



Legislative Fiscal Bureau

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June 13, 2016

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Administration: 2015 Act 118, Section 266(9m) Implementation Plan for Elections Commission and Ethics Commission -- Agenda Item II

On May 19, 2016, the implementation plan for transitioning the Government Accountability Board to the newly created Elections Commission and Ethics Commission, as required under 2015 Act 118, was received from the Department of Administration by the Joint Committee on Finance. This memorandum summarizes the implementation plan submitted to the Committee for approval under the procedures of s. 13.10 of the statutes.

BACKGROUND

On December 16, 2015, 2015 Assembly Bill 388 was enacted as 2015 Act 118, eliminating the Government Accountability Board (GAB), creating an Elections Commission and Ethics Commission, and making certain changes to statute regarding the administration of election, ethics, and lobbying laws. Under Act 118, the appropriations of the GAB were renumbered, and several additional appropriations created, to reflect the creation of the Elections and Ethics Commissions, effective June 30, 2016.

In order to ensure a smooth transition and to allocate funding between the Commissions with input from GAB staff and newly appointed Commission members, Act 118 specified that appropriations to the Commissions in the Chapter 20 schedule of appropriations are provided expenditure authority of \$0 annually and required that the Secretary of the Department of Administration (DOA) prepare an implementation plan, including a determination of which positions would be transferred to each agency, and how much funding should be provided to the appropriations of each agency, in concert with the Director of the GAB and members appointed to each Commission. In addition, the act reduced funding for all GAB appropriations in 2016-17 to \$0 and provided equal amounts of expenditure authority by fund source to the supplemental appropriations of the Joint Committee on Finance as follows: (a) \$2,920,500 GPR; (b) \$3,015,100 FED; (c) \$559,500 PR; and (d) \$100 SEG. Under Act 118, the implementation plan, which is before the Committee, must be approved under the procedures of s. 13.10 of the statutes.

SUMMARY OF PLAN

The plan allocates the 2016-17 funding provided under Act 118 to the two newly created Commissions. As noted in the plan, the funding and position authority (including classified and unclassified positions) to be provided to each appropriation was determined in consultation with staff of GAB. The plan also provides information regarding the transfer of incumbent employees; assets and liabilities; tangible personal property; contracts; rules, orders, and formal opinions; and pending matters from the GAB to the Commissions, and provides details relating to the transition and initial terms of the Commission members.

Under the plan, the Elections Commission would have an unclassified administrator and unclassified assistant administrator, as well as elections specialists, information technology support staff, administrative and accounting staff, an attorney, and a public information officer. The Ethics Commission would have an unclassified administrator, an attorney, and staff responsible for lobbying, campaign finance, and other ethics matters such as statements of economic interest. Also under the plan, several positions that would be transferred to the Elections Commission would, through a memorandum of understanding, perform the following administrative functions for the Ethics Commission: budgeting, human resources, contracts and purchasing, information technology support, website maintenance, administrative support, and public information officer duties. The Department of Administration's Division of Personnel Management reviewed the classifications and pay ranges of employees, including unclassified positions. To ensure the pay range of the future administrator and assistant administrator positions would be comparable to that of similar administrator positions in other agencies, and to successfully recruit for the positions, the Division determined that the executive salary group (ESG) level appropriate for the future administrators and assistant administrators of the Commissions would be ESG 4 for administrators (\$76,066 to \$125,528 annually) and ESG 3 for assistant administrators (\$70,429 to \$116,210 annually). By comparison, the Elections Division and Ethics Division administrators of the GAB are currently compensated at a rate that is less than the maximum of ESG 3 and greater than the minimum of ESG 4.

The implementation plan additionally addresses an unresolved issue relating to the initial terms of Commission members. Under Act 118, section 266(8)(c) and (d), the terms of one-half of the members of each Commission who are appointed as initial members of the Commission will expire on May 1, 2019. Other Commission members would serve a full five-year term. However, the act does not specify which members would have terms expiring May 1, 2019, and which would serve full terms. The Department of Administration indicates that, in consultation with the GAB and the authors of Act 118, the plan proposes a solution to ensure that each appointing authority has one appointee who would serve a shorter term, and one appointee who would serve a full term. The plan requests that the Committee adopt the recommendation for the following members to have terms expiring May 1, 2019: (a) for the Elections Commission, the Governor's appointee from the list prepared by the Speaker and Senate Majority Leader, the Assembly Speaker's appointee, and the Assembly Minority Leader's appointee; and (b) for the Ethics Commission, the Governor's appointee from the list prepared by the Senate and Assembly Minority Leaders, the Senate Majority Leader's appointee, and the Senate Minority Leader's appointee.

ANALYSIS

Table 1 summarizes 2016-17 funding and position authority, by appropriation and fund source, for the GAB prior to the enactment of Act 118 and for each Commission under the proposed plan. In total, the Elections Commission would be provided \$2,046,500 GPR and 9.75 GPR positions, \$3,015,100 FED and 22.0 FED positions, \$7,700 PR, and \$100 SEG. The Ethics Commission would be provided \$874,000 GPR and 4.55 GPR positions and \$551,800 PR and 3.45 PR positions. The proposed funding for each of the Commissions by fund source totals to amounts that are equal to the funding provided to the Committee's supplemental appropriations, and total proposed position authority by fund source is equal to GAB's current position authority by fund source.

