



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #115

Legal Services (DOA -- Transfers to the Department)

[LFB 2009-11 Budget Summary: Page 46, #1; Page 48, #2; Page 103, #23; Page 127, #3; Page 205, #9; Page 249, #4; Page 340, #11; Page 459, #12; Page 543, #3; Page 549, #4; Page 553, #5; Page 651, #7 and #8; and Page 686, #4]

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.

The DOA Secretary must delete 13.0 vacant attorney positions as of June 30, 2009. If fewer than 13.0 attorney positions are vacant in state agencies, the DOA Secretary must delete additional attorney positions so that a total of 13.0 positions are eliminated.

GOVERNOR

In DOA, provide \$1,426,400 PR and 10.0 PR classified and 2.0 PR unclassified attorney positions annually for the creation of a Division of Legal Services within the Department. Transfer \$339,600 GPR, \$419,400 PR and \$231,200 SEG annually from salaries and fringe benefits to supplies and services and delete a total of -1.0 GPR, -3.0 PR, and -1.0 SEG classified attorney

positions. In eight state agencies, provide a total of \$718,900 GPR, \$45,600 FED, \$246,200 PR, and \$358,000 SEG and 4.35 GPR, 0.15 FED, 1.5 PR, and 2.0 SEG positions for additional unclassified chief legal councils. The net change of these recommendations is \$718,900 GPR, \$45,600 FED, \$1,672,600 PR, and \$358,000 SEG and 3.35 GPR, 0.15 FED, 10.5 PR, and 1.0 SEG positions.

Specify that the following Departments could create 1.0 unclassified chief legal advisor position: (a) Administration; (b) Agriculture, Trade and Consumer Protection (DATCP); (c) Children and Families (DCF); (d) Corrections; (e) Health Services (DHS); (f) Natural Resources (DNR); (g) Transportation (DOT); and (h) Workforce Development (DWD).

Delete 1.0 classified attorney or legal staff position (a total of 5.0 positions) in each of the following agencies: (a) Department of Revenue (DOR); (b) Department of Financial Institutions (DFI); (c) Public Service Commission (PSC); (d) Regulation and Licensing (R&L); and (e) Department of Transportation (DOT).

Modify the current law requirement which deletes 13.0 attorney positions on June 30, 2009, to instead specify that the DOA Secretary eliminate up to 13.0 attorney positions that are vacant on June 30, 2011.

Create a Division of Legal Services within DOA. Specify that DOA may provide legal services to state agencies and is required to assess agencies for services. Specify that "state agencies" would include an office, commission, department, independent agency, or board in the executive branch including the Building Commission but excluding the Department of Justice and the Department of Public Instruction. The definition would include the University of Wisconsin System.

Create a PR-continuing appropriation within the Department for the receipt of revenues and specifying that the Division of Legal Services may expend all monies received from agency assessments for costs associated with providing legal services.

In addition to the 12.0 DOA positions identified above, specify that, in 2010-11, the Secretary of the Department of Administration be allowed to transfer 3.0 vacant attorney positions to the Division from any state agency as defined above. Specify that the position authority under the newly-created Division would increase by the number of positions transferred under the provision and the authorized position count of the agency transferred from would decrease by a corresponding amount. Under AB 75, as initially proposed, the Administration indicated that 7.0 positions would be transferred from within DOA to the new division. Thus, in total, the new division in DOA would have 22.0 positions.

The following table summarizes the annual attorney position adjustments recommended by the Governor in all state agencies other than: (a) up to 3.0 unknown position transfers to DOA's Division of Legal Services in 2010-11; and (b) the unknown cost of extending 13.0 attorneys for the 2009-11 biennium. Modifications are identified separately under each affected agency.

