



MEMORANDUM

TO: President Roger Roth, Minority Leader Jennifer Shilling
Speaker Robin Vos, Minority Leader Gordon Hintz

FROM: Rick Champagne, Chief

DATE: February 9, 2019

SUBJECT: Merger of the Legislative Reference Bureau and the Legislative Council

This memorandum responds to two questions I received on Friday, February 8, 2019, from President Roth's office on the LRB and LC merger.

The first question is "Are there any issues with confidentiality/attorney-client privilege standards if there is a single agency that handles drafting, including drafting with the executive branch, as well as involvement in committees?"

The second question is "More information regarding the organization chart regarding deputy directors and team leaders of each issue area. For example, would each section have a deputy overseeing it? Would then each issue team leader report to the deputy of the legal services section? What ideas do you have or challenges that would arise in managing a larger group of employees?"

Confidentiality/Attorney-Client Privilege

LRB attorneys draft all bills and amendments for introduction in the assembly and senate. By law, LRB attorneys draft for legislators, the governor, executive branch agencies, the courts, and other legislative service agencies. Also by law, LRB must maintain the confidentiality of all drafting and research requests. In preparing legislation, which is a legal work product, LRB attorneys enter into an attorney-client relationship with the requester. The effect of this is that LRB attorney conversations with and legal advice given to requesters are confidential.

LRB attorneys are trained to maintain confidentiality and to recognize that they enter into an attorney-client relationship when they prepare legislation for a requester. This is true when they draft bills for executive branch agencies and for legislators, even when the legislators are from different political parties and have opposing positions. The unique feature about nonpartisan legislative attorneys, whether they work for LRB or LC, is that they represent clients with different and often opposed political and policy interests and must maintain client confidentiality at all times.

In terms of protecting client confidentiality when drafting for executive branch agencies and working with legislative committees, the LRB has a long history – in fact, almost 50 years – of drafting the governor’s budget bill and then working with the Joint Committee on Finance on revising the bill. In this role, LRB attorneys summarize the governor’s budget bill for JCF members, work with JCF members and other legislators in drafting alternatives, and will appear at JCF executive sessions to answer questions on items in the governor’s budget bill. LRB attorneys do this while keeping confidential their conversations with and legal advice given to the governor and DOA. I should also add that, while the legislature has not had conference committees on budget bills in recent sessions, the LRB has traditionally staffed the conference committees.

In a merged agency, LC attorneys will receive training on protecting client confidentiality when staffing committees on bills they may have drafted. LRB attorneys can provide instruction on how they have done this when working with JCF on the governor’s budget bill. This should not be very difficult, because LC attorneys already keep confidential their conversations with legislators and staff. LC attorneys currently assist majority and minority committee members without divulging their conversations or legal advice. Also, LC attorneys prepare memos on bills about which they may have confidential information, but do not reveal that confidential information in the memos. For these reasons, all attorneys in a merged agency will protect client confidentiality and preserve attorney-client relationships in their new drafting and committee staffing assignments.

Merged LRB and LC Organization Structure

The permanent organization structure for a merged LRB and LC has a director and two deputy directors. One deputy director will assist the director in managing internal operations relating to bill drafting, the production of the governor’s budget bill and JCF substitute amendment, administrative services, publication and revision of statutes, and library operations. The other deputy director will assist the director in providing committee staffing services, overseeing the administrative rules clearinghouse, publishing the administrative code and register, staffing the floor on session days, and assisting legislative offices with constituent services. Both deputy directors will assist the director in organizing public policy research, conducting legislative outreach, and providing advice on legislative procedure.

The core organization feature of the merged agency is that attorneys and analysts are divided into subject area teams. There will be eight teams, with five to six attorneys and analysts assigned to each team. Each team will draft all legislation, conduct all research, and staff all committees in the team’s subject area. While team members will be trained to perform all functions, over time members will gravitate towards their strongest skill sets and focus more on performing those functions. Each team must maintain the high quality and timeliness of its legal and research services. Additionally, each team will have a team leader selected by the director. The team leader will be an attorney who is committed to the vision of a merged legal services agency and who will ensure that committee staffing, bill drafting, and research assignments are equitably distributed among team members and completed in a timely fashion. Team leaders will report to the director and deputy directors.

The primary challenge in managing the merged agency is to get LC attorney buy-in on the idea of a legal services agency organized by subject area teams in which all members draft bills, staff

committees, and conduct research. LRB attorneys are on board and are ready to begin the transition. Many LRB attorneys want to continue drafting bills as their primary assignment, but welcome the opportunity to staff committees as a secondary assignment. My understanding is that the main objection of many LC attorneys to a merged agency is that they do not want to draft bills. In the short-term, this can be managed. But the most important benefit of a merger is the improvement in the quality and delivery of legal services, which depends on all attorneys having the ability to provide all legal services.

The other challenge is merging two different work cultures. The LRB work culture is one that demands long hours for many periods during the session, quick turnaround on bill drafts and memos, and a solutions-oriented approach to working with legislative offices. As we say at the LRB, “Our job is to help you find a way to get to your goal, not to say you can’t reach that goal.” At the same time, there are quieter periods during session when LRB attorneys are encouraged to make liberal use of accrued leave and pursue opportunities for training and continuing education. In a merged agency, however, all attorneys must work long hours, produce bill drafts and memos on demand, and have a problem-solving approach to legislative issues. In this respect, the LRB is the same as the Fiscal Bureau. We serve the legislature and we work on its schedule. I know little about the LC work culture, but in a merged agency the expectations for responsiveness, productivity, and timeliness will be high.

I hope this addresses your questions. Please let me know if I can provide additional information or assistance.