



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 12, 2009

Joint Committee on Finance

Paper #849

Work Permit Fee Increase/Funding Conversion (DWD)

[LFB 2009-11 Budget Summary: Page 692, #17]

CURRENT LAW

Child labor laws, including hours of work, time of day, and prohibited employment, are administered and enforced by the Bureau of Labor Standards in the Division of Equal Rights in the Department of Workforce Development (DWD). In general, the Division is responsible for administering and enforcing state civil rights and labor standards laws. The Division has base level funding and position authority of \$5,712,300 GPR, 63.75 GPR positions, \$1,003,300 FED, 5.50 FED positions, \$11,200 PR, \$17,300 SEG, and 0.25 SEG position.

GOVERNOR

Delete \$325,500 GPR in 2009-10, \$434,000 GPR in 2010-11, and 6.00 GPR positions annually and provide expenditure authority of \$325,500 PR in 2009-10, \$434,000 PR in 2010-11, and 6.00 PR positions beginning in 2009-10 to convert the funding source for the positions from GPR to PR, and to provide funding for Equal Rights Division administration. Increase the work permit fee to provide the additional program revenue.

DISCUSSION POINTS

1. The bill would convert the funding source for 6.0 positions from GPR to PR. The source of program revenue would be from increasing the work permit fee by \$5 (from \$5 to \$10). Under the bill, it is estimated that the fee increase would generate an additional \$480,000 in annual collections. The revenues generated by the fee would be placed in a newly-created continuing program revenue appropriation that would fund the cost of the Department's information technology (IT) systems, including the child labor permit system, and other operational expenses of the Equal

Rights Division. The information system upgrade would involve infrastructure projects to make the Division's IT systems compatible with the Department's database software standard.

2. The Civil Rights Bureau within the Division of Equal Rights administers and enforces a number of antidiscrimination laws relating to fair employment, open housing, public accommodations and amusements, family and medical leave, and post-secondary education. The Bureau also administers provisions that protect employees and workers from employer retaliation for reporting law violations. The Labor Standards Bureau administers and enforces a number of employment laws relating to minimum wage, prevailing wage, child labor, hours of operation and overtime, notifications of business closings and mass layoffs, and other requirements regarding employer-employee relationships. The attachment provides more detail regarding the duties of these Bureaus.

3. A work permit is required for anyone under the age of 18 to work a job (with certain exceptions for agriculture and domestic service). The work permit establishes a minor's proof of age and insures that the employer, parent, or guardian, and minor are aware of state child labor laws and regulations. Married minors, high school graduates, minors living independently, and minors working for their parents in their parents' business must obtain work permits. Exceptions to the work permit requirement are: (a) minors employed in agriculture; (b) minors working in or around the home not in connection with the employer's business; (c) volunteer work for a nonprofit organization; (d) public entertainment or exhibition; (e) street trades for fund raising for nonprofit organizations, or schools; and (f) apprentices.

4. Work permits may be obtained from a state child labor permit officer, most of whom are located in school offices. Currently there are 584 permit offices and 1,607 permit officers issuing work permits. To obtain a work permit, the minor or parent must provide the permit officer with: (a) proof of age (birth certificate, baptismal certificate, Wisconsin identification card, or driver's license); (b) the employer's written intent to hire, including job duties to be performed, and the hours and time of day for work; (c) the parent or guardian's written consent to work; (d) a social security card; and (e) the \$5.00 work permit fee. The \$5.00 fee must be reimbursed by the employer no later than the minor's first paycheck.

5. In addition to work permits, the increased fee would apply to street trade permits. Street trade permits are required for minors who engage in selling or offering for sale, soliciting, collecting, displaying or distributing in public places or house-to-house: (a) newspapers or magazines; (b) articles, goods, and merchandise; (c) circulars or posters; (d) commercial service; or (e) shoe shining. Minors engaged in fund raising for nonprofit organizations or schools are not required to obtain street trade permits, provided no employer-employee relationship exists. Street trade permits cost \$5.00 and may be obtained from work permit offices.

