



Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 285/Assembly Bill 373: Changes to the State Civil Service System

Senate Bill 285 (SB 285) and Assembly Bill 373 (AB 373) are companion bills that would: (a) make changes to the state civil service system; and (b) create a discretionary merit compensation program GPR annual appropriation and provide \$6 million GPR in 2016-17 to the appropriation. The Senate bill was introduced on October 1, 2015, and referred to the Senate Committee on Labor and Government Reform. On October 21, 2015, the Senate Committee on Labor and Government Reform adopted Senate Amendment 1 (SA 1) to Senate Substitute Amendment 1 (SSA 1) to SB 285 on a vote of 5-0, adopted SSA 1, as amended, on a vote of 5-0, and adopted SB 285, as amended, on a vote of 3-2. On October 29, 2015, SB 285 was referred to the Joint Committee on Finance.

The Assembly bill was introduced on October 7, 2015, and referred to the Assembly Committee on State Affairs and Government Operations. On October 21, 2015, the Assembly Committee on State Affairs and Government Operations adopted Assembly Amendment 1 (AA 1) to AB 373 on a vote of 8-5, and adopted AB 373, as amended, on a vote of 8-5. On October 27, 2015, the Assembly adopted AA 1 to AB 373, adopted Assembly Amendment 2 (AA 2) to AB 373, and adopted AB 373, as amended, on a vote of 57-35. On October 27, 2015, AB 373 was messaged to the Senate. On October 29, 2015, AB 373 was referred to the Joint Committee on Finance.

The following summary identifies: (a) the provisions of the companion bills, as introduced; (b) changes made to the original bill by the Assembly under AA 1 and AA 2 to AB 373; and (c) changes made to the original bill by the Senate under SA 1 to SSA 1, and SSA 1 to SB 285. In addition, the summary provides background information relevant to the bills and a discussion of the fiscal effect of SB 285/AB 373.

BACKGROUND

Creation of the Division of Personnel Management Under 2015 Act 55

Under 2015 Act 55, the Office of State Employment Relations (OSER) was eliminated as a separate office. After deleting 6.95 full-time equivalent (FTE) positions annually, the remaining 43.0 FTE and the duties and responsibilities of OSER were primarily transferred to a new Division of Personnel Management (DPM) in the Department of Administration (DOA).

Prior to the passage of Act 55, the Administrator of the Division of Merit Recruitment and Selection under OSER was nominated by the Governor, and with the advice and consent of the Senate appointed for a five-year term, under the unclassified service from a register of at least five names certified to the Governor by the Director of OSER. The Director of OSER was required to prepare and conduct an examination for the position of Administrator of the Division of Merit Recruitment and Selection according to state requirements for classified positions.

Under Act 55, the Division of Merit Recruitment and Selection under OSER has become the Bureau of Merit Recruitment and Selection (BMRS) within DPM. Instead of the prior law process for the nomination and appointment of the Administrator of the Division of Merit Recruitment and Selection under OSER, the Director of BMRS is now appointed by, and serves at the pleasure of, the Secretary of DOA under the unclassified service.

Responsibilities of the Division of Personnel Management

The Division is responsible for administering Chapter 230 of the statutes (state employment relations), representing the executive branch in its role as an employer under Chapter 230 and representing the state as the employer in collective bargaining activities under subchapter V of Chapter 111 of the statutes (state employment labor relations). Other duties include providing support to other state agencies in human resources management, determining employee performance and training needs, setting standards for and ensuring compliance with agency affirmative action plans, and recommending to the Joint Committee on Employment Relations proposed compensation plans for non-represented employees and tentative collective bargaining agreements for represented employees.

The Division is also responsible for administering the state's classified service system. Except for positions in the unclassified service, the Administrator of DPM must assign all positions in the state civil service to various position classifications, typically based on the position's duties, authority and responsibilities. Positions may be periodically reallocated among position classifications on the same bases. Pay ranges are established and periodically reestablished for the various position classifications typically based on the skill, effort, responsibility, and working conditions for positions in the specific position classification. These classified service functions as well as issues involving suspension, discharge, and employee grievances are addressed by BMRS. The Bureau of Merit Recruitment and Selection is responsible for classified service issues involving: (a) recruitment, examination, and selection; (b) promotion; (c) restoration and

reinstatement; and (d) demotion and layoff.

The Administrator of DPM is charged with the effective administration of state employment relations law. The Administrator may delegate, in writing, any of his or her functions set forth in Chapter 230 of the statutes to an appointing authority (the chief officer of any governmental unit or chief administrative officer of an agency unless another person is authorized under law to appoint subordinate staff), within prescribed standards. If the Administrator determines that any agency is not performing the delegated function within prescribed standards, the Administrator is required to withdraw the delegated function. Subject to the approval of the Joint Committee on Finance, the Administrator may order transferred to DPM from the agency to which delegation was made such agency staff and other resources as necessary to perform such functions if increased staff was authorized to that agency as a consequence of the delegation, or if DPM reduced staff or shifted staff to new responsibilities as a result of the delegation.

