



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #104

### **Authority to Eliminate Vacant Positions (DOA -- General Agency Provisions)**

[LFB 2009-11 Budget Summary: Page 37, #19]

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#### **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 in budget determinations, 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 a 14-day passive review process and the creation and abolition of certain positions by the Board of Regents of the University of Wisconsin System and the University of Wisconsin Hospitals and Clinics Board.

#### **GOVERNOR**

Provide that the Secretary of DOA may abolish any full-time equivalent position or portion thereof in any executive branch state agency if that position has been vacant for more than 12 months. Define an executive branch state agency as any office, department, or independent agency in the executive branch of state government, including the University of Wisconsin System. Require the Secretary of DOA to lapse from each sum certain appropriation made to an executive branch state agency, from any revenue source, the amount expended for the annual salary and fringe benefit costs of any abolished vacant position, unless the appropriation is credited with program revenue, federal revenue, or segregated revenue derived from specific program receipts. These amounts would lapse to the underlying fund. Require the Secretary of DOA to subtract from the expenditure estimate for each appropriation, other than a sum certain appropriation, as specified above, the amount expended for the annual salary and fringe benefit costs of any abolished vacant position.

## **DISCUSSION POINTS**

1. Department of Administration budget officials indicate that the provision to allow for the elimination of certain vacant positions by the Secretary of DOA would provide DOA the opportunity to review each vacant position in the context of all state government functions, rather than simply as a position of a single agency. This approach is also viewed by the administration as leading to opportunities for greater efficiencies in the delivery of services.

2. No specific funding reduction is associated with the provision. Any potential expenditure authority reductions cannot be estimated because it is unknown which of the positions that have been vacant for more than 12 months 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 reflect actual savings if the vacant positions are eliminated. The primary reason for this is because 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 these 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.

3. However, an analysis was conducted to provide some indication of the budgeted costs of certain vacant positions. The analysis is based on position vacancy data for Pay Period 1 (January, 2009). Only positions that were vacant for one year or more were considered. In addition, a number of vacant positions were excluded from consideration. Since federal funds cannot be lapsed to the general fund without the possibility of a penalty and because the Legislature has little control over these positions, federally funded positions were excluded from the analysis. Similarly, positions in grant-funded appropriations and positions funded with SEG funds that cannot lapse to the general fund were not included. Project positions with a specific end date were also excluded. Further, unclassified executive salary group (ESG) positions, which are authorized in statute, were excluded from the analysis. Finally, selected positions were excluded because they were recently filled, were about to be filled, or were deemed critical to an agency's functions. For example, vacancies in the Department of Children and Families were largely excluded from this analysis because, as a new agency, the Department is still in the process of filling key positions.

4. The analysis was based on central payroll data. It should be noted that central payroll data includes executive-branch agencies, but does not include the University of Wisconsin System. Therefore, the analysis does not reflect vacancies in the UW System, but does reflect executive branch agencies that would otherwise be affected by the provision.

5. Based on the above conditions, there were a total of 168.6 FTE vacant positions, including 83.4 GPR positions, 57.1 PR positions, and 28.1 SEG positions. The funding

associated with these positions, including salaries and variable fringe benefit costs, totaled \$8.4 million (all funds). This total included \$4.1 million GPR, \$2.9 million PR, and \$1.4 million SEG. These estimates were based on a point in time and the actual vacant positions will change to some extent as workers leave state service and positions are hired.

6. 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. 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 long-term vacant positions eliminated in each state agency by the Secretary in the quarter. [Alternative 2]

7. If a vacant position is deleted under the Governor's provision, no funding would be provided for it in the subsequent biennium. This is because the standard budget adjustment for full funding of continuing position salaries and fringe benefits would not include funding for any deleted positions. However, the bill would: (a) require the Secretary of DOA to lapse the annual salary and fringe benefit costs of any abolished vacant position, unless the appropriation is credited with program revenue, federal revenue, or segregated revenue derived from specific program receipts; (b) specify that these amounts would lapse to the underlying fund; and (c) require that the Secretary of DOA subtract from the expenditure estimate for each appropriation other than a sum certain appropriation, the amount expended for the annual salary and fringe benefit costs of any abolished vacant position. Arguably, this provision is unnecessary given that the funding modifications would be handled under standard budget adjustments for the 2011-13 biennium.

