



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #245

Unclassified Division Administrators and Bureau Directors (Commerce and DSPS)

[LFB 2011-13 Budget Summary: Page 127, #10; Page 130, #11; and Page 383, #5]

CURRENT LAW

Section 230.08 (2) of the statutes authorizes Commerce six unclassified division administrators. The Department of Regulation and Licensing (DRL) was authorized four unclassified division administrators prior to 2011 Act 10. The intent of Act 10 is to authorize six unclassified administrators (two additional), including the chief legal advisor, and either the communications officer, or legislative liaison. Section 230.08 (2) also authorizes the DRL Secretary to assign not more than five unclassified bureau directors. The DRL Secretary may assign these bureau directors as either a bureau director or a division administrator. The budgeting system authorizes 6.0 unclassified positions in DRL, in addition to the Secretary, Deputy Secretary, and Executive Assistant.

GOVERNOR

Amend s. 230.08 (2) to authorize the Department of Safety and Professional Services (DSPS) to employ seven unclassified administrators, and eliminate the current authorization for four unclassified division administrators under DRL. Authorize DSPS to employ not more than 10 unclassified bureau directors, and eliminate the current authorization for five unclassified bureau directors under DRL.

Specify that incumbents holding four bureau director positions who are transferred from classified positions in Commerce to unclassified positions in DSPS would retain protections afforded employees in the classified service related to demotion, suspension, discharge, layoff, or reduction in base pay. The positions include: (a) director of the bureau of petroleum environmental cleanup fund administration (PECFA) in the Division of Environmental and Regulatory Services; (b) director of the bureau of petroleum products and tanks in the Division

of Environmental and Regulatory Services; (c) director of the bureau of integrated services in the Division of Safety and Buildings; and (d) director of the bureau of program development in the Division of Safety and Buildings.

Specify that the incumbent administrator of the Commerce Division of Administrative Services who is transferred to an unclassified position in DSPS would retain protections afforded employees in the classified service related to demotion, suspension, discharge, layoff, or reduction in base pay.

Transfer two unclassified division administrators from Commerce to DSPS as part of the transfer of the Division of Safety and Buildings and Division of Environmental Regulatory Services to DSPS. (The bill does not request the transfer of other unclassified positions or conversion of classified to unclassified positions related to the transfer of bureau directors from Commerce.)

DISCUSSION POINTS

1. If an agency is provided with an unclassified position by the Legislature, the authorization of that position occurs in two places. First, an agency is granted a statutory allotment under Chapter 230 of the statutes. Chapter 230 specifies which agencies may assign personnel to the unclassified service, for duties such as division administrators, bureau directors, directors, and executive assistants. The allotments under this chapter represent a maximum number of authorized unclassified positions, but do not represent the actual position count within an agency.

2. Secondly, the actual number of positions is entered into a state budgeting system. The state budgeting system count is the total number of positions authorized under each state appropriation within each state agency. This system represents a fixed position count.

3. The Chapter 230 authorization and the state budgeting system are usually coordinated in regards to legislative action on the budget. If an unclassified position is authorized, Chapter 230 and the state budgeting system are both adjusted as necessary. However, over time, the actual number of personnel assigned to an agency may be reduced below the maximum number allotted in Chapter 230 of the statutes due to budget reductions, consolidations, or transfers; such is the case with DRL and Commerce. Under current law, the Chapter 230 unclassified position allotment, exceeds the number of personnel assigned to the unclassified service.

4. This paper will address the issues of how many total unclassified positions should be assigned to DSPS from current DRL and Commerce staff, and provide alternatives to align the statutory specifications of unclassified positions with the number of unclassified positions in the state budgeting system.

5. The budget bill would statutorily allot a total of 20 unclassified positions under s. 230.08(2) in DSPS, as shown in Table 1. While the bill transfers two divisions with a total of four bureaus from Commerce to DSPS, it proposes three additional administrators and five additional bureau directors. However, the combination of the four administrators provided prior to 2011 Act 10 and the two intended under Act 10 as an attorney and communications officer, result in a

proposed number of seven administrators.

TABLE 1

**Governor's Proposed Authorization of Number of Unclassified Positions
Under Chapter 230 of the Statutes**

	DRL <u>Base</u>	DRL <u>Act 10</u>	Added <u>Under Budget</u>	DSPS <u>Total</u>
Office of the Secretary	3	--	--	3
Division Administrators	4	2*	3	7*
Bureau Directors	<u>5</u>	<u>--</u>	<u>5</u>	<u>10</u>
Total	12	2	6	20

* The bill would add three administrators to the four authorized prior to Act 10, but does not factor in two intended under Act 10, so provides seven rather than nine. The state budgeting system would also reflect seven administrators as unclassified.