Shared Services Under 2015 Act 55

Act 55 requires DOA to develop a plan for assuming responsibility for services relating to human resources, payroll, finance, budgeting, procurement, and information technology in consultation with the following agencies: (a) Board of Commissioners of Public Lands (BCPL); (b) Educational Communications Board (ECB); (c) Department of Financial Institutions (DFI); (d) Government Accountability Board (GAB); (e) Higher Educational Aids Board (HEAB); (f) State Historical Society; (g) Public Service Commission (PSC); (h) Department of Safety and Professional Services (DSPS); (i) State Fair Park Board; and (j) Department of Tourism. Act 55 requires DOA to submit the plan to the Joint Committee on Finance for approval under s. 13.10 of the statutes no later than March 1, 2016, for implementation beginning July 1, 2016. The plan must include which services would be provided to each agency, which positions would be deleted or transferred, and the number and type of positions and associated funding that would be provided to DOA.

State Civil Service

Under current law, Chapter 230 (state employment relations) specifies the rights and duties of state agency employers, classified and unclassified staff in state service, and of DPM in DOA which is broadly responsible for overseeing the application and enforcement of the Chapter. Senate Bill 285/Assembly Bill 373 would make a series of changes to these rights and duties in the areas of new employee hiring, probationary periods of employment after initial hiring, annual employee performance evaluations, discretionary merit compensation awards, employee discipline, grievance process, retention of employee disciplinary records, restoration of employment and reinstatement privileges, layoff procedures, the interaction between state civil service statutes and the biennial compensation plan approved by the Joint Committee on Employment Relations, and employment relations policy.

It should be noted that University of Wisconsin System and Wisconsin National Guard employees would not be affected by changes under the bills as these employees are not included in the definition of the state civil service.

The state civil service is divided between the classified and unclassified service. The changes under the bills would primarily affect the classified service. In state agencies, unclassified positions typically represent senior administrative staff appointed to serve at the pleasure of the Governor or the agency head. However, it should be noted that all positions in the judicial and legislative branches, the Investment Board, and the State Fair Park Board are unclassified. Further, attorneys in the District Attorney function and attorneys and administrative staff in the Office of the State Public Defender are also unclassified positions.

SUMMARY OF BILLS

Hiring Process

Competitive Procedures in Lieu of Civil Service Examinations. Under SB 285/AB 373, instead of competitive examinations, the bills would provide that competitive procedures to qualify for state employment would have to be free and open to all applicants who fulfilled the preliminary requirements stated in the employment announcement. Instead of providing that examinations would have to be held at such times and places as, in the judgment of the Director of BMRS, most nearly meets the convenience of applicants and the needs of the state civil service system, the bills would provide that competitive procedures would have to be scheduled in a manner that most nearly met the convenience of applicants and the needs of the civil service as determined by the Director of BMRS.

Under current law, the Director of BMRS must require persons applying for admission to any examination to file an application with BMRS in a reasonable time prior to the proposed examination. The bills would modify current law to delete the examination requirements and provide that the Director of BMRS would have to require persons applying for a position in the classified service to file an application and resume with BMRS.

Current law authorizes the Director of BMRS to appoint boards of examiners of at least two persons for the purpose of conducting oral examinations as a part of the examination procedure for certain positions. All board members must be well-qualified and impartial. All questions asked and answers made in any examination of applicants must be recorded and made a part of the records of the applicants. The bills would modify this provision to specify that the Director of BMRS would have the authority to appoint boards of evaluators of at least two persons, one of whom would be selected by BMRS and one of whom would be a representative of the appointing authority, for the purpose of conducting oral evaluations as a part of the hiring procedure for certain positions. All evaluators would have to be well-qualified and impartial. All questions asked and answers made in any oral evaluation would have to be recorded and made a part of the applicant's records.

Current law provides that if any applicant is unable to complete the examination in the form presented to the applicant due to a disability, BMRS must provide a reader, an appropriate place to

take the examination or other similar prerequisites to ensure equality of opportunity in the examination. Senate Bill 285/Assembly Bill 373 would modify current law to provide that if any applicant was unable to complete an evaluation that was used in the selection process in the form presented to the applicant due to a disability, BMRS would be required to provide necessary accommodations to ensure equality of opportunity in the selection process.

Under current law, DPM must accept an application after its due date from a veteran if all of the following apply: (a) the register established on the basis of timely applications was established not more than 60 days before the applicant's separation from the U.S. armed forces; (b) the register has not expired; (c) the application was filed not more than 45 days after the applicant's separation from the U.S. armed forces; and (d) the examination for the position is a written, nonessay examination that is scored by a machine. Under the bills, the fourth requirement for permitting a veteran to submit an application after its due date would be modified to provide that the appointing authority had not extended interviews for the position or filled the position at the time the application was received.

Senate Bill 285/Assembly Bill 373 would delete the requirement that within 30 days after acceptance of an application from a veteran who meets the requirements to submit the application after its due date, DPM must give the applicant an examination. Further, the bills would delete the statutory language which provides that the officials in control of state, municipal and county buildings, upon requisition by the Director of BMRS in DPM, must furnish without charge adequate rooms and building services for the administration of employment examinations.

