



MEMORANDUM

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

FROM: Rick Champagne, Chief

DATE: February 6, 2019

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

This memorandum discusses the pros and cons of merging the Legislative Reference Bureau (LRB) and the Legislative Council (LC). The duties of these agencies are established in statutes and legislative rules. Both agencies have also assumed other duties, either at their own initiative or by request of legislators. Many LRB and LC duties are distinct, while some complement one another, and still others overlap. This memorandum focuses on these core duties and assesses how their performance would be affected by a merger. The memorandum concludes with a plan for a transition period and the long-term organization for a merged LRB and LC.

Bill Drafting

LRB attorneys draft legislation and provide legal advice and research services. The LRB employs 19 attorneys who draft legislation and a chief and a deputy chief who are attorneys. LRB attorneys are assigned subject matter areas and draft legislation in their areas. During a typical legislative session, LRB attorneys draft between 5,500 and 6,000 bills and 3,500 and 4,000 amendments. Currently, about 60 percent of bill drafts are delivered to legislators within three days of request and 80 percent are delivered within a week.

The LC employs 17 attorneys and a deputy director who is an attorney. The director position is vacant. In a merged LRB and LC, if LC staff were to draft bills, the timeliness of bills would not improve in the short run. LC attorneys do not currently draft bills, so they would need training and their bills would require close review. Also, bills that take more than a week are usually complex drafts requiring multiple decisions by legislators, bills for which the legislator has not provided key information, and bills that the legislator has indicated are a low priority and not needed by any specific time. For these reasons, increasing the attorney drafting staff may not increase the timeliness or quality of bills in the short run.

But there are advantages, especially if all attorneys are organized into teams. Bill drafting requires both legal and public policy knowledge. The volume of bills drafted does not allow for

long periods of research to get up to speed. Bill drafts must be timely. But if each team consisted of five attorneys who focused on a subject matter area and drafted legislation in that area, bills could be assigned to all attorneys on the team. This would significantly increase the number of attorneys who serve the legislature with deep subject matter expertise.

Another advantage is that the timeliness and quality of bills would improve in the long run. Bill drafting loads would decrease, from about 250–300 bills per attorney to 125–150 per attorney each session, permitting all attorneys to provide other services, such as committee staffing and research work. These services would complement and strengthen bill drafting. For each subject matter area, the legislature could draw on a team of five attorney specialists who have expertise equal to their attorney counterparts in the executive branch and private sector. Bill drafting turnaround will increase with twice as many attorneys to expedite drafts.

A final advantage is that LC attorneys would help draft the biennial budget bill. Currently, the LC is not involved in the budget bill, nor does it staff the Joint Committee on Finance. In the most important bill of the session, LC attorneys play no role. LRB attorneys work with state agencies to draft items for inclusion in the budget, with the governor's office and DOA to prepare the budget bill, and then with legislators, staff, and the Legislative Fiscal Bureau to draft the legislature's budget bill. Considerable expertise is acquired in this process and is invaluable for drafting and providing legal advice on non-budget legislation. LC attorneys would gain this knowledge as well if they helped draft the budget bill.

A downside is there will be LC attorneys who do not want to draft bills. This is a problem, because the advantages of a merger come from having all attorneys share legal duties, including drafting. This issue must be managed to ensure the timeliness and quality of bill drafts. One way to do this is to make teams responsible for all bill drafting, committee staffing, and research in their subject matter areas, and allow teams to allocate these tasks among their attorneys. While all attorneys would perform legal, staffing, and research functions, over time some attorneys would focus more on bill drafting and others on committee staffing or conducting research.

Committee Staffing

LC staffs over 60 legislative committees. In a merged LRB and LC, all attorneys could staff committees. Each team would staff between six to eight committees in the team's area. No one attorney would be assigned to a committee; instead, the entire team would have the assignment. (There could still be a primary attorney contact for each committee.) At some committee meetings, only one attorney need be present; at other meetings, five or six team members could appear if needed. This would expand greatly the services provided to committees, as there would be a larger core of legal and research staff to assist committees and members.

