Agriculture, Trade and Consumer Protection

Departmentwide

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May 18, 2023 Joint Committee on Finance Paper #170

Bureau of Laboratory Services (Agriculture, Trade and Consumer Protection -- Departmentwide and Regulatory Programs)

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CURRENT LAW

The Department of Agriculture, Trade and Consumer Protection (DATCP) Bureau of Laboratory Services (BLS) is responsible for analyzing samples gathered during inspections and regulatory actions under DATCP's food safety, agrichemical management, and plant industry programs. BLS tests samples of dairy, meat, animal feed, fertilizer, pesticides, and groundwater to identify contamination, measure compliance with state standards, and ensure health and safety for Wisconsin consumers. The Bureau charges Department programs for its services, with the charges reflected as expenditures to those programs and as program revenues (PR) to the laboratory's biennial operations appropriation. BLS staffing currently totals 31.4 positions, consisting of: (a) 14.2 chemists; (b) 7.0 microbiologists; (c) 5.2 laboratory technicians; and (d) 5.0 supervisory and policy staff, including the Bureau's director. Of the total positions, 28.4 are funded by PR and 3.0 are supported by federal (FED) funding.

2021 Wisconsin Act 58, the biennial budget act, provided an additional 1.0 PR position and $90,200 PR, $33,800 SEG, $7,500 GPR, and $7,500 FED in 2021-22, and $113,300 PR, $42,600 SEG, $9,400 GPR, and $9,400 FED in 2022-23 for BLS operations.

DISCUSSION POINTS

1. Assembly Bill 43/Senate Bill 70 would provide $375,000 GPR and $74,200 PR in 2023-24 and $321,000 GPR and $93,200 PR in 2024-25 with 1.0 PR position to support additional staff and equipment acquisition for BLS. Funding of $74,200 PR in 2023-24 and $93,200 PR in 2024-25

would be directly associated with the 1.0 PR position. Additionally, the bill would provide $100,000 PR each year to support additional general costs of laboratory operations, with $52,000 from the segregated (SEG) agrichemical management (ACM) fund and $48,000 PR from food, lodging and recreation establishment regulation fees provided to pay BLS-assessed charges. Additional base funding of $300,000 GPR each year would be used to support replacement of instruments and equipment. The Department intends to use $54,000 GPR in one-time funding in 2023-24 to purchase wireless temperature monitoring equipment, and $21,000 GPR each year for maintenance of the wireless system.

2. In 2013, the Building Commission approved $2,065,000 in general-fund supported bonding for BLS laboratory equipment purchases. DATCP reports that BLS currently uses and maintains over $6 million worth of instrumentation and equipment inventory, and that instruments generally have a life expectancy of approximately 10 years. BLS replaced much of its instrumentation in 2014 when DATCP relocated the laboratory. Given the large amount of equipment purchased at that time, DATCP and BLS are anticipating the need for ongoing equipment replacement over the next four years as equipment loses optimal functionality and warranties expire. BLS has identified 12 pieces of equipment with estimated costs ranging from $20,000 to $300,000 that would be replaced over the next two biennia. The estimated total cost of the equipment is $1.9 million. DATCP reports that in addition to replacement costs, the costs to maintain equipment have also been increasing, placing further strain on the lab.

3. DATCP reports that demand for testing through BLS has been increasing steadily in recent years. In the three-year period from 2013 to 2015, the average test volume was 22,625 tests per year. In the three-year period including 2019, 2021, and 2022, the average test volume was 26,977 per year. (2020 has been excluded due to the impact of COVID-19 on test collection. These statistics also exclude hemp-related testing, as the state hemp program ended in January, 2022.) The average test volume has increased approximately 19% between the two periods, and DATCP reports that there is no indication that demand will ease in the future.

4. While testing demand is increasing, DATCP says that BLS's testing scope has also been expanding in recent years, as a result of more rigorous testing protocols needed to detect more compounds and organisms for proper enforcement. DATCP is also required to comply with federal Environmental Protection Agency and Food and Drug Administration (FDA) laboratory testing standards, which are subject to change. DATCP contends that older equipment is not always fit to keep up with more sophisticated testing requirements imposed by other state and federal agencies.

