



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #142

Office of Privacy Protection (DATCP)

Bill Agency

[LFB 2007-09 Budget Summary: Page 53, #11 & Page 359, #6]

CURRENT LAW

The Office of Privacy Protection (OPP) was created by executive order of the Governor in April, 2006. The OPP, which consists of 3.0 positions, specializes in handling identity theft and privacy protection issues for the Department of Agriculture, Trade and Consumer Protection (DATCP).

GOVERNOR

Transfer 3.0 positions associated with the Office of Privacy Protection (OPP) from FED to PR. Further, provide \$245,900 PR annually associated with these positions from DATCP's central services appropriation account.

In addition, provide the Office of the Commissioner of Insurance (OCI) \$123,000 PR annually in order to allow OCI to transfer this amount to DATCP for partial support of the OPP. The OCI program revenues are derived from insurance fees.

DISCUSSION POINTS

1. In April, 2006, the Governor created the Office of Privacy Protection by executive order. The office is a joint partnership between the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Financial Institutions (DFI), as specified in a memorandum of understanding (MOU) between the two agencies, and is located in the Department

of Agriculture, Trade and Consumer Protection. Under the MOU, DFI agreed to provide funding to DATCP for the costs of operating the OPP, not to exceed \$65,200 in 2005-06 and \$211,400 in 2006-07. The MOU expires June 30, 2007.

2. In conjunction with the executive order that created the Office of Privacy Protection, the Department of Administration (DOA) and DATCP created three federal (FED) positions (1.0 regulatory specialist, 1.0 investigator, and 1.0 auditor) in DATCP to staff and operate the office. The office is located in Madison and is administratively assigned to DATCP's Madison regional office.

3. DATCP has three regional consumer protection offices (Madison, Green Bay and Wauwatosa) and a satellite office (in Eau Claire, whose staff are supervised by the Madison regional office) that respond to consumer complaints and conduct investigations or other inspection-related work within their geographic areas that may have been received through local consumer complaint lines or referred from the Department's centrally located toll-free hotline. In addition, regional staff are assigned to certain statewide and national complaint areas.

4. While the OPP is located in DATCP's Madison regional office, OPP staff differ from other regional office staff who assist consumers in their area with a variety of consumer protection questions and complaints. Instead, OPP staff offer statewide consumer and business support on the issues of privacy protection and identity theft. The OPP's duties include: (a) aiding and educating consumers who are victims of identity theft; (b) networking and consulting with government agencies, law enforcement and businesses on privacy issues; and (c) handling DATCP's identity theft complaints and investigations. The Office also maintains a website with identity theft and privacy protection-related information and uses direct mail to reach consumers when appropriate.

5. From the creation of the Office in mid-April, 2006, through December, 2006, DATCP staff indicate the OPP received 304 identity theft complaints, 28 of which resulted in investigations by OPP staff, which lead to eight referrals for prosecution. However, DATCP staff indicate that with the creation of the OPP the number of identity theft-related complaints has risen. Based on the first three months of 2007, DATCP consumer protection staff expect the number of identity theft complaints could reach approximately 1,000 in 2007.

6. Unlike GPR, PR and SEG positions, no legislative approval is required for the creation of a FED position. Rather, an agency may submit a request to DOA for the position and document that revenues will be sufficient to support the requested position.

7. The three OPP positions were approved by DOA and placed in DATCP's federal indirect cost reimbursement (FICR) appropriation. The appropriation receives payments from the federal government that are negotiated by DATCP with the United States Department of Agriculture (USDA) and are intended to help cover the costs of implementing federal programs. After arriving at a FICR rate through negotiations with USDA, the rate is applied to federal grants received by DATCP, and deposited into the federal appropriation account.

8. DATCP's FICR appropriation would be authorized expenditures of \$1,779,900 annually under the bill. Since the appropriation is continuing, DATCP may expend all available funds in this appropriation account with the approval of DOA. The expenditure authority in the bill includes \$170,500 FED annually for salaries and fringe benefits of the three OPP positions as part of adjusted base funding.

9. While the three OPP positions were administratively created under a federal appropriation, the MOU between DATCP and DFI specifies that DFI reimburse DATCP for the costs of the office with program revenue. DATCP has deposited revenues received from DFI for the OPP to its state services PR appropriation. After receipt of the DFI revenues, DATCP has transferred the expenditures related to the OPP from its federal appropriation to its PR state services continuing appropriation. As a result, the costs associated with the three federal positions have actually been paid from program revenue. Under this mechanism, the creation of the positions needed approval only of the administration, and avoided needing to have them approved by the Joint Committee on Finance under the 14-day passive review process.

10. Under the bill, total funding of \$245,900 annually associated with the three OPP positions is provided to DATCP's central services program revenue appropriation. However, DOA identified an error in the cost estimate of the 3.0 positions due to a position misclassification. With this adjustment and revised supplies costs, \$204,600 could be provided to cover annual salaries, fringe benefits, supplies, and travel for the office (with a corresponding correction to the OCI appropriation for support of the office). DOA also indicated the bill should have increased DFI's PR general operations expenditure authority to account for the OPP funding. Based on the revised number, DFI could be provided expenditure authority of \$102,300 annually. Further, the bill identifies an incorrect PR appropriation for the office and could be corrected to place the funds and staff in the correct state services PR appropriation. In addition, while the bill eliminates three FED positions from DATCP's federal indirect cost reimbursement (FICR) appropriation, it does not eliminate the funding associated with these positions. As a result, \$170,500 FED annually (\$115,900 salary and \$54,600 fringe benefits) associated with the three OPP positions should be eliminated from DATCP's FICR appropriation. The table below provides an overview of the funding for the Office of Privacy Protection with these corrections (Alternative 2).

