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Joint Committee on Finance

Paper #265

Restructuring of the Employment Relations Commission (Employment Relations Commission)

[LFB 2013-15 Budget Summary: Page 151, #2]

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 certify bargaining units and bargaining representatives; holding referenda with respect to union, maintenance of membership, and fair-share agreements, where authorized; 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

Delete \$786,600 GPR and \$245,600 PR in 2013-14, \$1,205,500 GPR and \$327,400 PR in 2014-15, and 11.49 GPR and 5.0 PR positions annually to downsize the Wisconsin Employment Relations Commission.

Provide that each of the three WERC Commissioners would be appointed to two-thirds of a full-time equivalent position (currently, the positions are full-time). Provide that WERC Commissioners would be exempt from a requirement that a commissioner in state service may not hold any other office or position of profit or pursue any other business or vocation, but must devote his or her entire time to the duties of his or her office. These provisions would first apply to the WERC Commissioners on the effective date of the bill.

Delete the authority of the Commission Chairperson to appoint an executive assistant to serve at his or her pleasure outside the classified service. Under current law, the executive assistant is required to perform duties as the Chairperson prescribes. Provide that the Commission's division administrator must be appointed by the Commission Chairperson. [Under current law, the appointment authority for the division administrator is not specified.]

Repeal the statutory status of WERC as an independent agency in the executive branch and instead provide that WERC would be administratively attached to the Department of Workforce Development (DWD).

DISCUSSION POINTS

1. The Commission is provided base funding of \$3,198,000 (\$2,574,800 GPR and \$623,200 PR) and 25.5 positions (20.5 GPR and 5.0 PR). The staff includes 21.0 attorney positions, including 17.0 classified attorneys, 1.0 unclassified chief legal counsel, and 3.0 unclassified Commissioners. There are 4.5 support staff authorized: 2.5 legal support staff and 2.0 administrative staff.

2. There are currently 8.5 vacant positions at WERC, including 1.0 Commissioner position, 7.0 attorney positions, and 0.5 legal support staff position. This represents a vacancy rate of 33.3% for the Commission. The Commissioner vacancy is due to the term of one Commissioner ending March 1, 2013.

3. The bill would eliminate 11.49 GPR and 5.0 PR positions annually. The reductions include: (a) -0.99 GPR position by reducing each of the three Commissioners from full-time to two-thirds of a full-time equivalent position; (b) -8.0 GPR and -5.0 PR attorney positions; (c) -1.5 GPR legal support staff positions; and (d) -1.0 GPR administrative position. This represents an overall reduction to WERC staffing of nearly 65%. If these reductions are approved, WERC would retain 9.01 positions, including three 0.67 Commissioners, 5.0 attorney positions, 1.0 legal support staff position, and 1.0 administrative position.

4. The funding reductions under the bill (\$786,600 GPR and \$245,600 PR in 2013-14; and \$1,205,500 GPR and \$327,400 PR in 2014-15) reflect the salaries and fringe benefit costs for the eliminated positions and a recalculation of space costs associated with the relocation of WERC to DWD.

5. The Executive Budget book indicates that the reduction in funding and positions for the Commission is being proposed to reflect decreased workload, and the attachment of the Commission to DWD is being proposed to create additional efficiencies (because DWD can provide

general administrative support to WERC).

6. The workload of the WERC has changed considerably in recent years, particularly as a result of enactment of 2011 Wisconsin Act 10. Under Act 10, collective bargaining was significantly curtailed for most public employees and interest arbitration for general municipal employees was repealed (except for certain municipal transit employees). This has had the effect of reducing the traditional workload of the Commission. In comparing 2010-11 caseload (the fiscal year prior to the effective date of Act 10) and 2012-13 caseload (projected to the end of the current fiscal year) it is clear that significant reductions have taken place in the following areas.

7. Grievance arbitration cases, which relate to disputes of how provisions in collective bargaining agreements are being applied, are projected to decline by approximately 65%. Mediation proceedings are projected to decline by about 30%. Interest arbitration cases relating to the negotiation of collective bargaining agreements for general municipal employees will decline by approximately 98% during this period, reflecting the repeal of interest arbitration in this area. Interest arbitration cases relating to the negotiation of collective bargaining agreements for municipal fire and police employees (who were unaffected by the Act 10 changes) may also decline by about 23% between 2010-11 and 2012-13. Finally, unfair labor practice complaint cases are projected to decline approximately 56% over this period.

8. However, future projections relating to some of caseload areas may represent a reversal of some of these trends. First, it should be noted that 2012-13 overall caseload compared to 2011-12 overall caseload is expected to increase. While Act 10 had a direct effect of decreasing or eliminating certain types of caseload, it likely also had an effect in temporarily interrupting some caseload, or redirecting caseload into other areas.

