



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #573

### **Reclassify Division Administrator Position (DSPS -- Departmentwide and Professional Regulation)**

[LFB 2013-15 Budget Summary: Page 415, #5]

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#### **CURRENT LAW**

2011 Act 32 (the 2011-13 biennial budget act) created the Department of Safety and Professional Services (DSPS) by consolidating functions of the former Department of Regulation and Licensing (DRL) and the former Department of Commerce. DSPS regulates various professional and trade occupations, oversees certain safety and building standards, and administers the petroleum environmental cleanup fund award (PECFA) and petroleum tank inspection program. Several independent credentialing boards, such as the Medical Examining Board, are attached administratively to DSPS. The Department's operations are divided into five divisions: Policy Development (formerly "Board Services"), Professional Credential Processing, Management Services, Legal Services and Compliance, and Industry Services (combined from the two divisions in the Department of Commerce titled "Environmental and Regulatory Services" and "Safety and Buildings").

Chapter 15 and s. 230.08 of the statutes authorize DSPS up to 16.0 unclassified positions, including: (a) 3.0 positions in the Office of the Secretary; (b) 8.0 division administrators (which, under the current statutory definition, may include any managerial position determined by the appointing authority); and (c) 5.0 bureau directors. The state budget system currently authorizes DSPS to employ 13.0 unclassified positions (of the maximum statutory authority of 16.0).

#### **GOVERNOR**

Convert 1.0 position that serves as the Administrator of the Division of Management Services from a classified position to an unclassified position in the state budget system. Increase the maximum number of unclassified division administrator positions in the Department, as specified in the statutes, from 8.0 to 9.0.

## DISCUSSION POINTS

1. State statutes divide civil service positions into the classified service and the unclassified service. The unclassified service includes all elected officials, appointees of the Governor, and certain state cabinet agency positions such as division administrators, deputy secretaries, executive assistants, legal counsel, and public information officers. In general, unclassified positions serve at the pleasure of an appointing authority, such as a department secretary, and do not have the same rights and protections provided under state law to employees in the classified service.

2. If the Legislature authorizes an agency an unclassified position, the position authority occurs in two places. First, an agency is granted a statutory allotment under Chapter 230 of the statutes. The allotments under this chapter represent an agency's maximum number of authorized unclassified positions, not the actual position count within an agency. A second authorization must occur in the state budgeting system. The state budgeting system count is the total number of positions authorized under each appropriation within each agency.

3. DSPS currently has authorization through the state budget system for 13.0 unclassified positions. The Department fills these positions with 3.0 positions in the Secretary's Office (the secretary, the deputy secretary, and the executive assistant), 7.0 division administrators (4.0 division administrators, 1.0 deputy division administrator, 1.0 chief legal counsel, and 1.0 public information officer), and 3.0 bureau directors. The current statutory maximum for DPCS is 16.0 unclassified positions (3.0 positions in the Secretary's office, 8.0 division administrators, and 5.0 bureau directors).

4. The DPCS Division of Management Services provides administrative services for all DPCS programs. These functions include human resources, payroll management, budgeting and accounting, and information technology activities. The Administrator of the Division of Management Services is currently a classified position, while the division administrators of the other four DPCS divisions are unclassified positions. The Governor proposes converting the Administrator of the Division of Management Services position from a classified to an unclassified position.

5. DPCS believes that the administrator of the Division of Management Services should be converted from a classified to an unclassified position to standardize the classification of all DPCS division administrators, and to allow the Secretary to appoint that high-level position without being bound by the requirements that apply to the classified service. In addition to this Department management rationale, similar positions for management services division administrators in other agencies are unclassified. For these reasons, the Committee could adopt the Governor's recommendation to convert this position to an unclassified position, and increase the statutory maximum for DPCS unclassified division administrators (Alternative A1).

6. Under the bill, the statutory limit for DPCS unclassified positions would equal 17.0 (3.0 executive positions, 9.0 division administrators, and 5.0 bureau directors), although only 14.0 unclassified positions would be authorized in the state budget system (3.0 executive positions, 8.0 division administrators, and 3.0 bureau directors). If the Committee adopts the Governor's

recommendation to convert the division administrator position to an unclassified position, it could align the statutory limits with the number of unclassified positions that DSPS would be authorized in the state budget system under the bill (Alternative A2). This would reduce the statutory maximum number of DSPS unclassified positions by 3.0 (-1.0 division administrator and -2.0 bureau directors). Under Alternative A2, both the statutory limit and the state budget system authorization would total 14.0 unclassified positions, and the Department would be able to convert the Administrator of the Division of Management services to an unclassified position.

7. It could be argued that the activities conducted by the Division of Management Services may be more appropriately overseen by a position hired through the classified civil service rather than appointed by the Secretary, and continuity in the Division administrator position may be beneficial for certain activities where knowledge of the Department is important, such as program budgeting. The Committee could delete the Governor's recommendation for the position conversion if it believes this division administrator position should remain in the classified service (Alternative A3). If the Committee chooses not to convert this position to an unclassified position, it could also reduce the number of statutorily-authorized unclassified positions by one (to a total of 7.0) and reduce the number of unclassified bureau directors in statute (to a total of 3.0), so that the total number of unclassified positions in the statutes and state budget system both equal 13.0.

