



## Legislative Fiscal Bureau

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July 19, 2011

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Government Accountability Board: Section 13.10 Request to Provide Additional Funding to Process Senate Recall Petitions -- Agenda Item V

### REQUEST

The Government Accountability Board (GAB) requests a transfer of \$40,800 GPR in 2010-11, from the Joint Committee on Finance's GPR supplemental appropriation [s. 20.865(4)(a)] to the Board's GPR general program operations appropriation [s. 20.511(1)(a)] to permit the Board to hire temporary staff, pay overtime costs, and purchase a high speed scanner to review and analyze Senate recall petitions.

### BACKGROUND

Under current law, the voters of the state may petition for the recall of any state or local elected official by filing a petition, with the same official or agency with whom nomination papers or declarations of candidacy for the office are filed, demanding the recall of the officeholder. No recall petition may be offered for filing until the elected official has served at least one year in office. State law provides that nomination papers and declarations of candidacy for State Senator are filed with GAB.

A recall petition must generally be signed by the number of voters equal to at least 25% of the vote cast for Governor at the last election within the same district or territory as that of the elected official whose recall is sought. No recall petition may be offered for filing unless the petitioner first files a registration statement with GAB under state campaign finance laws. [Committees, groups, and individual registering with the Board under state campaign finance laws must generally provide information to the Board regarding political contributions and disbursements received and/or made by the committee, group, or individual.] For Senate recall petitions, the petitioner must attach to the registration a statement indicating his or her intent to

circulate a recall petition and the name of the Senator for whom recall is sought. No petitioner may circulate a recall petition prior to completing campaign finance registration. The last date that a petition for the recall of an elected official may be offered for filing is 5 p.m. on the 60<sup>th</sup> day commencing after campaign finance registration.

From the period April 25, 2011, to May 16, 2011, a total of 22 recall committees registered with GAB. Ultimately, 13 of those recall committees became inactive.

After the recall petition has been offered for filing, no name may be added or removed. A signature may not be counted if: (a) the signature is not dated; (b) the signature is dated outside the circulation period; (c) the signature is dated after the date of the certification contained on the petition sheet; (d) the residency of the signer of the petition sheet cannot be determined by the address given; (e) the signature is that of an individual who is not a resident of the elected official's jurisdiction or district; (f) the signer has been adjudicated an unqualified elector on grounds of incompetency or limited incompetency; (g) the signer is an unqualified elector by reason of age; and (h) the circulator knew or should have known that the signer, for any other reason, was an unqualified elector. If an individual signed the recall petition more than once, the second and subsequent signatures may not be counted. If someone signed in place of the voter, the signature may not be counted unless the voter was unable to sign due to physical disability and authorized another to sign on his or her behalf.

State law provides for a 31 day review period for Senate recall petitions filed with the Board. Specifically, within 10 days after the recall petition is offered for filing, the incumbent officeholder may file a written challenge with GAB specifying any alleged insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the challenge within five days after the challenge is filed. If a rebuttal is filed, the incumbent officeholder may file a reply to any new matter raised in the rebuttal within two days after the rebuttal is filed. The Board then has an additional 14 days to file a certificate or amended certificate.

Within 31 days after the Senate recall petition is filed, GAB must determine by careful examination whether the petition on its face is sufficient and so state in a certificate attached to the petition. If GAB finds the petition to be insufficient, the certificate must identify the insufficiencies. The petition may be amended to correct any insufficiency within five days following the affixing of the original certificate. Within five days after the filing of the amended petition, GAB must again carefully examine the face of the petition to determine sufficiency and must attach a certificate stating its conclusions.

If GAB finds the petition to be sufficient, the Board must file the petition. Under these circumstances a recall election will be scheduled on the Tuesday of the sixth week commencing after the date of the filing of the petition. If a recall primary is required, this date would be the date of the recall primary and the recall election would be held on the Tuesday of the fourth week commencing after the recall primary. However, upon a showing of good cause, a circuit court may grant an extension of any of these time periods.

Within seven days after a final determination of sufficiency or insufficiency of a recall petition, the petitioner or the incumbent officeholder may file a petition for writ of mandamus or prohibition in circuit court. Under this petition, the only matter before the court would be whether the recall petition is sufficient. The court could stay the effect of GAB's recall order while the petition is under court review and could order GAB to revise the election schedule if a revised schedule was necessitated by judicial review.

The Board ultimately found nine recall petitions against six Republican Senators and three Democratic Senators to be sufficient. For the recall elections involving the six Republican Senators a primary was held on July 12, 2011, and the special election will be held on August 9, 2011. For the recall elections involving the three Democratic Senators, any primary is scheduled for July 19, 2011, and the special election will be held on August 16, 2011.