Under current law, every reasonable precaution must be taken to prevent any unauthorized person from gaining any knowledge of the nature or content of the examination that is not available to every applicant. The bills would modify current law to provide that every reasonable precaution would have to be taken to prevent any unauthorized person from gaining any knowledge of the nature or content of the competitive procedures in the selection process that are not available to every applicant.

Current law requires that appointing authorities must appoint an individual to fill a classified service opening within 60 days after BMRS has certified to the appointing authority the eligible candidates available to fill the opening, unless an exception is made by the Director of BMRS. If an appointing authority does not make an appointment within 60 days after certification, he or she must immediately report in writing to the Director of BMRS the reasons therefore. Under SB 285/AB 373, this timeframe for filling a classified service opening after the certification of eligible candidates would be reduced from 60 days to 30 days.

Assembly/Senate: Under current law, all examinations, including minimum training and experience requirements for positions in the classified service must be job-related in compliance with appropriate validation standards and must be subject to the approval of the Administrator of DPM. Modify current law and the bills to provide that these matters would now be subject to the approval of the Director of BMRS, instead of the Administrator of DPM. [The bills already replace the requirement of examinations with selection criteria.]

Certification of Veterans and Spouses of Veterans for Vacant Classified Service Positions.

Senate Bill 285/Assembly Bill 373 would delete current law which provides that after the Director of BMRS initially certifies names eligible for appointment to a classified service position based on examination only, additional names must be certified in rank order of those who with the combination of veterans preference points and examination score earn a total score equal to or higher than the lowest score of those certified on the basis of examination only. Further, the bills would delete current law which provides that the number of veterans or spouses of veterans added to the list may not exceed the number of names certified on the basis of examination only.

The bills would also delete current law which awards the following examination preferences to veterans and spouses of veterans who gain eligibility on any competitive employment register and who do not currently hold a permanent appointment in the classified service or have mandatory restoration rights to a permanent appointment to any classified position: (a) for a veteran, 10 points are added to his or her grade; (b) for a disabled veteran, 15 points are added to his or her grade; (c) for a disabled veteran whose disability is at least 30%, 20 points are added to his or her grade; (d) for the spouse of a disabled veteran whose disability is at least 70%, 10 points are added to the spouse's grade; (e) for the unremarried spouse of a veteran who was killed in action, 10 points are added to the spouse's grade; and (f) for the unremarried spouse of a veteran who died of a service-connected disability, 10 points are added to the spouse's grade. A spouse of a veteran who is certified for a position after receiving a preference under (d), (e), or (f), and who is appointed to that position may not obtain a preference under (d), (e), or (f), for any other civil service position for which the applicant subsequently applies.

Senate Bill 285/Assembly Bill 373 would delete current law which provides that for every position to be filled by promotion from a promotional register, the Director of BMRS must, after certifying names for inclusion on the promotional register, additionally certify the name of the highest ranked disabled veteran whose disability is at least 70%.

Instead, SB 285/AB 373 would provide that if the certification list for a position includes a veteran and the appointing authority extends invitations to interview candidates for the position, the appointing authority must extend an invitation to interview to the veteran. If a veteran is included on a certification list and if the minimum qualifications and the skills, abilities, competencies, and knowledge of the veteran and any other applicant being interviewed for the position are equal, the appointing authority would be required to give a preference to the veteran for the position.

If the certification list for a position included an individual who was any of the following and the appointing authority extended invitations to interview candidates for the position, the appointing authority would be required under SB 285/AB 373 to extend an invitation to interview the following individuals: (a) a spouse of a disabled veteran whose disability is at least 70%; (b) an unremarried spouse of a veteran who was killed in action; and (c) an unremarried spouse of a veteran who died of a service-connected disability.

Under SB 285/AB 373, if an appointing authority did not appoint an eligible veteran but did appoint an eligible nonveteran to a position, no later than 30 days after making the appointment the

appointing authority would be required to file with the Director of BMRS, in writing, the reasons for the appointing authority's decision. Any information filed under this paragraph would be a part of the veteran's record. The Director of BMRS could not make any information filed under this paragraph available to anyone other than the veteran unless directed to do so by the appointing authority who filed the information.

The bills' provisions related to hiring preferences for veterans and spouses of veterans would first apply to a certification list for a position that is posted on the effective date of the bills.

Assembly/Senate: Delete provisions of the bills which would have provided that: (a) if the certification list for a position included a veteran and the appointing authority extended invitations to interview candidates for the position, the appointing authority would have had to extend an invitation to interview to the veteran; (b) if the certification list for a position included an individual who was any of the following and the appointing authority extended invitations to interview candidates for the position, the appointing authority would have been required to extend an invitation to interview the following individuals: (1) a spouse of a disabled veteran whose disability was at least 70%; (2) an unremarried spouse of a veteran who was killed in action; and (3) an unremarried spouse of a veteran who died of a service-connected disability; and (c) if an appointing authority did not appoint an eligible veteran but did appoint an eligible nonveteran to a position, no later than 30 days after making the appointment the appointing authority would have been required to file with the Director of BMRS, in writing, the reasons for the appointing authority's decision, any such information filed with the Director of BMRS would have become a part of the veteran's record, and the Director of BMRS would have been prohibited from making this information available to anyone other than the veteran unless directed to do so by the appointing authority who filed the information.