6. Prior to the creation of DRL, a number of independent examining boards regulated professional occupations. These examining boards set the credential requirements for the regulated profession, granted credentials, promulgated administrative rules applicable to the regulated professionals and collected credential fees. Each of these independent boards had a separate budget and directly employed staff.

7. In the mid-1960s, Wisconsin state government underwent a series of major reorganizations aimed at improving operational efficiency and responsiveness to the public. Under Chapter 75, Laws of 1967, the independent examining boards and councils were centralized for administrative and technical services. While each board would continue the independent regulation of its own profession, DRL assumed responsibility for the direct regulation of certain professions where no examining board existed.

8. Since 1967, subsequent legislation further consolidated occupational regulation under DRL and gradually transferred many administrative functions from the separate boards to the Department. In 1975, DRL was first authorized to hire staff for all the boards with a few exceptions.

9. In 1977, a single appropriation for the expenditure of all license fee revenue was created, and budgetary authority was centralized under the Department.

10. Under Chapter 34, Laws of 1979, the Department was authorized to reorganize its staff entirely along functional lines, rather than by the boards that they served, and to eliminate the last employee positions remaining under a board's direct authority. (The provisions of 2009 Wisconsin Act 28 again split the budget and staffing of the professions under the auspices of the Medical Examining Board and its affiliated credentialing boards from the remaining DRL regulated professions.)

11. Before the approval of Chapter 34, Laws of 1979, 5.0 unclassified positions remained for oversight of specific functions including the division administrator of the Division of Nurses and executive secretaries of the following examining boards: (a) architects, professional engineers, designers and land surveyors; (b) real estate; (c) pharmacy; and (d) pharmacy internship. The Legislature provided an additional three division administrator and not more than five bureau directors from the unclassified service. The DRL Secretary was required to appoint bureau directors from the list of candidates recommended by a committee of individuals designated by the chairperson of each affected examining board. Qualifications for these bureau directors were jointly established by the DRL Secretary and the affected committee.

12. Under 1985 Wisconsin Act 29, the assignment of the unclassified bureau directors was made the sole authority of the DRL Secretary.

13. Under current statutes in s. 230.08 (2), state employment relations provisions establish a maximum number of individuals who may serve as division administrators in each agency, and list the other employees who comprise the unclassified service. Under this list, the only unclassified bureau directors identified are those specified under DRL. This provision remains from the period in which individual occupations and businesses designated their staff based on approvals of their performance from board membership. It could be argued that, since these bureau directors no longer serve at the pleasure of the board membership, the reconfiguration of the DRL into an expanded Department of Safety and Professional Services represents an appropriate time to reassign the bureau directors to the classified service. As a result, bureau directors at DSPS would be treated in a manner similar to the bureau directors that serve in other executive branch agencies, including the individuals that currently serve in those roles in Commerce [Alternative 3].

14. It could also be argued that taking action to reorganize DRL into DSPS with the transfer of divisions from Commerce is not an appropriate reason to perpetuate an old structure of unclassified management by increasing the number of bureau directors in the unclassified service to include Commerce bureau directors. If the statutory authorization for the five transferred Commerce bureau directors as unclassified were deleted, the provision to maintain civil service provisions for the incumbents at Commerce would not be needed because their positions would not be converted to unclassified, and authorization for additional unclassified allotments in Chapter 230 could be deleted [Alternative 3].

15. While Chapter 230 specifies the maximum allotment of unclassified positions in agencies, these statutory provisions do not authorize actual positions. The Legislature must additionally act to provide positions within the budgeting system that also specify numbers of personnel to be hired under specific appropriations.

16. Currently, the Department of Regulation and Licensing is authorized 9.0 unclassified positions in the state budgeting system. Under the bill, a separate provision under DRL would convert 2.0 positions from classified to unclassified to implement the 2011 Act 10 provision related to an attorney and communications officer. The Department of Regulation and Licensing is currently organized into four divisions (board services, professional credentialing, management services, and enforcement). One of the current DRL divisions is currently headed by a classified division administrator. Under the bill, DSPS would be organized into six divisions, including the

addition of the two divisions transferred from Commerce. The bill provides 13.0 unclassified positions in the state budgeting system, including the 2.0 unclassified division administrators transferred from Commerce. This is shown in Table 2.