The Board originally sought \$40,800 GPR in 2010-11, in supplementation from the Joint Committee on Finance's GPR supplemental appropriation [s. 20.865(4)(a)] to fund costs associated with processing Senate recall petitions. From this appropriation, the Joint Committee on Finance may supplement state agency GPR appropriations, in accordance with provisions of s. 13.10, if an appropriation proves "insufficient because of unforeseen emergencies" or is "insufficient to accomplish the purposes for which made..." The appropriation has a current total remaining balance of \$1,018,700 GPR. Of this total, \$25,000 GPR is identified as unreserved and \$993,700 GPR has been reserved by the Legislature as follows: (a) \$543,700 GPR for the Department of Corrections associated with possible implementation of the federal Adam Walsh Act; and (b) \$450,000 GPR for the Department of Health Services associated with the Wisconsin Quality Home Care Authority.

Regarding the reserved funding, the Committee should note:

- Under provisions of 2011 Act 10, the Wisconsin Quality Home Care Authority (WQHCA) was repealed. Given that WQHCA no longer statutorily exists, the reserved funding for the Authority (\$450,000 GPR) is available to the Committee for reallocations relating to 2010-11.
- In 2009 Act 28, \$543,700 GPR was placed in the Committee's reserve appropriation for Corrections to request under s. 13.10 after state legislation was enacted to bring Wisconsin into compliance with federal Sex Offender Registration Notification Act legislation (Adam Walsh Act). The changes required by the federal act include adding foreign convictions to the registry, incorporating the federal tier system of classifying offenses, providing more detailed information on the registry, in-person registration verification, and expanding public access to registry information. Reserved funding was intended to address costs for database upgrades including developing applications to add and update required data elements, creating database tables, developing interfaces to internal and external systems, developing additional search capacities, interfacing to an electronic content management system, and project management. To date, state legislation has not been adopted and Corrections has not requested release of any of the funding.

Corrections indicates that it is in the process of working with federal officials to possibly modify federal requirements in such a manner that Wisconsin could become "substantially in compliance" with the Adam Walsh Act provisions. In the event of any modification to the federal requirements, funding would be necessary to achieve "substantial compliance." However, according to the Department, "barring a quick change for this modification it is very unlikely that the Department will be in a position to request the release of that funding before the end of this fiscal year." The fiscal year being referred to is 2010-11.

Funding to support GAB's request is available.

## **ANALYSIS**

Board staff indicates that since the s. 13.10 request was originally submitted to the Committee (for a supplement of \$40,800 GPR), that the Board has incurred \$88,300 in recall-related expenses including: (a) \$61,700 in staff salary and fringe benefit costs for time allocated to work associated with the recall petitions; (b) \$11,800 for special board meeting costs including per diems, travel expenses, and meal expenses; (c) \$6,800 for temporary staff services; (d) \$6,700 for litigation expenses; (e) \$1,000 for printing costs; and (f) \$300 for staff overtime. Of these amounts, \$59,900 in salary and fringe benefit costs were paid for with federal Help America Vote Act (HAVA) funding, and the remaining \$28,400 was GPR funding.

The Board now requests a supplementation from the Joint Committee on Finance GPR supplemental appropriation totaling \$88,300 GPR in 2010-11. While Board staff indicates that the recall-related costs of staff funded with federal HAVA funding can be transferred to other state-supported base resources of the Board, and that the GPR expenditures can be absorbed in base funding, Board staff has nonetheless expressed the concern that this substantial recall-related workload was not budgeted for, and that requiring the Board to fund these costs from base resources will reduce the base funding available for the Board to carry out its other statutory responsibilities. As a result, the Committee could consider approving the modified request.

While GAB utilized federally-funded staff to address the workload associated with the recall elections, the Board indicates that federal HAVA funding may ultimately not be utilized to pay expenses incurred in relation to the state recall elections. Instead, in closing the 2010-11 state fiscal year, these expenses must be reallocated to either supplemental funding received from the Committee, or to other state-supported base resources. As a result, the Committee could also consider providing \$59,900 GPR to permit the Board to charge salary and fringe benefit costs of staff who worked on the recall elections to GPR, and not to federal HAVA funding. Under this alternative, the Board would not receive supplementation for the \$28,400 GPR in base resources that the Board expended in relation to the recall elections.

On the other hand, the Committee could also consider denying the request. Given that base resources are available to cover the expenses associated with the recall elections, the Committee could take the position that additional funding is not necessary.

## ALTERNATIVES

1. Approve the request of the Government Accountability Board (GAB) to transfer \$40,800 GPR in 2010-11, from the Joint Committee on Finance's GPR supplemental appropriation [s. 20.865(4)(a)] to the Board's GPR general program operations appropriation [s. 20.511(1)(a)] to permit the Board to hire temporary staff, pay for overtime costs, and purchase a high speed scanner to review and analyze 2011 Senate recall petitions.

2. Transfer \$88,300 GPR in 2010-11, from the Joint Committee on Finance's GPR supplemental appropriation [s. 20.865(4)(a)] to the Board's GPR general program operations appropriation [s. 20.511(1)(a)] to offset costs incurred by the Board associated with the recall elections.

3. Transfer \$59,900 GPR in 2010-11, from the Joint Committee on Finance's GPR supplemental appropriation [s. 20.865(4)(a)] to the Board's GPR general program operations appropriation [s. 20.511(1)(a)] to offset costs incurred by the Board associated with the recall elections.

4. Deny the request.

Prepared by: Paul Onsager