Legal Services Under Assembly Bill 75

<u>Agencies by Fund</u>	<u>Positions</u>		<u>Annual Funding</u>		
	<u>Classified</u>	<u>Unclassified</u>	<u>Salary and Fringe</u>	<u>Supplies and Services</u>	<u>Total</u>
GPR					
Agriculture, Trade and Consumer Protection	0.00	1.00	\$171,200	\$0	\$171,200
Corrections	0.00	1.00	179,300	0	179,300
Health Services	0.00	1.00	170,400	0	170,400
Children and Families	0.00	0.85	129,600	0	129,600
Administration	0.00	0.50	-206,400	274,800	68,400
Revenue	<u>-1.00</u>	<u>0.00</u>	<u>-64,800</u>	<u>64,800</u>	<u>0</u>
GPR Total	-1.00	4.35	\$379,300	\$339,600	\$718,900
FED					
Children and Families	0.00	0.15	\$22,800	\$0	\$22,800
PR					
Financial Institutions	-1.00	0.00	-\$68,100	\$68,100	\$0
Public Service Commission	-1.00	0.00	-67,300	67,300	0
Regulation and Licensing	-1.00	0.00	-48,700	48,700	0
Workforce Development	0.00	1.00	177,800	0	177,800
Administration	0.00	0.50	-166,900	235,300	68,400
DOA - Legal Services	<u>10.00</u>	<u>2.00</u>	<u>1,306,400</u>	<u>120,000</u>	<u>1,426,400</u>
PR Total	7.00	3.50	\$1,133,200	\$539,400	\$1,672,600
SEG					
Natural Resources	0.00	1.00	\$179,500	\$0	\$179,500
Transportation	-1.00	1.00	108,000	70,500	178,500
Administration	<u>0.00</u>	<u>0.00</u>	<u>-160,700</u>	<u>160,700</u>	<u>0</u>
SEG Total	-1.00	2.00	\$126,800	\$231,200	\$358,000
All Fund Total	5.00	10.00	\$1,662,100	\$1,110,200	\$2,772,300

DISCUSSION POINTS

1. The State Budget Office has sent an errata report that indicates the following: (a) the Department of Administration should not have been provided with a chief legal advisor position (\$68,400 GPR and \$68,400 PR and 0.5 GPR and 0.5 PR position annually); (b) the chief legal advisor position was double referenced and should also be deleted under the Division of Legal Services (-\$136,800 PR salary and fringe and -\$10,000 supplies and services and -1.0 PR position annually); and (c) 5.0 positions (2.5 GPR, 1.5 PR, 1.0 SEG) within DOA should have been transferred to the Division of Legal Services from within DOA rather than newly created. The following table shows the total funding and positions by agency under this revision.

Legal Services -- Assembly Bill 75 Modified

<u>Agencies by Fund</u>	<u>Positions</u>		<u>Annual Funding</u>		
	<u>Classified</u>	<u>Unclassified</u>	<u>Salary and Fringe</u>	<u>Supplies and Services</u>	<u>Total</u>
GPR					
Agriculture, Trade and Consumer Protection	0.00	1.00	\$171,200	\$0	\$171,200
Corrections	0.00	1.00	179,300	0	179,300
Health Services	0.00	1.00	170,400	0	170,400
Children and Families	0.00	0.85	129,600	0	129,600
Administration	-2.50	0.00	-206,400	206,400	0
Revenue	<u>-1.00</u>	<u>0.00</u>	<u>-64,800</u>	<u>64,800</u>	<u>0</u>
GPR Total	-3.50	3.85	\$379,300	\$271,200	\$650,500
FED					
Children and Families	0.00	0.15	\$22,800	\$0	\$22,800
PR					
Financial Institutions	-1.00	0.00	-\$68,100	\$68,100	\$0
Public Service Commission	-1.00	0.00	-67,300	67,300	0
Regulation and Licensing	-1.00	0.00	-48,700	48,700	0
Workforce Development	0.00	1.00	177,800	0	177,800
Administration	-1.50	0.00	-166,900	166,900	0
DOA - Legal Services	<u>10.00</u>	<u>1.00</u>	<u>1,169,600</u>	<u>110,000</u>	<u>1,279,600</u>
PR Total	5.50	2.00	\$996,400	\$461,000	\$1,457,400
SEG					
Natural Resources	0.00	1.00	\$179,500	\$0	\$179,500
Transportation	-1.00	1.00	108,000	70,500	178,500
Administration	<u>-1.00</u>	<u>0.00</u>	<u>-160,700</u>	<u>160,700</u>	<u>0</u>
SEG Total	-2.00	2.00	\$126,800	\$231,200	\$358,000
All Fund Total	0.00	8.00	\$1,525,300	\$963,400	\$2,488,700