8. DSPS currently has 3.0 unclassified bureau directors, and is the only state agency with statutorily-designated unclassified bureau director positions. In the past, the membership of the credentialing boards appointed their own staff based on board approval of the staff's performance. Beginning in the mid-1980s, the appointment of these bureau directors was made by the DRL Secretary, rather than the credentialing boards. It could be argued that the classification of these bureau directors is a relic from the time when credentialing boards hired the bureau staff, and that this system does not align with current practice for bureau directors in other state agencies. In its 2011-13 budget deliberations, the Committee limited the number of unclassified bureau directors in the newly-created DSPS to a total of 2.0, but this change was reversed by a partial veto by the Governor.

9. DSPS is also the only Department that has an unclassified deputy division administrator. The deputy division administrator of the Division of Industry Services is currently an unclassified position under the broad statutory definition of "division administrator." This position is currently funded from the SEG appropriation for petroleum inspection and tank regulation, which would be transferred to the Department of Agriculture, Trade and Consumer Protection under a separate proposal. The Governor recommends maintaining an unclassified deputy division administrator position in DSPS, and funding it from the PR appropriation in the Division of Industry Services. That appropriation is currently authorized one unclassified division administrator.

10. If the Committee decides to change the classification structure of DSPS to more closely resemble that of other state agencies, it could do so by authorizing DSPS a total of 10.0 unclassified positions as follows: (a) 3.0 executive positions (secretary, deputy secretary, and executive assistant) and (b) 7.0 unclassified division administrators (1.0 chief legal counsel, 1.0 public information officer, and 5.0 division administrators (including the administrator of the Division of Management Services, as recommended by the Governor)). This would result in all

DSPS division administrators serving in the unclassified service, and all bureau directors and deputy division administrators serving in the classified service (Alternative B1).

11. Conversion of an unclassified position to a classified position would require DSPS to publicly announce the position as vacant, and incumbent employees would need to reapply and compete for these positions. If the Committee wants to allow the incumbent employees in the positions converted under Alternative B1 to remain in these positions without reapplying, it could require that the incumbent employees be appointed to the comparable classified position, and allow the incumbent to count time employed in the unclassified services toward any probationary period (Alternative B2). The Governor's budget applies a similar protection to unclassified positions in the Department of Veterans Affairs that would be converted to classified positions.

12. Finally, the Committee could decide to take no action on the number of DSPS bureau directors or deputy division administrators authorized in the state budget system or state statutes (Alternative B3).

13. The following table provides the total number of unclassified positions that DSPS would be authorized in the state budget system, and the maximum allowed in statute, under each of the alternatives:

**DSPS Unclassified Positions Authorized in the  
State Budget System -- Comparison of Alternatives**

	<u>A1</u>	<u>A2</u>	<u>A3</u>	<u>B1 and B2</u>
Office of the Secretary	3	3	3	3
Division Administrators	8*	8	7	7
Bureau Directors	<u>3*</u>	<u>3</u>	<u>3</u>	<u>0</u>
Total	14	14	13	10

\*Under Alternative A1, the statutory maximum for division administrators would be set at 9.0, and bureau directors would be set at 5.0. In the other alternatives, the statutory maximum would match the state budget system.

**ALTERNATIVES**

**A. Administrator for the Division of Management Services**

1. Approve the Governor's recommendation to convert the Administrator for the Division of Management Services to an unclassified position, and increase the statutory maximum number of unclassified division administrators in DSPS by 1.0 (to a total of 9.0).

2. Approve the Governor's recommendation to convert the Administrator for the Division of Management Services to an unclassified position. In addition, delete the statutory increase of unclassified division administrators in the bill, and reduce the statutory maximum number of unclassified bureau directors for the agency from 5.0 to 3.0 to align these statutory

maximums with the number and type of unclassified positions in the state budget system.

3. Delete the Governor's recommendation to convert the Administrator for the Division of Management Services from a classified to an unclassified position and the statutory increase in the maximum number of unclassified division administrators for the agency. In addition, reduce the statutorily authorized number of unclassified division administrator positions from 8.0 to 7.0, and reduce the statutory maximum number of unclassified bureau directors from 5.0 to 3.0 to align these statutory maximums with the number and type of unclassified positions in the state budget system.

**B. Unclassified Bureau Director Positions and Deputy Administrator Position**

1. Adopt Alternative A2. In addition, convert 3.0 unclassified Bureau Director positions and 1.0 Deputy Division Administrator position to classified positions in the state budget system. Repeal the statutory provision that authorizes DSPS to maintain unclassified Bureau Director positions, and reduce by 1.0 the statutory maximum number of unclassified division administrators for DSPS.

2. Adopt Alternative A2. In addition, convert 3.0 unclassified Bureau Director positions and 1.0 Deputy Division Administrator position to classified positions in the state budget system. Repeal the statutory provision that authorizes DSPS to maintain unclassified Bureau Director positions, and reduce by 1.0 the statutory maximum number of unclassified division administrators for DSPS. In addition, specify that the incumbent employees in the unclassified deputy division administrator and bureau director positions be appointed to the comparable classified positions, and that those employees may count time employed in the unclassified position towards any probationary period.

3. Make no changes to the number of unclassified DSPS Bureau Director or Deputy Division Administrator positions authorized in the state budget system. [This alternative may be adopted in addition to either Alternatives A1, A2, or A3.]

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