



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #585

Elimination of the Personnel Commission (Personnel Commission, WERC and DWD)

[LFB 2003-05 Budget Summary: Page 163, #3, Page 338, #1 and 478, #12]

CURRENT LAW

Base funding for the Personnel Commission is \$809,800 GPR and \$3,000 PR annually. The Commission is authorized 9.0 GPR positions. The three-member Personnel Commission is a quasi-judicial agency which addresses exclusively state employment issues, including appeals concerning hazardous employment injury benefits; certain kinds of noncontractual grievances; classification, examination, and appointment issues; and disciplinary actions involving unrepresented employees in the classified civil service. The Commission also processes complaints alleging that a state agency, in its capacity as an employer, violated state laws related to fair employment policies, family or medical leave, occupational safety and health, and “whistleblower” protections for state employees, health care providers, and caregivers reporting elder abuse.

The Wisconsin Employment Relations Commission (WERC) promotes collective bargaining and peaceful labor relations in the private and public sectors. WERC processes various types of labor relations cases, including elections, bargaining unit clarifications, union security referenda, mediations, interest arbitrations, grievance arbitrations, prohibited or unfair labor practices, and declaratory rulings. In addition to mediating labor disputes, the Commission provides training and assistance to parties interested in labor/management cooperation and a consensus approach to resolving labor relations issues.

The Division of Equal Rights in the Department of Workforce Development (DWD) is charged with enforcing statutes related to nonstate employee complaints: (a) under employer retaliation statutes related to aging and long-term care issues, care and treatment facilities issues, caregivers reporting elder abuse, public employee occupational health and safety, and state health care worker reporting; (b) regarding employment discrimination; (c) regarding unfair

honesty testing; (d) regarding unfair genetic testing; (e) regarding fair employment act retaliation; (f) regarding family and medical leave issues; and (g) regarding reemployment rights after National Guard, state defense force, or public health emergency service processing.

GOVERNOR

Eliminate the Personnel Commission on the general effective date of the bill and delete \$809,800 GPR and \$3,000 PR and 9.0 GPR positions annually. Shift \$3,000 GPR-REV annually associated with filing fees for certain state employee appeals from the Personnel Commission to WERC. Repeal all statutory provisions creating the Commission, providing for Commissioners, setting the term and qualifications of the Commissioners and assigning the Commissioners to an executive salary group. Transfer the complaint investigation functions of the Commission to DWD's Division of Equal Rights. Transfer the employee appeal functions of the Commission to WERC.

Specify that on the effective date of the bill, the assets and liabilities, tangible personal property, and contracts of the Personnel Commission, as determined by the Secretary of DOA, would be transferred as follows: (a) DWD's Division of Equal Rights would receive those items related to "whistleblower" statutes, employer retaliation, employment discrimination, state agency unfair honesty testing, state agency unfair genetic testing, state agency fair employment act retaliation, state employee family and medical leave issues, and state employee reemployment and benefit eligibility rights violations for returning National Guard, state defense force or public health emergency service personnel; and (b) WERC would receive items related to appeals of state employee classification and appointment decisions and examination scores, final step arbitrations of grievances relating to conditions of employment, denial of hazardous duty benefits, and certain decisions under county merit system rules relating to the income maintenance program personnel. Specify that the pending matters, and rules and orders of the Personnel Commission on the effective date of the bill for the above matters would become the pending matters, and rules and orders of WERC or DWD, as appropriate.

DISCUSSION POINTS

1. Under the bill, the Personnel Commission would be abolished, and its responsibilities transferred to WERC and DWD. Funding would be reduced by \$809,800 GPR and \$3,000 PR and 9.0 GPR positions annually. No funding or position authority increase would be provided to WERC or DWD. Rather, each agency would be required to support the additional workload from the transferred functions using existing resources.

2. According to the Executive Budget Book, "The Governor recommends eliminating the Commission to improve efficiency and balance the budget. The Governor further recommends transferring the functions currently performed by the Commission to the Division of Equal Rights in the Department of Workforce Development and the Wisconsin Employment Relations Commission."

3. The following table presents the responsibilities of the Personnel Commission, and indicates the agency to which that responsibility would be transferred and whether that agency currently performs a similar function.

