



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #275

Program Revenue Lapse (Employment Relations Commission)

[LFB 2015-17 Budget Summary: Page 147, #3]

CURRENT LAW

The Wisconsin Employment Relations Commission's (WERC) PR annual fees, collective bargaining training, publications, and appeals appropriation is utilized by WERC to address costs related to the performance of fact-finding, mediation, certification of collective bargaining representation, and arbitration functions, as well as for the costs of operating training programs, conducting appeals, and the preparation of publications, transcripts, reports, and other copied material. Fees assessed by WERC to offset the costs of carrying out its responsibilities, as well as training program and publication sale revenue, are deposited to this appropriation. Any unencumbered balance in the appropriation at the end of the fiscal year remains in the appropriation, is available for future authorized expenditures, and does not lapse to the general fund.

GOVERNOR

Provide that at the end of the fiscal year any unencumbered balance in WERC's annual fees appropriation that exceeds 10% of the expenditures from the appropriation in the fiscal year be lapsed to the general fund. Under the bill, it is estimated that lapses from the appropriation to the general fund would equal \$517,800 in 2015-16, and \$96,700 in 2016-17.

DISCUSSION POINTS

1. Prior to the adoption of 2011 Act 10, state and local employees were granted broad collective bargaining rights, permitting government employees to bargain on questions of wages,

hours, and conditions of employment. The responsibilities of WERC associated with the negotiation, interpretation, and enforcement of these local and state collective bargaining agreements generated work for the Commission, as well as associated fees assessed by WERC on the parties to the disputes. These fees were intended to offset the costs incurred by WERC to provide its services. The Employment Relations Commission assessed fees for mediation and binding arbitration services when labor and management reached an impasse in collective bargaining agreement negotiations. The Commission also assessed fees for grievance arbitration. Grievance arbitration involves disputes pertaining to the meaning or application of the terms of an existing collective bargaining agreement.

2. Act 10 now prohibits any local government employer or the state from bargaining collectively with a collective bargaining unit containing a general employee with respect to any factor or condition of employment except wages. Wages are defined to include only total base wages and exclude any other compensation, including, but not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions. Further, unless approved by referendum, any increase in base wages that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the increase in the consumer price index is prohibited. All other issues that were subject to bargaining prior to enactment of Act 10 are now at the discretion of the employer and may be specified in compensation plans and employee handbooks, rather than in collective bargaining agreements. However, public safety and transit employees are not considered general employees and retain broad rights to collectively bargain under state law.

3. Prior to Act 10, a collective bargaining unit was established by WERC for local employees, or by statute for state employees. The members of a collective bargaining unit were allowed to select a labor organization as its representative when a majority of the employees in that collective bargaining unit who were actually voting elected the labor organization as its representative. The labor organization remained the representative unless a minimum percentage of members of the collective bargaining unit supported a petition for a new election and subsequently voted to decertify the representative. Once established, and absent an affirmative action to change a collective bargaining representative, a labor organization continued to represent the collective bargaining unit over time without limitation. These prior-law provisions are retained under Act 10 for public safety employees and transit workers.

4. Post-Act 10, the WERC is required to conduct an annual election to certify the representative of the collective bargaining unit that contains a local or state general employee. The election is required to occur no later than December 1 for a collective bargaining unit containing school district or state employees and no later than May 1 for a collective bargaining unit containing general local employees who are not school district employees. The Commission is required to certify any representative that receives at least 51% of the votes of all of the general employees in the collective bargaining unit. If no representative receives at least 51% of the eligible votes, at the expiration of the collective bargaining agreement, WERC is required to decertify the current representative and the general employees are nonrepresented. If a representative is decertified, the affected general employees may not be included in a substantially similar collective bargaining unit

for 12 months from the date of decertification.

5. The Employment Relations Commission has been undergoing a transition, both in terms of its work associated with local and state collective bargaining agreements, as well as in regards to the WERC fees associated with this work. Given the more restricted nature of permitted collective bargaining for general employees (increases to base wages only) as well as the potentially long window for the duration of public safety and transit collective bargaining agreements (up to five years), the demand for mediation, binding arbitration, and grievance arbitration services from WERC has declined. However, for local and state collective bargaining units containing a general employee that remain, annual elections must be conducted by WERC to certify the representative of the collective bargaining unit.

6. In recent years fee revenue received by WERC, primarily from its labor relations responsibilities, has varied widely. Table 1 identifies annual fee revenue received by WERC from 2009-10 through 2014-15. The 2014-15 figure represents an estimate of what WERC will receive for the fiscal year. The bulk of the revenue from annual recertification elections for 2014-15 has already been received by WERC, increasing the Commission's confidence in the revenue estimate for the current fiscal year.

