



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #290

### Legal Support Staffing (Employment Relations Commission)

#### *Bill Agency*

[LFB 2007-09 Budget Summary: Page 137, #2]

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#### **CURRENT LAW**

The Wisconsin Employment Relations Commission (WERC) consists of three Commissioners appointed by the Governor, with the consent of the Senate, for six year terms. One Commissioner is designated by the Governor to serve as the Chairperson for a two-year term. WERC has statutory responsibilities relating to labor relations and collective bargaining in private, municipal and state employment through the provisions established under Subchapter I (Employment Peace), Subchapter IV (Municipal Employment Relations), and Subchapter V (State Employment Labor Relations) of Chapter 111 of the statutes.

Specifically, under current law, WERC is charged with: (a) conducting representation elections and other referendums for private, municipal or state employees and employers; (b) clarifying bargaining units for private, municipal, or state employees and employers; (c) enforcing proper bargaining conduct; (d) issuing declaratory rulings on such matters as whether an issue is a mandatory, permissive or prohibited subject of bargaining for private, municipal, or state employees and employers; (e) resolving various labor disputes, primarily for private or municipal employees and employers; (f) investigating bargaining impasses and appointing arbitrators, primarily for municipal employees and employers; and (g) performing as the administrative appeals body for reviewing various personnel actions relating to the state civil service under Subchapter II of Chapter 230 of the statutes.

The base budget for WERC is \$2,993,100, with 23.5 FTE authorized positions. This includes \$2,440,100 GPR (18.5 GPR positions) and \$553,000 PR (5.0 PR positions).

## **GOVERNOR**

Provide \$39,900 PR in 2008-09 in unallotted reserve to address attorney staffing needs during periods of employee turnover expected to occur due to anticipated retirements. In addition, provide a 0.5 GPR FTE confidential legal support staff position annually. The position would be funded through the reallocation of base funding for supplies and services (\$11,800 GPR in 2007-08 and \$16,200 GPR in 2008-09).

## **DISCUSSION POINTS**

1. The Governor's provision for a 0.5 GPR FTE confidential legal support staff position, funded through the reallocation of base funding for supplies and services (\$11,800 GPR in 2007-08 and \$16,200 GPR in 2008-09) was requested by the agency in its 2007-09 biennial budget request. WERC indicates that the position is needed because the agency does not have adequate support staff for its attorneys. [There are currently 2.5 legal support staff positions for 13 attorneys, 3 attorney supervisors, and 3 commissioners.] This was the only request for additional resources that was made in WERC's 2007-09 biennial budget request because agencies were directed not to request any GPR increases beyond funding provided in the 2006-07 adjusted base.

2. On October 30, 2006, WERC submitted a supplemental request to the administration for 3.5 GPR positions and the deletion of 1.0 PR position to increase legal staff by a net of 2.5 FTE positions. The request included 3.0 GPR attorney positions (one of which would be the PR position transferred to GPR funding), and a 0.5 legal secretary position. The annual costs of this proposal were estimated at \$272,800 GPR and -\$103,200 PR. [As noted above, the 0.5 legal secretary position was requested in the agency's biennial budget and was included in SB 40 by the Governor.]

3. The supplemental request document describes concerns that WERC has regarding the status of agency staffing both now and in the future. According to WERC officials, the staffing problems became particularly severe in the 2003-05 biennium. Under 2003 Wisconsin Act 33, base budget reductions affecting many state agencies resulted in a WERC staff reduction of 4.0 GPR positions and the authorization of an additional 2.0 PR positions. Given the agency's size, the net reduction of 2.0 positions represented a 7.8% reduction in WERC's staff.

4. In addition, 2003 Act 33 transferred state employee appeal functions from the Personnel Commission (which was eliminated under Act 33) to WERC. However, the Personnel Commission positions associated with this work (which, according to WERC officials familiar with the Personnel Commission's operations, varied between 1.0 and 1.6 FTE) were not transferred to WERC. Initially, this caseload included 65 active cases, including approximately 25 that WERC viewed as a backlog due to the age of the cases. WERC reassigned 1.0 FTE attorney position to work on these cases full-time. In addition, WERC officials indicate that other staff assisted (and continue to assist), as needed, in this workload, requiring an estimated 1.0 FTE of additional staff time. This level of staffing, according to WERC, was needed in order to eliminate the backlog and maintain a process for the timely disposition of these cases. Therefore, under Act 33, WERC

experienced a staff reduction of 2.0 FTE positions and gained added responsibilities that required the reassignment of approximately 2.0 FTE positions to handle the new personnel appeals.