9. For example, with respect to most state employees, because Act 10 eliminated collective bargaining on all issues except base wages, disciplinary appeals, which had formerly been processed under provisions specified in collective bargaining agreements, will now come before WERC. Such personnel appeals represent a new type of case for the Commission and the number of appeals in 2012-13 is expected to exceed 100 cases (compared to 46 such cases in 2011-12). This caseload is expected to continue to grow.

10. Mediation cases may also trend upwards in the future. While mediation cases in 2012-13 will be lower than in 2010-11 (pre-Act 10), they will increase significantly over 2011-12 levels (from 18 cases in 2011-12 to an estimated 56 cases in 2012-13). According to WERC officials, this increase reflects, in part, an increasing use of mediation services by school districts and teachers. This use of WERC mediation services may relate to the new, limited grounds for collective bargaining (base wages limited to consumer price index inflation) and how employers and labor organizations arrive at agreement or impasse in this area. This increased use of mediation may continue in the future, or it may decrease as the involved parties become more familiar with how to conduct labor relations under these revised legal requirements.

11. Act 10 also requires annual certification of representatives of each collective bargaining unit containing general municipal and state employees (except collective bargaining units containing certain municipal transit employees), as well as most state protective occupation

employees. Such elections were not required prior to Act 10 and are now required to be conducted by WERC. In 2011-12, 381 such elections were conducted. Since then, these elections have been suspended pending the outcome of certain legal proceedings, but WERC officials expect this work will likely resume in the near future. According to WERC officials, this certification work is administrative in nature and has generally been handled by administrative staff with some assistance from the Commission's chief legal counsel.

12. In summary, Act 10 dramatically affected WERC's work. As described above, some caseload work will be permanently reduced or eliminated and other areas of work will likely remain relatively constant or grow as employment dispute resolution activities adjust to the post-Act 10 environment. Over time, as employers, employees, and labor organizations adapt to the new employment relations landscape, caseload levels should settle into more stable patterns.

13. Commission officials concur in the conclusion that the changes in caseload warrant staff reductions. The Commission Chairman has stated: "I am reasonably confident that the three commissioners reduced to two-thirds equivalent and five attorneys can handle the caseload over the next two years." If the level of staffing recommended under the bill should prove to be inadequate in the future, because certain types of caseload continue to trend upward, the Commission may request additional staff in future budget requests.

14. On the other hand, it can be argued that the attorney reductions under the bill are not proportional to the caseload reductions experienced at the Commission to date. The overall decrease in caseload between 2010-11 and 2012-13 is approximately 40%. [Under the bill, the Commissioner positions are reduced by 33%, to two-thirds full-time equivalency.] However, WERC attorney positions were cut more deeply. If vacant attorney positions are excluded from consideration (these vacant positions are eliminated under the bill), there are 11.0 filled attorney positions currently performing caseload work. The bill would eliminate six of the 11.0 filled positions (55%). If the filled positions are reduced by a proportion more consistent with the reduction in caseload, 2.0 attorney positions could be restored. [Alternative 2]

15. *Commissions and Commissioners under Current Law.* An executive branch commission is defined in law as a three-member governing body in charge of a department or independent agency or of a division or other subunit within a department, except that the Wisconsin Waterways Commission consists of five members and the Parole Commission consists of eight members. Generally, commission members are nominated by the Governor and appointed with the advice and consent of the Senate. For the Parole Commission, however, only the Chairperson is nominated by the Governor and appointed with the advice and consent of the Senate; the remaining members are classified employees appointed by the Chairperson. Generally, commissioners serve six-year terms; however, terms for commissioners of the Wisconsin Waterways Commission are five years, and for the commissioner who serves as the chairperson of the Parole Commission, two years. In addition, the state authorizes two commissioners - that is, single individuals - to administer certain functions: (a) the Commissioner of Insurance (who serves at the pleasure of the Governor); and (b) the Commissioner of Railroads (nominated by the Governor and appointed with the advice and consent of the Senate to a six-year term).

16. The Public Service Commission (PSC), the Wisconsin Employment Relations

Commission (WERC), and the Office of the Commissioner of Insurance (OCI) are independent agencies. As independent agencies, PSC, WERC, and OCI develop and submit their own personnel and budget requests directly to the Governor and are identified as separate agencies in the Chapter 20 appropriation schedule.

17. Other commissions are administratively attached to a state agency. Such an attached commission may exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the commission, independently of the head of the department or independent agency to which it is attached. However, with some exceptions, budgeting, program coordination and related management functions must be performed under the direction and supervision of the head of the department or independent agency.

18. Three commissions are attached to an agency in which the agency head performs budgeting, program coordination and related management functions on behalf of the commission: (a) the Parole Commission, attached to the Department of Corrections; (b) the Tax Appeals Commission, attached to the Department of Administration; and (c) the Wisconsin Waterways Commission, attached to the Department of Natural Resources.

