



## Legislative Fiscal Bureau

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

May 12, 2011

Joint Committee on Finance

Paper #590

### **Transfer Functions to Departments of Administration and Financial Institutions (DOA -- Transfers; DFI; and Secretary of State)**

[LFB 2011-13 Budget Summary: Page 34, #4, Page 178, #6, Page 392, #3 and Page 393, #4]

#### **CURRENT LAW**

The Office of the Secretary of State (OSS) is responsible for issuing notary public commissions, issuing authentications and apostilles, registering trademarks and trade names, recording annexations and charter ordinances of municipalities, publishing state laws, filing oaths of office, and filing deeds for state lands and buildings. Fees charged for services are the primary source of funding for the Office. In addition, the Office receives an annual transfer of \$200,000 from the Department of Financial Institutions (DFI). Fee revenues and transferred funding are placed in a program revenue appropriation, and any year-end unencumbered amount in the appropriation balance in excess of 10% of the prior year's expenditures is transferred to the general fund as GPR-revenue. The Office's base level funding and position authority is \$725,700 PR and 7.5 PR positions for 2010-11.

#### **GOVERNOR**

*Transfer Administrative Functions to the Department of Administration.* Delete \$80,200 PR and 1.0 PR accountant position annually in OSS, and transfer administrative services functions of OSS to the Department of Administration (DOA). In addition, delete the authority for the Secretary of State, as an elected official, to appoint an unclassified stenographer position.

On the effective date of the bill, the assets and liabilities, and tangible personal property, including records, of OSS that were primarily related to administrative services, as determined by the Secretary of Administration (Secretary), would transferred to, and become the assets and liabilities, tangible personal property, and records of DOA. All contracts entered into by OSS in effect, that were primarily related to administrative services, as determined by the Secretary, would remain in effect and be transferred to DOA. DOA would be required to carry out any

obligations under a contract until it was modified or rescinded by DOA, to the extent allowed under the contract. Any pending matter with OSS that was primarily related to administrative services, as determined by the Secretary, would be transferred to DOA. All materials submitted to, or actions taken by OSS with respect to the pending matter would be considered as having been submitted to, or taken by, DOA. All rules promulgated by OSS that were primarily related to administrative services, as determined by the Secretary, would remain in effect until amended or repealed by DOA. All orders issued by OSS that were primarily related to administrative services, as determined by the Secretary, would remain in effect until their specified expiration date, or until modified or rescinded by DOA.

*Transfer Notary Public Commission and Trademark Certification Functions to DFI.* Delete \$107,100 PR and 2.0 PR positions annually in OSS to reflect the transfer of administrative responsibilities for issuing notary public commissions and registering trademarks, trade names, and brands to the Department of Financial Institutions. The bill would transfer \$57,000 PR and 1.0 PR position related to OSS trademark or notary functions to DFI annually for related administrative responsibilities. The employee who was transferred would have the same rights and status in DFI that the position enjoyed in OSS, and if the transferred employee had attained a permanent status, he or she would not be required to serve a probationary period. The remaining 1.0 PR position of OSS relating to trademark or notary functions that was not transferred to DFI would be de-authorized. In addition, the annual transfer of PR funding from DFI to OSS would be increased by \$125,000, from \$200,000 to \$325,000.

On the effective date of the bill, the assets and liabilities, and tangible personal property, including records, of OSS relating to OSS trademark or notary functions would be transferred to, and become the assets and liabilities, and tangible personal property and records of DFI. All contracts entered into by OSS, in effect, relating to OSS' trademark or notary functions, would remain in effect and be transferred to DFI. DFI would be required to carry out these contractual obligations until the contract was modified or rescinded by DFI, to the extent allowed under the contract. Any pending matter related to OSS trademark or notary functions would be transferred to DFI, and all materials submitted to, or actions taken by, OSS with respect to the pending matter would be considered as having been submitted to, or taken by, DFI. All rules and orders promulgated or issued by OSS relating to OSS trademark or notary functions would remain in effect until their specified expiration dates, or until amended or repealed by DFI. In the case of disagreement between OSS and DFI related to the transfer, DOA would be required to determine the matter, and develop a plan for an orderly transfer.

