



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #430

### **Judicial Compensation Commission and the Joint Committee on Employment Relations (Legislature and Supreme Court)**

[LFB 2015-17 Budget Summary: Page 284, #8, and Page 427, #6]

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#### **CURRENT LAW**

The Director of the Office of State Employment Relations (OSER) is required to submit any changes to the state employee compensation plans involving classified and certain unclassified employees, including executive salary group (ESG) employees and state elected officials, to the Joint Committee on Employment Relations (JCOER). The state employee compensation plans address a wide array of compensation and conditions of employment-related issues. The state employee compensation plans are typically approved on a biennial basis. In odd-numbered budget years, compensation adjustments included in approved state employee compensation plans may not be paid out prior to enactment of the biennial budget bill.

Under Article IV Section 26 of the Wisconsin Constitution, the salary of state elected officials may generally not be increased or decreased during their term of office. However, the salaries of all justices and judges are adjusted to the amounts provided in the state employee compensation plan whenever any justice or judge takes office after adoption of the state employee compensation plan.

The salary of the Chief Justice of the Supreme Court is statutorily required to be established at a different level than the associate justices of the Supreme Court.

#### **GOVERNOR**

Create a Judicial Compensation Commission consisting of members appointed by the Supreme Court. [The bill does not specify the membership number or composition of the Commission.] Provide that members of the Commission must be reimbursed for expenses

necessarily incurred as members of the Commission. Under the bill, the Director of State Courts would provide staffing and support services to the new Commission.

Require the Judicial Compensation Commission to biennially review the salaries of Supreme Court justices, Court of Appeals judges, and Circuit Court judges, and submit a written report on their recommendations for changes to these salaries to the Governor and JCOER no later than December 1<sup>st</sup> of each even-numbered year. Specify that judicial salaries established in the biennial compensation plan approved by JCOER be based on recommendations included in the Commission's report.

Repeal the provision specifying that the salary of the Chief Justice be different than the salaries established for the associate justices of the Supreme Court.

## **DISCUSSION POINTS**

1. In its 2011-13 budget submission to the Governor, the Supreme Court requested the creation of a Judicial Compensation Commission to study and make recommendations on judicial compensation. Under the proposal, the Commission would have reviewed judicial salaries every two years and made written recommendations to the Governor and JCOER no later than December 1<sup>st</sup> of each even-numbered year. The Governor would have been required to include in the budget for the upcoming biennium sufficient funding to implement the recommendations. The Joint Committee on Employment Relations would have been required to approve the written recommendations, unless, by majority vote, the Committee agreed to not approve or make modifications to the Commission's recommendations, stating the need for any changes. Under the proposal, when state employees received a general wage adjustment, judges and justices would have received either the general wage adjustment awarded to all employees or the salary increase recommended by the Commission, whichever was larger. The Commission would have consisted of seven appointed members to serve four-year terms, as follows: (a) two by the Governor; (b) one by the President of the Senate; (c) one by the Speaker of the Assembly; (d) one by each Dean of the law schools at the University of Wisconsin and Marquette University; and (e) one by the President of the State Bar of Wisconsin. The members of the Commission would have elected a member to serve as Chair. Further, members of the Commission would have served without compensation but would have been eligible for reimbursement for reasonable expenses incurred in carrying out their responsibilities. The Director of State Courts would have been directed to provide staffing and support to the Commission.

2. Under 2011 Assembly Bill 40 (the 2011-13 biennial budget bill), as introduced, the Governor did not include or recommend adoption of a provision related to the creation of a Judicial Compensation Commission. Subsequently, the Legislature adopted a provision to create a Judicial Compensation Commission but made the following modifications from the original proposal submitted by the Supreme Court: (a) the Commission was created on a one-time basis to provide recommendations for the 2013-15 biennium (the provision related to the Commission and its work would have sunset on December 2, 2012); and (b) if the salary adjustment approved by JCOER, based on the Commission's recommendations, was less than the percentage increase of any across-the-board pay adjustments for any other position in the classified service, the annual salary

adjustment for any Supreme Court justice or judge of the Court of Appeals or Circuit Court would have been increased to equal the percentage increase of the highest across-the-board pay adjustment provided for any position in the classified service.