TABLE 1

**Annual WERC Fee Revenue
2009-10 Thru 2014-15**

<u>Fiscal Year</u>	<u>Amount</u>
2009-10	\$641,600
2010-11	512,600
2011-12	328,700
2012-13	180,800
2013-14	306,100
2014-15	228,300

7. Table 2 identifies the fund condition for the annual fees, under the budget bill, as introduced. Based on projected revenues of \$250,000 annually during 2014-15, and during the upcoming biennium, the administration estimated lapses of \$517,800 during 2015-16, and \$96,700 during 2016-17 under its proposal to lapse unencumbered balances in this appropriation at the end of every fiscal year that exceeded 10% of the expenditures from the appropriation in the fiscal year to the general fund.

TABLE 2**Fund Condition for the Annual Fees, Collective Bargaining Training, Publications, and Appeals Appropriation under the Budget Bill, as Introduced**

<u>Item</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
Opening Balance	\$302,400	\$436,400	\$15,300
Revenue	250,000	250,000	250,000
Expenditures	<u>116,000</u>	<u>153,300</u>	<u>153,300</u>
Preliminary Closing Balance	\$436,400	\$533,100	\$112,000
10% of Expenditures		\$15,300	\$15,300
Lapse		517,800	96,700
Closing Balance	\$436,400	\$15,300	\$15,300

8. Table 3 identifies the reestimate of the fund condition for the annual fees, based on: (a) updated information as to expenditures in 2014-15; and (b) updated revenue projections for 2014-15 and the upcoming biennium. As a result of this reestimate, the lapse amount under the Governor's recommendation is projected to be \$84,000 lower than originally estimated by the administration. It is now estimated that the lapse from WERC under the Governor's recommendation would total \$458,800 in 2015-16, and \$71,700 in 2016-17.

TABLE 3**Reestimated Fund Condition for the Annual Fees, Collective Bargaining Training, Publications, and Appeals Appropriation under the Governor's Recommendation**

<u>Item</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
Opening Balance	\$302,400	\$402,400	\$15,300
Revenue	228,300	225,000	225,000
Expenditures	<u>128,300</u>	<u>153,300</u>	<u>153,300</u>
Preliminary Closing Balance	\$402,400	\$474,100	\$87,000
10% of Expenditures		\$15,300	\$15,300
Lapse		458,800	71,700
Closing Balance	\$402,400	\$15,300	\$15,300

9. The administration indicates that the recommendation to lapse unencumbered balances from this appropriation to the general fund was proposed in order to address temporarily high revenue balances in the appropriation that it does not anticipate will continue. As WERC is estimated to have sufficient funding under this recommendation to carry out its responsibilities

during the 2015-17 biennium, the Committee could consider approving the recommendation. [Alternative 1]

10. The appropriation is estimated to end 2016-17 with a positive revenue balance of \$15,300. In addition, the following should be noted: (a) annual revenue receipts to the appropriation appear to be moderating; (b) the administration believes that the high revenue balances in the appropriation are temporary in nature; and (c) any revenue balances in the future could only be utilized by WERC to address its program costs if authorized by the Legislature (as the appropriation is an annual appropriation). As a result, the Committee could consider modifying the recommendation to provide that the lapse requirement would apply for the 2015-17 biennium only. Under this alternative, the lapse provision would sunset June 30, 2017. [Alternative 2]

11. As WERC revenues to its PR appropriation have fluctuated substantially since the passage of 2011 Act 10, the Committee could consider deleting the provision. [Alternative 3] Under this alternative, unencumbered PR balances would remain with WERC and would be available to address expenditures incurred by WERC in future fiscal years. Deleting the provision would reduce GPR-REV under the bill by \$517,800 in 2015-16, and \$96,700 in 2016-17.

ALTERNATIVES

1. Approve the Governor's recommendation to provide that at the end of the fiscal year any unencumbered balance in the Wisconsin Employment Relations Commission's (WERC) annual fees, collective bargaining training, publications, and appeals appropriation that exceeds 10% of the expenditures from the appropriation in the fiscal year be lapsed to the general fund. Based on a reestimate of expenditures from and revenue to the appropriation, decrease estimated GPR-REV by \$59,000 in 2015-16, and by \$25,000 in 2016-17.

ALT 1	Change to Bill
GPR-REV	- \$84,000

2. Modify the Governor's recommendation by providing that the lapse requirement apply for the 2015-17 biennium only and sunset effective, June 30, 2017.

3. Delete provision. [Under this alternative, lapses of \$517,800 in 2015-16, and \$96,700 in 2016-17 would not occur from WERC's appropriation to the general fund.]

ALT 3	Change to Bill
GPR-REV	- \$614,500

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