



## Legislative Fiscal Bureau

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April 26, 2007

Joint Committee on Finance

Paper #110

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

#### *Base Section*

[LFB 2007-09 Budget Summary: Page 29, #1; Page 55, #14; Page 62, #7;  
Page 81, #2; Page 91, #8; Page 105, #7; Page 132, #7; Page 146, #2;  
Page 234, #8; Page 361, #14; Page 387, #7; Page 397, #9; Page 434, #3; Page 474, #2;  
Page 485, #3; Page 490, #7; Page 565, #4; Page 580, #7; and Page 596, #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 a total of \$16,132,200 PR and -45.44 GPR, -16.66 FED, 86.2 PR, and -24.1 SEG positions in

2008-09 for all state agencies for the transfer of attorneys and legal staff to DOA, effective July 1, 2008.

*Create Division of Legal Services.* Create a Division of Legal Services with \$16,132,200 PR and 128.9 PR positions [127.9 classified and 1.0 unclassified] for personnel costs associated with the transfer of certain executive branch state agency attorney and legal staff positions to the agency, effective July 1, 2008. Included in these positions would be 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 July 1, 2008, 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, but excluding 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 Government Accountability Board, the Department of Justice, and the Employment Relations Commission. The Secretary of DOA would be authorized to identify the positions to be transferred.

Specify that the following attorney and legal staff positions would not be transferred to DOA: (a) employees of district attorneys; (b) one lead attorney at the Office of State Employment Relations (whose duties include negotiation of collective bargaining agreements for labor relations); and (c) one "general counsel" or lead attorney at the Departments of Administration; Agriculture, Trade, and Consumer Protection; Children and Families; 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 July 1, 2008, except for such employees that work for the Department of Workforce Development.

*DOA Authorized to Provide Legal Services.* Authorize DOA to provide legal services to state agencies. 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 Positions.* Create 13.0 unclassified general counsel positions to serve as the only agency legal counsel for the following agencies: (a) Department of Administration; (b) Department of Agriculture, Trade, and Consumer Protection; (c) Department of Children and Families; (d) Department of Commerce; (e) Department of Corrections; (f) Department of Financial Institutions; (g) Department of Health and Family Services; (h) Department of Natural Resources; (i) Department of Regulation and Licensing; (j) Department of Revenue; (k) Department of Transportation; (l) Department of Workforce Development; and (m) 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: (a) use a state employee, unless the agency contracts with DOA's Division of Legal Services or its Division of Hearings and Appeals; or (b) 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 as in the agency in which they originated. Specify that attorneys and legal staff that 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 be transferred to DOA on July 1, 2008.

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

**TABLE 1**

<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	4.00	4.00	0.00	1.00	5.00
Agriculture, Trade and Consumer Prot.	7.50	7.50	0.00	1.00	8.50
Board on Aging and Long-Term Care	1.00	1.00	0.00	0.00	1.00
Children and Families	4.30	4.30	0.00	1.00	5.30
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	6.00	6.00	0.00	1.00	7.00
Health and Family Services	19.50	19.50	0.00	1.00	20.50
Insurance	6.00	6.00	0.00	1.00	7.00
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	3.00	2.00	1.00	0.00	3.00
Regulation and Licensing	30.00	30.00	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>1.55</u>	<u>1.55</u>	<u>0.00</u>	<u>1.00</u>	<u>2.55</u>
Total 2007-08 FTE (All Agencies)	146.90	141.90	5.00	13.00	159.90
New DOA Division of Legal Services Administrator Position		1.00	0.00	0.00	1.00
Total 2008-09 FTE Reduction (in DOA)		-14.00	0.00	0.00	-14.00
Total 2008-09 FTE (All Agencies)		128.90	5.00	13.00	146.90
All Agencies Net Reduction (Current Positions Compared to 2008-09 FTE)					0.00

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

## 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 141.9 FTE attorney and legal staff positions from various state agencies to DOA, creating 1.0 FTE unclassified division administrator for a newly-created Division of Legal Services in DOA and providing 13.0 FTE

unclassified general counsel positions to the cabinet agencies, beginning in 2008-09. Further, 14.0 FTE attorney and legal staff positions transferred to DOA in 2008-09 would be deleted, resulting in no net position reduction. However, the bill would convert 1.49 (all funds) project positions to permanent positions. These positions were scheduled to be terminated in August, 2009, [0.49 FTE position in DHFS] and June, 2009, [1.0 FTE in the Department of Revenue]. So, there is a net of 1.49 FTE permanent positions and -1.49 FTE project positions, under the bill.