*Budget Efficiencies.* Delete \$22,500 PR annually in OSS to reflect a 10% reduction in supplies and services funding and unallotted reserve funding. In addition, \$23,700 PR and 0.5 PR office associate position would be deleted to reflect reduced administrative responsibilities for OSS, due to the transfer of functions to DOA and DFI.

## **DISCUSSION POINTS**

1. The Office of the Secretary of State is headed by an elected, constitutional officer. The Wisconsin Constitution requires the Secretary of State to maintain the official acts of the

Legislature and Governor, and to maintain the Great Seal of the State of Wisconsin and affix it to all official acts of the Governor. The state statutes authorize the Secretary of State to appoint a Deputy Secretary and an unclassified stenographer. The unclassified stenographer position has not been filled for a number of years. The salary of the Secretary of State is specified by statute and fixed, at least for the term of the current Secretary, at \$68,556, regardless of the programs assigned to the Office.

OSS performs functions through the Government Records Division and the Administrative Services Division. Administrative responsibilities for the Government Records Division are established by numerous statutes, and include issuing notary public commissions, issuing notary authentications and apostilles, recording annexations and charter ordinances of municipalities, registering trade names and trademarks, publishing legislative acts, recording official acts of the Legislature and Governor, filing oaths of office, and filing deeds for state lands and buildings. The Government Records Division is staffed by 4.5 FTE PR positions

The Administrative Services Division provides accounting for all receipts and disbursements of OSS, manages procurement and printing, and administers certain personnel and budget duties. The Division also administers OSS payroll operations, fringe benefit programs, all other OSS business services, and maintains the OSS inventory system. The Division is staffed by 1.0 FTE PR Senior Accountant position.

OSS employees are cross-trained in different program areas, such as processing notary public certifications, to provide coverage for all OSS programs during staff absences and periods of high work volume. Individual position descriptions include cross-training responsibilities.

### **Administrative Services Function**

2. The OSS senior accountant position is responsible for management of the OSS financial system including: (a) establishing fiscal year appropriation budgets; (b) monitoring appropriation balances; (c) preparing and analyzing monthly appropriation balance reports, project expenditures, and records of revenues, expenditures, and encumbrances; (d) preparing the annual GAAP accounting report; and (e) preparing quarterly and annual accounts receivable reports. The accountant serves as OSS purchasing and printing manager, and as the agency risk management officer by maintaining a computerized fixed asset/inventory control system for insurance coverage of office property. The accountant manages the OSS payroll and benefits system, including worker's compensation, and processes and reconciles payroll and fringe benefit reports. The accountant also develops and prepares the biennial agency budget request and assists the Secretary and Deputy Secretary as necessary.

3. Under the bill, administrative services functions for OSS would be moved to DOA. Although the bill does not specify the "administrative services functions" that would be transferred, the State Budget Office indicates that the transferred duties would include budgeting, accounting, procurement, and human resources. The OSS senior accountant position would be eliminated due to the transfer of administrative service functions. As a result, administrative service functions, as determined by the Secretary of Administration, would be performed by DOA for OSS.

4. Workload data provided by OSS indicates that management of the OSS financial systems requires 20 hours per week, management services, including procurement, require 16 hours per week, and payroll and benefits activities require four hours a week, for a total of 40 hours per week. DOA has not been provided additional positions to perform OSS administrative functions. OSS has expressed concern that DOA would not be able to absorb administrative service functions that would require 1.0 FTE position to perform. As a result, OSS believes that DOA could not provide administrative services as timely, efficiently, and at the level currently provided by the accountant. In addition, the DOA Secretary could transfer administrative functions from a constitutional officer, diminishing the authorities remaining with the Office. From this view, the Committee could choose to restore the accountant position to ensure a constant level and quality of administrative services for OSS. (It should be noted that, the workload information is based on administrative activities performed for OSS with current law responsibilities, including functions related to issuing notary public commissions and registering trademarks and trade names, which would be transferred to DFI under the bill.)

