



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #116

### **Transfer and Elimination of Maintenance Staff (DOA -- Transfers to the Department)**

[LFB 2009-11 Budget Summary: Page 49, #3]

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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.

Also, under current law, state agencies are required to cooperate in the performance and execution of state work and to interchange data, reports and other information, and, by proper arrangements between the state agencies directly interested, interchange the services of employees, or jointly employ or make assignments of employees as the best interests of the public service require. All interchanges of services and joint employments and assignments of employees for particular work must be consistent with the qualifications and principal duties of such employees, except that, in the case of an emergency which is the result of natural or human causes, state agencies may cooperate to maintain required state services through the temporary interchange of employees. An employee who is assigned temporary interchange duties may be required to perform work which is not normally performed by the employee or described in his or her position classification.

The Department of Administration's (DOA) Division of Facilities Management manages the state's real estate portfolio and provides facilities for all state programs through capital projects (state-owned facilities) and lease agreements (private facilities).

## **GOVERNOR**

Specify that the DOA Secretary could abolish any position in any executive branch state agency that is responsible for the performance of building maintenance functions for that agency. Define "executive branch state agency" as an office, department, or independent agency in the executive branch (including the University of Wisconsin System) other than the Department of Administration.

Specify that the DOA Secretary, with the assistance of the chief administrative officer of each executive branch state agency, would identify employees of the executive branch state agencies whose positions would be deleted under this provision. Specify that the DOA Secretary could transfer any employee so identified. If employees are transferred, specify that they would maintain the employment rights, as defined under Subchapter V of Chapter 111 and Chapter 230 (describing state employment relations), that they had immediately prior to being transferred. Specify that no employee transferred under this provision, that had attained permanent status, would be required to serve a probationary period.

Modify the current program revenue supported facility and operations; police management functions appropriation to specify that DOA could expend all monies received for the purpose of financing the costs of operation of state-owned or operated facilities that are not funded from other appropriations, including custodial and maintenance services, minor projects, utilities, fuel, heat, and air conditioning, energy efficiency assessments for debt service costs, energy conservation and construction projects, supplements for child care facilities for the children of state employees, and police and protection functions. Under current law, the Department may only expend the amounts annually shown in the appropriation schedule for those purposes. Specify that any position transferred to DOA under this provision would be funded under this appropriation and be added to the appropriation for the purpose of providing maintenance to state agencies.

## **DISCUSSION POINTS**

### **Position Transfer Authority**

1. Under s. 16.505 of the statutes, most state positions cannot be created or abolished unless they are authorized by one of the following: (a) the Legislature by law or in budget determination; (b) the Joint Committee on Finance under s. 13.10 of the statutes; and (c) the Governor when creating or abolishing federally funded positions. The exceptions are PR positions created under 14-day passive review process under s. 16.505(2) of the statutes, and certain positions created and abolished under the UW System and the UW Hospitals and Clinics.

2. Except in the case of reductions of allocated positions, or insufficient funds to support ongoing positions, there are statutory protections for classified employees that have served a probationary period. Under s. 230.34 of the statutes, employees that reach permanent status may be

removed, suspended without pay, discharged, reduced in base pay, or demoted only for just cause.

3. The Governor's recommendation would provide permanent authority to the DOA Secretary to abolish any authorized full-time equivalent position that is responsible for the performance of building maintenance functions within any executive branch state agency. The agencies that could currently be affected include: (a) Department of Administration; (b) Department of Corrections; (c) Educational Communications Board; (d) Department of Health Services (DHS); (e) Historical Society; (f) Department of Justice; (g) Department of Military Affairs; (h) Department of Natural Resources; (i) Department of Public Instruction; (j) Department of Revenue; (k) State Fair Park Board; (l) Department of Transportation; (m) UW System; and (n) Department of Veterans Affairs (DVA).

4. Currently, there are approximately 4,000 state positions that could be subject to transfer under the provision, including approximately 2,800 at the UW System and approximately 1,200 in other executive branch agencies.

5. The types of positions that could be transferred or deleted would include automotive repair, bricklayers and masons, building and grounds staff, carpenters, cemetery caretakers, craftsmen, custodians, electricians, facilities maintenance and repair staff, gardeners and groundskeepers, industries specialists, locksmiths, vehicle operators, network cable technicians, painters, plumbers, power plant operators and superintendents, steamfitters, tile setters, and welders.