2. On a statewide, all-executive branch agency basis, the attorney consolidation initiative would make the following adjustments: (a) net amounts of \$5,316,300 GPR, \$1,821,800 FED, \$4,384,200 PR, and \$2,875,700 SEG in 2008-09 would be shifted from salaries and fringe benefits to supplies and services funding under 19 agencies to pay for DOA-provided legal services (there would be no net fiscal change associated with these offsetting transfers); (b) net attorney and legal staff position authority deletions of 45.44 GPR, 16.66 FED, 42.7 PR, and 24.1 SEG beginning July 1, 2008 in state agencies outside of the Division of Legal Services (the result of deleting a 141.9 all fund positions from the agencies and creating 13.0 all funds unclassified lead attorneys); and (c) the addition of \$16,132,200 PR in 2008-09 and 128.9 PR positions 2008-09 under the Division of Legal Services (the result of 141.9 PR transferred positions plus 1.0 PR new division administrator minus 14.0 PR deleted positions).

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.

4. In addition, the bill would authorize the Office of the Commissioner of Insurance the current 11 cabinet agencies, and the Department of Children and Families (created as a cabinet agency under the bill) to retain 1.0 FTE newly-created unclassified general counsel position each. The other 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 both the 2003-05 and 2005-07 biennial budget bills. These earlier initiatives had a number of similar elements to the current proposal, but also differed in important ways.

- The 2005-07 initiative was nearly identical to the attorney consolidation provisions of 2007 Senate Bill 40, except that under the 2005-07 biennial budget bill the following would have been required: (a) the transfer would have occurred six months earlier; (b) DOA would have been required to delete a net of 13.0 attorney positions and lapsed or transferred \$724,900 (all funds) to the general fund; and (c) the transfer of two DOJ attorney positions with duties entailing tax litigation.

- The 2003-05 proposal would have 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, 14.0 FTE fewer attorney and legal staff positions are authorized in DOA than would be deleted from the agencies. Depending on the number of attorneys that are moved to one of the newly-created unclassified lead attorney positions, a total of 14.0 attorneys or legal staff could be terminated from state employment, while as many as 14.0 new attorneys would be hired under the current proposal.

- Under the 2003-05 proposal, legal support staff were not subject to transfer to DOA.

- Agency chief counsels in the Office of the Commissioner of Insurance and the cabinet agencies were not subject to transfer to DOA under the 2003-05 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 2003-05 initiative, the Department of Regulation and Licensing was completely excluded. Under the current initiative, all Department of Regulation and Licensing attorneys and legal staff 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 2003-05 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 listed as an agency not subject to the transfer provisions.

- No division administrator position was authorized under DOA in connection with the 2003-05 attorney transfer initiative. While it was assumed that some type of organizational restructuring would occur under DOA, the bill did not specify its nature.

- A similar provision was included authorizing DOA to provide legal services to state agencies, under the 2003-05 initiative. 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 and 2005-07 biennial budget bill, the attorney consolidation was deleted. However, in both cases a portion of the position deletions were maintained.

7. In 2003-05, under 2003 Act 33, the Secretary of DOA was directed to delete 31.0 FTE positions that were vacant on January 2, 2004, and specified that \$1,013,300 in 2003-04 and \$2,026,500 in 2004-05 would be lapsed or transferred to the general fund. The provision originally specified that the position deletions would be attorneys, but that specific requirement was line item vetoed.

8. In 2005-07, under 2005 Act 25, the Secretary of DOA was required to delete 13.0 FTE executive branch agency attorney positions by June 30, 2007, other than attorneys at the Department of Employee Trust Funds and the State of Wisconsin Investment Board. The Governor's veto message also indicated that \$724,900 (all funds) would be lapsed or transferred to the general fund related to these deletions. [Specific language requiring these lapses or transfers was line item vetoed by the Governor.] The Committee should note that under 2007 Wisconsin Act 5, the deletion date for these 13.0 attorneys was extended to June 30, 2009. As a result, the 13.0 attorney positions would need to be deleted by the end of 2008-09. However, these 13.0 attorney position deletions could occur from any state agency, except for ETF and SWIB, and it is unknown how many of the deletions would occur from the Division of Legal Services. Also, these position deletions would occur regardless of the current attorney consolidation initiative.

9. *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."

10. The Department states that it is likely that the Division of Legal Services would be organized by functional specialties such as business and finance, health and justice, regulation, employment and labor, and tax and trust funds. According to the *Budget in Brief*, these subject teams would allow the state to "leverage the expertise and program knowledge of current staff and yet allow management flexibility to distribute workload more evenly." It is further stated that this arrangement would allow state attorneys to "maintain current agency specific expertise while creating opportunities to broaden their expertise in other areas, promoting cross-training, and improving consistency and legal work."