2. The Governor's recommendation would create a Division of Legal Services in DOA made up of 11.0 to 14.0 positions. The bill, as modified by the errata, would provide 10.0 classified and 1.0 unclassified positions and would also allow the transfer of up to 3.0 vacant attorney positions in 2010-11. The new Division would have the authority provide legal services to all executive branch agencies, except for the Department of Justice and the Department of Public Instruction.

3. A PR-continuing appropriation is created under the bill, which would allow the Division to assess agencies for the legal services provided and to expend all revenues received. Under the bill, as modified by the errata, it is estimated that \$1,279,600 PR annually would be expended for legal services by DOA. To partially offset these additional costs, the Governor has recommended deleting 5.0 vacant legal staff positions and transferring the amounts that are currently under salaries and fringe benefits for these positions to supplies and services to partially

offset the new legal service assessments. In addition, under the errata, 5.0 filled legal staff positions would be transferred to the Division and current salary and fringe benefits for these positions would be transferred to supplies and services to pay for legal services. The Governor has further recommended creating an unclassified chief legal advisor within eight of agencies, which is reduced to seven under the errata.

4. Finally, the Governor has recommended extending the requirement to delete 13.0 attorney positions to June 30, 2011. The bill language modifies current law to allow for the deletion of up to 13.0 attorney positions rather than specifically deleting 13.0 positions. [Current law requires the deletion of 13.0 attorney positions, beginning with vacancies, but requiring additional deletions if vacancies are not available.]

5. In net, AB 75, as modified, would increase the number of legal staff for all state agencies by 21.0 positions in 2009-11 as follows: (a) the creation of 7.0 unclassified chief legal advisor positions; (b) the creation of 11.0 legal services positions (1.0 unclassified and 10.0 classified) in the Division of Legal Services; (c) the deletion of 5.0 classified attorney positions at PSC, DRL, DFI, DOT, and DOR; (d) the deletion of classified 5.0 legal services positions from other DOA appropriations; and (e) the extension of 13.0 attorney positions that are currently scheduled to be deleted on June 30, 2009. The number of additional attorneys authorized after June 30, 2011, would include 8.0 unclassified attorney positions authorized under items (a) through (d) and an unknown number of the 13.0 positions (item (e)), depending on the number that were deleted by the DOA Secretary.

6. The make-up of the Division of Legal Services would include: (a) 1.0 unclassified division administrator (currently in the Division of Energy); (b) 6.0 classified attorneys; and (c) 4.0 classified legal services support staff. In addition, under the bill, 3.0 attorneys could be transferred to the Division in 2010-11.

7. *Previous Attorney Consolidation Initiatives.* The Governor has proposed the creation of a centralized legal services division in each of the last three biennial budget bills. The prior bills all included the transfer of a number of attorneys and legal staff, generally transferring the attorneys from executive branch agencies into a single Division of Legal Services.

The first two proposals included net state position reductions. The 2007-09 proposal had no net change in position authority. The current proposal would have a net increase of 21.0 attorneys and legal staff (8.0 unclassified attorneys identified in the above table and 13.0 attorney positions retained for at least two additional years).

The prior proposals included limits on agency use of attorneys, generally restricting attorney use outside of those provided under DOA. The current recommendation does not place such restrictions on attorney use.

8. The Governor's Budget in Brief indicates: "legal services are one of the most critical elements of effective and efficient state operations. Contracts, privacy policies, rule-making and human resources management rely heavily on state agency legal resources. In order to improve

coordination of legal services, the budget creates a new division within the Department of Administration focused on enterprisewide legal issues. The new division will provide legal services on complex multiagency issues including: contracting and contract negotiation, procurement, information and information system security, public records, real estate, administrative rules and risk management."