6. The Governor's Budget in Brief indicates that the transfer of maintenance positions to DOA would achieve greater coordination and more cost-effective service levels. The Department indicates that the amount of staffing eliminated or consolidated would be dependant on a DOA review of current staffing levels. The Department states that "it is not known at this time what the full scope of the consolidation might be. DOA will be conducting reviews of likely consolidation opportunities, focusing on situations where multiple agencies share space at and institution or campus, but have their own maintenance staff or where multiple agencies are grouped in a metropolitan area."

7. In regards to where maintenance staff would be housed, DOA indicates that some classifications, such as facility repair workers, may work primarily within a single facility and would remain housed at those facilities, while other staff may service multiple facilities and may be headquartered at a central location.

8. According to DOA, agencies could be billed for services in two ways. First, agencies could be billed a flat rate for basic services based upon a mutual agreement between each agency and DOA, which would cover routine building operations and maintenance. Second, any additional maintenance requests from agencies could be billed on a cost per service basis.

9. It could be argued that the flexibility provided under this provision would allow DOA to eliminate duplicative positions. Specific maintenance staff specialties may be underutilized by agencies that retain specialty maintenance workers, while other agencies may lack access to

specialty services due to infrequent need of those services. Therefore, maintaining a central pool of specialty workers, could provide broad service availability to all agencies, but limit agency costs based on only needed use.

10. On the other hand, it could be argued that agencies will see limited savings related to this consolidation. The Department has not identified the amount or type of positions that would be deleted or transferred. Since a minimum number of maintenance staff will have to be available for general agency need, it is likely that DOA would have to assess agencies for these employees whether or not specific requests for their services are made (a stand-by fee for access to specific maintenance services). If insufficient staffing is retained by DOA, private maintenance vendors may have to be used.

11. Further, under AB 75 DOA would become responsible for determining when additional staff is needed or when current staffing levels could be reduced. Agencies would then be billed for those services. Agencies would lose the ability to prioritize various maintenance services and thus, would be wholly dependant on DOA for scheduling and performing maintenance activities.

12. Current maintenance staffing levels have been allocated based upon a legislative process in which specific positions were requested and approved. Under the bill's provisions, there would be no requirement that DOA perform any formal or public evaluation of agency programs. The bill would not require public notice prior to reassignments, nor is there any appeal process for affected agencies or employees. There would also be no reporting requirement to the Legislature on the reassignments that are made, or the reasons for the reassignments.

13. In addition, current law already allows agencies to hire part-time staff or to pool resources with other agencies through memorandums of understanding, if single agency use of a full-time position is not economically justified.

14. If DOA believes that savings could be accrued through maintenance staff consolidation, it may be more appropriate for DOA to recommend specific consolidation alternatives that would identify the number of positions that would be consolidated and/or eliminated within specific agencies as part of the biennial budget process. This would allow the Legislature to review the appropriateness of the reallocation of positions and the amount of funding that would be provided for such purposes. Further, the affected agencies would be allowed to express opinions regarding the specific transfers.

15. While the Department indicates that there should be agency efficiencies that would reduce the overall maintenance staff expenditures, there is no explicit appropriation reductions identified under the bill and no agency-specific consolidation proposals. Further, since the bill creates a PR-continuing appropriation (discussed below), DOA would not be prohibited from increasing maintenance staff expenditures, now, or in the future.

16. In addition, the maintenance staff provision is statutory and would remain in effect

until repealed. Different DOA Secretaries could have varying opinions about the best way to maintain state facilities that could expand services, maintain current levels, or privatize all state services by eliminating all state maintenance workers and contracting for those services. Under the bill, these changes could occur without legislative oversight.

17. Finally, approval of the Governor's provision would significantly lessen legislative oversight. Under current law, positions may only be created or abolished by the Legislature by law, in the biennial budget, by the Joint Committee on Finance under certain circumstances, or, for federal positions, by the Governor. When positions are created, these positions are in a specific agency, with a specific funding source, and for an agency specific purpose. Over time, the activities of an agency may change and, in such cases, positions and resources may be reallocated within the agency. While the AB 75 provision does not create or abolish positions, it does allow unrestricted transfer of certain types of positions between executive branch agencies without legislative review. As a result, budgetary and positions allocation decisions of the Legislature would be superseded by a decision of the Secretary of DOA.