In addition, deleting the funding in the 2009-11 biennium, as required under the bill, could make it more difficult for agencies to meet lapse requirements. As noted above, agencies have been holding positions vacant in order to generate the balances needed to meet lapse requirements that are currently imposed on state agencies. Removing the expenditure authority for deleted positions in the 2009-11 biennium could further limit an agency's ability to meet these lapse requirements. The Committee could, therefore, delete this component of the Governor's recommendation. [Alternative 3]

8. 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 are 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 University of Wisconsin (UW) Hospital Authority, 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 or portion thereof in any executive branch state agency if that position has been vacant for more than 12 months, under a 14-day passive review approval process. [Alternative 4]

9. The AB 75 provision would also include vacant positions at the UW System. However, under current law, the Board 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) the appropriation for trust fund income, which is a segregated fund; and (e) certain revenues credited to the academic fees (tuition) appropriation. Positions that are funded through the appropriation of segregated funds may otherwise only be created or abolished by the full Legislature or the Joint Committee on Finance under s. 13.10.

Assembly Bill 75 would provide that the UW Board of Regents may create or abolish positions that are funded through segregated funds appropriations. The bill would require that the Board would have to report quarterly to DOA and the Cochairpersons of the Joint Committee on Finance on the number of positions created or abolished during the preceding quarter, and the source of funding for each such position.

Given the position management authority of the UW System under current law, and the enhanced authority provided to the UW System under the bill, the inclusion of the UW System in the DOA Secretary's authority to eliminate long-term vacancies appears to be unnecessary. The Committee may wish to exclude the UW System from the vacancy elimination provision.

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 Fund 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 testified 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 5]

10. 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 for each state agency, the Legislature is expressing its intent with respect to how state revenues will be distributed to support the various policies of the state. Arguably, providing the Secretary of DOA with the authority to eliminate long-term vacant positions within the executive branch 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 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 positions once they have been vacant for at least 12 months. This degree of position management authority, exercised without legislative oversight, could significantly modify the Legislature's budget and policy intent in the future.

11. Finally, it can also be argued that the elimination of vacant positions can be handled under current law procedures. For example, in the current biennial budget process, executive branch agencies could have been directed by DOA to identify in their biennial budget requests any unneeded long-term vacancies. The Governor could then have recommended the elimination of these positions in each affected agency. This would have provided the Legislature the opportunity to review the position reductions as part of its budget deliberations. There are also opportunities under s. 13.10 and s. 16.505 proceedings for DOA to recommend position reductions relating to long-term vacancies. Current law procedures for the elimination of long-term vacancies would remain, if the provision is deleted. [Alternative 6]

## **ALTERNATIVES**

1. Approve the Governor's recommendation to provide that the Secretary of DOA may abolish any full-time equivalent position or portion thereof in any executive branch state agency if that position has been vacant for more than 12 months. Define an executive branch state agency as any office, department, or independent agency in the executive branch of state government, including the University of Wisconsin System. Require the Secretary of DOA to lapse from each sum certain appropriation made to an executive branch state agency, from any revenue source, the amount expended for the annual salary and fringe benefit costs of any abolished vacant position, unless the appropriation is credited with program revenue, federal revenue, or segregated revenue derived from specific program receipts. These amounts would lapse to the underlying fund. Require the Secretary of DOA to subtract from the expenditure estimate for each appropriation other than a sum certain appropriation, as specified above, the amount expended for the annual salary and fringe benefit costs of any abolished vacant position.

2. In addition to Alternative 1, require the Secretary of the Department of Administration to include in the quarterly position report provided to the Committee under s. 16.50 of the statutes, a specification of the number of long-term vacant positions eliminated in each state

agency by the Secretary in that quarter.

3. In addition to Alternative 1 or 2, delete the requirement that the Secretary of DOA lapse from each sum certain appropriation made to an executive branch state agency, from any revenue source, the amount expended for the annual salary and fringe benefit costs of any abolished vacant position, unless the appropriation is credited with program revenue, federal revenue, or segregated revenue derived from specific program receipts. Delete the specification that these amounts would lapse to the underlying fund and the requirement that the Secretary of DOA to subtract from the expenditure estimate for each appropriation other than a sum certain appropriation the amount expended for the annual salary and fringe benefit costs of any abolished vacant position.

4. Provide that the Secretary of the Department of Administration may recommend the abolition of any full-time equivalent position or portion thereof in any executive branch state agency if that position has been vacant for more than 12 months 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.

5. 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

6. Delete provision.

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