9. The Budget in Brief also indicates that the Division would work to standardize state contracts and requests for proposals. The unclassified chief legal advisors in the selected agencies would increase flexibility to allocate resources and legal expertise throughout state government. The Department states that DOA would identify enterprisewide issues, but agencies could also request assistance on multi-agency issues. Fees would be determined by the Division of Legal Services.

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

- 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. Attorneys could be assigned to assist agencies based on the type of legal expertise that is needed 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.
- Improved inter-agency coordination of state responses on issues such as open-records requests, administrative rules, contractual obligations of the state and those who provide services to the state.

11. 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:

- First, there could be potential staff control issues. While most agencies would retain internal legal staff that would likely provide overall direction with respect to agency legal matters, the pool attorneys would be DOA employees, and may have divergent views about whether a particular agency legal matter should proceed. The manner in which these issues are resolved between the agencies could cause difficulties for the "client" agency.
- The Department of Administration 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. Since the bill does not reduce this in-house staff, except at PSC, DRL, DFI, and DOR, most agencies would continue to use their in-house services. For another six agencies (DOT would have no net gain or loss) there would be additional attorney services available under the Governor's recommendation. It could be argued that with the net gain of agency legal services under the bill, that there would be less demand for centralized legal services.

- Whether or not agencies request legal counsel from the Division of Legal Services, it is likely that DOA will have to recover costs for fixed Division expenses, including the salary, fringe benefits, and supplies and services costs of up to 14.0 positions. It is unknown how DOA will bill for the legal services provided. While some attorney staff and supplies and services costs will undoubtedly be translated into some type of use charge based upon requested services, it is likely that much of the divisional costs would be based on flat fees distributed to each state agency, whether services were requested or directly provided to those agencies.

- DOA would have the ability to assess fees for the provision of legal services to non-cabinet executive branch agencies, such as Employee Trust Funds, the Office of the State Treasurer, the Department of Public Instruction, the Department of Justice, the Government Accountability Board, and the Department of Veterans Affairs.

- Currently, the Legislature has oversight of the distribution of legal staff through the appropriation of funds and the approval of legal staff for specific agencies. It could be argued that the creation of centralized legal services moves the legal services approval process to the DOA Secretary.

- The bill would allow the DOA to provide legal services to many non-cabinet executive agencies, including the Department of Veterans Affairs, the Government Accountability Board, the Secretary of State, and the Office of the State Treasurer, which may have diverging views about the legal services that are needed for their agencies.

12. While the administration indicates that the Division of Legal Services would provide services for contracting and contract negotiation, procurement, information and information system security, public records, real estate, administrative rules and risk management, the language under the bill does not restrict the type of legal services that may be provided and assessed to agencies.

13. If the Committee wishes to approve the creation of the Division of Legal Services it may wish to restrict the type of legal services that may be provided to executive branch agencies to the services specifically outlined by the administration.

14. In addition to the general concerns identified above, two agencies have raised specific concerns regarding legal services being provided within DOA.

The Executive Director of the State of Wisconsin Investment Board (SWIB) states that the Board provides specialized services for Wisconsin employees and transferring the legal functions of SWIB to DOA would be inconsistent with the fiduciary responsibilities of the Board. The Executive Director asks that SWIB be exempted from the Governor's recommended changes for the provision of legal services.

The Secretary of the Department of Employee Trust Funds (ETF) also stated his concern for the use of funds from the Public Employee Trust Fund for legal services that may or may not provide direct benefits to the Trust or the employee members. The Secretary of ETF asked to be exempted from the attorney consolidation provisions.

15. At a time when agencies are being asked to lapse a significant portion of their funding resources and make reductions to staffing levels, it could be questioned whether additional assessments for legal services, that may or may not have been requested by the agency, is appropriate.

16. The additional costs to state agencies would be at least \$1,635,300 (all funds) annually based on estimated assessments of \$1,279,600 annually for the Division of Legal Services costs plus \$1,209,100 annually for salary and fringe benefits for 7.0 chief legal advisor positions minus \$853,400 annually that would be made available for legal service assessments through the deletion of 10.0 attorney positions at DOA, PSC, DRL, DFI, DOT, and DOR. Table 1 shows these amounts by fund source.

