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May 15, 2013

Joint Committee on Finance

Paper #107

Legal Services to State Agencies (DOA -- General Agency Provisions)

[LFB 2013-15 Budget Summary: Page 26, #18]

CURRENT LAW

Current law allows the Department of Administration to provide legal services and assess fees for those services to a department in the executive branch that has a secretary who serves at the pleasure of the Governor. The Division of Legal Services provides legal services related to state contracting, procurement, and other activities.

GOVERNOR

Expand the Department's authority to provide legal services and assess fees for legal services to include any state office or independent agency in the executive branch. Specify that at its own discretion, DOA may provide legal services to any state agency that has a secretary who serves at the pleasure of the Governor and must assess the state agency for legal services provided by the Division of Legal Services. Further specify that, at the request of any state agency that does not have a secretary who serves at the pleasure of the Governor, DOA may provide legal services to the state agency and must assess the state agency for legal services provided by the Division of Legal Services.

DISCUSSION POINTS

1. The administration indicates that the bill would bring the Statutes in alignment with current practice. The Division of Legal Services provides legal services to 13 agencies that are assessed for the cost of providing the services. In addition, legal services are provided to other agencies as the need arises. The following agencies have received services but not been assessed for the cost of the services provided: (a) Public Service Commission; (b) Office of the Commissioner of the Railroads; (c) Educational Communications Board; (d) State Fair Park; (e) Wisconsin Historical

Society; (f) Department of Public Instruction; and (g) Government Accountability Board. Under current law, DOA is unable to bill these agencies to recover the cost of providing legal services. The administration notes that this has the effect of increasing assessments to other state agencies to cover the cost.

2. The administration does not anticipate that the provision, if approved, would affect DOA expenditures for legal services in the 2013-15 biennium. However, it could result in a decrease in assessments to agencies currently being assessed. Further, agencies that currently receive legal services and do not pay for the services could experience an increase in costs. The administration was unable to provide an estimate of the dollar value of the services provided to the agencies that are currently not assessed, because DOA does not assess on an hourly basis. Rather, agencies are assessed based on attorney workload by subject matter, according to each agency's estimated share of subject matter representation. For example, if attorneys spend 8.6% of their hours on procurement matters, a procurement allocation equal to 8.6% of the total cost of services is then divided among agencies according to how much each agency expended on procurement.

3. It could be argued that the bill would make payment for legal services fairer, to the extent that agencies pay for the services received. The administration indicates that the intention of providing legal services to offices and independent agencies is to bring "greater consistency to state contracting, procurement, and other activities." For these reasons, the Committee could choose to approve the recommendation. [Alternative 1]

4. On the other hand, it could be argued that the services the Division provides should be provided only to the agencies specified under current law, and that assessing those agencies to cover the costs of other agencies is improper. The Committee could choose to disallow the provision of legal services to agencies other than those specified under current law. [Alternative 2]

5. Finally, the Committee could delete the provision. Under this alternative, if DOA decided to continue to provide services to agencies other than allowed under current law, DOA could not charge for these services. [Alternative 3]

ALTERNATIVES

1. Approve the Governor's recommendation to expand the Department's authority to provide legal services and assess fees for legal services to include any state office or independent agency in the executive branch and assess the agency for services provided.

2. Delete the provision and create statutory language disallowing the provision of legal services to state agencies not already specified under current law.

3. Delete the provision.

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