6. The work permit fee is \$5.00. The amount of the fee is not specified in the statutes. DWD is authorized to establish and collect a reasonable fee based on the cost of issuing the permits. Current law authorizes DWD to allow the issuing agency to retain a portion of the fee as compensation for services, if the person issuing the certificate is not on the payroll of the Division

of Equal Rights. The work permit fee is currently distributed as follows: (a) \$2.50 is retained by the issuing agency, such as schools and counties; and (b) \$2.50 is deposited in the general fund.

7. DWD allocates 0.5 GPR position and \$44,100 GPR to administration of work permits. The 0.5 position includes 0.25 program assistant and 0.25 section chief positions.

8. The bill would convert the funding source for 6.0 positions from GPR to PR. The source of program revenue would be from increasing the work permit fee by \$5 (from \$5 to \$10). In preparing AB 75, the administration estimated that the fee increase would generate an additional \$480,000 in annual collections. The revenues generated by the fee would be placed in a newly-created continuing program revenue appropriation that would fund the cost of the Department's information technology systems, including the child labor permit system, and other operational expenses of the Equal Rights Division.

9. The positions that would be converted would include the 0.5 position that administers work permits and 5.50 labor standards investigators. Under the bill, most of the program revenue generated by the fee increase would be used for salary and fringe benefits.

10. In the Department's 2009-11 agency request, DWD requested expenditure authority of \$288,000 annually in a newly-created program revenue appropriation to fund an upgrade in the IT systems used by the Division of Equal Rights. The upgrade would involve IT infrastructure projects to make the Division's systems compatible with the Department's database software standard. Program revenue for the new appropriation would be generated by increasing the work permit fee \$3.00, from \$5.00 to \$8.00. It was estimated that the fee increase would generate an additional \$288,800 in annual fee collections that would be placed in the new program revenue appropriation. However, under the bill, most of the program revenue expenditure authority would be used to fund salaries and fringe benefits. In addition, the estimate of program revenues is based on a projection of 96,000 work permits issued annually. Currently, DWD estimates that 60,600 permits will be issued. This would generate \$303,000 in revenue compared to the estimated \$480,000 under the bill. As a result, 2.0 of the converted positions will be unfunded. An alternative would be to convert 4.0 GPR positions, rather than 6.0 GPR positions to PR (\$217,800 in 2009-10 and \$284,100 in 2010-11).

11. The Division of Equal Rights has base level funding of \$5,712,300 GPR, \$1,003,300 FED, \$11,200 PR, and \$17,300 SEG. The primary source of funding for the Division's general operations is GPR. As noted, funding for the 6.0 positions would be provided by a \$5.00 increase in the work permit fee. Program revenues are statutorily defined as revenues that are credited to an appropriation to fund a specified program. Typically, program revenues are not used to fund general operations where the main source of funding is GPR. However, there are a number of exceptions to this general rule.

12. The \$5.00 work permit fee increase would double the current charge for work permits. Since the fee is reimbursed by employers, the higher fee would increase business costs, particularly on businesses that hire a relatively significant number of minors.

13. The program revenue appropriation that would be created would be a continuing, "all monies received" appropriation. Dollar amounts shown in the schedule for such appropriations represent the most reliable estimates of the amounts that will be expended. However, expenditures made from such appropriations are generally only limited by the amount of revenues available from the appropriation. This would allow the Department more flexibility in its administrative activities. Establishing the appropriation as an annual appropriation would limit the Department's expenditures to amounts shown in the appropriation schedule. This would provide more legislative oversight to expenditures. If the appropriation balance built up over time, the work permit fee could be reduced. An alternative would be to establish the work permit fee/equal rights administration appropriation as an annual appropriation.

14. The bill would not establish the \$10 fee amount in the statutes, and would eliminate the requirement that the fee be based on the costs of issuance. The administration's *Executive Budget Book* states that the fee would be increased to \$10. As drafted, the bill would specify that all monies collected from the fee, except funds that DWD authorizes the issuing agency to retain, would be deposited into the new PR appropriation. However, the administration's intent is for the first \$5 of the fee to be distributed as under current law (\$2.50 to the issuing agency, and \$2.50 to the general fund), and for just the additional \$5 to be deposited into the new PR appropriation. An alternative would be to statutorily specify the fee at \$10 and require that \$2.50 be retained by the issuer, \$2.50 be placed in the general fund, and \$5.00 be placed in the newly created child labor permit system appropriation.

