



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #335

Realignment of Budgeted Expenditures within Agency Funding Sources (Ethics Board)

CURRENT LAW

The Ethics Board administers the Code of Ethics for Public Officials and Wisconsin's lobbying laws. The agency has the authority to investigate the circumstances surrounding possible violations of the Code of Ethics or state lobbying laws. The Ethics Board generally utilizes GPR funding to support its administration of the Code of Ethics and utilizes program revenues derived from the payment of lobbying registration fees to support its administration of Wisconsin's lobbying laws.

Base level funding under the agency's general program operations appropriation for the administration of the Code of Ethics is \$232,700 GPR and 3.0 GPR positions annually and under its general program operations appropriation for the administration of lobbying laws is \$361,900 PR and 3.5 PR positions annually. These appropriations include base level funding of \$20,100 GPR and \$120,100 PR, respectively, for supplies and services costs.

GOVERNOR

Make no change to base level amounts budgeted under either the agency's GPR-funded general program operations appropriation or its PR-funded general program operations appropriation for supplies and services costs.

DISCUSSION POINTS

1. Under 2001 Wisconsin Act 16 (the 2001-03 biennial budget act), the Ethics Board received a GPR base budget for supplies and services of \$46,500 GPR annually. Act 16, however, also reduced Board funding by \$11,800 GPR annually. The Ethics Board reduced its base supplies

and services funding by the full \$11,800 GPR annually, to \$34,700 GPR annually. Under 2001 Wisconsin Act 109 (the 2001-03 budget adjustment act), the Ethics Board's GPR funding was reduced by an additional \$16,100 GPR in 2002-03. The agency implemented this reduction by again reducing its base supplies and services funding by the full \$16,100 GPR, to \$18,600 GPR in 2002-03. The Board subsequently received rent supplements from the Department of Administration, raising its GPR supplies and services base to \$20,100 GPR annually.

2. The following table identifies the GPR and PR funding amounts, by budgeted expenditure purpose, recommended by the Governor under the Ethics Board's two general program operations appropriations during the 2003-05 biennium.

Ethics Board General Program Operations Budget under SB 44

	<u>2003-04</u>	<u>2004-05</u>
GPR		
Permanent Salaries	\$154,900	\$154,900
Fringe Benefits	61,300	61,300
LTE Salaries	800	800
Supplies and Services	<u>20,100</u>	<u>20,100</u>
Total	\$237,100	\$237,100
 PR		
Permanent Salaries	\$188,000	\$188,000
Fringe Benefits	74,400	74,400
LTE Salaries	1,000	1,000
Supplies and Services	<u>120,100</u>	<u>120,100</u>
Total	\$383,500	\$383,500

3. Some federal district courts and some state courts in other jurisdictions have ruled that it is unconstitutional under the First Amendment to impose a lobbying fee if the fee amounts to a tax. These courts have held that a lobbying fee may only be imposed to offset the costs of administering the legitimate regulation of lobbying activity. Where a lobbying fee exceeds this limitation, it amounts to an unconstitutional tax on the right of citizens to petition their legislatures. While no Wisconsin court has ruled on this point, Ethics Board staff have taken the position that lobbying fees may properly be used only to offset the costs of regulating lobbying activity.

4. Although the Ethics Board determined that the most appropriate allocation of GPR reductions during 2001-03 was to assign all such reductions to supplies and services, Ethics Board staff have now developed a plan to reallocate GPR funding from budgeted personnel costs to budgeted supplies and services costs for the administration of the Code of Ethics. The plan would also reallocate smaller amounts of lobbying fee (PR) funding from budgeted supplies and services costs to budgeted personnel costs for the administration of state lobbying laws. The effect of the plan, in the view of Board staff, would be to reduce the appearance that lobbying fees are currently

being used to cover non-lobbying supplies and services costs.

5. The following table identifies the GPR and PR funding allocations by budgeted expenditure purpose under the Board's plan. The Ethics Board plan is able to reallocate budgeted GPR personnel costs to GPR supplies and services by: (a) reassigning more of the expense of higher cost employees to PR; (b) reassigning more of the expense of lower cost employees to GPR; and (c) not funding 0.25 FTE in position authority (0.20 GPR and 0.05 PR) provided to the Ethics Board during 2003-05.

Proposed General Program Operations Budget

	<u>2003-04</u>	<u>2004-05</u>
GPR		
Permanent Salaries	\$128,500	\$128,500
Fringe Benefits	51,000	51,000
LTE Salaries	800	800
Supplies and Services	<u>56,800</u>	<u>56,800</u>
Total	\$237,100	\$237,100
PR		
Permanent Salaries	\$195,800	\$195,800
Fringe Benefits	77,500	77,500
LTE Salaries	1,000	1,000
Supplies and Services	<u>109,200</u>	<u>109,200</u>
Total	\$383,500	\$383,500

6. In considering the Ethics Board plan, the Committee may wish to consider: (a) what is the appropriate level of supplies and services funding; (b) whether some provision should be made to budget for agency ethics code investigations under a separate appropriation; and (c) whether or not unfunded position authority should be budgeted to the agency.