As noted in the plan, the GAB's general program operations GPR appropriation, which is biennial, is renumbered under Act 118, will continue to be biennial, and will become the general program operations appropriation for the Elections Commission. Therefore, any unused 2014-15 expenditure authority would carry forward and be available to the Elections Commission appropriation in 2016-17, in addition to what is provided in the Chapter 20 schedule of appropriations for that year. Three PR appropriations under GAB are expected to have a cash balance that would be transferred to the relevant appropriation accounts of each Commission as follows: (a) for the materials and services appropriation balance, 40% would transfer to the Elections Commission and 60% to the Ethics Commission (based on a review of 2014-15 expenditures); (b) the elections administration, program revenue [s. 20.511(1)(i)] cash balance, derived from campaign finance report filing fees, would transfer to the Ethics Commission's general program operations, program revenue appropriation [s. 20.521(1)(g)], for which the specific fund source is the same and which would be used to fund the agency responsible for campaign finance responsibilities; and (c) the lobbying administration cash balance would transfer to the Ethics Commission's appropriation for lobbying.

The proposed plan allocates funding for investigations between the Commissions based on the amount of funding in 2016-17 for the investigations appropriation under GAB (prior to the enactment of 2015 Act 118, \$250,000 GPR). Although the implementation plan materials indicate that there are no active or ongoing investigations at this time, because the investigation appropriations under each Commission are annual rather than sum sufficient in nature, some amount of funding would be necessary for a Commission to be able to conduct initial, preliminary investigations, as specified under Act 118, sections 18 and 195. Therefore, it is reasonable to provide some level of funding for investigations for each Commission. Under the proposal, of the total funding of \$250,000, the Elections Commission is allocated \$25,000 and the Ethics Commission is allocated \$225,000. In part, this is because investigations have historically been related to potential violations of law that would fall under the Ethics Commission's authority. However, the Elections Commission is also given investigatory powers under the act. The proposed plan provides to the Elections Commission an amount of funding sufficient to conduct at least one preliminary investigation up to \$25,000, as provided in Act 118, or more than one preliminary investigation if less than \$25,000 is spent for a single investigation. In the case of the Ethics Commission, the amount allocated under the plan could provide for nine preliminary investigations if \$25,000 were fully expended for each.

TABLE 1
Proposed Division of Funding Between Elections and Ethics Commissions

Government Accountability Board 2016-17 Funding and Position Authority November, 2015				Elections Commission Proposed Funding and Position Authority May, 2016				Ethics Commission Proposed Funding and Position Authority May, 2016			
Appropriation by Fund Source	Appropriation Type	2016-17 Funding	FTE	Appropriation by Fund Source	Appropriation Type	2016-17 Funding	FTE	Appropriation by Fund Source	Appropriation Type	2016-17 Funding	FTE
GPR											
General program operations; general purpose revenue	Biennial	\$2,587,900	14.30	General program operations; general purpose revenue	Biennial	\$1,938,900	9.75	General program operations; general purpose revenue	Annual	\$649,000	4.55
Investigations	Sum Sufficient	250,000	0.00	Investigations	Annual	25,000	0.00	Investigations	Annual	225,000	0.00
Training of chief inspectors	Biennial	0	0.00	Training of chief inspectors	Biennial	0	0.00	Special counsel	Annual	0	0.00
Voter identification training	Annual	82,600	0.00	Special counsel	Annual	0	0.00	Voter identification training	Annual	82,600	0.00
Election administration transfer	Annual	0	0.00	Voter identification training	Annual	0	0.00	Election administration transfer	Annual	0	0.00
		—	—	Elections administration	Annual	0	0.00			—	—
Total GPR		\$2,920,500	14.30	Total GPR		\$2,046,500	9.75	Total GPR		\$874,000	4.55
PR											
Recount fees	Continuing	\$0	0.00	Recount fees	Annual	\$0	0.00	General program operations; program revenue	Annual	31,700	0.00
Materials and services	Annual	19,200	0.00	Materials and services	Annual	7,700	0.00	Gifts and grants	Annual	0	0.00
Elections administration; program revenue	Annual	31,700	0.00	Gifts and grants	Annual	0	0.00	Materials and services	Annual	\$11,500	0.00
Lobbying administration; program revenue	Annual	508,600	3.45					Lobbying administration; program revenue	Annual	508,600	3.45
Electronic filing software	Continuing	0	0.00					Electronic filing software	Annual	0	0.00
Gifts and grants	Continuing	0	0.00								
Total PR		\$559,500	3.45	Total PR		\$7,700	0.00	Total PR		\$551,800	3.45
FED											
Federal aid	Continuing	\$195,700	0.00	Federal aid	Annual	\$195,700	0.00				
Federal aid; election administration fund	Continuing	2,819,400	22.00	Federal aid; election administration fund	Continuing	2,819,400	22.00				
Total FED		\$3,015,100	22.00	Total FED		\$3,015,100	22.00				
SEG											
Election administration	Annual	\$100	0.00	Election administration	Annual	\$100	0.00				
All Funds		\$6,495,200	39.75	All Funds		\$5,069,400	31.75	All Funds		\$1,425,800	8.00

