



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 26, 2011

Joint Committee on Finance

Paper #505

Authority to Eliminate Vacant Positions (Office of State Employment Relations)

[LFB 2011-13 Budget Summary: Page 335, #7]

CURRENT LAW

Under current law, with certain exceptions, no position, regardless of funding source or type, may be created or abolished unless authorized by the Legislature by law, or by the Joint Committee on Finance under s. 13.10 of the statutes, or by the Governor with respect to federally funded positions. The exceptions include changes in the authorized level of program revenue positions approved through the Joint Committee on Finance 14-day passive review process and the creation and abolition of certain positions by the Board of Regents of the University of Wisconsin System (UW System) and the University of Wisconsin Hospitals and Clinics Board.

GOVERNOR

Provide that, during the 2011-13 fiscal biennium, the Secretary of the Department of Administration (DOA) may abolish any full-time equivalent position in any office, department, or independent agency in the executive branch of government, if the position is vacant and the Secretary determines that filling the position is not required for the state agency to carry out its duties and exercise its powers.

DISCUSSION POINTS

1. In a related provision, the Governor would eliminate \$43,608,400 (all funds) and 735.12 positions annually in 29 executive branch agencies to reflect the elimination of salary and fringe benefit costs for positions that have been vacant for 12 or more months. The provision discussed in this paper would authorize the Secretary of DOA to eliminate other vacant positions, at his or her discretion, during the 2011-13 biennium.

2. The Department of Administration was asked for the rationale underlying the

Governor's provision to allow the DOA Secretary to abolish additional vacant positions in the 2011-13 biennium. Departmental officials indicated:

"The Governor's budget eliminates positions that have been vacant over 12 months, based on the assumption that over that length of time an agency has figured out ways to work more efficiently with fewer staff. This provision included those positions that were vacant for over 12 months as of January 2011. There will be other positions that cross this threshold during the 2011-13 biennium which could also be eliminated. In addition, length of time a position has been vacant is not the only factor to consider when trying to make government run as efficiently and cost effectively as possible. Therefore, for the 2011-13 biennium only, the DOA Secretary would be given additional authority to eliminate positions that are vacant, where elimination will not negatively impact service to the public. This will be a useful tool for the Administration to reduce the size of the state government workforce especially as retirements occur and as other initiatives, like the Waste Fraud and Abuse Commission, identify areas that could be reformed."

3. No specific funding reduction is associated with the provision. Any potential expenditure authority reductions cannot be estimated because it is unknown which vacant positions would be selected for elimination. In addition, the funding situation for vacant positions is complicated by several factors. First, the elimination of funding for salaries and fringe benefit costs would not necessarily reflect actual savings if the vacant positions are eliminated. The primary reason for this is that agencies have been holding positions vacant in order to generate the balances needed to meet lapse requirements that are currently imposed on state agencies. In other words, in most cases, the savings associated with keeping positions vacant are already being taken. In addition, vacant positions funded from program revenue and segregated fund accounts may be held vacant because there are insufficient funds in these appropriation accounts to support the hiring of the positions. Eliminating these positions, therefore, would not necessarily result in additional funds being available to address the state's budget difficulties.

4. According to central payroll data provided by DOA for state Pay Period 7, ending March 26, 2011, there are 4,356 vacant positions (all funds) in 36 executive branch agencies. The budgeted salaries and fringe benefits associated with these positions total an estimated \$259.5 million. As noted above, the bill would delete \$43,608,400 (all funds) and 735.12 long-term vacant positions annually. The elimination of these long-term vacancies would leave approximately 3,621 vacant positions, with budgeted salaries and fringe benefits totaling approximately \$215.9 million. These data do not reflect payroll data of the UW System, which would also be subject to the bill's provision permitting the DOA Secretary to determine the elimination of vacancies in 2011-13. The UW System is discussed further below.

It should also be noted that, of the 3,621 vacant positions described above, 102.9 positions were created in the 2009 legislative session and are first authorized to be hired between May 1, 2011, and June 19, 2011. These include 57.5 positions in the Department of Health Services and 45.4 positions for the State Public Defender. Under the provision, if these positions have not been hired by July 1, 2011, and the 2011-13 budget is enacted, they could be eliminated by the DOA Secretary. In addition, positions authorized in the 2011 legislative session, which initially would be posted as vacant, could, under the provision, be eliminated by the DOA Secretary before being hired.