The bills, as introduced, would have deleted current law which provides that for every position to be filled by promotion from a promotional register, the Director of BMRS must, after certifying names for inclusion on the promotional register, additionally certify the name of the highest ranked disabled veteran whose disability is at least 70%. Instead, provide that after certifying names to an appointing authority to fill a vacancy in the classified service, the Director of BMRS would be required to additionally certify the names of the three highest ranked disabled veterans whose disability was at least 70%.

In addition, provide that after certifying names to an appointing authority to fill a vacancy in the classified service, the Director of BMRS would be required to additionally certify the names of the: (a) three highest ranked individuals each of whom is the spouse of a disabled veteran whose disability is at least 70%; (b) three highest ranked veterans; (c) three highest ranked disabled veterans not certified under (b); (d) three highest ranked individuals each of whom is an unremarried spouse of a veteran who was killed in action; and (e) three highest ranked individuals each of whom is an unremarried spouse of a veteran who died of a service-connected disability. Provisions related to hiring preferences for veterans and spouses of veterans would first apply to a position that was posted on the effective date of the bill.

Competition for Job Openings. Senate Bill 285/Assembly Bill 373 would delete current

law which provides that if, in the judgment of the Director of BMRS, the group of applicants best able to meet the requirements for vacancies in positions in the classified service are available within the classified service, the vacancies must be filled by competition limited to persons in the classified service who are neither limited-term employees or project employees, and persons with the right of restoration resulting from layoff, unless it is necessary to go outside the classified service to be consistent with an approved affirmative action plan or program. A person with the right of restoration resulting from layoff may only compete for a position for which he or she could have competed had the layoff not occurred. Further, the bills would delete current law which provides that the Director of BMRS may also limit competition for promotion to the employees of an agency or an employing unit within an agency if the resulting group of applicants would fairly represent the proportion of members of racial and ethnic, gender or disabled groups in the relevant labor pool for the state.

Current law provides that a vacancy in a career executive position may be filled through an open competitive examination, a competitive promotional examination or by restricting competition to employees in career executive positions. Under the bills, a vacancy in a career executive position could only be filled through an open competitive hiring process.

Further, SB 285/AB 373 would delete current law which provides that a person with a right of restoration resulting from layoff who competes for promotion to a position for which competition is limited by the Director of BMRS to employees currently in the classified service, and is appointed, must again serve a probationary period. If the appointing authority terminates the employee during the probationary period, the person must return to his or her former layoff status.

Assembly/Senate: No change to the bills.

Access to Personnel Files during the Hiring Process. Under SB 285/AB 373, the Administrator of DPM, and the Director of BMRS in DPM, would be required to provide an appointing authority with access to the personnel files of any individual currently holding a state classified or unclassified position to whom the appointing authority intended to make an offer of employment.

Under the bills, an appointing authority could not make an offer of employment to the state classified service to any individual who currently held a position in the state classified or unclassified service unless the appointing authority had reviewed the personnel file of the individual. This provision would first apply to an offer of employment made on the effective date of the bills.

Assembly/Senate: No change to the bills.

Conviction Record. Under the bills, the Director of BMRS would generally be prohibited from inquiring as to the conviction record of any applicant before the applicant had been certified for an open position. The Administrator of DPM would not be prohibited from notifying an applicant for a position in the civil service that, by law or policy, a particular conviction record could disqualify an applicant from employment in a particular position. If a particular conviction

record disqualified applicants for a certain position in the state civil service, the Administrator of DPM could request a person applying for the position to supply information regarding the conviction record of the applicant, or otherwise inquire into or consider the conviction record of the applicant, to determine whether the applicant's conviction record disqualified him or her for the position before the applicant was certified for the position. These conviction record provisions would first apply to an application for employment in the civil service submitted on the effective date of the bills.

Assembly: Provide that the Director of BMRS, instead of the Administrator of DPM, would not be prohibited from notifying an applicant for a position in the civil service that, by law or policy, a particular conviction record could disqualify an applicant from employment in a particular position.

Senate: Delete provision.

Vacant Positions in the Classified Service. Senate Bill 285/Assembly Bill 373 would require each appointing authority to submit an annual report to the Administrator of DPM and the Director of BMRS in DPM indicating the number of days it took to make an offer of employment for a vacant position after receiving from the Director of BMRS a list of names of individuals who were certified for appointment to the position.

Assembly/Senate: No change to the bills.

