



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #117

### **Administrative Law Judge Positions (DOA -- Transfers to the Department)**

[LFB 2009-11 Budget Summary: Page 49, #4; Page 103, #24; and Page 549, #6]

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#### **CURRENT LAW**

The Division of Hearings and Appeals (DHA) is a division within the Department of Administration (DOA), but operates independently of DOA except for certain budgeting and management functions. The Division conducts administrative hearings for several state agencies. Under current law, DHA decides contested administrative proceedings for the Department of Natural Resources, cases arising under the Department of Justice's Crime Victim Compensation Program, and appeals related to actions of the Department of Health Services. The Division also hears appeals from the Department of Transportation, conducts hearings for the Department of Corrections regarding probation, parole, and extended supervision revocation and juvenile aftercare supervision, and handles contested cases for the Division of Economic Support in the Department of Workforce Development, the Department of Public Instruction, the Department of Employee Trust Funds, and the Low-Income Home Energy Assistance Program of the Department of Administration. Other agencies may contract with the Division for hearing services.

#### **GOVERNOR**

Provide \$205,900 PR in 2009-10 and \$200,900 PR in 2010-11 and 1.5 PR classified positions for hearings and appeals services in DOA. The Executive Budget Book indicates that the deletion of 1.0 PR position at the Department of Regulation and Licensing (DRL) and 0.5 PR position at the Department of Agriculture Trade and Consumer Protection (DATCP) would correspond with the creation of 1.5 PR positions at the Department of Administration. Transfer \$68,200 PR annually under DRL and \$68,700 PR under DATCP from salary and fringe benefits to supplies and services.

**DISCUSSION POINTS**

1. Under the bill, 1.0 PR attorney position from DRL and 0.5 PR attorney position from DATCP would be deleted in these agencies and a corresponding 1.5 PR positions created under the Department of Administration. The positions in DRL and DATCP are currently vacant. Under the bill, the minimum salary and fringe benefits rates for these attorney positions would be deleted under salary and fringe benefits and transferred to supplies and services to pay for DHA assessments for administrative law judge services.

2. The table below identifies the funding levels that would be provided to DOA and the amounts that would be transferred from salary and fringe benefits in DRL and DATCP under the bill. The positions at DOA would have a salary and fringe benefit increase of \$34,300 over the current salary and fringe authority at DRL and DATCP. It is assumed that the supplies and services costs associated with the positions at DOA would be equal to the supplies and services currently available at DRL and DATCP for these positions.

	<u>Salary and Fringe</u>	<u>Supplies and Services</u>	<u>Total</u>
Agriculture Trade and Consumer Protection	-\$68,700	\$68,700	\$0
Regulation and Licensing	<u>-68,200</u>	<u>68,200</u>	<u>0</u>
Total	-\$136,900	\$136,900	\$0
Administration*	\$171,200	\$29,700	\$200,900

\*There is an additional \$5,000 of one-time funding in 2009-10 under DOA.

3. In a budget errata to the Committee, DOA has indicated that the amounts transferred from salary and fringe benefits to supplies and services under DATCP were calculated based on a full-time position rather than 0.5 position authority and that the amount that should have been transferred is \$35,500 PR annually, as shown in the table below.

	<u>Salary and Fringe</u>	<u>Supplies and Services</u>	<u>Total</u>
Agriculture Trade and Consumer Protection	-\$35,500	\$35,500	\$0
Regulation and Licensing	<u>-68,200</u>	<u>68,200</u>	<u>0</u>
Total	-\$103,700	\$103,700	\$0
Administration*	\$171,200	\$29,700	\$200,900

\*There is an additional \$5,000 of one-time funding in 2009-10 under DOA.

4. Based on the budget errata, the Committee could choose to modify the bill to specify

that only \$35,500 PR annually under DATCP would be transferred from salary and fringe benefits to supplies and services. Under this modification, the DOA positions would have salary and fringe benefits of \$67,500 PR above the amounts deleted from DRL and DATCP. [Alternative 1]

5. The Department indicates that the goal of the transfer is to increase efficiency of administrative hearings statewide through consolidation. The Department states that the proposed transfer of DATCP's administrative hearing responsibility, which involves a small number of cases each year, to DHA will result in greater efficiency through economies of scale.

6. The administration also argues that moving administrative hearings to DHA would help avoid the appearance of conflict of interest related to DATCP hearing cases involving their regulatory duties.