5. A second staffing issue raised by WERC is the expected retirement of senior staff in the next four years. Of 21 individuals currently employed at WERC, excluding the Commissioners who are appointed, there is a likelihood that 10 individuals will retire within four years. The first retirement of this group is scheduled for the Fall of 2007; however, for the remaining individuals, it is not known at this time when each retirement will occur. The 10 include six attorneys, three attorney supervisors, and the agency's office manager supervisor. This group represents virtually the entire senior management of the agency.

6. WERC officials indicate that in the labor relations field, trust relationships that develop over many years are vital to success and it will be difficult to compensate for the loss of so many senior professional staff. WERC officials believe that the most effective way to address this issue is to begin hiring some new staff now who can be trained by more senior staff (prior to their retirement) and to allow new staff sufficient time to develop relationships and experience in the field with the assistance of senior staff.

7. Based on the loss of staff and the additional responsibilities resulting under 2003 Act 33, and the prospect of losing a large proportion of experienced staff to retirements, WERC proposed the additional 3.5 GPR positions and the deletion of 1.0 PR position described above.

8. The provision under the bill to place \$39,900 PR in 2008-09 in unallotted reserve is intended to address attorney staffing needs during periods of employee turnover expected to occur due to the anticipated retirements in 2008-09. Administration officials indicate that this amount would be sufficient to provide a 0.5 FTE attorney position for about a six-month period and that the amount provided (in one year only) is constrained by the available program revenue in the appropriation account (discussed below).

9. The funding provided under the bill would help to address a portion of the anticipated staffing needs in 2008-09, but would not be available to address any needs in 2007-08, or allow for any period of peer training in most cases. The WERC supplemental request for additional position authority for attorneys would make such training more feasible and could help to redress past position reductions. For these reasons, the Committee could consider an alternative to fund the supplemental request. The correct budget amounts for this proposal would be to: (a) provide \$194,700 GPR in 2007-08 and \$259,200 GPR in 2008-09 and 3.0 GPR positions annually; and (b) delete \$77,800 PR in 2007-08 and \$143,100 PR in 2008-09 and 1.0 PR attorney position annually. The PR reduction in 2008-09 also reflects the deletion of the \$39,900 PR provided under the bill for staffing needs because this alternative would address these staffing needs in a different manner. Under the alternative, the Governor's provision of a 0.5 GPR position with no funding increase would remain.

10. The transfer of 1.0 PR attorney to GPR funding would also help to address a potential deficit in WERC's PR appropriation account, which currently funds 5.0 PR attorney

positions. Base funding in the appropriation account totals \$553,000 PR. This appropriation primarily receives filing fees related to different types of labor relations actions. WERC has the authority to set these fees by rule. The current fees are summarized in the table below. For the \$500 filing fees, one-half of the fee (\$250) is paid by each party to the dispute. The \$80 complaint filing fee is paid entirely by the complaining party. The \$50 filing fee for a personnel appeal relating to an employee classification dispute is paid by the employee.

**Current WERC Filing Fees**

<u>Case Type</u>	<u>Filing Fee</u>
Grievance Arbitration	\$500
Mediation	500
Interest Arbitration	500
Fact Finding	500
Police/Fire Interest Arbitration	500
Complaint	80
Personnel Appeal	50

11. In 2004-05, the appropriation received \$442,700 in program revenue and had a year-end balance of \$205,000. In 2005-06, \$434,200 PR was received and the closing balance in the account was \$124,600. Based on average caseload over the last three years (2003-04 through 2005-06) and projected caseload in 2006-07, filing fee revenue can be projected through 2007-08 and 2008-09. These estimates show that the current filing fees would not be sufficient to maintain the costs to continue supporting the 5.0 PR base-level positions funded from this appropriation. Under these projections, the PR appropriation account would have a deficit of approximately \$284,300 on June 30, 2009.

12. WERC has been aware of this situation and indicated in their 2007-09 budget request that fees would need to be raised to support current PR expenditure authority. WERC projected that the \$500 fees would need to be raised to \$700 (a 40% increase) and the \$80 complaint fee would need to be raised to \$100 (a 25% increase). The \$50 fee for a personnel appeal relating to an employee classification dispute would not be raised. An analysis of these increases show that the 2007-08 and 2008-09 budgeted costs under the bill for the appropriation could be covered and the closing balance on June 30, 2009 would total approximately \$38,100.

13. The fee increase would produce an estimated \$161,100 in additional annual revenue. Of this total, approximately \$75,000 would be paid by municipalities. This is because for the \$500 cases, one-half of the fee (\$250) is paid by each party to the dispute. Municipalities are a party to over 94% of the disputes that carry a \$500 filing fee. WERC officials argue that this increase is significant and it would follow a filing fee increase in 2003, when mediation, arbitration, fact-finding, and complaint filing fees were doubled to their current levels. WERC also expresses concern that the increased fees would deter or delay, to some extent, the use of WERC's dispute resolution services. This could result in disputes lingering and intensifying, thus increasing the costs of any resolution.