Probationary Period After Initial Hiring

Under current law, all original and all promotional appointments to permanent, sessional and seasonal positions in the classified service, other than supervisory or management positions, must be for a probationary period of six months. However, the Director of BMRS, at the request of the appointing authority and in accordance with administrative rule, may extend the probationary period for a maximum of three additional months. The bills would modify current law to provide that: (a) all original and all promotional appointments to permanent, sessional, and seasonal positions in the classified service, other than supervisory or management positions, would generally have to be for a probationary period of two years; (b) the authority of the Director of BMRS to extend the probationary period for a maximum of three additional months would be eliminated; and (c) the Director of BMRS could, upon request by the appointing authority, waive any portion of a probationary period but in no case before a one year probationary period had been served.

Under current law, probationary periods for employees in supervisory or management positions are generally one year. However, the Director of BMRS, upon request by the appointing authority, may waive any portion of the probationary period after six months of probation have been served. Senate Bill 285/Assembly Bill 373 would modify current law to provide that the probationary period for employees in supervisory or management positions would generally be for two years. However, the Director of BMRS, upon request by the appointing authority, could waive any portion of the probationary period after one year of probation had been served.

The bills would delete current law which permits the Director of BMRS to authorize up to a two-year probationary period for any administrative, technical, or professional position, in order to provide the appointing authority assurance that the employee has had adequate exposure to the various responsibilities which are a part of the position or classification.

These bills' changes to probationary periods would first apply to a probationary period that would begin on the effective date of the bills.

Assembly/Senate: Modify the bills' changes to the probationary period after initial hiring to instead provide that: (a) all original and all promotional appointments to permanent, sessional and seasonal positions in the classified service, with the exception of those positions designated as supervisor or management positions, would have to serve a one year probationary period, but the Director of BMRS, at the request of the appointing authority, could extend any such probationary period for a maximum of 12 additional months; and (b) all probationary periods for employees in supervisory or management positions would continue to be for one year (as under current law) but at the request of the appointing authority the Director of BMRS could extend any such probationary period for a maximum of 12 additional months; and (c) upon request by the appointing authority, the Director of BMRS could waive any portion of a lengthened probationary period but in no case before a one-year probationary period had been served. In addition, unlike the introduced bills, maintain current law which permits the Director of BMRS to authorize up to a two-year probationary period for any administrative, technical, or professional position, in order to provide the appointing authority assurance that the employee has had adequate exposure to the various responsibilities which are a part of the position or classification.

Under current law, waiver of any part of the probationary period for a supervisor may not be granted before completion of the required supervisory development program. Delete this current law restriction on the waiving of a portion of the probationary period for a supervisor. [Under the bills, however, the minimum period of probation for a supervisor would be increased from six months to one year.]

Annual Employee Performance Evaluations

Under current law, in cooperation with appointing authorities, the Administrator of DPM must establish an employee performance evaluation program to provide a continuing record of employee development and, when applicable, to serve as a basis for pertinent personnel actions. Similar evaluations must be conducted during the probationary period but may not infringe upon the authority of the appointing authority to retain or dismiss employees during the probationary period. Under the bills, the Administrator of DPM would have to require each appointing authority to conduct an annual performance evaluation of each employee appointed by the appointing authority.

Assembly/Senate: Modify the bills to provide that the Administrator of DPM would have to require each appointing authority to conduct *at least* an annual performance evaluation of each employee appointed by the appointing authority.

Discretionary Merit Compensation Awards

Senate Bill 285/Assembly Bill 373 would require the Administrator of DPM to develop and implement a discretionary merit award program to distribute funding to agencies for the purpose of providing lump sum monetary awards to classified employees whose job performance exceeded agency expectations. The bills would create a discretionary merit compensation program GPR annual appropriation and provide \$6 million GPR in 2016-17 to the appropriation. As a result in the 2017-19 biennium, this appropriation would have base budget expenditure authority of \$6 million annually. Amounts appropriated to this appropriation could be utilized to supplement the appropriations to state agencies for the cost of discretionary merit compensation awards approved by DPM. Further, SB 285/AB 373 would require each state agency head to certify to the Administrator of DPM at such time and in such manner as the Administrator would prescribe, the sum of money needed from the discretionary merit compensation program GPR appropriation for the state agency to make lump sum discretionary merit compensation awards to its classified employees. Upon receipt of the certifications together with such additional information as the DPM Administrator would prescribe, the Administrator of DPM would be required to determine the amounts needed from the appropriation to supplement state agency budgets. The DPM Administrator could not approve an agency request for money from the discretionary merit compensation program for an award that would increase an employee's base compensation. Decisions of an appointing authority relating to awards under this discretionary merit award program would not be appealable to the Employment Relations Commission, including the evaluation methodology and results used to determine the award or the amount awarded.

Assembly/Senate: No change to the bills.

Employee Discipline

Progressive Discipline. Under the bills, the Administrator of DPM would be required to establish standards for progressive discipline plans to be prepared by all agencies and applied to all employees in the classified service. The standards would be required to address progressive discipline for personal conduct and work performance that is inadequate, unsuitable, or inferior. Appointing authorities would be required to prepare a progressive discipline plan which complied with the standards developed by the Administrator of DPM.

Assembly/Senate: Provide that standards for progressive discipline would have to allow an appointing authority to accelerate progressive discipline if the inadequacy, unsuitability, or inferiority of the personal conduct or work performance for which an employee was being disciplined was severe.