3. The Governor vetoed the creation of a Judicial Compensation Commission in signing the 2011-13 biennial budget act (2011 Act 32). The Governor indicated that, "I am vetoing this section because I object to the requirement to provide a certain amount of funding for judicial salaries in the 2013-15 biennium. I also object to required salary increases for justices and judges when state employees are facing salary reductions due to increased contributions for health insurance and pension. Judicial salaries are included in the compensation plan, similar to all other elected officials, and will be adjusted as necessary under that system."

4. In its 2015-17 budget submission to the Governor, the Supreme Court again requested the creation of a Judicial Compensation Commission to study and make recommendations on judicial compensation that substantially conformed to the Supreme Court's 2011-13 request. However, the 2015-17 request did not require the Governor to include in the budget for the upcoming biennium sufficient funding to implement the recommendations. Instead, the request would have required that judicial salaries in the 2015-17 state compensation plan be set at a level comparable to the average judicial salaries among Wisconsin's surrounding Midwest states (Illinois, Iowa, Michigan, and Minnesota) as of January, 2014. Table 1 compares the current salaries of Wisconsin Supreme Court justices, Appellate Court and Circuit Court judges with the average salaries of Supreme Court, Appellate Court and trial Court judges in these four Midwestern states. As Wisconsin has seven Supreme Court justices, 16 Court of Appeals judges, and 249 Circuit Court judges, it would require \$6.7 million in additional funding annually to increase Wisconsin judicial salaries to the average judicial salaries in the four bordering Midwestern states as of January, 2014.

**TABLE 1**

**Comparison of Current Wisconsin Judicial Salaries with the Average Judicial Salaries in Illinois, Iowa, Michigan, and Minnesota as of January, 2014**

<u>Court</u>	<u>Wisconsin</u>	<u>Surrounding Midwestern States</u>
Supreme Court	\$147,403	\$175,132
Appellate Court	139,059	162,511
Trial Court	131,187	151,968

5. Table 2 provides the salaries of Supreme Court, Appellate Court and Trial Court judges in the four bordering Midwestern states updated as of July, 2014, as well as the current salaries for Wisconsin's judiciary. As can be seen in Table 2, judicial salaries in Illinois are meaningfully higher than the judicial salaries in the remaining Midwestern states. If Wisconsin judicial salaries were raised to the average of the judicial salaries in Iowa, Michigan and Minnesota as of July, 2014 (not including Illinois in the average), it would require \$3.1 million in additional annual funding.

**TABLE 2**

**Comparison of Judicial Salaries in Illinois, Iowa, Michigan, Minnesota, and Wisconsin**

<u>State</u>	<u>Court Circuit</u>	<u>Appellate</u>	<u>Supreme</u>
Illinois	\$187,018	\$203,806	\$216,542
Iowa	143,897	154,556	170,544
Michigan	139,919	151,441	164,610
Minnesota	138,318	147,346	156,375
Wisconsin	131,187	139,059	147,403

6. In the 2015-17 biennial budget bill, the Governor recommends creating a Judicial Compensation Commission to study and make recommendations on judicial compensation. The Governor modified the Supreme Court's 2015-17 request as follows: (a) eliminated the requirement that judicial salaries in the 2015-17 state compensation plan be set at a level comparable to the average judicial salaries among the four bordering Midwestern states as of January, 2014; (b) provided that judicial salaries established in the biennial compensation plan approved by JCOER be based on recommendations included in the Commission's report (instead of providing that judicial salaries be increased based on the general wage increases awarded to all state employees or salary increases recommended by the Commission and approved by JCOER, whichever would be greater); (c) modified the membership of the Commission to provide that the Commission would consist of members appointed by the Supreme Court (the bill does not specify the membership number or the composition of the Commission); and (d) repealed the current law provision specifying that the salary of the Chief Justice shall be different than the salaries established for the associate justices of the Supreme Court.