Complaint Investigation Functions Transferred to DWD

<u>Personnel Commission</u>	<u>Wisconsin Employment Relations Commission</u>	<u>Workforce Development, Equal Rights</u>
Enforcement of the state employee "whistleblower" law related to mismanagement, waste of public funds, or a danger to public health and safety by state agency personnel.	No similar authority.	No similar authority.
Enforcement of employer retaliation statutes covering state employees based on aging and long-term care issues, care and treatment facilities issues, reporting elder abuse, public employee occupational health and safety violations, and health care worker reporting.	No similar authority.	Enforcement of employer retaliation statutes covering nonstate employees based on aging and long-term care issues, care and treatment facilities issues, reporting elder abuse, public employee occupational health and safety violations, and health care worker reporting.
Process state agency employment discrimination allegations.	No similar authority.	Process nonstate employee employment discrimination.
Process state agency unfair honesty testing allegations.	No similar authority.	Process nonstate employee unfair honesty testing.
Process state agency unfair genetic testing allegations.	No similar authority.	Process nonstate employee unfair genetic testing.
Process state agency fair employment act retaliation allegations.	No similar authority.	Process nonstate employee fair employment act retaliation.
Process state employee family and medical leave violation allegations.	No similar authority.	Process nonstate employee family and medical leave issues.
Process state employee reemployment and benefit eligibility rights violation allegations for returning National Guard, state defense force or public health emergency service personnel.	No similar authority.	Process nonstate employee reemployment and benefit eligibility rights violations for returning National Guard, state defense force or public health emergency service personnel.

Appeals Process Funding Transferred to WERC

<u>Personnel Commission</u>	<u>Wisconsin Employment Relations Commission</u>	<u>Workforce Development, Equal Rights</u>
Appeals of state employee classification decisions and examinations.	Limited involvement as a mediator, arbitrator or hearing examiner for employees who are represented by a union.	No similar authority.
Appeals of state employee appointment decisions.	Limited involvement as a mediator, arbitrator or hearing examiner for employees who are represented by a union.	No similar authority.
Final step arbitrations of state employee grievances relating to conditions of employment.	Limited involvement as a mediator, arbitrator or hearing examiner for employees who are represented by a union.	No similar authority.
Appeals of denial of state employee hazardous duty benefits.	No similar authority.	No similar authority.
Appeals of certain decisions under county merit system rules relating to the income maintenance program personnel.	Limited involvement as a mediator, arbitrator or hearing examiner for employees who are represented by a union.	No similar authority.

4. According to the Biennial Report of the Personnel Commission 1999-01 (the latest biennial period for which information is available), appeal and complaint cases were divided as identified below. In the table on page 5:

- Appeals include all cases in which no investigation by the Commission was contemplated (appeals of state employee classification and appointment decisions and examination scores, final step arbitrations of grievances relating to conditions of employment, denial of hazardous duty benefits, and certain decisions under county merit system rules relating to the income maintenance program personnel). In addition, appeals include those cases: (a) referred for hearing after an investigation where an initial determination of probable cause was made; (b) where the complainant appeals because of an initial finding of no probable cause; or (c) where a hearing is waived.

- Investigations include those items related to "whistleblower" statutes, employment discrimination, state agency unfair honesty testing, state agency unfair genetic testing, state agency fair employment act retaliation, state employee family and medical leave issues, and state employee reemployment and benefit eligibility rights violations for returning National Guard, state defense force or public health emergency service personnel. Generally, investigations result in a written initial determination, which are automatically referred to hearing if a determination of probable

cause is made or may be appealed if an initial determination of no probable cause is made.

- Appeals cases are considered closed as a result of settlements, withdrawals, dismissals due to lack of prosecution, dismissals for lack of subject matter jurisdiction and those closed after a hearing on the merits of the allegation.

- Investigations are considered closed if a case results in the issuance of an initial determination, settlement, withdrawal, dismissal for lack of subject matter jurisdiction, waiver of the investigation or is otherwise referred to the hearing stage.

	July 1, 1999 Through <u>June 30, 2000</u>	July 1, 2000 Through <u>June 30, 2001</u>
Appeals		
Beginning Number of Cases	203	195
New Appeals	166	113
Post-Investigation of Complaints	60	87
Cases Closed	<u>-234</u>	<u>-252</u>
Ending Number of Cases	195	143
Complaint Investigation		
Beginning Number of Cases	214	207
New Cases	182	198
Cases Closed	<u>-189</u>	<u>-209</u>
Ending Number of Cases	207	196

5. In 1999-00 and 2000-01, DWD received approximately 4,300 civil rights cases annually. These cases included fair employment, and family and medical leave, as well as fair housing and public accommodations. In these two years, DWD completed between 4,900 and 5,000 cases annually, and sent approximately 1,100 case to hearing annually.

6. In 1999-00, WERC had a beginning caseload of approximately 1,000 private, municipal, and state employment cases, including mediation, arbitration, fact finding, complaint, and election issues. In 1999-00 and 2000-01, WERC received between 1,100 and 1,200 cases annually, and closed an equivalent number.