5. A total of \$80,200 PR, including standard budget adjustments and reductions for increased employee contributions for pension and health insurance, would be deleted from OSS annually due to elimination of the accountant position. DOA has indicated that it will assess the Office \$40,000 annually for administrative services to OSS. (The \$40,000 would be paid from OSS base level supplies and services funding.) Based on these amounts, Committee approval of the transfer would reduce the Office's annual administrative expenses by \$40,200 PR, based on DOA's initial assessment. However, the State Budget Office has indicated that the annual administrative assessment could be increased or decreased once DOA better understands the agency's need for services and the resulting workload. In addition, specific services that would be transferred are not clearly identified, so that OSS could retain some of its current administrative functions.

#### **Notary Public Commissions/Trademark, Trade Name Registrations**

6. OSS issues a certificate of appointment as a notary public to qualified applicants. Generally, a commission is for four years, however, the commission is permanent for persons licensed to practice law. Authentications and apostilles are typically issued to confirm the notary public for documents sent to other states or foreign countries. OSS is the designated state agency, by the U.S. State Department and under the Hague Convention, for issuing authentication and apostille certificates for documents for use abroad. Fees are charged for notary public commissions, and certificates of authentication and apostilles. Specific filing fees include: (a) \$20 for four-year notary public commissions and renewals; (b) \$50 for permanent notary public commissions; and (c) \$10 for authentication certificates and apostilles.

7. An office operations associate, notary records specialist position is primarily responsible for managing the OSS notary public commission program. The notary record specialist responsibilities include: (a) processing notary applications, updating the notary database, and generating notary certificates; (b) verifying submitted documents for statutory conformity; (c) responding to inquires through different media, such as correspondence, telephone, and facsimile, and communicating with individuals whose applications are rejected; (d) instructing and directing the records assistant; (e) maintaining and purging the notary paper filing system and computer database; and (f) retrieving requested documents from the databases, and issuing special certificates.

The position provides administrative services through activities such as entering data into WISMART (the state's accounting system) and preparing OSS manuals, pamphlets, and brochures. The position also assists in answering telephones, responding to walk-up customers, and organizing and maintaining an inventory for notary documents and applications.

8. Workload data provided by OSS indicates that processing four-year and permanent notary commissions requires 66.7 hours per week. Maintenance of notary commission records involves an additional 8 hours per week. According to Office data, notary functions require a total of 74.7 hours per week, or the equivalent of almost 1.9 FTE.

9. An office operations associate, certification specialist, administers the authentication and apostille certificates function by: (a) verifying notarial officers and documents for notarial acts; (b) providing certified copies of records; (c) processing applications, and collecting, processing, and depositing fees; (d) preparing and attaching authentication and apostille certificates, and affixing certified stamps; and (e) communicating with applicants for resolution of rejected applications. The position coordinates the publication of state laws, and assists in general administrative functions by answering telephones, communicating with walk-up customers, responding to inquires through different media, and maintaining an inventory of applications and other documents.

10. Workload information developed by OSS indicates that processing and issuing authentications and apostilles, tracking and filing related documents, and collecting fees requires 34 hours per week. In addition, coordinating the publication and filing of new laws involves 14 hours a week. The position's activities exceed the equivalent of 1.0 FTE.

11. A person, firm, partnership, corporation, association, or union of workingmen may apply to OSS for state trademark or service mark registration. If application requirements are met, OSS issues a certificate of registration of the mark. Generally, the registration is for 10 years. OSS is also required to record beverage brands used on beverage containers. A lodge, fraternal society, or similar organization may register identifying information with OSS, including name, motto, emblem, or other insignia. A \$15 fee is charged for trademark and trade name registrations.