ALTERNATIVES

1. Approve the Governor's recommendation to delete \$325,500 GPR in 2009-10, \$434,000 GPR in 2010-11, and 6.00 GPR positions annually and provide expenditure authority of \$325,500 PR in 2009-10, \$434,000 PR in 2010-11, and 6.00 PR positions beginning in 2009-10 to convert the funding source for the positions from GPR to PR, and to provide funding for Equal Rights Division administration. In addition, include a statutory provision that would specify that the work permit fee would be established at \$10 and require that \$2.50 be retained by the issuer, \$2.50 be placed in the general fund, and \$5.00 be placed in the newly created child labor permit system appropriation.

2. Modify the Governor's recommendation and delete \$217,800 GPR in 2009-10 and \$284,100 GPR in 2010-11, and 4.0 GPR positions annually and provide expenditure authority of \$217,800 PR in 2009-10 and \$284,100 PR in 2010-11, and 4.0 PR positions annually to convert the funding source from GPR to PR and to provide funding for Equal Rights Division administration. In addition, include a statutory provision that would specify that the work permit fee would be established at \$10 and require that \$2.50 be retained by the issuer, \$2.50 be placed in the general fund, and \$5.00 be placed in the newly created child labor permit system appropriation.

ALT 2	Change to Bill	
	Funding	Positions
GPR	\$257,600	2.00
PR	<u>- 257,600</u>	<u>- 2.00</u>
Total	\$0	0.00

3. If alternative 1 or 2 is adopted, specify that the new child labor law permit system appropriation would be an annual appropriation rather than a continuing "all monies received" appropriation.

4. Delete the Governor's recommendation.

ALT 4	Change to Bill	
	Funding	Positions
GPR	\$759,500	6.00
PR	<u>- 759,600</u>	<u>- 6.00</u>
Total	\$0	0.00

Prepared by: Ron Shanovich
Attachment

ATTACHMENT

Duties of DWD's Bureaus of Civil Rights and Labor Standards

Civil Rights Bureau

The Civil Rights Bureau administers and enforces the following antidiscrimination laws:

1. *Fair Employment.* The law prohibits discrimination based on race, creed, color, national origin, ancestry, age, sex, handicap, arrest or conviction record, sexual orientation, marital status, and military status. The law prohibits unfair honesty testing and genetic testing. It also prohibits discrimination because of filing or assisting with a labor standards complaint or because of use or non-use of lawful products. DWD is authorized to hear complaints of discrimination, unfair honesty testing, or unfair genetic testing.

2. *Open Housing.* The state fair housing law prohibits housing discrimination based on race, color, religion, national origin, ancestry, sex, age, disability, lawful source of income, marital status, sexual orientation, and family status. DWD is authorized to receive and investigate complaints charging a violation of the law.

3. *Public Accommodations and Amusements.* The state public accommodations and amusements law provides that it is against the law to deny service or to give unequal treatment in service because of sex, race, color, creed, disability, sexual orientation, national origin, or ancestry. Discrimination in relation to age, 18 and older, is only unlawful in regard to lodging establishments. "Public accommodations" includes, but is not limited to, hotels, motels, restaurants, taverns, retail stores, exercise clubs, dry cleaners, auto repair shops, and other service establishments. The law does not apply when a private, nonprofit organization provides goods or services to only its members or their guests. DWD may receive and investigate a complaint that a violation of the law has occurred.

4. *Family and Medical Leave.* The Wisconsin family and medical leave act requires that all employers with 50 or more permanent employees must allow employees of either sex up to six weeks of leave in a twelve-month period for the birth or adoption of a child, up to two weeks of leave in a twelve-month period for the care of a child, spouse, or parent with a serious health condition, and up to two weeks of leave in a twelve-month period for the employee's own serious health condition. The law specifies that no one may "interfere with, restrain or deny the exercise of any right" provided under the law. It also prohibits discharging or discriminating against anyone for opposing a practice prohibited under the law, for filing a charge under the law, for assisting in an investigation or other proceeding under the law, or for testifying in an investigation or hearing held in relation to rights guaranteed by the law. An employee who believes his or her employer has violated any of these provisions may file a complaint with DWD.

5. *Post Secondary Education.* The law prohibits discrimination in post secondary

education because of physical condition or developmental disability.