TABLE 1

Annual Amount of Funds Transferred to Supplies and Services for Attorney Charges Relating to Position Deletions

GPR	\$271,200
PR	350,000
SEG	<u>231,200</u>
Total (All funds)	\$853,400

Annual Amount of Additional Assessments from Office of Legal Services*

PR	\$1,279,600
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Annual Additional Costs for Chief Legal Advisors

GPR	\$650,500
FED	22,800
PR	177,800
SEG	<u>358,000</u>
Total (All funds)	\$1,209,100

All Fund Additional Agency Costs (Net of New Supplies and Services Funds) \$1,635,300

17. In addition to these costs, an unknown amount related to retaining 13.0 attorney positions would be extended through at least June 30, 2011.

18. As stated previously, the administration believes the creation of the Division of Legal Services would allow for more efficient and coordinated use of state legal resources to address enterprisewide legal matters. However, it appears that such a division would result in increased costs to the state whether or not the agency legal advisor positions are created.

Chief Legal Advisors

19. According to the Governor's Budget in Brief, the unclassified chief legal advisors are intended to provide seven of the state agencies with increased "flexibility to allocate resources and legal expertise throughout state government."

20. The Department states that the chief legal advisors would provide counsel to the agency secretaries and the executive staff, would direct agency legal services, and would supervise agency attorney management and attorney supervisor positions. The chief legal advisors would also work with the Division of Legal Services on complex multi-agency legal matters. The chief legal advisors would supervise the current attorney supervisors and lead attorneys, who would then supervise the remaining classified attorneys.

21. It could be argued that the chief legal advisors would represent a significant increase to agency expenditures (\$1,209,200 all funds annually) and act as a buffer between the current agency lead attorneys and the unclassified executive staff of state agencies. In essence, creation of the chief legal advisors could reduce the authority of classified lead attorneys.

22. 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 legal advisor under the Governor's recommendation, a potential disadvantage of this arrangement could be that the agency chief legal advisor would be subject to change with each new agency secretary. While the secretary would have the ability to choose an advisor 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 could result from long-term service in the position.

23. Also, there may be situations in which an agency chief legal advisor 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 the management team. The type of exchange would be less likely to occur with an unclassified chief counsel position.

24. If the Committee believes that these positions should be deleted from the bill, a corresponding appropriation reduction could be made to annual agency appropriations, as follows: (a) -\$171,200 GPR and -1.0 GPR position at the DATCP; (b) -\$179,300 GPR and -1.0 GPR position at Corrections; (c) -\$170,400 GPR and -1.0 GPR position at DHS; (d) -\$129,600 GPR and

-\$22,800 FED and -0.85 GPR and -0.15 FED position at DCF; (e) -\$177,800 PR and -1.0 PR position at DWD; (f) -\$179,500 SEG and -1.0 SEG position at DNR; and (g) -\$178,500 SEG and -1.0 SEG position at DOT.

Division of Legal Services Administrator

25. The Department would transfer the Division Administrator position that currently oversees the Division of Energy Services to oversee the Division of Legal Services. This position is currently funded from the segregated public benefits fund, but would now be funded from program revenue from assessments to agencies for legal services.

26. This division administrator would be responsible for the oversight of 10.0 to 13.0 total positions. It could be argued that assigning a division administrator to oversee such a small group would be excessive use of a division administrator position. It could also be noted that the cost of such a division administrator would be an additional cost to state agencies through the Division of Legal Services assessments and the amount allocated to the division administrator would increase by 17% over the amounts currently paid to Division of Energy Services administrator (\$136,700 SEG compared to \$160,000 PR for salary and fringe benefits).

27. The Committee could chose to reduce the total number of division administrators available to DOA from 14 to 13, relating to the transfer of the Division of Energy Services and delete 1.0 PR unclassified position and \$160,000 PR annually from the estimated expenditures of the Division.

28. Under this alternative, the Department could include legal services under one of the Office of the Secretary or as a Bureau of Legal Services under one of the current Divisions (such as Enterprise Operations or Administrative Services).