5. DATCP plans to allocate $54,000 GPR in one-time funding in 2023-24 to purchase wireless temperature monitoring equipment and $21,000 GPR annually to maintain the wireless system. Currently, BLS uses liquid-in-glass thermometers to monitor temperatures of samples, chemicals, and supplies to ensure items are being stored and analyzed at required temperatures. BLS has 100 thermometers that are read manually twice a day, taking approximately 75 minutes of staff time daily. DATCP would use one-time funding to purchase a wireless, automatic temperature monitoring system that would measure temperatures on a continual basis, allow temperatures to be read at any frequency, and document a temperature, date, and time for every reading. DATCP contends that purchasing this equipment will: (a) reduce staff time spent on manual reading by up to

400 hours annually; (b) help the lab to identify failing equipment; (c) ensure sample storage at proper temperatures; and (d) eliminate transcription errors and manual misreads of thermometers.

6. Given the increase in sampling in recent years and changing expectations for enforcement, the Committee could consider providing DATCP $375,000 GPR in 2023-24 and $321,000 GPR in 2024-25 to support equipment acquisition for the Bureau of Laboratory Services [Alternative A1]. The provision of GPR to support laboratory equipment purchases could be considered to be consistent with GPR-supported purchases of such equipment in 2013-14.

7. It could be considered appropriate to provide additional funding for BLS on a short-term basis, rather than as base funding, given DATCP's indication that most equipment will need to be replaced in the next four years. DATCP reports that it is possible that new equipment purchases would decline after most equipment purchased around 2013-14 is replaced. The Committee could consider providing $375,000 GPR in 2023-24 and $321,000 GPR in 2024-25 in one-time funding for equipment replacement. DATCP could pursue additional funding during the 2025-27 budget process if the lab demonstrates continued need [Alternative A2].

8. The Committee additionally could consider providing GPR in a continuing appropriation for BLS equipment acquisition. DATCP's total estimated cost of equipment needed by the lab in the next four years is $1.9 million. Given the large available balance of the state's general fund, laboratory equipment purchases could be considered a viable use for GPR on a short-term basis. The Committee could consider allocating $1.9 million GPR in a continuing appropriation in 2023-24 for BLS equipment purchases, which would allow DATCP to replace equipment for the lab as needed [Alternative A3]. Funding appropriated would remain available for laboratory equipment purchases until it is exhausted or redirected by legislative action.

9. Alternatively, the Committee could consider providing additional PR to cover equipment acquisition, rather than providing GPR. BLS is funded from chargebacks on agency programs and additional funding would need to be authorized in the respective programs that utilize BLS services. Additional funding in programs outside of BLS could consist of: (a) $312,000 ACM SEG in 2023-24; and (b) $288,000 PR in 2023-24 from food, lodging, and recreational facilities fees. Funding would support $600,000 PR in 2023-24 for equipment acquisition; BLS would have the entire amount available during the biennium in its biennial appropriation for equipment purchases, and additional funding could be reauthorized in future biennia. Additionally, the Committee could provide $10,500 from each source in each year of the biennium and $27,000 from each source in 2023-24 only in PR funding for temperature monitoring equipment, with $75,000 PR in 2023-24 and $21,000 PR in 2024-25 provided for BLS acquisition and maintenance of the equipment. The SEG and PR sources have sufficient annual revenue and available balances to support additional expenditures for BLS charges [Alternative A4].

10. Under the bill, funding of $100,000 PR each year is intended for ongoing general laboratory operations costs. Additional funding in programs outside of BLS would consist of: (a) $52,000 ACM SEG each year; and (b) $48,000 PR each year from regulation of food, lodging, and recreational facilities. The SEG and PR sources have sufficient annual revenue and available balances to support additional expenditures for BLS charges. The Committee could choose to provide $52,000 SEG and a total of $148,000 PR annually for general laboratory operations [Alternative B1].

11. BLS reports that due to several years of increasing testing volume, the laboratory has backlogs of tests as long as two years in some units. While certain sample collection waned in fiscal years 2020 and 2021 due to COVID restrictions, test volumes have returned to previous levels and are anticipated to continue increasing over the next four years. BLS has identified the need for an additional 1.0 permanent chemist position in the laboratory to: (a) help keep up with increasing testing volume; (b) coordinate research and development projects on new methods for testing as pesticides and other chemicals are added to the list of items the lab must detect; and (c) improve accreditations of results.