7. In testimony before the Joint Committee on Finance on March 2, 2015, the Chief Justice of the Supreme Court indicated that, "The bill includes a Judicial Compensation Commission that the court requested. It will study judicial compensation and make recommendations to the Joint Committee on Employment Relations. Judicial salaries are lagging behind. The Governor's office has advised us that there likely will be no funding available for pay increases to state officers or employees in this coming biennium. Although the Commission and State will not, under these circumstances, immediately address our concern in attracting well-qualified lawyers to the bench and retaining them, the creation of a Commission is an important step to address erosion of judicial compensation."

8. The state compensation plan sets the salaries of elected state officials, including state justices and judges, as well as state executives and general state employees. Table 3 identifies the salaries of statewide constitutional officers and legislators effective as of January, 2015. Table 4 identifies the salaries of elected district attorneys for those who took office effective January 7, 2013. Table 5 identifies the current salary ranges for the state's top executives in Executive Salary Groups 1 thru 10. Table 6 identifies the current annual salaries of Wisconsin's Supreme Court justices, including the statutorily required compensation add-on for the Chief Justice, as well as the annual salaries for Wisconsin's Court of Appeals and Circuit Court judges.

**TABLE 3****Annual Salaries of Statewide Constitutional Officers and Legislators  
Effective January, 2015**

<u>Office</u>	<u>Annual Salary</u>
Governor	\$147,328
Attorney General	142,966
State Superintendent of Public Instruction	120,111
Lieutenant Governor	77,795
Secretary of State	69,936
State Treasurer	69,936
Legislator	50,950

**TABLE 4****Annual Salaries of Elected District Attorneys for  
Those Taking Office January, 2013**

<u>Prosecutorial Unit Size</u>	<u>Annual Salary</u>
More than 500,000	\$134,200
More than 250,000 but not more than 500,000	121,405
More than 100,000 but not more than 250,000	115,296
More than 75,000 but not more than 100,000	115,296
More than 50,000 but not more than 75,000	109,781
More than 35,000 but not more than 50,000	109,781
More than 20,000 but not more than 35,000	98,147
Not more than 20,000	98,147

**TABLE 5****Current Salary Ranges for State Executives in  
Executive Salary Groups (ESG) 1 Thru 10**

<u>ESG Range</u>	<u>Annual Salary</u>	
	<u>Minimum</u>	<u>Maximum</u>
1	\$60,602	\$93,935
2	65,450	101,450
3	70,687	109,566
4	76,344	118,333
5	82,453	127,802
6	89,051	138,029
7	96,175	149,073
8	103,870	160,999
9	112,180	173,880
10	121,156	187,793

**TABLE 6**

**Current Annual Salaries for Wisconsin's Supreme Court Justices  
and Court of Appeals and Circuit Court Judges**

<u>Office</u>	<u>Annual Salary</u>
Supreme Court Chief Justice	\$155,403
Supreme Court Justice	147,403
Court of Appeals Judge	139,059
Circuit Court Judge	131,187

9. Another way to view Wisconsin judicial salaries is in comparison to the salaries of other top elected and executive state officials. All Supreme Court justices receive more in annual compensation than any other elected state official or district attorney, including the Governor (\$147,328). Court of Appeals judges receive more in annual compensation than all state elected officials and district attorneys except for the Governor and the Attorney General (\$142,966). Circuit Court judges receive more in annual compensation than all state elected officials and district attorneys except for the Governor, Attorney General, and District Attorney for Milwaukee County (\$134,200). Table 5 identifies the salary ranges for the state's top executives. The lowest salary range in which the current annual salary for a Circuit Court judge appears is ESG 6 (\$89,051 annual minimum salary to \$138,029 annual maximum salary). Some of the current state executives assigned to ESG 6 include the Director of the Office of State Employment Relations and the Secretaries of the Departments of Agriculture, Trade and Consumer Protection, Children and Families, and Financial Institutions. The lowest salary range in which the current salaries for Court of Appeals judges and Supreme Court associate justices appear is ESG 7 (\$96,175 annual minimum salary to \$149,073 annual maximum salary). Some of the current state executives assigned to ESG 7 include the Secretaries of the Departments of Natural Resources, Revenue, Transportation, and Workforce Development. The lowest salary range in which the current salary for the Supreme Court Chief Justice appears is ESG 8 (\$103,870 annual minimum salary to \$160,999 annual maximum salary). The highest placed secretaries are assigned to ESG 8 and include the Secretaries of Administration, Corrections and Health Services. The current salaries of Supreme Court justices and Court of Appeals and Circuit Court judges are all within the current highest ESG 10 salary range (\$121,156 minimum annual salary to \$187,793 maximum annual salary).