TABLE 2

Proposed Number of Unclassified Positions in State Budgeting System

	<u>DRL - Base</u>	<u>Added for Act 10</u>	<u>Added Under Budget</u>	<u>DSPS - Total-Budget</u>	<u>Alternative 2 - DSPS</u>	<u>Alternative 3 - DSPS</u>
Office of the Secretary	3			3	3	3
Division Administrators	3	2	2	7	8	8
Bureau Directors	<u>3</u>	—	—	<u>3</u>	<u>2</u>	<u>0</u>
Total	9	2	2	13	13	11

17. The Department of Regulation and Licensing officials prepared a draft organizational chart for the new DSPS which includes six divisions. Based on the organization plan developed by DRL/DSPS, the bill's allotment of 20 unclassified positions in s. 230.08 (2) is greater than needed for the DSPS organizational plan.

18. The Committee could choose to amend the bill to align the s. 230.08 (2) statutory authorization of unclassified positions with the organizational plan of DSPS. One way of accomplishing this would be to: (a) authorize eight unclassified administrators (rather than seven under the bill) for the six divisions, an attorney and a communications officer; and (b) authorize two unclassified bureau directors (rather than 10 under the bill) for two of the three unclassified DRL incumbents [Alternative 2]. The Department of Safety and Professional Services could continue to utilize the unclassified position not currently being used for a division administrator for the third unclassified bureau director. The four classified bureau directors transferred from Commerce would remain as classified, the provision maintaining their civil service protection upon transfer to unclassified positions would not be needed, and the provision could be deleted. This alternative would maintain the 13.0 unclassified positions requested by the Governor in the budgeting system, and equate the Chapter 230 allotments to the Governor's recommendation.

19. Another option would be to delete authorization for unclassified bureau directors as follows: (a) authorize eight unclassified administrators; (b) delete the current DRL and proposed DSPS authorization for unclassified bureau directors; (c) delete the provision maintaining civil service protection for classified Commerce bureau directors upon transfer to unclassified DSPS positions; (d) convert 1.0 unclassified bureau director to an unclassified division administrator; and (e) convert 2.0 unclassified bureau director positions to classified [Alternative 3]. This would remove agency bureau directors from unclassified services, and provide a total of 11.0 unclassified positions in the state budgeting system and under Chapter 230 of the statutes. It should be noted that under either Alternative 2 or 3 the two 2011 Act 10 related unclassified staff would be provided, whether or not 2011 Act 10 is ultimately found to be in effect.

20. The bill provides civil service protection for a Commerce incumbent administrator of the Division of Administrative Services when transferred from a classified position in Commerce to an unclassified position in DSPS. There is no current incumbent that fits this provision. The provision could be deleted.

21. The bill did not amend the s. 230.08 (2) authorization for Commerce division administrators. A technical correction should be made as part of the elimination of Commerce, to delete the authorization for Commerce to employ six unclassified administrators [Alternative 4].

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) provide statutory authorization under Chapter 230 for seven unclassified administrators in DSPS; (b) delete statutory authorization for four unclassified administrators in DRL; (c) provide statutory authorization for DSPS for 10 unclassified bureau directors; (d) delete statutory authorization for DRL for five unclassified bureau directors; (e) transfer two unclassified administrators from Commerce to DSPS; and (f) provide civil service protections to the incumbents in four bureau director and one division administrator position transferred from Commerce to DSPS.

2. Approve the following: (a) provide statutory authorization under Chapter 230 for eight unclassified administrators in DSPS; (b) delete statutory authorization for four unclassified administrators in DRL; (c) provide statutory authorization for DSPS for two unclassified bureau directors; (d) delete statutory authorization for DRL for five unclassified bureau directors; (e) transfer two unclassified administrators from Commerce to DSPS; (e) provide civil service protections to the four classified incumbent bureau directors transferred from Commerce to unclassified positions in DSPS; and (f) delete the civil service protection to a classified administrator of the Commerce Division of Administrative Services transferred to an unclassified position in DSPS (no such position exists).

3. Approve the following: (a) provide statutory authorization under Chapter 230 for eight unclassified administrators in DSPS; (b) delete statutory authorization for four unclassified administrators in DRL; (c) delete the current authorization for the DRL Secretary to appoint not more than five bureau directors from the unclassified service; (d) delete the proposed authorization for the DSPS Secretary to appoint not more than 10 bureau directors from the unclassified service; (e) delete the civil service protections to the four classified incumbent bureau directors transferred from Commerce to DSPS (they would retain the rights and status of all classified employees transferred from Commerce to DSPS); (f) convert 2.0 unclassified bureau director positions to classified; (g) convert 1.0 unclassified bureau director to 1.0 unclassified administrator position; and (h) delete the civil service protection to a classified administrator of the Commerce Division of Administrative Services transferred to an unclassified position in DSPS (no such position exists).

4. In addition to any of the above alternatives, approve a technical correction to delete the current authorization for Commerce to employ six unclassified administrators.

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