Location of the Division of Legal Services

29. It could be argued that, if a Division of Legal Services was created that it 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 87.9 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. 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.

30. Alternatively, as DOA envisions, the new Division would provide legal support in more administrative functions, such as contracts writing, open record requests, risk management, and rule writing. Further, 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, some may believe that the use of legal staff should be determined by the Secretary assigned to oversee the agency, rather than either DOA or DOJ.

Appropriation Authority

31. Under the bill, DOA would be allowed to expend all moneys received from assessments to agencies for providing legal services through a PR-continuing appropriation. Currently, DOA is allowed to retain private legal counsel. Assembly Bill 75 provisions 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.

32. The Department of Administration indicates that spending flexibility is needed because the volume of work is unknown and because the bill would allow the DOA Secretary to increase the position authority by 3.0 additional positions in 2010-11, thereby increasing the number of personnel paid from the appropriation. If the Committee wishes to provide this funding flexibility, it could maintain the proposed PR-continuing appropriation.

33. Alternatively, it could be argued that as agencies attempt to control their expenditures and more efficiently use their resources, that assessments from DOA for resources that they may or may not have benefited the agency could impinge the agency's efforts to reduce expenditures.

Also, the Legislature currently has oversight on the total amount expended on state legal services through the state budget process and approval of attorney and legal staffing positions. Since the PR-continuing legal services appropriation could allow for uncapped assessments for state use of state and private legal services, approval of this appropriation would reduce legislative oversight.

34. The Committee could consider modifying the Governor's recommendation by creating the appropriation as an annual appropriation. This alternative would limit DOA's ability to expand revenues to the amount approved by the Legislature on an annual basis. In addition, the Committee could delete the proposed transfer of up to 3.0 vacant attorney positions in 2010-11. This would eliminate the need for flexibility in appropriation authority in this biennium and should the Department wish to expand the total number of legal staff assigned to the Division of Legal Services, a request could be made under future budget deliberations. This would allow the Legislature to review the appropriateness of any transfer.

Extension of Attorney Deletions

35. 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 Secretary was required

to delete vacant positions first, but if there were not enough vacancies, the Secretary was required to delete filled positions. Under 2007 Wisconsin Act 5, the deletion date for these 13.0 attorneys was extended to June 30, 2009. The Governor's current recommendation would be to extend this date again (to June 30, 2011), but to specify that the DOA Secretary could eliminate *up to* 13.0 attorneys that are vacant on that date (non-vacancies could not be deleted).

36. Currently, there are 44.8 vacant attorney positions among the 1,112.35 attorney positions in executive branch agencies, including the UW system.

37. The Department indicates that the extension of these positions would help ensure a smooth transition to the newly-reorganized Division of Legal Services and for agency legal services. The Committee could choose to approve the Governor's recommendation to extend the deletion of these positions until June 30, 2011.

38. On the other hand it could be noted that, under the bill, there would no longer be a requirement to delete any attorney positions on the effective date.

39. It could be questioned whether the creation of the Division of Legal Services necessitates the extension of 13.0 other attorney positions. The attorney positions that would be deleted on June 30, 2009, would come primarily from vacancies. The extension of the deletion date may allow agencies to fill these vacancies, but it is unclear how these newly-hired attorney staff would aid the transition of the newly-created Division, especially since it is unknown where the position deletions would be made. The Committee could choose to delete the Governor's recommendation to extend the deletion date of 13.0 positions and to make the deletion permissive.

40. In addition, it could be argued that if the positions are only needed for the transitional period, then the deletion of attorney positions at the end of 2009-11 should be required rather than optional.

41. While the Department did not submit errata on this provision, DOA states that "the intent of the provision to delete up to 13.0 attorney positions by the end of the [2009-11] biennium is to delete all 13.0 FTE positions and should therefore be viewed as a reduction in the number of positions in the state." If the Committee believes that the extension of the sunset would ease the creation of the Division of Legal Services, but that the positions should be deleted at the end of the 2009-11 biennium, then it could delete the permissive authority of the position deletion.