10. It is also argued that creation of a Judicial Compensation Commission is appropriate in order to address judicial turnover and retention. Table 7 utilizes data provided by the Director of State Courts Office and identifies the turnover in the Wisconsin Court System for justices and judges over the last five complete calendar years.

**TABLE 7****Supreme Court Justice and Court of Appeals and Circuit Court Judge Turnover  
Calendar Years 2010 Thru 2014**

<u>Court</u>	<u>Event/Item</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Supreme Court	Retirement	0	0	0	0	0
	Resignation	0	0	0	0	0
	Death	0	0	0	0	0
	Lost Election	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	Subtotal	0	0	0	0	0
	# of Justices	7	7	7	7	7
	Turnover %	0.00%	0.00%	0.00%	0.00%	0.00%
Court of Appeals	Retirement	3	2	2	0	1
	Resignation	0	0	0	0	0
	Death	0	0	0	0	1
	Lost Election	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	Subtotal	3	2	2	0	2
	# of Judges	16	16	16	16	16
	Turnover %	18.75%	12.50%	12.50%	0.00%	12.50%
Circuit Court	Retirement	14	17	12	12	9
	Resignation	0	0	1	1	0
	Death	0	1	0	0	0
	Lost Election	<u>1</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>1</u>
	Subtotal	15	19	15	14	10
	# of Judges	249	249	249	249	249
	Turnover %	6.02%	7.63%	6.02%	5.62%	4.02%
Wisconsin Court System	Total	18	21	17	14	12
	# of Justices/Judges	272	272	272	272	272
	Turnover %	6.62%	7.72%	6.25%	5.15%	4.41%

11. As a group, the annual turnover for Wisconsin's justices and judges has ranged from a high of 7.72% in calendar year 2011, to a low of 4.41% in calendar year 2014. Since calendar year 2011, the annual rate of turnover has been decreasing each year. Over the last five calendar years there have only been two resignations from the Wisconsin judiciary, one in 2012 and one in 2013. As Table 7 shows almost all of the turnover has been associated with retirement.

12. By comparison, the turnover in the state's permanent classified employees (excluding the University of Wisconsin System) in 2012-13 totaled 9.0% (2.9% associated with retirement and 6.1% non-retirement separations) and in 2013-14 totaled 9.9% (3.1% associated with retirement and 6.8% non-retirement separations).

13. In raising concerns about the current level of Wisconsin judicial salaries, the Supreme Court in its 2015-17 budget request noted that, "As of January 2014, the National Center for State

Courts (NCSC) ranked Wisconsin's trial court judicial salaries 37<sup>th</sup> among the 50 states. The Court of Appeals salaries were 29<sup>th</sup> of the 39 state appellate courts throughout the nation and the Supreme Court salaries were 34<sup>th</sup> of 50 courts. It is easy to show how Wisconsin's judicial salaries have lost ground using these annual national rankings by taking a look back 13 years. The October 2001 NCSC survey showed the Wisconsin's circuit court judges' salaries ranked 24<sup>th</sup> nationwide while the Court of Appeals salaries ranked 22<sup>nd</sup>, and Supreme Court salaries ranked 23<sup>rd</sup>."

14. The Supreme Court also noted that both the American Judicature Society and the American Bar Association (two national legal organizations) have recommended the creation of the type of Commission that would be created under the budget bill to set judicial salaries. The Supreme Court indicated that the purpose of this Commission would be to "assure that highly qualified persons are attracted to the bench and can serve without unreasonable economic hardship."

15. Supreme Court staff further indicated that, "There is a real concern that Wisconsin's judicial salaries will continue to erode. At some point, inadequate salaries will outweigh the intangible rewards of a judge's job, discouraging talented lawyers from seeking or accepting judgeships. To continue to attract high quality people, substantial increases to the judicial rate of office are needed. Without meaningful increases there is concern that only independently wealthy or relatively inexperienced attorneys will choose judicial service. For Wisconsin's adversarial justice system to work, decision-makers must be competent and compensated in some way comparable to the advocates who appear before them."