5. The Governor's provision does not include a legislative reporting requirement. If the Committee is interested in providing the Secretary of DOA the authority to eliminate long-term vacant positions, without legislative oversight, it may want to require that the Secretary regularly report to the Committee on such actions in the 2011-13 biennium. Under current law, the Secretary provides the Committee a quarterly report under s. 16.50 of the statutes on the number of federally-funded positions approved during the quarter by the Governor, the positions approved by the UW System, and the positions approved by the Legislature during the same period. The Secretary could be required, in this report, to specify the number of vacant positions eliminated in each state agency by the Secretary in the quarter for the 2011-13 biennium. [Alternative 2]

6. Some state positions may be of relatively low priority and their elimination without legislative oversight may not be a significant concern. However, many state positions may be viewed as critical to the health and safety of the public. With respect to positions relating to health or public safety, one could cite, for example, employees of the Departments of Corrections, Health Services, and Veterans Affairs working in state care facilities, state law enforcement personnel (UW and Capitol police, DOJ special agents, conservation wardens, district attorneys, and public defenders), health-related inspection and monitoring personnel (food safety inspectors), and employees performing essential maintenance functions (power plant operators). Given the importance of these and other state positions, the Committee may wish to modify the Governor's provision to permit a more streamlined procedure for the elimination of long-term vacancies, but retain legislative oversight.

Under this alternative, the Secretary would be authorized to recommend to the Committee the elimination of any full-time equivalent position in any office, department, or independent agency in the executive branch of government, under a 14-day passive review approval process. [Alternative 3]

7. The AB 40 provision would also include vacant positions at the UW System (but would not include the UW-Madison Authority, if the proposed authority is approved). However, under current law, the Board of Regents of the UW System may create or abolish positions that are funded through: (a) its largest general purpose revenue appropriation for general program operations, subject to the conditions established in a memorandum of understanding with DOA; (b) certain program revenue appropriations, including the auxiliary revenues, general operation receipts, gifts and donations appropriations; (c) federal appropriations for aid and indirect cost reimbursement; (d) segregated fund appropriations; and (e) certain revenues credited to the academic fees (tuition) appropriation.

Given the position management authority of the UW System under current law, the inclusion of the UW System in the DOA Secretary's authority to eliminate vacancies appears to be unnecessary. The Committee may wish to exclude the UW System from the vacancy elimination provision. [Alternative 4]

8. In addition, some agencies have requested to be excluded from the provision. Both the Department of Employee Trust Funds and the State of Wisconsin Investment Board have expressed opposition to the provision because these agencies are funded from the Public Employee Trust Funds and the elimination of vacancies has no benefit to the general fund. These agencies

also have concerns that the provision threatens the independence required of agencies with trust fund fiduciary responsibilities. The Departments of Justice and Public Instruction have also indicated that these agencies should be excluded because the provision would reduce the constitutional authority of elected officials by diminishing their control of employment decisions. An alternative is provided to exclude from the provision one or more of these agencies, if the Committee believes the agency should not be subject to the provision. The staff of the other constitutional offices are small and would generally not have vacancies over 12 months in duration. [Alternative 4]

9. It could be argued that the ability to control position authority within state government is essential to the Legislature's ability to manage the budget of the state. In setting the budget and position authorization for each state agency, the Legislature is expressing its intent with respect to how state resources will be distributed to support the various policies of the state. Arguably, providing the Secretary of DOA with the authority to eliminate vacant positions within the executive branch, even for a period of two years, affects legislative oversight, particularly when the provision is viewed in the context of the administration's ability under current law to manage hiring.

Generally, state agencies have continued to try to hire certain vacant positions that are deemed critical to their workload management. However, under current DOA hiring restrictions, any new hire cannot be made unless approved by DOA. This approval requirement means that DOA already has direct control over how long certain positions are kept vacant. The Committee may wish to consider whether DOA should have the authority to both determine how long a position is held vacant, as well as to eliminate the vacant positions. This degree of position management authority, exercised without legislative oversight, could significantly modify the Legislature's budget and policy intent. The Governor's provision could, therefore, be deleted. [Alternative 5]

ALTERNATIVES

1. Approve the Governor's recommendation to provide that, during the 2011-13 fiscal biennium, the Secretary of DOA may abolish any full-time equivalent position in any office, department, or independent agency in the executive branch of government, if the position is vacant and the Secretary determines that filling the position is not required for the state agency to carry out its duties and exercise its powers.

2. In addition to Alternative 1, require the Secretary of DOA to include in the quarterly position report provided to the Committee under s. 16.50 of the statutes, a specification of the number of vacant positions eliminated in each state agency by the Secretary in that quarter for the 2011-13 biennium.

3. Delete the provision and instead provide that the Secretary of DOA may recommend the abolition of any vacant full-time equivalent position in any office, department, or independent agency in the executive branch of government by notifying the Joint Committee on Finance in writing of his or her proposed action. If the Cochairpersons of the Committee do not notify the

Secretary that the Committee has scheduled a meeting for the purpose of reviewing the proposed action within 14 working days after the date of the Secretary's notification, the position changes may be made as proposed by the Secretary. If, within 14 working days after the date of the Secretary's notification, the Cochairpersons of the Committee notify the Secretary that the Committee has scheduled a meeting for the purpose of reviewing the proposed action, the position changes may be made only upon approval of the Committee.

4. In addition to any of the above alternatives, specify that one or more of the following agencies would be excluded from the provision:

- a. Department of Employee Trust Funds
- b. Department of Justice
- c. Department of Public Instruction
- d. State of Wisconsin Investment Board
- e. University of Wisconsin System

5. Delete provision.

Prepared by: Art Zimmerman