18. Some agencies have indicated that their maintenance staff provides services that are unique to their agencies. Concerns have also been raised as to whether adequate background checks and training would be provided for replacement staff, particularly staff that would work directly with children or individuals with special needs and staff that would work at health care facilities or correctional institutions. Also, in some cases facilities with limited staffing may cross-train employees to perform duties other than traditional maintenance roles. If the Governor's recommendation is adopted, DOA would be responsible for not only addressing safety and security concerns for these maintenance staff but any unique agency needs.

### **Facilities and Maintenance Operations Appropriation**

19. The Governor has recommended modifying the current program revenue supported facility and operations; police management functions appropriation to specify that DOA could expend all monies received for the purpose of financing the costs of operation of state-owned or operated facilities that are not funded from other appropriations, including custodial and maintenance services, minor projects, utilities, fuel, heat, and air conditioning, energy efficiency assessments for debt service costs, energy conservation and construction projects, supplements for child care facilities for the children of state employees, and police and protection functions. The following table shows the amounts expended for maintenance and facility operations appropriation purposes in 2007-08.

**Facility and Maintenance Operations Appropriation  
2007-08**

Facilities and Maintenance	\$21,266,700
Utilities and Power Plants	11,188,100
Police and Protection Functions	5,081,400
Child Care Facility Supplement	308,600
Executive Residence	<u>304,500</u>
 Total	 \$38,149,300

20. By granting PR-continuing authority under this appropriation, the Legislature would authorize DOA to expend all amounts received for each of these services.

21. The Department states that providing PR-continuing authority would grant flexibility needed for the maintenance staff transfer. In addition, it would allow the agency to handle the unknown nature of maintenance issues, which can fluctuate significantly from year to year. The Department currently handles the maintenance costs that it can afford on a cash basis, but some larger maintenance costs are paid over time for under a master-lease. The Department states that increased flexibility would allow DOA to pay for more of these costs on an upfront cash basis that would allow agencies to avoid paying interest costs. The PR-continuing authority would also provide flexibility in paying for fluctuating utility costs.

22. The Department notes that state agency space rental changes make up a majority of revenues under this appropriation. Since the Building Commission approves space rental rates, the Legislature (through the Building Commission) would retain some oversight via approval of these rates. On the other hand, it is not evident, nor is it statutorily required, that new assessments for maintenance staff would be part of the space rental costs. This would significantly limit legislative oversight on amounts assessed to agencies and expended by DOA for maintenance staff costs.

23. In addition, none of the existing fuel and utility appropriations provided for agencies that have separate state facilities, such as the UW-System, the Department of Veterans Affairs Homes, or the Department of Military Affairs for National Guard facilities are provided with continuing or sum-sufficient appropriations. Even though there is significant variation in fuel and utility costs, it could be argued that the Legislature, should continue to review potential fluctuations, including determining whether supplements should be provided to cover increased costs, and from which source the supplements should be provided.

24. Providing PR-continuing authority under this appropriation would allow for unlimited expenditures on the following: (a) maintenance staffing levels for executive branch agencies; (b) total amounts expended by state agencies on facilities and maintenance; (c) total amounts spent of fuel and utilities at state facilities; (d) total amounts provided as subsidies for child care facilities that locate near the Capitol Building; (e) total amounts expended on police and protection services; and (f) total amounts expended on care and maintenance of the executive

residence. This would significantly reduce the Legislature's authority in regards to total expenditures spent on state facilities.

25. Though the PR-continuing authority is recommended due to proposed changes in the maintenance staffing, it could be argued that the affect of the change is more widespread, because of the multiple uses of the appropriation. The bill would allow the Department to significantly modify the assessments to all agencies based on any of the services provided under this appropriation. Agencies assessed for services would include the Legislature and the Courts. Maintenance costs of the Capitol and executive residence may be supplemented through the GPR appropriation under s. 20.865(2)(e) of the statutes.

26. If the Committee believes that legislative oversight of maintenance positions and the overall expenditures under the facility and operations; police management functions appropriation should be retained, it could delete the Governor's recommendation. If the executive branch agencies have specific proposals for the consolidation of maintenance staffing, it could request such modifications in separate legislation or under the 2011-13 biennial budget.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to consolidate maintenance staff for executive branch agencies, including: (a) deleting or transferring positions responsible for building maintenance functions of executive branch agencies; (b) allowing the Department of Administration Secretary with the assistance of the chief administrative officer of each executive branch agency to identify maintenance staff positions that could be deleted or transferred; and (c) modify the current program revenue supported facility operations; police management functions appropriation to specify that the Department of Administration could expend all funds received.

2. Delete provision.

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