An advantage of a merger would be that if all attorneys drafted bills and staffed committees, the drafting attorney could staff or appear before committee. Members could direct questions to the attorney who has firsthand knowledge not only of the bill's provisions, but also background information on the bill, the bill's intent, and alternatives. The drafting attorney would not have to consult other experts to get up to speed on a bill, having already acquired this knowledge during the drafting process. Also, having prepared all amendments, the drafting attorney could summarize amendments at committee, even when the amendments are offered with little notice.

Another advantage is that the committee could draw on a larger core of attorneys for expertise. A team of attorney specialists could conduct research and gather information for the committee, present information at committee, and ensure that the committee is fully informed in considering legislation. Committees would no longer be staffed by one or two attorneys, who have multiple and often unrelated committee assignments. Committees would be stronger.

A spinoff of teams is that standing committees will have the staff necessary to work thoroughly and consider major legislation. There is a trend for major legislation to be referred to the Joint Committee on Finance. The complexity of major legislation, timeliness issues on passage of the legislation, and the fact that the LFB staffs the committee all contribute to this trend. The LFB can assign up to 25 fiscal analysts to a bill, provide background information, offer alternatives, and answer all committee questions. Usually, the number of LFB analysts covering a bill is far fewer, but JCF can draw on the number of analysts necessary for the task. This is not the case with standing committees. Under a merged LRB and LC, standing committees would be better able to work bills, recommend amendments to bills, and report out fully considered legislation.

There may be LRB attorneys who do not want to staff committees. Just like the issue of LC attorneys not wanting to draft bills, the issue of LRB attorneys not wanting to staff committees will require management during the early years of merger. Again, one way to resolve this issue is to assign bill drafting, committee staffing, and research work to teams, and allow the teams to allocate these functions among their attorney members. In this way, attorneys with strong committee staffing experience and skills could focus more on that core function.

Study Committees

LC study committees are created after session to study issues and prepare legislation to address the issues. In 2016 there were seven new study committees and in 2018 there were nine new study committees. Currently, LC attorneys provide staff services for study committees, while LRB attorneys draft all study committee bills. (At the request of LC, LRB began drafting study committee bills in 2016; before 2016, LC staff drafted all bills considered by study committees and LRB drafted only the final version of bills recommended by the study committees.)

If LRB and LC merged, there would be 19 new attorneys to assist the study committees, greatly expanding study committee staff. Given the somewhat limited scope of recent study committees, however, it is not clear that study committees require this level of additional service. Many study committees fail to report legislation. Other study committees narrow their scope and report more limited legislation. If the legislature chose to expand the number of study committees or increase their scope, then additional legal and research staff would greatly assist these committees.

Legal Advice and Research Services

LRB and LC provide legal advice and research to the legislature. LRB attorneys offer legislative offices advice on bills during the drafting process. LRB attorneys also offer other legal services, relating to public records, open meetings, legislative procedure, and employment. On request, LRB prepares legal memoranda. LC prepares legal and research memoranda that summarize legislation and address legal issues. The memoranda are prepared on request of legislators. LC attorneys respond to legal inquiries in memoranda or at committee meetings and provide other legal services. Other than drafting legislation and staffing committees, there is considerable overlap in LRB and LC legal and research services.

In a merged LRB and LC, attorney teams could offer legal advice, prepare legal memoranda, and conduct research on matters within the team's subject area. Legal memoranda would be more definitive, as attorneys could draw upon extensive expertise and daily experience in working on these issues. Legal research would not have to be conducted from scratch as attorneys would already know the relevant statutory and case law in their subject area. Legal opinions rest not just on reading and compiling case law, but also on the exercise of legal judgment, sorting through cases and legal arguments, to determine which is most important. This ability to make legal judgments comes from experience working in a subject area and having acquired expertise. Having attorney teams prepare legal memoranda and conduct research will improve the quality and timeliness of the work product.