7. On March 20, 2003, in testimony before the Committee, the Personnel Commission indicated that its current caseload was 290 cases (239 discrimination complaints and 51 civil service appeals cases).

8. According to the Personnel Commission, elimination of the Commission would result in increased caseload the Labor and Industry Review Commission (LIRC), since LIRC hears appeals of DWD administrative decisions. Further, the Commission indicates that the Equal Rights Division (ERD) could be required to review cases against DWD raising questions of conflict of

interest and the potential need to have a third party hear discrimination cases against DWD. Finally, the Personnel Commission states: "Prior to the creation of the WPC [Wisconsin Personnel Commission] in 1978, civil service appeals were handled by the Personnel Board, and discrimination complaints handled by ERD. One of the reasons for the creation of the was to consolidate the handling of these cases to accommodate the then increasingly common situations where state employees challenged a personnel action--e.g., failure to promote--by filing both a civil service appeal and a complaint of discrimination. Currently the WPC has five matters pending where a civil service appeal and a discrimination complaint are consolidated so that only one hearing needs to be held."

9. On March 17, 2003, in testimony before the Committee, the WERC indicated: "We fully agree with the logic of transferring the appeals function to our agency. With the exception of classification disputes that form only an occasional portion of our case load, the remainder of the appeals cases appears to focus on issues of hiring, firing, layoffs, discipline, and promotion - routine subjects with which our own staff has considerable experience as grievance arbitrators in municipal and private sector contract interpretation disagreements."

10. In considering the elimination of the Personnel Commission, the Committee may wish to consider the potential advantages and disadvantages of such an action.

11. Among the potential advantages of eliminating the Personnel Commission are the following:

- The state budget would be reduced by \$809,800 GPR and \$3,000 PR and 9.0 GPR positions annually.
- The hearing of state employee and non-state employee employer retaliation and various employment discrimination cases would be consolidated in one agency (DWD), rather than divided two agencies.
- The state employee appeals function transferred to the WERC is one the WERC indicates is compatible with its current duties. While the WERC does not currently perform these specific duties, the nature of the transferred authority is similar to current activities.

12. Among the potential disadvantages of eliminating the Personnel Commission are the following:

- The expertise of the Personnel Commission staff related to the state as an employer, and employment discrimination, "whistleblower," and certain personnel issues will be lost since all of the Personnel Commission staff positions would be eliminated.
- The ability to consolidate civil service appeals and discrimination complaints of state employees would be eliminated. Instead, civil service appeals would be addressed by the WERC and discrimination complaints of state employees by DWD.

- The Division of Equal Rights is not an independent state agency. To the extent that matters related to DWD as an employer are raised, an independent examiner may be have to be appointed to hear the matter. According to the Personnel Commission, 16 of its current 290 cases involve allegations against DWD.

13. Instead of eliminating the Commission and transferring its duties to WERC and DWD, the Committee could retain the Commission. Under one alternative, standard budget adjustments of \$54,500 GPR annually would need to be provided to fully fund existing Commission salaries and lease costs. These costs could be offset by a 10% annual across-the-board reduction of \$81,000 GPR and 1.0 GPR position. Under this alternative, total funding and positions under the bill would be increased by \$783,300 GPR and 8.0 GPR positions and \$3,000 PR annually. A further alternative would simply delete the Governor's recommendation. The Commission would be required to fund any standard budget adjustment costs from its available base level resources.

ALTERNATIVES

1. Approve the Governor's recommendation to eliminate the Personnel Commission on the general effective date of the bill and: (a) delete \$809,800 GPR and \$3,000 PR and 9.0 GPR positions annually; (b) transfer to WERC \$3,000 GPR-REV annually associated with filing fees for certain state employee appeals; (c) repeal all statutory provisions creating the Commission, providing for Commissioners, setting the term and qualifications of the Commissioners and assigning the Commissioners to an executive salary group; (d) transfer the complaint investigation functions of the Commission to DWD's Division of Equal Rights; and (e) transfer the employee appeal functions of the Commission to WERC.

2. Delete the provision. Instead, provide \$54,500 GPR annually to fully fund Commission salaries and lease costs, and delete \$81,000 GPR and 1.0 GPR position annually associated with an across-the-board reduction.

<u>Alternative 2</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
2003-05 FUNDING (Change to Bill)	\$1,566,600	\$6,000	\$1,572,600
2004-05 POSITIONS (Change to Bill)	8.00	0.00	8.00

3. Delete provision.

<u>Alternative 3</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
2003-05 FUNDING (Change to Bill)	\$1,619,600	\$6,000	\$1,625,600
2004-05 POSITIONS (Change to Bill)	9.00	0.00	9.00

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