12. Under current law, agencies may hire limited-term employees (LTEs) to supplement permanent staff. LTEs typically provide staff capacity for short-term projects or seasonal surges in staffing needs. However, LTEs are limited to 1,039 hours of work per year, and are offered limited fringe benefits, making it difficult to recruit and retain LTE laboratory staff. BLS has attempted to recruit LTE staff to meet growing lab needs with limited success. Due to the highly technical nature of laboratory testing practices, training of LTE staff also may be prohibitively time- and cost-intensive. BLS reports LTEs may require three to five months of training before being sufficiently qualified, and once trained may still require more supervision than permanent staff. Thus, DATCP contends that the technical and training requirements associated with laboratory staff have made it infeasible to rely on LTE staff to meet growing BLS staffing needs.

13. DATCP indicates that additional staffing is essential to accommodate increased testing volumes and to meet evolving international laboratory standards and federal FDA requirements. As testing standards evolve, BLS must allocate staff time to research and development efforts. Ensuring testing meets international standards and FDA requirements improves confidence of regulated industries in BLS test results, and limits resulting disputes and open records requests related to contested test results. The Committee could consider providing $74,200 PR in 2023-24 and $93,200 PR in 2024-25 to provide 1.0 additional position for BLS operations [Alternative C1].

ALTERNATIVES

A. Equipment Acquisition

1. Provide $375,000 GPR in 2023-24 and $321,000 GPR 2024-25 to support equipment acquisition within DATCP's Bureau of Laboratory Services.

ALT A1	Change to Base
GPR	$696,000

2. Provide $375,000 GPR in 2023-24 and $321,000 GPR in 2024-25 to support equipment acquisition within DATCP's Bureau of Laboratory Services. Specify that all funding would be provided on a one-time basis in the 2023-25 biennium.

ALT A2	Change to Base
GPR	$696,000

3. Provide $1.9 million GPR in a continuing appropriation in 2023-24 for laboratory equipment purchases.

ALT A3	Change to Base
GPR	$1,900,000

4. Provide DATCP's Bureau of Laboratory Services: (a) $600,000 PR in 2023-24 to support equipment acquisition and maintenance; (b) $54,000 PR in 2023-24 for wireless temperature monitoring equipment; and (c) $21,000 PR each year of the biennium for maintenance of the wireless temperature monitoring system. Additionally, provide funding in programs outside of BLS as follows to cover lab-assessed costs of equipment: (a) $349,500 in 2023-24 and $10,500 in 2024-25 from agrichemical management SEG; and (b) $325,500 PR in 2023-24 and $10,500 PR in 2024-25 for regulation of food, lodging, and recreational facilities from fees on those entities.

ALT A4	Change to Base
PR	$1,032,000
SEG	360,000
Total	$1,392,000

5. Take no action.

B. General Laboratory Operations

1. Provide $100,000 PR each year in the 2023-25 biennium to support maintenance and general laboratory operations within DATCP's Bureau of Laboratory Services. Additional funding in programs outside of BLS would consist of: (a) $52,000 SEG each year for regulation of agricultural chemicals from the agrichemical management fund; and (b) $48,000 each year for regulation of food, lodging, and recreational facilities from fees on those entities. (This alternative can be selected in addition to Alternatives A1, A2, A3, or A4).

ALT B1	Change to Base
PR	$296,000
SEG	104,000
Total	$400,000

2. Take no action.

C. Position Authority

1. Provide $74,200 PR in 2023-24 and $93,200 PR in 2024-25 with 1.0 permanent position to support laboratory activities (This alternative can be selected in addition to any of the above

alternatives).

ALT C1	Change to Base	
	Funding	Positions
PR	$167,400	1.00

2. Take no action.

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AGRICULTURE, TRADE AND CONSUMER PROTECTION

Departmentwide

LFB Summary Items for Which No Issue Paper Has Been Prepared

Item #	Title
6	Computer System Equipment, Staff and Services
8	Position Realignment
9	Program Revenue Reestimates
10	Federal Revenue Reestimates