OPP Annual Funding (corrected)

	<u>Source</u>	<u>Funding</u>	<u>Positions</u>
DATCP	PR	\$204,600	3.0
OCI	PR	102,300	0.0
DFI	PR	102,300	0.0
DATCP	FED	<u>-170,500</u>	<u>-3.0</u>
Totals		\$238,700	0.0

11. The administration indicates that because privacy protection and identity theft affect multiple business sectors and consumers, funding sources were identified from both DFI and OCI.

The administration argues DFI is an appropriate ongoing funding source due to its responsibility to protect consumers of financial services. Further, the administration believes OCI is an appropriate funding source due to its regulation of insurance companies, which it identifies as an industry where consumers are at significant risk of identity theft. The administration indicates that splitting the funding of the OPP between these two sources reduces the impact of funding such an office.

12. When the OPP was created by executive order, DFI agreed to provide one-time funding for the operating costs of the office, to be housed in DATCP, based on its role in investor protection, consumer protection and financial security. This support is provided from DFI's gifts and grants appropriation.

13. DFI's base PR general operations appropriation is funded with program revenue from various licensing, filing, and examination fees and assessments applicable to financial institutions and services. Under the bill, this appropriation would be provided \$14,875,000 PR annually. Revenues received by this appropriation in excess of this amount are deposited to the state's general fund. As a result, providing an additional \$102,300 PR annually would have the effect of decreasing the amount received by the state's general fund by the same amount. Since the method of DFI funding suggested by DOA would have the effect of decreasing revenue deposited to the state's general fund, it could be argued that providing DATCP with GPR funding for the DFI portion, or the entire portion, of OPP costs is more appropriate (Alternative 3 or 4).

14. Prior to the creation of the OPP, privacy protection issues were handled by DATCP's existing Bureau of Consumer Protection staff. DATCP currently has three regional offices, along with a satellite office in Eau Claire, that contain 23.8 staff (in addition to the OPP staff) that respond to consumer complaints and conduct investigations or other inspection-related work. Further, DATCP's Bureau of Consumer Protection has a consumer information center (CIC) that consists of 13.15 staff whose duties include responding to consumer complaints via the Bureau's toll-free hotline, working on special projects as assigned, and administering the state's telephone solicitation no-call list. If the three OPP positions are eliminated, DATCP's regional office and CIC staff would once again be responsible for identity theft and privacy protection issues.

ALTERNATIVES TO BILL

1. Include the bill provision to transfer 3.0 positions associated with the Office of Privacy Protection (OPP) from FED to PR. Further, provide DATCP with \$245,900 PR annually and OCI with \$123,000 PR annually.

ALT 1	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
FED	\$0	\$0	\$0	- 3.00
PR	0	0	737,800	3.00
Total	\$0	\$0	\$737,800	0.00

2. Adopt the Governor's recommendations, as corrected, to provide \$204,600 PR

annually with 3.0 positions in DATCP's state services PR appropriation. Further, delete \$170,500 FED annually with 3.0 positions. Moreover, provide the Office of the Commissioner of Insurance (OCI) and Department of Financial Institutions (DFI) each \$102,300 PR annually in their supplies and services budgets to support the Office. (General fund revenues would decline by \$204,600 over the biennium.)

ALT 2	Change to Bill			Change to Base		
	Revenue	Funding	Positions	Revenue	Funding	Positions
GPR	-\$204,600	\$0	0.00	-\$204,600	\$0	0.00
FED	0	- 341,000	0.00	0	- 341,000	- 3.00
PR	<u>0</u>	<u>80,600</u>	<u>0.00</u>	<u>0</u>	<u>818,400</u>	<u>3.00</u>
Total	-\$204,600	-\$260,400	0.00	-\$204,600	\$477,400	0.00

3. Modify the provision to instead transfer 1.5 positions associated with the Office of Privacy Protection (OPP) from FED to GPR, and 1.5 OPP positions from FED to PR. Provide DATCP \$102,300 GPR annually and \$102,300 PR annually to support the office and delete \$170,500 FED annually. Further, provide OCI \$102,300 PR annually to transfer to DATCP to partially support the OPP.

ALT 3	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$204,600	1.50	\$204,600	1.50
FED	- 341,000	0.00	- 341,000	- 3.00
PR	<u>- 328,600</u>	<u>- 1.50</u>	<u>409,200</u>	<u>1.50</u>
Total	-\$465,000	0.00	\$272,800	0.00

4. Modify the provision to instead transfer 3.0 positions associated with the Office of Privacy Protection (OPP) from FED to GPR. Provide \$204,600 GPR and delete \$170,500 FED annually.

ALT 4	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$409,200	3.00	\$409,200	3.00
FED	- 341,000	0.00	- 341,000	- 3.00
PR	<u>- 737,800</u>	<u>- 3.00</u>	<u>0</u>	<u>0.00</u>
Total	-\$669,600	0.00	\$68,200	0.00

5. Do not adopt the Governor's recommendations. Rather, eliminate base funding of 3.0 OPP positions and \$170,500 FED annually. [This would have the effect of eliminating the Office of Privacy Protection and associated funding and would maintain current law with respect to OCI and DFI.]

ALT 5	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
FED	- \$341,000	0.00	- \$341,000	- 3.00
PR	<u>- 737,800</u>	<u>- 3.00</u>	<u>0</u>	<u>0.00</u>
Total	- \$1,078,800	- 3.00	- \$341,000	- 3.00

6. Delete provision. [The 3.0 OPP positions would continue to be appropriated from DATCP's FED appropriation.]

ALT 6	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
FED	\$0	3.00	\$0	\$0
PR	<u>- 737,800</u>	<u>- 3.00</u>	<u>0</u>	<u>0</u>
Total	- \$737,800	- 0.00	\$0	\$0

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