A side benefit from having teams prepare legal opinions is that the reputation of these opinions will grow. In some states, legal opinions issued by legislative attorneys are given "persuasive value" by state courts, especially when those opinions address legislation considered by the legislature. This is the case with opinions of the Office of Legislative Counsel in California. This status comes from the high quality of the opinions and from the fact that legislators rely on the opinions. Legal opinions that reach clear conclusions, prepared by attorney experts, could acquire a reputation for quality and accuracy and be given weighted consideration by the courts.

Administrative Rules

Currently, LRB and LC carry out functions relating to administrative rules. The LC serves as the legislature's rules clearinghouse, under which it reviews proposed rules before public hearing. The LC reviews the legal authority for the rule and its form and clarity. The LRB publishes the Administrative Register and revises and publishes the Administrative Code. Both agencies respond to questions from state agencies on administrative rules. The result is that the functions relating to the promulgation, revision, and publication of administrative rules are divided. In a merged LRB and LC, one agency would serve as the legislature's clearinghouse for proposed administrative rules and would revise and publish the rules.

Floor Coverage

The LRB and LC have attorneys on the floor when the legislature is in session. LRB attorneys on the floor are in contact via Skype with other LRB attorneys who answer questions about bills and who draft amendments. All LRB attorneys are at their offices while the legislature is in session, even after business hours. In the past, LRB could not have its drafting attorneys on the floor, because the attorneys had to be in their offices to draft amendments. This session, in the senate, the LRB is trying to station drafting attorneys on the floor and have other attorneys back at the LRB offices take calls and prepare amendments. It is unclear if the LRB will be able to do this consistently.

Currently, LRB and LC attorneys on the floor cannot always respond to questions about bills under floor consideration. The LRB attorney who knows the most about a bill—the LRB attorney who drafted the bill—is usually back at the LRB drafting amendments or answering phone or email questions about the bill. The LC attorney on the floor may not be able to answer the questions unless the attorney staffed the committee that reported out the bill. The result is that LRB and LC have attorneys on the floor, but they may not be the right attorneys. In a

merged LRB and LC, attorneys on a team who can answer questions about bills could be stationed on the floor, while other team attorneys could draft amendments to the bills.

Appendix
Transition and Long-Term Organization Plan
For Merger of the Legislative Reference Bureau and the Legislative Council

Transition Period (2019–20)

It will take one legislative session to fully merge LRB and LC while maintaining the current quality and timeliness of bill drafting and quality of committee staffing services. LRB attorneys will reduce their drafting loads to assume committee-staffing services, and LC attorneys will learn how to draft while reduce their committee-staffing services. This process should be gradual, undertaken throughout the session, so as not to affect the timeliness and quality of bill drafts and to maintain the quality of committee staffing.

The attached Transition Organization chart outlines an organization structure that serves the legislature’s needs during the 2019–20 legislative session. Under the chart, the merged agency comprises five sections, each with an administrator. During this transition period, the Bill Drafting Section and the Committee Staff Services Section would be separate, each under an administrator. There would be attorney crossover between the two sections as LRB attorneys begin staffing committees and LC attorneys begin drafting bills. But the crossover would affect different attorneys differently: some attorneys would begin doing both right away; others may require a gradual approach to assuming both duties and need additional training. The aim during this transition period would be to maintain the high quality and timeliness of legal services, while giving attorneys time to fully acquire the two sets of legal skills. This transition period would also provide time to assess the relative workloads and skill sets of the attorneys, to merge the two agency work cultures, and to allow attorneys to choose team subject areas.

