



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #295

### **Conversion of a Classified Attorney Position to an Unclassified Division Administrator (Employment Relations Commission)**

[LFB 2011-13 Budget Summary: Page 170, #5]

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#### **CURRENT LAW**

The Wisconsin Employment Relations Commission (WERC) consists of three Commissioners appointed by the Governor, with the advice and consent of the Senate, for staggered six-year terms expiring on March 1 of the odd-numbered years. At the time of making new nominations to the Commission, the Governor is required to designate a member or nominee to serve as the Commission's chairperson for a two-year term expiring on March 1 of the odd-numbered year.

The WERC is responsible for administering labor relations law under the Wisconsin Employment Peace Act, Municipal Employment Relations Act and State Employment Labor Relations Act (Subchapters I, IV and V of Chapter 111 respectively). These responsibilities include conducting elections to determine bargaining units and bargaining representatives; holding referenda with respect to all union, maintenance of membership, and fair-share agreements; issuing decisions in the adjudication of unfair labor practice, election issues, unit clarification, and declaratory rulings; mediating collective bargaining disputes; and providing arbitration services for grievances arising in the interpretation and application of existing collective bargaining agreements. The WERC also serves as an administrative appeals body for reviewing personnel actions relating to the state civil service under Subchapter II of Chapter 230.

#### **GOVERNOR**

Create an unclassified division administrator position in WERC and convert 1.0 classified position to 1.0 unclassified position. According to the 2011-13 Executive Budget Summary, the intent of the provision is to convert the WERC's chief legal counsel position to unclassified status.

## DISCUSSION POINTS

1. The Commission is provided base funding of \$3,125,000 (\$2,570,200 GPR and \$554,800 PR) and 26.0 positions (21.0 GPR and 5.0 PR). The staff includes 21.0 attorney positions, including 18.0 classified attorneys and 3.0 unclassified attorneys (the Commissioners). There are 5.0 support staff authorized. Two classified attorney positions, one of the Commissioner positions, and a 0.50 legal support staff position are currently vacant.

2. One of the Commission's attorneys is classified as an attorney confidential supervisor position and serves as chief legal counsel for the Commission. The incumbent has served as an attorney with WERC for 36 years and is experienced in all facets of the Commission's work.

3. Administration officials have confirmed that the intent of the Governor's provision is to convert the WERC chief legal counsel position to unclassified status. As an unclassified position, the person would be appointed by, and service at the pleasure of, the Commissioners. According to administration officials, the provision is consistent with the conversion of other classified positions to unclassified status enacted under 2011 Wisconsin Act 10. As an unclassified division administrator position, the appointed individual would, according to administration officials, continue to serve as chief legal counsel to the Commission and would, therefore, be an attorney. Finally, officials indicate that the change is intended to ensure that the individual serving in the position is carrying out the policies of the Commission.

4. Under current law, the Governor has the authority to appoint Commissioners with Senate confirmation. At the time an appointment is made, the Governor may designate a new chairperson. Recently, the Governor nominated two individuals to fill vacant Commissioner positions and appointed one of the individuals to the Chairperson position. The Governor, therefore, has significant influence over the Commission to ensure that the administration's policy goals with respect to employment relations are reflected in the Commission's work.

5. Under the bill, the Governor, through the Commissioners, would have an additional appointment of an unclassified position that would replace the classified attorney position serving as chief legal counsel to the Commission. The position would, then, serve at the pleasure of the Commissioners and, by extension, the Governor.

6. As noted above, the WERC's responsibilities include, but are not limited to, issuing decisions in the adjudication of unfair labor practice, election issues, unit clarification, and declaratory rulings; mediating collective bargaining disputes; providing arbitration services for grievances arising in the interpretation and application of existing collective bargaining agreements; and handling civil service appeals. The Commission plays a significant role in the resolution of disputes, particularly civil service appeals involving executive branch state agencies. It could be argued that the chief legal counsel at WERC should be, and should be perceived to be, a neutral party in the resolution of disputes, and be able to provide legal advice to the Commissioners free of any concern for his or her job appointment. Some would argue that it may be difficult in some situations for an appointed attorney to advance impartial legal advice while serving at the pleasure of the Governor's appointees.

7. As noted above, the current incumbent serving as chief legal counsel for WERC has worked 36 years with the agency and has significant experience, expertise, and institutional knowledge relating to the work of the Commission. Arguably, it would be difficult to develop this level of expertise, if the position is newly appointed with each change of Governor. Therefore, experience, expertise, and institutional knowledge relating to the Commission's work would be more difficult to maintain over time, potentially lessening WERC's ability to perform its statutory duties.

8. It should also be noted that the bill's provision would eliminate the classified chief legal counsel position and replace it with an unclassified division administrator. While DOA indicates that the position would continue to be an attorney, there would be no requirement for the person employed in this position to be an attorney. If the Committee adopts the Governor's recommendation, it may also wish make this a requirement for the new unclassified position. [Alternative 2]

## **ALTERNATIVES**

1. Approve the Governor's provision create an unclassified division administrator position in WERC and convert 1.0 classified position to 1.0 unclassified position.

2. Approve the Governor's provision, but require that the unclassified division administrator position be an attorney.

3. Delete the provision.

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