16. In order to address the Supreme Court's concerns, the Committee could consider approving the Governor's recommendation. [Alternative 1] Under this alternative a Judicial Compensation Commission would be created consisting of members appointed by the Supreme Court. The Commission would submit its first biennial report on their recommendations for changes to judicial salaries to the Governor and JCOER no later than December 1, 2016. While no funding is provided under the bill for increased judicial salaries or for general wage adjustments for state employees in 2015-17, the Commission's recommendations to JCOER could serve as the basis for increased judicial compensation in the 2017-19 biennium.

17. Under current law, the Office of State Employment Relations (OSER) is responsible for making recommendations to JCOER, typically every biennium, as to changes in compensation for state elected officials, state executives, and employees throughout state government in the state compensation plans. Under the bill, however, rather than having the Commission submit its recommendations to OSER and having OSER consider the recommendations as a part of its broad responsibilities to recommend changes to compensation for employees statewide, the Commission would submit its recommendations directly to the Governor and to JCOER. Concerns could be raised that this process could: (a) unfairly weight judicial salary compensation concerns verses other state elected officials, executives, and state employees, by providing that the Commission's recommendations be submitted directly to JCOER, while not giving equal attention to the compensation concerns for the many other employee classes in state government; and (b) preclude or make it more difficult for OSER to weigh for JCOER in any draft state compensation plan the compensation concerns of justices and judges against the compensation concerns associated with other state elected officials, executives, and state employees, as judicial salaries would be treated

separately instead of being incorporated by OSER when developing a draft biennial compensation plan. In response the Committee could consider providing that instead of submitting the required written report to the Governor and to JCOER, the required written report would instead be submitted to OSER or a new Division of Personnel Management under the Department of Administration (to which OSER is recommended to be transferred under the bill). [Alternative 2] On the other hand as a Commission providing recommendations for judicial salaries on behalf of the Court system, it could be argued that these recommendations would be more appropriately submitted to the Governor and the Legislature as co-equal branches of government, verses to the state agency responsible for employment relations.

18. While the Supreme Court recommended that the President of the Senate and the Speaker of the Assembly each be permitted to appoint one member to a seven-member Judicial Compensation Commission, the Governor deleted this requirement. Instead, the Governor provided that the members of the Judicial Compensation Commission be appointed exclusively by the Supreme Court. In order to provide for gubernatorial and legislative involvement in the process of reviewing judicial compensation by the proposed Commission, the Committee could provide that in lieu of being made up of members appointed by the Supreme Court, the Judicial Compensation Commission be made up of the following seven appointed members to serve four-year terms as originally proposed by the Supreme Court in its 2015-17 budget request: (a) two members appointed by the Governor; (b) one member appointed by the President of the Senate; (c) one member appointed by the Speaker of the Assembly; (d) one member appointed by each Dean of the law schools at the University of Wisconsin and Marquette University; and (e) one member appointed by the President of the State Bar of Wisconsin. The members of the Commission would elect a member to serve as Chair. [Alternative 3]

19. On April 14, 2015, the administration submitted a technical errata requesting that the effective date of the recommended Judicial Compensation Commission be delayed to July 1, 2016. [Alternative 4] The intent of the errata is to ensure that a process would continue to exist to provide judicial salary increases not only in 2016-17, but also in 2015-16. Under the errata, the intent would be that judicial salary increases for 2015-16 would continue to be recommended by OSER, but for 2016-17 this responsibility would shift to the Commission.

20. However, JCOER typically reviews and approves compensation adjustments in the state compensation plans on a biennial, as opposed to an annual, basis. As a result, if the Committee elects to approve the creation of a Judicial Compensation Commission, the Committee could provide that for the 2015-17 biennium any salary adjustments for state judges and justices would continue to be recommended by OSER and approved by JCOER, as under current law. [Alternative 5] As under the bill, the Judicial Compensation Commission could take effect with the enactment of the biennial budget bill, and would have until December 1, 2016, to develop salary recommendations for the 2017-19 biennium.

