



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

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Joint Committee on Finance

Paper #421

Interagency and Intra-Agency Assistance and Delinquent Obligation Collection (Justice)

[LFB 2015-17 Budget Summary: Page 279, #16 and #17]

CURRENT LAW

Current law requires the Department of Justice to furnish legal services to several state agencies. Revenue generated when DOJ charges a state agency for legal services is received and expended from the Legal Services interagency and intra-agency annual appropriation. Base expenditure authority for the appropriation is \$1,239,100 PR annually.

In addition, current law requires the Department to: (a) monitor cases filed in bankruptcy courts in Wisconsin and other states; (b) notify state agencies that may be affected by those bankruptcy cases; and (c) represent the interest of the state in bankruptcy cases and related adversary proceedings. All delinquent obligations collected by DOJ while performing its duties are paid to the Department of Administration, and then deposited in the appropriate fund. The Department of Administration (DOA) must credit an amount equal to the reasonable and necessary expenses incurred by DOJ in performing its duties related to delinquent obligation collection to DOJ's delinquent obligation collection appropriation. Base expenditure authority for the appropriation is \$7,000 PR annually.

GOVERNOR

Convert the Legal Services interagency and intra-agency annual appropriation to a continuing appropriation. In addition, convert the Legal Services delinquent obligation collection annual appropriation to a continuing appropriation.

DISCUSSION POINTS

Interagency and Intra-Agency Assistance

1. The Department currently enters into agreements with state agencies under which DOJ charges these state agencies for ongoing legal services. Table 1 identifies the Department's current agreements, as well as the amount DOJ charges for its services and a brief description of the services provided by DOJ. As Table 1 indicates, DOJ currently generates \$1,327,700 of revenue from these agreements, and generally utilizes the funding to support the positions that provide the services under the agreement. The amount charged to state agencies is based upon DOJ's actual costs to provide legal services.

TABLE 1

**Department of Justice's Agreements with
Other State Agencies for Legal Services, 2014-15**

<u>Agency</u>	<u>Annual Charge</u>	<u>Description of Service</u>
Transportation	\$683,100	DOT provides DOJ \$683,100 annually to support 6.5 positions that provide legal services in the area of eminent domain and property law.
Transportation	186,000	DOT transfers \$186,000 annually of federal grant funding to DOJ to support a traffic safety resource prosecutor position that promotes awareness and training in the investigation and prosecution of vehicular crimes.
Administration	131,500	DOA's Division of Risk Management provides DOJ \$131,500 annually to support the investigation, litigation, and settlement of environmental liability claims against the state.
Workforce Development	128,300	DWD provides DOJ \$128,300 annually to support 1.0 workers compensation resolution officer and 0.5 limited-term employee workers compensation officer. These officers provide services for Wisconsin's work injury supplementary benefit fund.
University of Wisconsin - Medical School	126,800	UW Medical School provides DOJ \$126,800 annually for risk management-related litigation costs. DOJ indicates that it utilizes the funding to support the rent costs of DOJ's Division of Legal Services.
Safety and Professional Services	65,500	DSPS provides DOJ \$65,500 annually to support 0.5 full-time equivalent attorneys. In exchange, DOJ consults with DSPS staff on legal issues, provides training to DSPS staff, and performs work on DSPS-related cases.
Health Services	6,500	DHS provides DOJ \$6,500 annually for legal services relating to the state's Medicaid Program (MA).
Total	<u>\$1,327,700</u>	

2. Table 2 identifies the amount of revenue that DOJ has generated from its legal service agreements over the last five fiscal years. As Table 2 indicates, DOJ's contractual revenues have steadily increased from 2010-11 through 2014-15.