The Bureau also administers the following laws that protect employees and workers from employer retaliation for reporting law violations:

1. *Public Employee Health and Safety.* The law prohibits retaliation by an employer in cases where a public employee reports an actual or potential hazard to the State Safety and Buildings Division in the Department of Commerce. The law also prohibits employer retaliation in cases where an employee reasonably refuses to perform a task that represents a danger of serious injury or death, or where the employee exercises any other right related to occupational safety and health.

2. *Employee Right to Know.* The Wisconsin right to know law provides that employees have a right to know what toxic substances may be encountered on the job, and prohibits employer retaliation against an employee for exercising any rights under the law.

3. *Elderly Abuse.* The law prohibits retaliation against any employee for reporting abuse of an elderly person to a state or county agency.

4. *Health Care Workers.* Wisconsin law prohibits employer retaliation against any health care worker for reporting violations of laws, rules, or quality care standards.

5. *Whistleblower Law for State Workers.* Under the state "whistleblower law" an employee of the State of Wisconsin, with certain exceptions, may not be retaliated against for disclosing information regarding a violation of any state or federal law, rule or regulation, mismanagement or abuse of authority in state or local government, substantial waste of public funds, or a danger to public health or safety. An employee may disclose information to any other person. However, before disclosing information to anyone other than an attorney, collective bargaining representative, or the Legislature, the employee must disclose the information in writing to the employee's supervisor, or disclose the information in writing to an appropriate governmental unit designated by the Equal Rights Division. An employee who believes that a supervisor or appointing authority has initiated or administered, or threatened to initiate or administer, a retaliatory action against that employee in violation of the law may file a written complaint with the Division of Equal Rights, specifying the nature of the retaliatory action.

Labor Standards Bureau

The Labor Standards Bureau administers and enforces the following laws that establish standards and procedures:

1. *Prevailing Wage Rates.* DWD is required to determine the prevailing wage rates for all types of local public works projects, state public works construction projects, and state contracted highway projects. The Department is required to investigate any alleged violation of such wage rates and hours for state and local projects. The Department of Transportation enforces the

prevailing wage law for highway projects.

2. *Hours of Work and Overtime.* The law requires payment of time and one-half of the regular rate of pay for hours worked that are in excess of forty in a given week, with certain exemptions.

3. *Records Open to Employee.* The law authorizes employees and former employees to inspect their own personal records.

4. *One Day of Rest in Seven.* Wisconsin law requires employers in factories or mercantile establishments to provide at least one period consisting of twenty-four consecutive hours of rest in a calendar week. Waivers or modifications may be issued when jointly requested by labor or management.

5. *Street Trades.* The law establishes maximum daily and weekly hours, and sets time of day restrictions for minors (under age 18) engaging in street trades, which includes delivery, distribution or selling door-to-door. The law also provides for enforcement actions.

6. *Child Labor.* Wisconsin law establishes maximum daily and weekly hours, and establishes time of day restrictions for minors. The law also specifies employment prohibitions, by type of employment, for minors 11 through 17 years of age. The law also provides for enforcement action.

7. *Minimum Wage.* The law sets minimum wage rates, provides for special minimum wage licenses for rehabilitation facilities and for workers with disabilities, and for student learners. The law also defines "hours worked."

8. *Private Employment Agents.* The law provides rules for licensing of private employment agents (agents that require applicant-paid fees), and for the registration of employer-paid fee agents. Enforcement action is authorized.

9. *Wage Payment and Collection.* Wisconsin law requires DWD to process individual wage claims from employees who have not received earned wages, and establishes when employees must be paid.

10. *Business Closing and Mass Layoff.* Wisconsin law requires that employers of 50 or more employees must provide sixty days advanced written notification of a business closing or mass layoff (generally affecting 25 employees). Notices must be provided to DWD, affected employees, the union, and the highest official in the municipality in which the business is located.

11. *Cessation of Health Care Benefits.* Wisconsin law requires that employers of 50 or more employees must provide sixty days advance written notification when the employer decides to terminate a health care benefit plan. Notices must be provided to the employees, retirees, and their dependents. The law does not require notification to employees who quit or were terminated. Notification is not required where existing plans are changed.