12. An operations associate, trademark specialist position is responsible for managing the trademark registration program. Position responsibilities include: (a) processing registrations, accounting for fees, and issuing trademark registrations; (b) updating and maintaining trademark paper files and the computer database; (c) communicating with applicants to resolve noncompliance issues; (d) preparing the trademark journal and subscriptions; and (e) developing program changes and improvements. A substantial portion of the trademark specialist's responsibilities require the position to assist in administering government records, deeds, and gubernatorial act filings by: (a) auditing, filing, organizing, and maintaining separate filing systems for each record series; (b) searching and retrieving requested documents from office archives; (c) auditing and processing deeds to state lands and buildings, and maintaining separate filing systems for parks, forests, and miscellaneous lands and buildings; (e) verifying processed documents for accuracy and timeliness; and (f) instructing staff in processing various records during heavy work periods. The position also answers telephones, assists walk-in customers, audits walk-in notary applications during busy work periods, answers information requests submitted though different media, and maintains an inventory of trademark applications and related documents.

13. OSS workload data indicates that processing, auditing, and entering trademark and trade name applications data, printing and mailing certificates, and maintaining the trademark database requires 23 hours per week, or the equivalent of over 0.5 FTE. The position also has responsibilities related to managing government records. OSS data indicate that auditing and preparing municipal records for distribution, filing and preservation involves total staff time of 20 hours a week, and filing other documents such as pardons, oaths, and records of appointment requires an additional 20 hours a week in staff time.

14. The table shows the number of notary public commissions issued, authentications and apostilles affixed, and trademarks and trade names registered for 2007 through 2010. The number of notary public commissions issued and authentications/apostilles affixed has declined significantly since 2007, while the number of trademark/trade name registrations has remained relatively stable.

**Notary Public Commissions, Trademark, Trade Name Registrations, and Authentication and Apostilles**

<u>Year</u>	<u>Notary Commissions Issued</u>	<u>Apostilles Authentications Affected</u>	<u>Trademark Trade Names Registration</u>
2007	19,224	25,687	2,110
2008	19,056	20,501	2,299
2009	18,540	17,771	2,333
2010	16,515	17,488	2,339

15. OSS currently contracts with NMT corporation for data storage and maintenance, and website access for notary public commissions, trademarks and trade name registrations, and government records. OSS indicates that NMT corporation provides high quality and responsive information technology support and services for \$600 per month. OSS' interactive website provides access to information related to the OSS programs and includes applications, fee information, and an online notary public education tutorial that provides applicants with information about the duties and responsibilities of notary publics.

16. The bill would transfer responsibility for issuing notary public commissions and registering trademarks and trade names from OSS to DFI. Funding of \$57,000 PR and 1.0 PR notary records specialist would be transferred to DFI. Annual funding of \$50,100 and 1.0 PR trademark specialist position would be eliminated.

17. OSS has expressed concern that transfer of the notary public commission and trademark and trade name functions would substantially lower the level of those services provided to the business community and individual customers. OSS workload data indicates that the notary function alone requires almost 2.0 FTE in staffing, yet only 1.0 FTE would be provided at DFI. OSS is able to support these services through both the cross-training of staff, and experience in administering this function. The trademark registration function would be transferred, but no corresponding staff would accompany the transfer. As noted, OSS is the designated state agency for

apostilles and authentications that validate notary public commissions and that function would not be transferred to DFI. Transfer of the notary commission function to DFI would separate this function and the related authentication on apostille function between two agencies. The transfer would also require changes to the computer database and OSS website, used to administer the notary commissions and trademark trade name registration programs. The State Budget Office has indicated that DOA and DFI staff are not sure that OSS technology will be compatible with DFI technology. From this view, the current level of services could best be maintained by retaining, in OSS, responsibility and the related positions for issuing notary public commissions and registering trademarks and trade names.

18. Under 1995 Wisconsin Act 27; (a) \$1,203,100 PR, 17.00 PR positions, and responsibility for filing and maintaining business organization records were transferred from OSS to the newly created DFI; (b) \$1,097,000 PR and 14.0 PR positions, responsibility for Uniform Commercial Code (UCC) and federal lien filings and the UCC lien information system were transferred to DFI; and (c) \$521,300 PR and 23.5 PR positions were deleted from OSS to reflect reduced workload due to the transfers. Position authority (but not statutory authority) for the OSS stenographer position was eliminated under these provisions. The bill would transfer additional functions from a constitutional officer, further diminishing the authority of OSS.