The plan conforms to the requirements of 2015 Act 118 to: (a) propose expenditure authority for the Elections Commission and the Ethics Commission by appropriation; (b) specify funding sources of all positions for each Commission; and (c) be developed by the Secretary of DOA in consultation with the Director and general counsel of the GAB and members appointed to the Commissions. Therefore, the Committee may choose to approve the plan as it was submitted. [Alternative 1]

However, the Committee could choose to modify proposed funding amounts or position authority provided to each appropriation, within the budgeted amounts in each of the Committee's supplemental appropriations.

Although it is unknown at this time how many preliminary investigations would be necessary or appropriate in a given fiscal year, actual expenditures by GAB for investigations from 2008-09 to 2013-14 ranged from \$17,300 GPR to \$178,900 GPR annually, as shown in Table 2 below. No funding was expended for investigations in 2014-15 or 2015-16 as of May, 2016. Further, Act 118 provides legislative oversight over the use of funds for investigations. The act changes investigations appropriations from being sum sufficient to annual, and each Commission may submit to the Committee a request that supplemental funds be credited to its appropriation for the purpose of continuing an ongoing investigation. The request would be subject to a 14-day passive review process. A request for supplemental funding must contain a statement of the action requested, the purpose of the request, the statutory provision authorizing or directing the performance of the action, and information about the nature of the investigation for which the Commission seeks supplemental funds, excluding the name of any individual or organization that is the subject of the investigation. Given recent expenditure patterns and the newly created oversight procedures, it could be argued that \$225,000 may be more than what is needed for the Ethics Commission to conduct preliminary investigations without requesting Committee approval for supplemental funding.

TABLE 2

**GAB Investigations Expenditures,
2008-09 to 2015-16
June, 2016**

<u>Fiscal Year</u>	<u>Expenditures</u>
2008-09	\$45,600
2009-10	17,300
2010-11	43,100
2011-12	46,100
2012-13	47,700
2013-14	178,900
2014-15	0
2015-16*	0

*Expenditures as of June 1, 2016.

Further, in the GAB's October 12, 2015, fiscal estimate of the bill as introduced, agency staff noted that conducting meetings, for which a per diem is paid to each Board or Commission member, and which incur travel, printing, and other costs, would likely increase under the reorganization due to having two separate Commissions, each with the same number of members as the current Board. Under Act 118, Commission members are paid a per diem equal to that of GAB members, at the rate paid to reserve circuit court judges, which is \$454.11 for each day on which they are actually and necessarily engaged in the performance of their duties. In addition, other meeting costs will be incurred for each of the Commissions, that in total may exceed the costs that would have been incurred for meetings of only one board. Prior to the act, the GAB budgeted \$47,000 in 2016-17 for meeting expenses, including per diems. Staff indicated in the October, 2015, estimate that expenses for meetings for 12 Commission members, including per diems, travel, printing, and other costs, would be approximately twice the current cost for six Board members. Additional funding was not provided for increased meeting expenses under the act.

To provide for increased meeting costs resulting from the reorganization, the Committee could approve the plan in part, and could additionally transfer \$47,000 of the \$225,000 allocation that is provided under the plan for Ethics Commission investigations, and instead provide \$23,500 GPR to each Commission's general program operations appropriation, for meeting costs including per diems. The Ethics Commission would have \$178,000 GPR remaining to conduct investigations, which would provide for seven preliminary investigations at \$25,000 each, or more investigations if any incurred less than \$25,000. [Alternative 2]

While the plan conforms to the requirements of Act 118 and was developed collaboratively between DOA and the GAB, if the Committee disagrees with some aspects of the plan, it could modify the plan as it deems appropriate, or choose to deny the request to approve the plan and direct DOA to modify the plan and resubmit it for approval under s. 13.10 of the statutes. However, it should be noted that the general effective date of the act is June 30, 2016, and the state fiscal year begins July 1, 2016. Therefore, a delay in approving the plan and uncertainty regarding approved funding and position authority could make the transition considerably more difficult to implement. [Alternative 3]

ALTERNATIVES

1. Approve the implementation plan for transitioning the GAB to the Elections Commission and Ethics Commission.
2. Modify the implementation plan by transferring \$47,000 GPR from the Ethics Commission's investigations appropriation of \$225,000 GPR to the general program operations appropriations of each Commission in the following amounts, for Commission meeting costs including per diems: (a) \$23,500 GPR for the Elections Commission; and (b) \$23,500 GPR for the Ethics Commission.
3. Deny approval of the plan. Direct DOA to modify the plan and resubmit it to the Committee for approval under the procedures of s. 13.10 of the statutes.

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