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

- The consolidation would allow for the coordination of administrative rules. A unit of the Legal Services Division would include administrative rules coordinators as well as attorneys. The attorneys and rules coordinators would provide "expertise to translate agencies' policy goals into the more technical language and format required under the administrative rules process."
- Improved contract negotiations for state agencies by insuring that best practices are followed and that attorneys and legal staff with expertise in contract language are available to all agencies.

- Providing managerial flexibility regarding legal services. 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 would allow for the cross-training of attorneys, helping to insure that attorney time is fully utilized and insuring that multiple employees can perform a particular legal need helps insulate the state during vacation periods and periods of turn-over.

- 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.

- Improved inter-agency coordination.

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 (ETF) and the Department of Veterans Affairs (DVA).

- 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. Under this provision, the Secretary of the Department of Administration along with the division administrator for the Division of Legal Services would determine which executive agencies would have access to legal services.

- 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.

- The Board on Aging and Long-Term Care has objected to the transfer of its attorney position because of the Board's ombudsman duties, which, under federal law, require the attorneys to be free from conflict of interest. Since the ombudsman is required to monitor, comment, and advocate on behalf of older adults the duties of the ombudsman may, at times, be at odds with state agencies that operate long-term care facilities, (DHFS). In this case, the goals of the state agency assigning the attorney (Division of Legal Services) could be in direct odds with the aging adults which the Board is assigned to protect.

- 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.

- Under the proposal, a total of 146.9 attorneys and legal staff would be affected by the consolidation initiative. Currently, the 146.9 FTE located at state agencies include 109.15 attorneys (including attorney managers, supervisors and confidential attorneys) and 37.75 legal staff (including legal associates, legal secretaries, paralegals, and administrative rules coordinators). As indicated previously, depending on the number of attorneys moved to one of the unclassified lead attorneys, a total of 14.0 attorneys or legal staff could be terminated from state employment, while as many as 14.0 new attorneys would be hired. Though the attorney consolidation recommendation could create positions for 14.0 FTE new attorneys, the reduction could occur from lower paid legal staff, changing the ratio of legal staff to attorneys. In addition, the bill would convert 1.49 FTE project positions into full time positions.

- 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.

- Under the bill, the legal services appropriation would be PR-continuing, thereby allowing the agency to expend all moneys received from assessments to agencies for providing legal services. This provision could allow DOA to significantly increase the state's use of attorney services from both the newly-created division and private law firms without legislative oversight, since no limit would be placed on the total amount that could be expended from this appropriation.

- As is shown in Table 2, it is estimated that agencies would be assessed an additional \$487,200 (all funds) for attorney salary and fringe benefits, compared to current law (assuming that no more than the amounts in the appropriation schedule are expended under the bill).

**TABLE 2**

**Position and Funding Changes for the Affected Attorney Positions**

	<u>Current Law</u>	<u>Bill</u>	<u>Change</u>
<b>Funding (All Funds)</b>			
Permanent Salary	\$9,820,900	\$10,633,100	\$812,200
Project Salary	117,900	0	-117,900
Fringe Benefits	4,459,200	4,252,100	-207,100
Supplies and Services*	<u>1,247,000</u>	<u>1,247,000</u>	<u>0</u>
	\$15,645,000	\$16,132,200	\$487,200
<b>Positions (All Funds)</b>			
Classified	140.41	127.90	-12.51
Project	1.49	0.00	-1.49
Unclassified	<u>0.00</u>	<u>14.00</u>	<u>14.00</u>
	141.90	141.90	0.00

\*Since funding is not moved within supplies and services, it is assumed that the same amount, provided under DOA in the bill, is dedicated under current law.

- According to the DOA, there does not appear to be sufficient space to house 128.9 positions that would be included under the Division of Legal Services in the state office building that currently houses DOA or in any of the other state office buildings. It is anticipated that additional space for the attorneys and legal staff would have to be found in a privately-owned building.

- To the extent that the Division of Legal Services costs include space costs for staff, and agencies are unable to reduce their own space cost as a result of fewer staff, agencies would be double billed for rental space for attorneys and legal staff.

- It is likely that there would be similar duplications of costs associated with the storage of documents needed by both the agency personnel and the legal services personnel that could potentially work with a given agency. Information related to the operation of an agency (such as contracts, employment records and administrative rules), would likely be needed by both agency personnel and the Division of Legal Services. Therefore, there would duplicative storage needed.