Appropriate Supplies and Services Funding

7. While total agency funding would remain unchanged under the Board's plan, supplies and services funding would increase from \$140,200 annually (all funds) to \$166,000 annually (all funds). GPR supplies and services funding would increase from \$20,100 annually to \$56,800 annually. PR supplies and services funding would decrease from \$120,100 annually to \$109,200 annually.

8. Apart from Ethics Board investigation costs (for which funding is not currently budgeted), the Board did not request and the Governor did not recommend an increase for supplies and services funding under either of the Board's GPR- or PR-funded general program operations appropriations for 2003-05. As a result, the Committee may wish to consider limiting the Board's total supplies and services funding level under the plan to that already provided under the budget bill (\$140,200 all funds).

9. Ethics Board staff have indicated an intention to charge 39% of agency supplies and services costs to GPR and 61% of agency supplies and services costs to PR funded from lobbying fees. The Board indicates that this split accurately reflects how agency staff as a whole plan to divide their time between administration of the Code of Ethics and Wisconsin's lobbying laws.

10. If a corresponding 39% of the total \$140,200 (all funds) supplies and services funding provided to the Board under the budget bill is provided as GPR, funding of \$54,700 GPR annually would be indicated. Under this scenario, the Board's plan could be reduced by \$2,100 GPR annually.

11. Under the bill, the Board would be authorized to expend a total of \$767,000 PR in lobbying fee revenues over the biennium, but the Board has projected only \$665,100 PR in lobbying fee revenue during this period. The Board would be able to expend \$101,900 PR in excess of revenues only by drawing from an available appropriation account balance of \$263,000 PR.

12. If after providing \$54,700 GPR annually, the Board's total supplies and services funding is to be limited to no more than the \$140,200 (all funds) annually, Board PR supplies and services funding under the proposal could be reduced by \$23,700 PR annually to \$85,500 PR annually. This reduction would serve to draw lobbying fee expenditures more into line with actual lobbying fee revenue for the biennium.

Possible Funding for Code of Ethics Investigation Costs

13. The Ethics Board is not specifically budgeted for the cost of agency investigations relating to ethics code violations. Instead, the Ethics Board has submitted s. 13.10 requests to the Joint Committee on Finance when supplemental investigation funding is required.

14. Agency investigative costs are variable and difficult to budget with any degree of accuracy. During the last ten fiscal years, the Board's annual investigative costs have ranged from a low of \$2,600 GPR (2000-01) to a high of \$37,700 GPR (1994-95, a year in which a s. 13.10 supplementation was provided). Annual investigative costs have averaged \$14,600 GPR over this ten-year period.

15. Ethics Board staff have highlighted the need for base funding for agency investigation costs. Prior to the imposition of Act 16 and Act 109 reductions, the agency's GPR-funded supplies and services base funding (as adjusted for subsequent rent supplements) would have been \$48,000 GPR annually. If an adjusted total of \$54,700 GPR annually is provided under the Board reallocation proposal, as modified under the preceding section, the amount of the difference (\$6,700 GPR annually) could be budgeted specifically for future agency investigative costs.

16. The Committee could consider leaving this \$6,700 GPR annually in the Board's GPR general program operations appropriation as additional supplies and services funding. It could be argued that this would permit the Board maximum flexibility to either apply this funding to the costs of ethics investigations if needed, or to other supplies and services costs of the Board.

17. Alternatively, the \$6,700 GPR annually could be provided under a new ethics code investigations biennial appropriation. Such an arrangement would: (a) ensure that \$13,400 GPR biennially be set aside for ethics investigation costs; (b) permit the Board greater flexibility to shift funding between fiscal years; and (c) improve budgetary oversight of investigative costs.

Unfunded Position Authority

18. The Board's expenditure proposal would leave unfunded a 0.25 FTE (0.20 GPR and 0.05 PR) position during the 2003-05 biennium. This unfunded position authority would be eligible to receive full funding of \$11,000 GPR and \$2,800 PR as a standard budget adjustment during 2005-07, unless this unfunded position authority is deleted at this time.

ALTERNATIVES

1. Adjust the budget of the Ethics Board by: (a) shifting \$36,700 GPR annually in salary and fringe benefits funding to supplies and services funding in the agency's GPR general program operations appropriation; and (b) shifting \$10,900 PR annually in supplies and services funding to salaries and fringe benefits funding in the agency's PR general program operations appropriation.

2. Adopt Alternative 1 with the following modifications: (a) delete \$2,100 GPR and \$23,700 PR annually from the Board's GPR and PR general program operations appropriations for supplies and services funding; and (b) delete 0.25 FTE (0.20 GPR and 0.05 PR) of unfunded position authority annually from the Board.

<u>Alternative 2</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
2003-05 FUNDING (Change to Bill)	- \$4,200	- \$47,400	- \$51,600
2004-05 POSITIONS (Change to Bill)	- 0.20	- 0.05	- 0.25

3. *[Alternative 3 may be selected in addition to either Alternative 1 or Alternative 2.]* Create a GPR ethics code investigations biennial appropriation under the Ethics Board and transfer \$6,700 annually from the Board's GPR general program operations appropriation to this appropriation.

4. Take no action.

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