14. If the Committee feels that such filing fee increases should not be imposed on local units of government and other parties to employment disputes, an alternative could be considered to transfer 1.5 PR attorney positions to GPR funding. This would require: (a) \$116,600 GPR in 2007-08 and \$154,800 GPR in 2008-09 and 1.5 GPR positions annually; and (b) -\$116,600 PR in 2007-08 and -\$154,800 PR in 2008-09 and -1.5 PR positions annually. Under this alternative, the \$39,900 PR provided under the bill for staffing needs would remain to address staffing transition issues in 2008-09. The closing balance in the appropriation account would be projected at -\$12,900 on June 30, 2009, an amount that can be managed by WERC.

15. A more limited alternative would be to transfer 1.0 PR attorney position to GPR funding. This would require: (a) \$77,800 GPR in 2007-08 and \$103,200 GPR in 2008-09 and 1.0 GPR position annually; and (b) -\$77,800 PR in 2007-08 and -\$103,200 PR in 2008-09 and -1.0 PR position annually. Under this alternative, the \$39,900 PR provided under the bill for staffing needs would remain to address staffing transition issues in 2008-09. In this case, the closing balance in the appropriation account would be projected at -\$103,300 on June 30, 2009. To the extent that this deficit could be managed, fees could remain at current levels, be increased at a later time, or be increased by lesser amounts.

16. Finally, the WERC request discussed above (that would provide 3.0 GPR attorney positions and delete 1.0 PR attorney position) could also be implemented with no immediate fee increase. In this instance, reductions in program revenue expenditure authority would result from the deletion of 1.0 PR attorney position (-\$77,800 PR in 2007-08 and -\$103,200 PR in 2008-09) and the removal of \$39,900 PR in 2008-09 provided under the bill for attorney staffing needs. With these deletions, the June 30, 2009, closing balance would have a deficit of \$63,400. Again, it may be possible that this deficit could be managed so that fees could remain at current levels, or fee increases could be delayed or lessened.

**ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to provide \$39,900 PR in 2008-09 in unallotted reserve to address attorney staffing needs during periods of employee turnover expected to occur due to anticipated retirements. In addition, provide a 0.5 GPR FTE confidential legal support staff position annually. The position would be funded through the reallocation of base funding for supplies and services (\$11,800 GPR in 2007-08 and \$16,200 GPR in 2008-09).

ALT 1	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	\$0	0.50
PR	0	0.00	39,900	0.00
Total	\$0	0.00	\$39,900	0.50

2. Delete the provision. Instead: (a) provide \$194,700 GPR in 2007-08 and \$259,200 GPR in 2008-09 and 3.5 GPR positions (3.0 FTE attorneys and 0.5 FTE confidential legal support

staff) annually; and (b) delete \$77,800 PR in 2007-08 and \$103,200 PR in 2008-09 and 1.0 PR attorney position annually.

ALT 2	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$453,900	3.00	\$453,900	3.50
PR	<u>- 220,900</u>	<u>- 1.00</u>	<u>- 181,000</u>	<u>- 1.00</u>
Total	\$233,000	2.00	\$272,900	2.50

3. Approve the Governor's recommendation and, in addition: (a) provide \$116,600 GPR in 2007-08 and \$154,800 GPR in 2008-09 and 1.5 GPR attorney positions annually; and (b) delete \$116,600 PR in 2007-08 and \$154,800 PR in 2008-09 and 1.5 PR attorney positions annually.

ALT 3	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$271,400	1.50	\$271,400	2.00
PR	<u>- 271,400</u>	<u>- 1.50</u>	<u>- 231,500</u>	<u>- 1.50</u>
Total	\$0	0.00	\$39,900	0.50

4. Approve the Governor's recommendation and, in addition: (a) provide \$77,800 GPR in 2007-08 and \$103,200 GPR in 2008-09 and 1.0 GPR attorney position annually; and (b) delete \$77,800 PR in 2007-08 and \$103,200 PR in 2008-09 and 1.0 PR attorney position annually.

ALT 4	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$181,000	1.00	\$181,000	1.50
PR	<u>- 181,000</u>	<u>- 1.00</u>	<u>- 141,100</u>	<u>- 1.00</u>
Total	\$0	0.00	\$39,900	0.50

5. Delete provision.

ALT 5	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$0	- 0.50	\$0	0.00
PR	<u>- 39,900</u>	<u>- 0.00</u>	<u>0</u>	<u>0.00</u>
Total	- \$39,900	- 0.50	\$0	0.00

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