13. It could be argued that, if the attorneys are to be consolidated, such consolidation should occur within the Department of Justice (DOJ), rather than DOA. The Department of Justice is headed by the Attorney General, who is elected to head the DOJ, including its Division of Legal Services. The agency provides legal, criminal investigatory, and other law enforcement services for the state. The Division of Legal Services is authorized 86.9 (all funds) attorneys, which represent the interests of the state in court, advise state officers and agencies regarding their legal rights and responsibilities, and represent these officers and agencies in court. The Division also participates in the creation of legal opinions requested of the Attorney General.

14. Given that DOJ is statutorily required to represent the legal interests of the state, some might argue that DOJ would be more capable of determining the best use practices of the state's legal services staff.

15. Alternatively, it could be argued that the issues that are documented above, such as the costs involved in providing space for attorneys and the agencies' legal records, diverging issues among agencies leading to conflicts of interest within the Division of Legal Services, discouraging the use of "preventative" legal services, questions of whether the attorneys would lack expertise in the roles of the agencies for which they are assigned, and issues of whether an executive branch agency should be responsible for assigning attorney use to non-cabinet executive agencies (ETF and DVA), would still be of concern whether the attorney consolidation occurred in DOA or DOJ.

16. It could also be argued that there could be diverging interests between the Attorney General and the Governor about which agencies and which issues would merit the use of state legal staff. For instance, the Governor and the Attorney General may have differing opinions about whether more legal staff time should be devoted to the enforcement of rules rather than contract writing and review. Since the use of legal services within an agency may have a vital role in the scope of practice of that agency, it could be argued that the use of legal staff should be determined by the Secretary assigned to oversee the agency.

17. In addition, it could be argued that while the Attorney General and DOJ would have expertise in the litigation of the state laws, their knowledge of rule making processes, contract writing and other in-house legal services may be less than the department or division heads of the specific agencies who currently assign the use of legal services.

18. *Unclassified Agency Chief Counsel Positions.* The current attorney consolidation initiative that would authorize 13.0 unclassified general counsel positions at various cabinet agencies and the Office of the Commissioner of Insurance. 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.

19. 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.

20. 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.

21. 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 12 cabinet agencies (including the proposed Department of Children and Families) and the Office of the Commissioner of Insurance, it could approve the Governor's recommendation.

22. 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, the 13.0 (all funds) unclassified lead attorneys positions would instead be provided as classified positions.

23. *Approval of the Transfer.* 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.

24. However, if the Committee concludes that the proposed consolidation of attorneys under DOA would not be desirable as a matter of public policy, or would not provide efficiencies in state legal services, then it could reject 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, and deleting the creation of a separate Division of Legal Services in DOA.

## **ALTERNATIVES TO BASE**

1. Approve the Governor's recommendation to: (a) provide \$16,132,200 PR and -45.44 GPR, -16.66 FED, 86.20 PR, and -24.10 SEG positions in 2008-09 for personnel costs associated with the transfer of certain executive branch state agency attorney and legal staff positions to the Department of Administration, effective July 1, 2008; (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 13.0 (all funds) unclassified general counsel positions; and (d) specify that the Division of Legal Services would provide legal services to executive branch agencies.

ALT 1	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	\$0	- 45.44
FED	0	0.00	0	- 16.66
PR	0	0.00	16,132,200	86.20
SEG	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>- 24.10</u>
Total	\$0	0.00	\$16,132,200	0.00

2. Modify the Governor's recommendation by specifying that the lead attorney for the following agencies would be provided as classified rather than unclassified attorneys: (a) Department of Administration (0.5 GPR and 0.5 PR); (b) Department of Agriculture, Trade and Consumer Protection (1.0 GPR); (c) Department of Children and Families (1.0 PR); (d) Department of Commerce (1.0 PR); (e) Department of Corrections (1.0 GPR); (f) Department of Financial Institutions (1.0 PR); (g) Department of Health and Family Services (1.0 GPR); (h) Office of the Commissioner of Insurance (1.0 PR); (i) Department of Natural Resources (1.0 SEG); (j) Department of Regulation and Licensing (1.0 PR); (k) Department of Revenue (0.7 GPR and 0.3 SEG); (l) Department of Transportation (1.0 SEG); and (m) Department of Workforce Development (1.0 PR).

ALT 2	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	\$0	- 45.44
FED	0	0.00	0	- 16.66
PR	0	0.00	16,132,200	86.20
SEG	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>- 24.10</u>
Total	\$0	0.00	\$16,132,200	0.00

3. Maintain current law. *[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, and deleting the creation of a separate Division of Legal Services in DOA.]*

ALT 3	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	45.44	\$0	0.00
FED	0	16.66	0	0.00
PR	- 16,132,200	- 86.20	0	0.00
SEG	<u>0</u>	<u>24.10</u>	<u>0</u>	<u>0.00</u>
Total	- \$16,132,200	0.00	\$0	0.00

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