleting the creation of a separate Division of Legal Services in DOA, and shifting \$93,000 GPR annually of expert witness expense funding in connection with tax litigation matters from DOR back to DOJ.

26. Further, if the Committee wished to ensure the lapse or transfer of \$724,900 (all funds) to the general fund and the deletion of 13.0 positions in 2006-07, the Committee could adopt a provision comparable to that adopted in the 2003-05 budget relating to attorney consolidations. The Committee could direct the Secretary of DOA to delete 13.0 executive branch attorney positions, other than those at the UW System, that become vacant before January 1, 2007, and lapse or transfer at least \$724,900 (all funds) of the associated non-FED salary and fringe benefits amounts to the general fund in 2006-07. If fewer than 13.0 FTE vacant attorney positions are identified by that date, the Secretary would be authorized to delete sufficient additional attorney positions such that a total of 13.0 positions are deleted and \$724,900 is lapsed or transferred to the general fund in 2006-07.

## ALTERNATIVES

1. Approve the Governor's recommendation to: (a) provide \$8,086,000 PR and -48.14 GPR, -16.26 FED, 101.90 PR, and -24.50 SEG positions in 2005-06 and \$12,842,800 PR and -48.14 GPR, -16.26 FED, 75.90 PR, and -24.50 SEG positions in 2006-07 for personnel costs associated with the transfer of certain executive branch state agency attorney and legal staff positions to the Department of Administration, effective January 1, 2006; (b) create a Division of Legal Services within the Department of Administration and 1.0 division administrator to head this new Division; (c) specify the creation of a 12.0 (all funds) unclassified general counsel positions; (d) specify that the Division of Legal Services would provide legal services to executive branch agencies; and (e) specify the lapse of \$724,900 from amounts appropriated for legal services to the general fund within the 2005-07 biennium.

2. Modify the Governor's recommendation by: (a) including the Department of Employee Trust Funds among the executive branch state agencies that would be excluded from the attorney consolidation initiative; (b) restoring 1.0 SEG position annually under ETF and deleting 1.0 PR position annually under DOA; and (c) transferring \$60,400 SEG in 2005-06 and \$120,700 SEG in 2006-07 from supplies and services to salaries and fringe benefits under ETF and deleting \$60,400 PR and \$120,700 PR in salary and fringe benefits funding under DOA.

<u>Alternative 2</u>	<u>PR</u>	<u>SEG</u>	<u>TOTAL</u>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$181,100	\$0	- \$181,100
<b>2006-07 POSITIONS</b> (Change to Bill)	- 1.00	1.00	0.00

3. Modify the Governor's recommendation by restoring the classified chief counsel positions in 12 state agencies as follows: (a) delete \$445,000 GPR, \$354,700 PR, and \$76,100 SEG in 2005-06 and \$890,000 GPR, \$709,300 PR, and \$152,000 SEG in 2006-07 and 6.0 GPR, 5.0 PR, and 1.0 SEG unclassified chief counsel positions annually; (b) provide \$389,400 GPR, \$391,400

PR, and \$95,000 SEG in 2005-06 and \$778,700 GPR, \$782,800 PR, and \$189,800 SEG in 2006-07 and 5.2 GPR, 5.5 PR, and 1.3 SEG classified chief counsel positions annually; and (c) delete 12.0 PR positions annually under DOA's Division of Legal Services.

<b>Alternative 3</b>	<b>GPR</b>	<b>PR</b>	<b>SEG</b>	<b>TOTAL</b>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$166,900	\$110,200	\$56,700	\$0
<b>2006-07 POSITIONS</b> (Change to Bill)	- 0.80	- 11.50	0.30	- 12.00

4. Delete the Governor's recommendation. *[This alternative would have the effect of retaining all of the attorney and legal support staff positions subject to transfer under the bill in their respective home agencies, deleting the conversion of agency chief counsels to the unclassified service, deleting the creation of a separate Division of Legal Services in DOA, and shifting \$93,000 GPR annually of expert witness expense funding in connection with tax litigation matters from DOR back to DOJ.]*

<b>Alternative 4</b>	<b>GPR-REV</b>	<b>GPR</b>	<b>PR</b>	<b>SEG</b>	<b>TOTAL</b>
<b>2005-07 REVENUE</b> (Change to Bill)	- \$724,900				- \$724,900
<b>2005-07 FUNDING</b> (Change to Bill)			- \$20,928,800		- \$20,928,800
<b>2006-07 POSITIONS</b> (Change to Bill)		48.14	- 75.90	24.50	- 13.00

5. *In addition to Alternative 4, require the Secretary of the Department of Administration to delete 13.0 executive branch attorney positions, other than those at the UW System, that become vacant before January 1, 2007, and lapse or transfer at least \$724,900 (all funds) of the associated non-FED salary and fringe benefits amounts to the general fund in 2006-07. If fewer than 13.0 FTE vacant attorney positions are identified by that date, the Secretary would be authorized to delete sufficient additional attorney positions such that a total of 13.0 positions are deleted and \$724,900 is lapsed or transferred to the general fund in 2006-07. [The funding sources of the position deletions are calculated based on the current non-FED funding ratios of the executive branch attorney positions subject to the initiative. Actual position deletions may be different and could be in any executive branch agency, other than the UW System.]*

<b>Alternative 5</b>	<b>GPR-REV</b>	<b>GPR</b>	<b>PR</b>	<b>SEG</b>	<b>TOTAL</b>
<b>2005-07 REVENUE</b> (Change to Bill)	\$724,900				\$724,900
<b>2006-07 POSITIONS</b> (Change to Bill)		- 5.00	- 5.00	- 3.00	- 13.00

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