



## Legislative Fiscal Bureau

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April 16, 2009

Joint Committee on Finance

Paper #401

### **Across-the-Board 1% Reductions (Government Accountability Board)**

[LFB 2009-11 Budget Summary: Page 327, #2]

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#### **CURRENT LAW**

The Government Accountability Board (GAB) is charged with carrying out the state's election administration responsibilities, as well as administering the state's ethics and lobbying laws, and the Wisconsin Election Campaign Fund. In carrying out its responsibilities to enforce the state's lobbying laws, GAB imposes lobbying fees on individual lobbyists and lobbying principals and utilizes this funding to cover its lobbying-related expenses.

Lobbying fees are deposited to the Board's lobbying administration; program revenue appropriation. The adjusted base for this appropriation is \$419,600 PR annually.

#### **GOVERNOR**

Delete \$4,200 PR annually from the lobbying administration; program revenue appropriation as part of an across-the-board 1% reduction in most non-federal appropriations.

#### **DISCUSSION POINTS**

1. Under AB 75, the Board's lobbying administration; program revenue appropriation which is funded by lobbying fees is reduced \$4,200 PR annually as part of an across-the-board 1% reduction in most non-federal appropriations. Administration staff has expressed its intent to lapse \$4,200 PR annually in associated lobbying fees to the general fund as a part of a series of lapse provisions to balance the general fund.

2. Some state and federal district courts have ruled that it is unconstitutional under the First Amendment to the U.S. Constitution to impose a lobbying fee that amounts to a tax. Under

these decisions, a lobbying fee may only be imposed to offset the costs of administering legitimate regulation of lobbying activity. These courts have held that if a lobbying fee exceeds this limitation, it amounts to an unconstitutional tax on the right of citizens to petition the Legislature. Government Accountability Board staff have expressed the opinion that lobbying fees may not be lapsed to the general fund, but may only be utilized for lobbying-related program expenses. [*Moffett v. Killian*, 360 F. Supp. 228 (D. Conn. 1973); *Georgia State AFL-CIO v. State of Georgia Ethics Commission*, United States District Court, Northern District of Georgia (September, 1995); *Common Cause, Inc. v. State of Indiana*, Marion Superior Court (September, 1996); and *Fidanque v. State of Oregon*, Oregon Supreme Court (November, 1998).]

3. Assembly Bill 75 requires the Secretary of DOA to lapse \$160 million to the general fund during the 2009-11 biennium from the unencumbered balances of state agency appropriations. The provision specifies that no funding may be lapsed if it would violate the federal or state constitution. If lobbying fees cannot be lapsed to the general fund to contribute to a balanced budget, it could be argued that the reduction serves little purpose.

4. In addition, GAB staff has expressed concerns regarding the cumulative impact of AB 75 reductions to the agency's ability to carry out its responsibilities. Restoring this funding reduction could assist the Board to meet its statutory obligations.

5. Alternatively, the Committee could maintain the reduction in expenditure authority under the view that all state agencies should be encouraged to reduce expenditures and develop efficiencies within the resources provided.

## ALTERNATIVES

1. Adopt the Governor's recommendation to delete \$4,200 PR annually from the lobbying administration; program revenue appropriation.

2. Delete provision.

| ALT 2 | Change to Bill |
|-------|----------------|
|       | Funding        |
| PR    | \$8,400        |

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