TABLE 2

**Revenue Generate by DOJ from Agreements for Legal Services
2010-11 thru 2014-15**

<u>Fiscal Year</u>	<u>Revenue</u>
2010-11	\$977,200
2011-12	1,013,700
2012-13	1,077,300
2013-14	1,266,700
2014-15	1,327,700

3. The revenue generated from DOJ's agreements with state agencies is largely received by the Legal Services interagency and intra-agency annual PR appropriation. Base expenditure authority for this annual appropriation is \$1,239,100 PR annually. As Table 1 indicates, however, current contractual revenues total \$1,327,700 annually. The Department indicates that, since annual contractual revenues exceed the appropriation's expenditure authority, the Department has had to receive a portion of its contractual revenues in its Legal Services federal aid appropriation. Specifically, DOJ receives a portion of the federal grant funding transferred from DOT to DOJ for a traffic safety resources prosecutor position in the federal aid appropriation. Since the funding for the traffic safety resource prosecutor is transferred to DOJ from DOT, however, DOJ should receive the funding as program revenue rather than federal revenue.

4. The bill converts the interagency and intra-agency appropriation from an annual appropriation to a continuing appropriation. As a continuing appropriation, DOJ would not require legislative approval to expend amounts beyond what is appropriated. Therefore, DOJ would be able to receive and expend all contractual revenues generated from legal services provided to state agencies in the interagency and intra-agency appropriation.

5. Given that DOJ has generated an increasing amount of revenue to support its actual costs to furnish legal services to other state agencies, and that DOJ is receiving revenues in a federal appropriation because annual contractual revenue exceed the appropriation's expenditure authority, the Committee could convert the Legal Services interagency and intra-agency PR annual appropriation to a continuing appropriation [Alternative A1].

6. On the other hand, the Committee could decide to maintain the appropriation as an annual appropriation in order to retain legislative oversight over the appropriation's expenditures [Alternative A2]. As an annual appropriation, DOJ could not expend amounts beyond that appropriated. However, any necessary increase beyond the appropriated amount could be approved by the Committee acting under s. 16.515 of the statutes.

7. Alternatively, the Committee could decide to maintain the appropriation as an annual appropriation but increase the appropriation's expenditure authority from \$1,239,100 PR to \$1,327,700 PR annually [Alternative A3]. Under this alternative, the Legislature would maintain oversight over the appropriation's expenditure authority. Further, this alternative would provide the

appropriation expenditure authority to receive all of the revenue DOJ currently generates from providing other state agencies legal services in the interagency and intra-agency appropriation. If DOJ's costs to provide contractual legal services to state agencies increases in future years, DOJ could request that the Committee increase the appropriation's expenditure authority as authorized under s. 16.515 of the statutes.

Delinquent Obligation Collection

8. Over the years, a fee has been developed to assess agencies to permit DOJ to recover its costs in bankruptcy proceedings. The fee is applied to the amounts recovered by DOJ and is currently set at 16%. As a result, 16% of all amounts recovered by DOJ in bankruptcy cases are deposited in the Department's delinquent obligation collection PR annual appropriation. The remaining amounts recovered in these bankruptcy proceedings are returned to the relevant agency.

9. The 2001-03 biennial budget reduced the expenditure authority of the delinquent obligation collection appropriation from \$66,300 PR to \$0 PR. Subsequently, under the 2013-15 budget act, the expenditure authority was increased to \$7,000. As a result of its expenditure authority in recent years, the Department has generally absorbed the costs of providing the state delinquent obligation collection services.

10. Table 3 identifies the revenues generated by the appropriation over the last 10 fiscal years, as well as DOJ's expenditures from the appropriation over that same time period. As Table 3 indicates, the Department's appropriation has generated \$650,600 of program revenue since 2005-06. Further, the amount of revenue generated by the appropriation has fluctuated from year to year depending on the cases litigated by DOJ.

TABLE 3

Delinquent Obligation Collections Revenues and Expenditures 2005-06 through 2014-15 (as of March, 2015)

<u>Fiscal Year</u>	<u>Revenue</u>	<u>Expenditures*</u>
2005-06	\$150,200	\$0
2006-07	27,900	0
2007-08	3,000	0
2008-09	21,100	0
2009-10	2,300	0
2010-11	3,100	0
2011-12	5,300	0
2012-13	405,000	0
2013-14	12,700	\$7,000
2014-15 (thru March, 2015)	<u>20,000</u>	<u>0**</u>
Total	\$650,600	\$7,000

*Prior to 2013-14, expenditure authority of this appropriation was \$0.