Just Cause Discipline or Discharge. Under current law, an employee with permanent status in the classified service or an employee who has served with the state as an assistant district attorney or an assistant state public defender for a continuous period of 12 months or more may be removed, suspended without pay, discharged, reduced in base pay, or demoted only for just cause.

The bills would provide that it would be considered just cause to remove, suspend without

pay, discharge, reduce the base pay of, or demote an employee for work performance or personal conduct that is inadequate, unsuitable, or inferior, as determined by the appointing authority, but only after imposing progressive discipline that complies with the standards for progressive discipline as developed by the Administrator of DPM. Without imposing progressive discipline, it would be considered just cause to remove, suspend without pay, discharge, reduce the base pay of, or demote an employee for any of the following conduct: (a) harassing a person while on duty; (b) intentionally inflicting physical harm on another person while on duty; (c) while on duty, being intoxicated or under the influence of a controlled substance or a controlled substance analog; (d) while on duty, being in possession of a controlled substance or a controlled substance analog, without a prescription; (e) falsifying records of the agency; (f) theft of agency property or services with intent to deprive an agency of the property or services permanently, theft of currency of any value, felonious conduct connected with the employee's employment with the agency, or intentional or negligent conduct by an employee that causes substantial damage to agency property; (g) a conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for the agency; (h) misuse or abuse of agency property, including the intentional use of the agency's equipment to download, view, solicit, seek, display, or distribute pornographic material; and (i) a serious violation of the code of ethics established by the Director of BMRS, as determined by the Director of BMRS.

Assembly/Senate: For purposes of just cause discipline for a serious violation of the code of ethics, require the Director of BMRS to establish standards for what would constitute a serious violation of the code of ethics.

Failure to Report to Work. Under current law, if an employee fails to report for work as scheduled or to contact his or her supervisor, the appointing authority may discipline the employee. If an employee fails to report for work as scheduled, or to contact his or her supervisor for a minimum of five consecutive working days, the appointing authority must consider the employee's position abandoned and may discipline the employee or treat the employee as having resigned his or her position.

The bills would modify current law to provide that if an employee failed to report to work as scheduled, or to contact his or her supervisor for a minimum of three working days during a calendar year, the appointing authority would be required to consider the employee's position abandoned and could discipline the employee or treat the employee as having resigned his or her position.

These bills changes would first apply to employee discipline for conduct that occurred on the effective date of the bills.

Assembly/Senate: No change to the bills.

Grievance Process

Under current law, the Administrator of DPM must establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to conditions of

employment. If an employee has permanent status in class, or an employee has served with the state as an assistant district attorney or an assistant state public defender for a continuous period of 12 months or more, the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the Employment Relations Commission as the final step in the state employee grievance procedure established by the Administrator of DPM if the appeal alleged that the decision was not based on just cause. Senate Bill 285/Assembly Bill 373 would modify this current law process through new statutory provisions that would specifically define the process for appealing "adverse employment decisions."

Under SB 285/AB 373, an "adverse employment decision" would mean a decision to demote, layoff, suspend without pay, discharge, or reduce the base pay of an employee. For purposes of the grievance process related to "adverse employment decisions," an "employee" would mean an employee who had obtained permanent status in the classified service or an employee who had served with the state as an assistant district attorney or an assistant state public defender for a continuous period of 12 months or more.

Under the bills, an employee could file a complaint concerning the application of a law, rule, or policy to an adverse employment decision against the employee. If an employee did not file a complaint or an appeal by an applicable deadline, the employee would waive his or her right to appeal the adverse employment decision.

To commence the grievance process for an adverse employment action under SB 285/AB 373, an employee would have to file a complaint with the employee's appointing authority challenging the adverse employment decision against the employee no later than 14 days after the employee became aware of, or should have become aware of, the decision that is the subject of the complaint.

An appointing authority, or his or her designee, who received a timely complaint would be required to conduct any investigation he or she considered necessary, meet with the employee in person, and issue a decision, in writing, no later than 14 days after the date of which the appointing authority, or his or her designee, received the employee's complaint. If the appointing authority did not issue a written decision within 15 days after receiving the employee's complaint, the employee could appeal to the Administrator of DPM.

If an appointing authority did not find in favor of the employee's grievance, the employee could appeal the appointing authority's decision by filing a complaint with the Administrator of DPM. The employee could file a complaint no later than 14 days after the date of the appointing authority's decision.

If the Administrator of DPM received a timely employee complaint/appeal, the Administrator would be required to review the complaint and the appointing authority's written decision, and would be required to issue a decision, in writing, no later than 30 days after the date the employee filed a complaint/appeal with the Administrator. If the Administrator did not issue a written decision within 31 days after receiving the employee's complaint, the employee could appeal to the Employment Relations Commission (ERC).