19. The responsibility for issuing notary public commissions and registering trademarks and trade names, and the related position would be placed in the Division of Corporate and Consumer Services in DFI. The Division is responsible for examining and filing business records, such as annual reports and merger, consolidation, and dissolution documents, for partnerships, limited liability corporations (LLCs), cooperatives, and corporations. The Division is also responsible for examining and filing documents under the statewide UCC system, including statements of business indebtedness, consignments, terminations, and financing statements. The Division also maintains the statewide UCC system. According to DFI, the transferred position would work directly with four other staff, including a supervisory position that currently administer the UCC system.

20. A total of \$107,100 PR, after standard budget adjustments and reductions due to increased employee contributions for pension and health insurance would be deleted from OSS annually, due to the transfer of 1.0 notary records specialist, and elimination of 1.0 trademark specialist position. Expenditure authority of \$57,000 PR would be provided to DFI for the transferred notary records specialist. As a result, state annual expenditures would be reduced by \$50,100 PR. The State Budget Office indicates that DFI should be able to absorb the notary and trademark functions with only 1.0 FTE additional position because, according to the position descriptions for the notary records and trademark specialists, those functions only account for 1.45 position in workload (.85 notary specialist and .6 trademark specialist activities), and DFI has positions to provide back-up to the functions. DFI has indicated that it believes it could automate certain notary and trademark functions currently performed by OSS personnel. However, DFI has not specified the activities that would be automated. In addition, as shown in the table above, the number of notary commissions has been declining, while trademark and trade name registrations have remained stable.

21. DFI is primarily funded from a program revenue, general program operations

appropriation, and fees for services provided are the source of program revenues for the appropriation. The unencumbered year-end balance in the DFI general program revenue appropriation is transferred to the general fund as GPR revenue. As noted, the year-end balance in the OSS program fees appropriation in excess of 10% of prior years expenditures is also transferred to the general fund. The transfer of notary public commission and trademark and trade name registration functions from OSS to DFI would change both agencies' revenues and expenditures and, consequently, the year-end transfers to the general fund. DFI would receive increased fee collections from notary commissions and trademark and trade name registrations (\$324,100), and have increased expenditures due both to the transfer of the notary records specialist position (\$57,000) and the increased funds transfer (\$125,000) to OSS. Conversely, OSS would experience an expenditure reduction (\$107,100) due to the elimination of two positions and a net reduction in revenues, since the additional funds transfer from DFI (\$125,000) would not entirely offset the loss of notary public commission and trademark and trade name registration fees (\$324,100). The year-end transfer from to the general fund from the DFI general program operations appropriation would increase by an estimated \$142,100 annually, while the estimated transfer to the general fund from the OSS program fees appropriation would decrease by an estimated \$81,300 in 2011-12 and \$92,000 in 2012-13. The net effect on the general fund would be an increase of GPR revenues of \$60,800 in 2011-12 and \$50,100 in 2012-13.

### **Office Associate**

22. A 0.5 FTE PR office associate position in the Administrative Services Division of OSS is responsible for a number of activities related to managing government records including: (a) auditing, processing, and filing various records, including incorporation papers, annexations, charter ordinances, litigation papers, and corporate boundaries; (b) preparing and maintaining municipal indices; (c) preparing documents and files, and entering records into the preservation database; (d) auditing, indexing, and filing gubernatorial documents; and (e) monitoring, listing, and corresponding with municipalities that fail to comply with statutorily required corporate boundary filings. The office associate assists walk-in customers, answers the main OSS telephone line, and accesses the government records database to respond to requests. The position also assists in processing and issuing notary public commissions, and authentications and apostilles.

23. A total of \$23,700 PR would be deleted annually for salary and fringe benefits, after standard budget adjustments and reductions for increased contributions to pension and health insurance for the deleted OSS office associate position. As a result, OSS expenditures would be reduced by the \$23,700. The State Budget Office indicates that the position would be deleted to reflect budget efficiencies. Under the bill, the Office's administrative functions would be transferred to DOA, and notary public commission and trademark and trade name registration functions would be transferred to DFI. A total of 3.00 FTE positions would be transferred or eliminated as a result of those actions. The office associate's activities related to those functions would no longer be required. The position would not have to assist in notary public and trademark activities, and there would be less walk-up activity and fewer telephone calls to respond to and other administrative responsibilities.