19. One Commissioner (of Railroads, attached to the PSC) and one commission (Labor and Industry Review Commission, attached to DWD) are provided budgeting and management independence from the head of the attached independent agency or department.

20. The Governor's provision would attach WERC to DWD, with the requirement that budgeting, program coordination and related management functions must be performed under the direction and supervision of the Secretary of DWD. As noted above, the Labor and Industry Review Commission, also attached to DWD, is provided budgeting and management independence from the Secretary of DWD.

21. Administration officials indicate that the intent of the bill's provision is to maintain the independence of WERC following the restructuring. For example, under the bill, WERC would continue to be identified as a separate agency in the Chapter 20 appropriation schedule. This is not the case for most commissions, including the Labor and Industry Review Commission. However, not providing WERC the budgetary independence that is provided to the Labor and Industry Review Commission would appear to limit WERC's independence.

22. Administration officials indicate that providing this budgetary authority to WERC would be consistent with their intent that the independence of WERC be maintained. The Committee may wish to specify that, as an attached Commission, the budget of WERC must be transmitted by DWD to the Governor without change or modification by the Department, unless agreed to by WERC. [Alternative 3a]

23. Under current law, commissioner positions are generally regarded as full-time offices. The statutes specify that a commissioner may not hold any other office or position of profit, or pursue any other business or vocation, but must devote his or her entire time to the duties of his or her office. However, this requirement does not apply to the Commissioner of Insurance or the

members of the Wisconsin Waterways Commission. In addition, the Commissioner of Insurance may not engage in any other occupation, business, or activity that is in any way inconsistent with the performance of the duties of the Commissioner of Insurance, nor may the Commissioner hold any other public office.

24. Under the bill, the WERC Commissioners would be appointed to two-thirds of a full-time equivalent position (instead of being full-time positions) and the Commissioners would be exempt from the requirement that a commissioner in state service may not hold any other office or position of profit or pursue any other business or vocation, but must devote his or her entire time to the duties of his or her office. While this provision is consistent with the provision for the Commissioner of Insurance, it does not include the conflict of interest provision that applies to outside work by the Commissioner of Insurance.

25. The Committee may wish to specify that WERC Commissioners may not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of WERC Commissioners, nor may a WERC Commissioner hold any other public office. [Alternative 3b]

26. Finally, in the 2013-15 budget errata report, the administration indicates that the 1.0 legal support staff position that remains at WERC after the restructuring initiative should have been converted to a paralegal advanced position. This change would not affect the position authorization of the Commission and would not require any budgetary changes. The Committee could authorize this change. [Alternative 3c]

ALTERNATIVES

1. Approve the Governor's recommendations, as follows:

Delete \$786,600 GPR and \$245,600 PR in 2013-14, \$1,205,500 GPR and \$327,400 PR in 2014-15, and 11.49 GPR and 5.0 PR positions annually to downsize the Wisconsin Employment Relations Commission (WERC).

Provide that each of the three WERC Commissioners would be appointed to two-thirds of a full-time equivalent position. Provide that WERC Commissioners would be exempt from a requirement that a commissioner in state service may not hold any other office or position of profit or pursue any other business or vocation, but must devote his or her entire time to the duties of his or her office. These provisions would first apply to the WERC Commissioners on the effective date of the bill.

Delete the authority of the Commission Chairperson to appoint an executive assistant to serve at his or her pleasure outside the classified service. Under current law, the executive assistant is required to perform duties as the Chairperson prescribes. Provide that the Commission's division administrator must be appointed by the Commission Chairperson.

Repeal the statutory status of WERC as an independent agency in the executive branch and instead provide that WERC would be administratively attached to the Department of

Workforce Development (DWD).

2. Modify the Governor's provision to provide attorney staffing at the WERC in proportion to caseload reductions by providing \$202,100 GPR in 2013-14 and \$222,000 in 2014-15 and 2.0 attorney positions annually to partially restore attorney staff deleted under the bill.

ALT 2	Change to Bill	
	Funding	Positions
GPR	\$424,100	2.00

3. Approve the Governor's recommendations with one or more of the following modifications:

a. Provide that the budget of WERC must be transmitted by DWD to the Governor without change or modification by the Department, unless agreed to by the WERC Commissioners;

b. Provide that WERC Commissioners may not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of WERC Commissioners, nor may a Commissioner hold any other public office.

c. Delete 1.0 GPR legal support staff - confidential position and provide 1.0 GPR paralegal - advanced position to address an intended change that was not made in the bill.

4. Delete provision.

ALT 4	Change to Bill	
	Funding	Positions
GPR	\$1,992,100	11.49
PR	<u>573,000</u>	<u>5.00</u>
Total	\$2,565,100	16.49

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