**It is expected that DOJ will expend its full expenditure authority of \$7,000 by the end of the 2014-15.

11. Given that the annual appropriation's current expenditure authority is \$7,000, the Department may not expend more than \$7,000 annually without legislative approval. Unexpended revenue is generally either: (a) retained in the appropriation; or (b) utilized to meet the Department's lapse requirement. The Department indicates that if the appropriation was converted from an annual appropriation to a continuing appropriation, it would utilize revenue received by the appropriation to support its staff and supplies costs related to delinquent obligation collections.

12. Due to the fluctuating revenue streams in the appropriation, and that revenues in the appropriation would be utilized to reimburse DOJ for its expenses related to collecting delinquent obligations, the Committee could approve the Governor's recommendation and convert the appropriation to a continuing appropriation [Alternative B1]. As a continuing appropriation, DOJ would not require legislative approval to expend amounts beyond what are appropriated. Rather, DOJ could spend any available cash balances in the appropriation.

13. On the other hand, the fluctuating amount of revenue received by the appropriation from year to year could lead the Committee to conclude that it should maintain the appropriation as an annual appropriation in order for the Legislature to preserve its oversight over agency spending. As an annual appropriation, the Department could not expend amounts beyond that appropriated. However, any necessary increase beyond the appropriated amount could be approved by the Committee acting under s. 16.515 of the statutes.

14. Further, it could be argued that since the Department has been able to absorb the cost of providing delinquent obligation collection services in recent years, DOJ does not require authority to expend additional amounts received by the delinquent obligation collection appropriation.

15. In the 2013-15 budget bill, the Governor recommended that DOJ's delinquent obligation collection PR annual appropriation be converted to a continuing appropriation. During deliberations of the 2013-15 budget, the Committee removed the Governor's recommendation. Instead, the Committee increased the expenditure authority of the appropriation from \$0 PR to \$7,000 PR annually in order to provide DOJ modest expenditure authority to address some of its expenses incurred in bankruptcy cases, but still permit the Legislature to exercise oversight of the utilization of larger recoveries deposited in the appropriation.

16. Given that the Legislature would maintain oversight over the appropriation's expenditures, and that DOJ has absorbed the costs of providing delinquent obligation collection services in recent years, the Committee could deny the Governor's recommendation and maintain the appropriation as an annual appropriation [Alternative B2].

17. Alternatively, in recognition of the revenue that the appropriation generates and that DOJ does incur costs related to delinquent collection obligations, the Committee could decide to increase the appropriation's expenditure authority from \$7,000 PR annually to \$8,900 PR annually. [Alternative B3]. The increase in expenditure authority would reflect the average amount of revenues generated over the last five completed fiscal years (not including 2012-13). [Note that revenues received in 2012-13 are not included in the five year average due to abnormally large amount generated from one case.]

ALTERNATIVES

A. Interagency and Intra-Agency Assistance Appropriation

1. Adopt the Governor's recommendation and convert the Legal Services interagency and intra-agency PR annual appropriation to a continuing appropriation.
2. Delete provision.
3. Increase the expenditure authority of the Legal Services interagency and intra-agency appropriation by \$88,600 PR annually and maintain the annual appropriation.

ALT A3	Change to Bill
PR	\$177,200

B. Delinquent Obligation Collections Appropriation

1. Adopt the Governor's recommendation and convert the Legal Services delinquent obligations collections PR annual appropriation to a continuing appropriation.
2. Delete provision.
3. Increase the expenditure authority of the delinquent obligations collections appropriation by \$1,900 PR annually and maintain the annual appropriation.

ALT B3	Change to Bill
PR	\$3,800

Prepared by: Michael Steinschneider