An employee or an appointing authority could appeal a decision issued by the Administrator of DPM by filing an appeal with the ERC. The employee or appointing authority could file an appeal with the ERC no later than 14 days after receiving the Administrator's decision. Within 10 days of receiving an appeal, the ERC would be required to determine whether all procedural requirements were completed properly and in a timely manner. If a procedural requirement was not met, the ERC would be required to dismiss the appeal. If all of the procedural requirements were met, the Commission would be required to hear the appeal under its general hearing rules, except that the Commission would be required to issue a decision on the appeal no later than 120 days after the date the appeal was filed with the Commission.

To ensure that the Commission issued its decision no later than 120 days after a filed appeal, all of the following would apply to a hearing before the Commission for an adverse employment decision appeal: (a) the parties would be required to participate in a pre-hearing conference no later than 20 days after the filing of the appeal (the Commission would be required to set the date of the hearing at the pre-hearing conference); (b) discovery would have to be completed no later than 60 days after the appeal was filed; (c) the Commission would be required to rule on all motions no later than 30 days before the date of the hearing; (d) the Commission could only grant an extension to a deadline in an adverse employment decision appeal for extraordinary circumstances (the Commission could not grant an extension beyond the 120 day limit for issuing its decision); and (e) continuances of the hearing could be granted only in extraordinary circumstances, as determined by the Commission.

Under SB 285/AB 373, this new grievance process for addressing adverse employment actions would first apply to adverse employment actions taken against an employee on the effective date of the bills.

Assembly/Senate: Instead of providing that if a procedural requirement was not met in an adverse employment decision appeal, the ERC would be required to dismiss the appeal, clarify that the ERC would be required to dismiss the appeal if: (a) a procedural requirement was not met by the employee; or (b) the appointing authority's appeal was not made in a timely manner.

Retention of Employee Disciplinary Records

Senate Bill 285/Assembly Bill 373 would generally require an appointing authority to permanently maintain an employee's disciplinary records in the employee's personnel file. An employee's disciplinary records could not be removed from an employee's personnel file unless: (a) ordered by a court; (b) removed as a part of a grievance process by the appointing authority, administrator, or commission; or (c) otherwise agreed to in a settlement agreement.

Assembly/Senate: No change to the bills.

Restoration of Employment and Reinstatement Privileges

Under current law, any permanent classified employee who has separated from state service, not due to any delinquency or misconduct on his or her part but owing to reasons of economy or

otherwise, must be granted the following considerations: (a) for a five-year period from the date of separation, the person is eligible for reinstatement in a position having a comparable or lower pay rate or range for which the person is qualified; and (b) for a three-year period from the date of separation, if on layoff status, the person must be placed, in inverse order of layoff, on an appropriate mandatory restoration register for the unit used for layoff and on a restoration register for the agency from which the person was laid off.

On or after the effective date of the bills, the reinstatement privilege would be limited to permanent, classified employees who had been laid off. A permanent, classified employee would be eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person was qualified for a three-year period from the date of the layoff.

Further, under current law, the Director of BMRS may also provide for the reinstatement of persons who served in seasonal and sessional employment and for persons who separated from a position while serving a probationary period. The bills would delete the authority of the Director of BMRS to permit the reinstatement of seasonal and sessional employees and probationary employees.

Senate Bill 285/Assembly Bill 373 would delete current law which provides that a person who separates from the classified service to fill an elective position has reinstatement privileges for five years following termination from the classified service or for one year following termination from the elective position, whichever is longer. This change would first apply to a person who separated from the classified service on the effective date of the bills.

Assembly/Senate: No change to the bills.

Layoff Procedure

Under current law, permanent classified employees and employees serving a probationary period in such positions after promotion or transfer may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization, but only after all probationary and limited-term employees in the classes used for layoff are terminated. The order of layoff of such employees may be determined by seniority or performance or a combination thereof or by other factors. The bills would modify current law to provide that an appointing authority would be required to determine the order of layoffs of such employees primarily based on job performance, and thereafter, in accordance with the rules of the Director of BMRS, on disciplinary records, seniority, and ability.

Current law further provides that the Director of BMRS must promulgate rules governing layoffs and appeals and alternative procedures in lieu of layoff to include voluntary and involuntary demotion and the exercise of a displacing right to a comparable or lower class, as well as the subsequent employee right of restoration or eligibility for reinstatement. Senate Bill 285/Assembly Bill 373 would modify current law to eliminate the displacing right of classified employees to a comparable or lower class. The modifications under the bills to permanent, classified employee restoration or reinstatement rights are discussed above.

Assembly/Senate: Permit permanent classified employees and employees serving a probationary period in such positions after promotion or transfer to be laid off even if all original appointment probationary and limited-term employees in the classes used for layoff had not been terminated.

Biennial Compensation Plan

Under current law, the biennial compensation plan may include provisions relating to pay, benefits, and working conditions that, when approved by the Legislature, supersede the provisions of the civil service and other applicable statutes and rules promulgated by the Administrator of DPM and the Director of BMRS. Under the bills, the provisions in the biennial compensation plan could no longer supersede the provisions of the civil service and other applicable statutes.

Assembly/Senate: Delete current law which provides that provisions of the biennial compensation plan, when approved by the Joint Committee on Employment Relations, may supersede rules promulgated by the Administrator of DPM and the Director of BMRS.