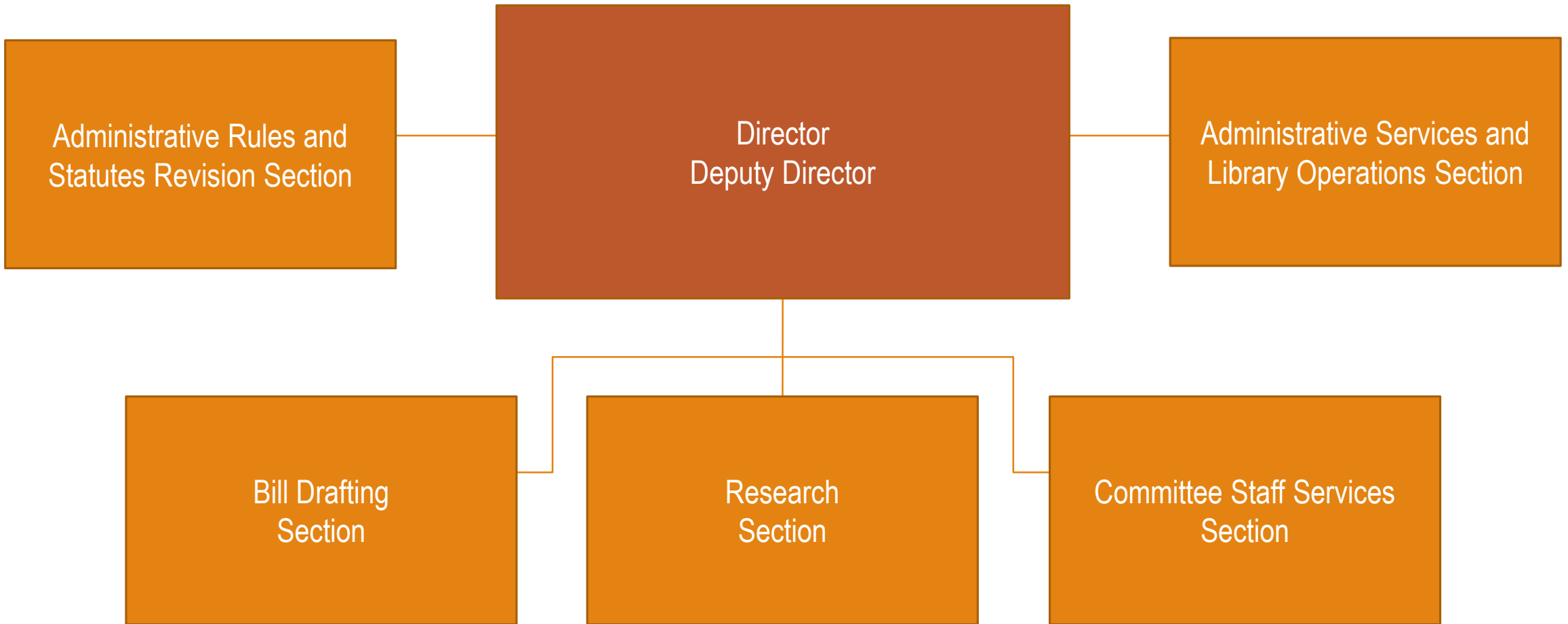
Long-Term Organization Structure and Operations (After 2019–20)

By the end of the 2019–20 session, all attorneys will be ready to move to a long-term organization structure in which they are grouped into teams, consisting of five attorneys and one or two research analysts. The attorneys will staff committees with jurisdiction in their subject area and draft all bills in their subject area. Research analysts will assist attorneys and work with legislative staff. As the attached Long-Term Organization chart shows, the director and deputy directors will lead the organization, which will consist of three sections: the Administrative Rules and Statutes Revision Section, the Administrative Services and Library Operations Section, and the Legal Services and Research Section. The Legal Services and Research Section will be divided into eight teams which more or less overlap LFB team assignments. Each team will have a team leader.

The teams are the key to the new organization. Attorneys on the teams will staff committees and draft all bills and amendments in their subject area. Attorneys will become experts in their subject areas, since they will be able to focus exclusively on a public policy and legal area. As mentioned earlier, some attorneys may find that drafting suits their skills and they will spend more time drafting bills than staffing committees. Other attorneys may do committee work

exceptionally well and present and analyze legislation in clear and concise ways; thus, they will gravitate more to committee work. Each team will allow attorneys to develop those skills that best suit them, but all attorneys will be trained and required to both draft and staff committees.

Transition Organization Chart for Merged LRB and LC



Permanent Organization Chart for Merged LRB and LC