ALTERNATIVES

1. Approve the Governor's recommendation, as modified by the errata, to provide \$1,279,600 PR and 10.0 PR classified and 1.0 PR unclassified position for a newly created Division of Legal Services. Delete 1.0 classified attorney or legal staff position (a total of 5.0 positions) in each of the following agencies: (a) Department of Revenue; (b) Department of Financial Institution; (c) Public Service Commission; (d) Regulation and Licensing; and (e) Department of Transportation. Create a PR-continuing appropriation for the receipt of revenues and specifying that

the Division of Legal Services may expend all monies received from agency assessments for costs associated with providing legal services. Create 1.0 chief legal advisor for the following Departments: (a) Agriculture, Trade and Consumer Protection; (b) Children and Families; (c) Corrections; (d) Health Services; (e) Natural Resources; (f) Transportation; and (g) Workforce Development. Specify that the Secretary of the Department of Administration may delete up to 13.0 vacant attorney position, excluding attorneys in the Department of Employee Trust Funds and the State of Wisconsin Investment Board, on June 30, 2011. Specify that, in 2010-11, the Secretary of the Department of Administration be allowed to transfer 3.0 vacant attorney positions to the Division from any state executive branch agency, except the Department of Justice and the Department of Public Instruction.

ALT 1	Change to Bill	
	Funding	Positions
GPR	-\$136,800	- 3.00
PR	- 430,400	- 3.00
SEG	<u>0</u>	<u>- 1.00</u>
Total	-\$567,200	- 7.00

2. Specify that the Division of Legal Services may provide only the following types of legal services: (a) contracting and contract negotiation; (b) procurement; (c) information and information system security; (d) public records; (e) real estate; (f) administrative rules; and (g) risk management.

3. Specify that the State of Wisconsin Investment Board and the Department of Employee Trust Fund would not be included as an agency in which the Division of Legal Services could provide services.

4. *Chief Legal Advisors.* Modify the Governor's recommendation to delete chief legal advisors as follows: (a) -\$171,200 GPR and -1.0 GPR position annually at the Department of Agriculture Trade and Consumer Protection; (b) -\$179,300 GPR and -1.0 GPR position annually at the Department of Corrections; (c) -\$170,400 GPR and -1.0 GPR position annually at the Department of Health Services; (d) -\$129,600 GPR and -\$22,800 FED and -0.85 GPR and -0.15 FED position annually at the Department of Children and families; (e) -\$177,800 PR and -1.0 PR position annually at the Department of Workforce Development; (f) -\$179,500 SEG and -1.0 SEG position annually at the Department of Natural Resources; and (g) -\$178,500 SEG and -1.0 SEG position annually at the Department of Transportation.

ALT 4	Change to Bill	
	Funding	Positions
GPR	-\$1,301,000	- 3.85
FED	- 45,600	- 0.15
PR	- 355,600	- 1.00
SEG	<u>- 716,000</u>	<u>- 2.00</u>
Total	-\$2,418,200	- 7.00

5. *Division Administrator.* Modify the Governor's recommendation to create a separate

Division of Legal Services. Specify that the legal services would be provided under an existing division within the Department of Administration. Delete \$160,000 PR and 1.0 PR unclassified position annually and reduce the number of statutorily authorized division administrators at the Department of Administration by one.

ALT 5	Change to Bill	
	Funding	Positions
PR	- \$320,000	- 1.00

6. *Appropriation Authority.* Modify the bill to specify that the PR appropriation for the receipt of revenues and to pay expenses of the Division of Legal Services be annually appropriated rather than continuing.

7. *Extension of Attorney Deletions.*

a. Delete the Governor's recommendation to extend the deletion date for 13.0 attorney positions from June 30, 2009, to June 30, 2011 and to make the deletion of attorney positions permissive rather than required.

b. Approve the Governor's recommendation but make the deletion of attorney positions on June 30, 2011, required rather than permissive.

8. Delete provision.

ALT 8	Change to Bill	
	Funding	Positions
GPR	- \$1,437,800	- 3.35
FED	- 45,600	- 0.15
PR	- 3,345,200	- 10.50
SEG	- 716,000	- 1.00
Total	- \$5,544,600	- 15.00

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