State Employment Relations Policy

Under SB 285/AB 373, it would be the policy of Wisconsin to recruit, select, and promote employees based on their relative skills, abilities, competencies, and knowledge, including using open processes to consider qualified applicants for initial employment. Further, it would be the policy of this state to retain employees on the basis of the adequacy of their performance, to correct inadequate performance when possible and appropriate, and to separate employees whose performance and personal conduct is inadequate, unsuitable, or inferior.

Assembly/Senate: No change to the bills.

Shared Services

Under the bills, the Act 55 requirement that DOA develop plans for assuming the responsibility for human resource functions in 10 specific agencies (BCPL, ECB, DFI, GAB, HEAB, Historical Society, PSC, DSPP, State Fair Park, and Tourism) would be expanded to require that DOA consult with each executive branch agency (other than the University of Wisconsin System) and develop a plan to assume human resource functions. Further, the plan for assumption of the human resource functions (modified by the bills), and the current law requirement that DOA submit a plan for assumption of payroll, finance, budgeting, procurement, and information technology functions for the 10 agencies identified above, would be delayed until January 1, 2017. [It should be noted that the bills, as introduced, inadvertently do not modify the Act 55 requirement to submit shared services plans to the Joint Committee on Finance no later than March 1, 2016, for implementation beginning July 1, 2016. Under Act 55, any DOA plan for assuming the responsibility for human resource functions in 10 specific agencies could not be implemented unless approved, or modified and approved, by the Joint Committee on Finance.]

Assembly/Senate: Exempt the Technical College System Board from the requirement that

DOA develop a plan to assume its human resource functions. Delay the date for submission of the DOA shared services report to the Joint Committee on Finance from March 1, 2016 (as this deadline was developed under 2015 Act 55 for the shared services initiative for 10 specific agencies), to March 1, 2017, for the human resources initiative involving the original 10 agencies identified above, as well as the broader human resource initiative now involving all executive branch agencies other than the University of Wisconsin System and the Technical College System. Delay the date for implementation of the shared services initiative, from July 1, 2016, to July 1, 2017.

State Civil Service System Review

Senate Bill 285/Assembly Bill 373 would require the Administrator of DPM and the Director of BMRS to jointly review all of the following:

1. The classifications for all positions in the classified service. In reviewing the classifications, they would be required to consider the feasibility of reducing the number of classifications, as well as establishing a new system of classification, in order to increase administrative efficiency and better meet the needs of the state civil service.
2. The Wisconsin Human Resources Handbook.
3. The biennial compensation plan.
4. The feasibility of requiring all state agencies (including the Legislature, the Courts, and the UW System) to use electronic personnel files.
5. The feasibility of requiring all state agencies (including the Legislature, the Courts, and the UW System) to use a uniform personnel evaluation system.

The Administrator of DPM and the Director of BMRS would be required to submit their findings no later than January 1, 2017, to the Governor and to the Chief Clerk of each house of the Legislature for distribution to the Legislature.

Assembly: Instead of a joint review of the feasibility of requiring all state agencies to use electronic personnel files and a uniform personnel evaluation system, provide that the Administrator of DPM and the Director of BMRS jointly review the feasibility of requiring all executive branch agencies (other than the University of Wisconsin System) to use electronic personnel files and a uniform personnel evaluation system. Further, provide that the Administrator of DPM would be required to submit any requested changes to the biennial compensation plan that result from this joint review to the Joint Committee on Employment Relations no later than January 1, 2017.

Senate: Provide that the Administrator of DPM would be required to submit any requested changes to the biennial compensation plan that result from this joint review to the Joint Committee on Employment Relations no later than January 1, 2017.

Performance Evaluation Audit

SB 285/AB 373: No provision.

Assembly: No provision.

Senate: Provide that no later than January 1, 2018, and annually thereafter, the Legislative Audit Bureau (LAB) would be required to perform a performance evaluation audit of BMRS in DPM in DOA, including a review of the Bureau's implementation of civil service hiring procedures. The LAB would be required to file a copy of the report of the audit with the Chief Clerk of each house of the Legislature, the Governor, the Joint Committee on Finance, DOA, the Legislative Reference Bureau, the Legislative Fiscal Bureau, and the Department audited.

Effective Date

The bills' provisions would take effect on July 1, 2016, except that the provision directing the Administrator of DPM and the Director of BMRS to review the state civil service system would take effect on the day after publication of the bills.

Assembly/Senate: Provide that the changes to the shared services initiative would take effect on the day after publication of the bills.

FISCAL EFFECT

The provisions of SB 285/AB 373 would create a discretionary merit compensation program GPR annual appropriation and provide \$6 million GPR in 2016-17 to the appropriation. As a result in the 2017-19 biennium, this appropriation would have base budget expenditure authority of \$6 million annually.

The Department of Administration indicates that SB 285/AB 373 would increase the workload of DPM, "although some of the increased workload would be temporary in nature." The Department of Administration indicated that the number of additional positions needed to address this workload and the associated cost of these positions cannot be determined at this time.

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