24. OSS opposes eliminating the position. According to the office associate position description, over 50% of the position's responsibilities relate to government and municipal records,

and authentications and apostiles, which would continue to be functions of OSS. In addition, 30% of the trademark specialist's responsibilities are related to government records functions. The three other positions that would be eliminated or transferred (accountant, trademark specialist, and notary records specialist) all had significant administrative and back-up responsibilities. From OSS' view, the office associate is necessary to offset the effect of the loss of the other positions on the ability of OSS to perform its remaining required functions.

**GPR Revenue Reestimate**

25. OSS is funded by fees for services that are placed in a program revenue appropriation. Any year-end unencumbered balance in excess of 10% of prior year expenditures is transferred to the general fund. Based on more recent expenditure and revenue data, the transfer to the general fund from the Office's program fees appropriation is estimated to increase by \$83,500 in 2011-12, and \$64,800 in 2012-13, when compared to the bill.

**ALTERNATIVES**

**A. Administrative Services Function**

1. Approve the Governor's recommendation to delete \$80,200 PR, and 1.0 PR accountant position annually, and transfer administrative services functions of OSS to DOA. Also, approve the Governor's recommendation to delete the authority for the Secretary of State, as an elected official, to appoint an unclassified stenographer position.

2. Delete the transfer of administrative services functions from OSS to DOA. Retain the senior accountant position in OSS by restoring \$80,200 PR and 1.0 PR accountant annually in OSS. Approve the Governor's recommendation to delete authority for the Secretary of State to appoint an unclassified stenographer position.

ALT A2 - OSS	Change to Bill	
	Funding	Positions
PR	\$160,400	1.00

**B. Notary Public Commissions/Trademark, Trade Name Registrations**

1. Approve the Governor's recommendation to delete \$107,100 PR and 2.0 PR positions annually from OSS, transfer \$57,000 PR and 1.0 PR notary records specialist position annually to DFI, and transfer administrative responsibilities for issuing notary public commissions and registering trademarks, trade names, and brands from OSS to DFI. In addition, increase the annual transfer of PR funding from DFI to OSS by \$125,000, from \$200,000 to \$325,000.

2. Delete the transfer of \$57,000 PR and 1.0 PR position annually, and responsibility for issuing notary public commissions and registering trademarks, trade names, and brands, from the Office of the Secretary of State to DFI. Retain the responsibility for issuing notary public

commissions and registering trademarks, trade names, and brands for the Office of the Secretary of State by restoring \$107,100 PR and 1.0 PR notary records specialist and 1.0 PR trademark specialist positions annually to OSS. Also, delete the increase of \$125,000 in the annual transfer of PR funding from DFI to OSS.

ALT B2	OSS Change to Bill			DFI Change to Bill			Net Change to Bill		
	Revenue	Funding	Positions	Revenue	Funding	Positions	Revenue	Funding	Positions
GPR	-\$173,300			-\$284,300			-\$457,600		
PR	398,200	\$214,200	2.00	-648,200	-\$114,000	-1.00	1,046,400	\$100,200	1.00

**C. Office Associate**

1. Approve the Governor's recommendation to delete \$23,700 PR and 0.5 PR office associate position annually from OSS.

2. Retain the office assistant position in OSS by restoring \$23,700 PR and 0.5 PR office associate position annually OSS.

ALT C2 - OSS	Change to Bill	
	Funding	Positions
PR	\$47,400	0.50

**Modification -- GPR Revenue Reestimate**

3. Reestimate the annual transfers of GPR revenue from the OSS program fees appropriation to the general fund under 2011 Assembly Bill 40 to increase by \$83,500 in 2011-12, and by \$64,800 in 2012-13.

	Change to Bill Revenue
GPR	\$148,300

Prepared by: Ron Shanovich