7. The Department of Regulation and Licensing currently splits the duties of staff attorneys. The attorneys staff agency boards on a regular basis and act as administrative law judges for cases for administrative decisions outside of their board. As with DATCP, the administration argues that the transfer of DRL's administrative hearing responsibility to DHA will result in eliminating the public perception of a conflict of interest between the different parties to a contested disciplinary action and would eliminate the need to avoid contact between agency attorneys in regards to legal decisions.

8. In support of transfer of the functions, it could be argued that the transfer to DHA would allow the state to better use the part-time position that is rarely used at DATCP, and would eliminate conflict of interest issues at DATCP and DRL.

9. However, some issues could be raised concerning the funding level of the new positions. The Department indicates that the higher salary in DOA is based on analysis of how much a person with sufficient credentials and experience would be paid in the new administrative law judge positions. The Department would provide funding near the top of the allowable pay scale for new attorney appointments. This amount would also be in excess of several of the attorneys already assigned to DHA.

10. If there are economies of scale, then there should be some savings involved with the transfer, rather than the increased costs associated with the bill. Under the bill, DRL and DATCP would have sufficient funding to support \$103,700 PR of administrative law judge services, but state agencies would be assessed \$171,200 for salary and fringe benefits for these 1.5 PR attorney positions. It could be argued that the new attorneys hired should start at amounts similar to the amounts set aside in DRL and DATCP to support the transferred functions.

11. The Committee could choose to approve \$103,700 PR for salary and fringe benefits for these 1.5 PR positions as shown in the table below. The net cost increase to state agencies would then be limited to the one-time supplies and services costs at DOA for new workstations. [Alternative 2]

	<u>Salary and Fringe</u>	<u>Supplies and Services</u>	<u>Total</u>
Agriculture Trade and Consumer Protection	-\$35,500	\$35,500	\$0
Regulation and Licensing	<u>-68,200</u>	<u>68,200</u>	<u>0</u>
Total	-\$103,700	\$103,700	\$0
Administration*	\$103,700	\$29,700	\$133,400

\*There is an additional \$5,000 of one-time funding in 2009-10 under DOA.

12. Additionally, it could be argued that despite the fact that the administration states that the DATCP position is underutilized, that they would likely be charged the same amount by DHA as they have allotted for the part-time position (\$35,500 PR annually) and, therefore, there would be no estimated savings to DATCP by moving the 0.5 attorney position to DHA. If the Governor's recommendation is removed, DATCP and DRL would retain existing position authority and could decide to hire new administrative law judges, or keep the positions vacant and distribute the workload within the agencies. [Alternative 3]

13. Alternatively, as the two agencies are currently addressing workload with the existing staff, the Governor's recommendation could be deleted, and the existing vacant positions removed from DATCP and DRL. Total funding would be reduced by \$35,500 PR annually in DATCP and \$68,200 PR annually in DRL. [Alternative 4]

## ALTERNATIVES

1. Approve the Governor's recommendation as modified to provide the following: (a) \$205,900 PR in 2009-10 and \$200,900 PR in 2010-11 and 1.5 PR classified attorney positions for hearings and appeals services in the Department of Administration; (b) delete 1.0 PR attorney position at the Department of Regulation and Licensing and transfer \$68,200 PR annually from salary and fringe benefits to supplies and services; (c) delete 0.5 PR attorney positions at the Department of Agriculture Trade and Consumer Protection and transfer \$35,500 PR from salary and fringe benefits to supplies and services.

2. Modify the Governor's recommendation to provide the following: (a) \$138,400 PR in 2009-10 and \$133,400 PR in 2010-11 and 1.5 PR classified attorney positions for hearings and appeals services in the Department of Administration; (b) delete 1.0 PR attorney position at the Department of Regulation and Licensing and transfer \$68,200 PR annually from salary and fringe benefits to supplies and services; (c) delete 0.5 PR attorney positions at the Department of Agriculture Trade and Consumer Protection and transfer \$35,500 PR from salary and fringe benefits to supplies and services.

<b>ALT 2</b>	<b>Change to Bill</b>
	Funding
PR	- \$135,000

3. Delete the Governor's recommendation.

<b>ALT 3</b>	<b>Change to Bill</b>
	Funding
PR	- \$406,800

4. Delete the Governor's recommendation. In addition, delete \$35,200 PR and 0.5 position annually in DATCP, and \$68,200 PR and 1.0 position annually in DRL.

<b>ALT 4</b>	<b>Change to Bill</b>
	Funding    Positions
PR	- \$614,200    - 1.50

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