21. It could be argued that under the bill some ambiguity exists as to whether judicial salary changes would need to continue to be included in the biennial compensation plan developed by OSER. In order to clarify the relevant bill language, if the Committee elects to approve the creation of the Judicial Compensation Commission, but elects not to require that the Commission

submit its report to OSER or a new Division of Personnel Management under DOA, the Committee could explicitly provide that judicial salaries would not be included in the biennial compensation plan, but rather would be separately addressed by JCOER based on recommendations submitted to the Committee by the Commission. [Alternative 6]

22. Under the budget bill, current law would be deleted which provides that the salary of the Chief Justice be different than the salaries established for the associate justices of the Supreme Court. Under the 2013-15 compensation plan, the Chief Justice receives an additional \$8,000 annually. The administration indicates that the change was recommended to not limit the salary recommendations that could come from any approved Judicial Compensation Commission. As a result, the Committee could decide to adopt this change. On the other hand, as the Chief Justice of the Supreme Court is the administrative head of the Court system and assumes additional administrative responsibilities that associate justices are not responsible for, the Committee could maintain current law. [Alternative 7] Based on information from the National Center for State Courts (NCSC), Minnesota and Iowa both provide higher pay for the Chief Justice of the Supreme Court, while in Illinois and Michigan the Chief Justice of the Supreme Court receives the same salary as Associate Justices of the Supreme Court. According to NCSC, Minnesota provides an additional \$16,000 annually to its Chief Justice, while Iowa provides an additional \$8,000 annually.

23. Finally, it could be argued that: (a) Wisconsin judicial salaries are comparable to or competitive with salaries provided to other state elected officials and state executives; (b) annual Wisconsin judicial turnover, in particular resignations, does not appear to indicate retention problems that might call for increased compensation; (c) as in 2011-13, that the state should not be laying the groundwork for judicial compensation increases at a time that general state employees will be receiving no general wage adjustment increases; and (d) Wisconsin judicial compensation should be addressed in the same way that compensation issues are addressed for all other state elected officials, executives, and general employees, biennially through the submission of an updated compensation plan by OSER to JCOER. As a result, the Committee could elect to delete the provision. [Alternative 8]

## **ALTERNATIVES**

1. Approve the Governor's recommendation to create a Judicial Compensation Commission consisting of members appointed by the Supreme Court. Require the Judicial Compensation Commission to biennially review the salaries of Supreme Court justices, Court of Appeals judges, and circuit court judges, and submit a written report on their recommendations for changes to these salaries to the Governor and the Joint Committee on Employment Relations (JCOER) no later than December 1<sup>st</sup> of each even-numbered year. Specify that judicial salaries established in the biennial compensation plan approved by JCOER be based on recommendations included in the Commission's report. Repeal the current law provision specifying that the salary of the Chief Justice shall be different than the salaries established for the associate justices of the Supreme Court.

2. Modify the Governor's recommendation to specify that instead of submitting the required written report to the Governor and JCOER, the required written report would instead be

submitted to the Office of State Employment Relations or the new Division of Personnel Management under the Department of Administration.

3. Modify the Governor's recommendation by providing that in lieu of being made up of members appointed by the Supreme Court, the Judicial Compensation Commission be made up of seven appointed members to serve four-year terms, as follows: (a) two appointed by the Governor; (b) one appointed by the President of the Senate; (c) one appointed by the Speaker of the Assembly; (d) one appointed by each Dean of the law schools at the University of Wisconsin and Marquette University; and (e) one appointed by the President of the State Bar of Wisconsin. Provide that the Chair of the Commission be elected by the members of the Commission.

4. Modify the Governor's recommendation by delaying the effective date of the Judicial Compensation Commission to July 1, 2016.

5. Modify the Governor's recommendation by providing that for the 2015-17 biennium any salary adjustments for state judges and justices would continue to be recommended by the Office of State Employment Relations and approved by JCOER.

6. Modify the Governor's recommendation by specifying that judicial salaries not be included in the biennial compensation plan developed by OSER or the new Division of Personnel Management under the Department of Administration. *This alternative may not be adopted with Alternative 2.*

7. Maintain current law specifying that the salary of the Chief Justice be different than the salaries established for the associate justices of the Supreme Court.

8. Delete provision.

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