



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #272

Transfer of Procurement Position to the Department of Administration (Administration -- Transfers and Employee Trust Funds)

[LFB 2015-17 Budget Summary: Page 33, #4 and Page 143, #3]

CURRENT LAW

The Department of Employee Trust Funds (ETF) was created by Chapter 75, Laws of 1967. The day-to-day operation and management of the Wisconsin Retirement System (WRS), the group health insurance program, and other employee benefit programs offered to state and participating local government employees is the responsibility of ETF. The Department is currently organized into six Offices (Policy, Privacy, and Compliance; Internal Audit; Communications; Strategic Health Policy; Legal Services; and Enterprise Initiatives) and three Divisions (Retirement Services; Management Services; and Trust Finance). The Department has a total of 266.2 full-time equivalent (FTE) staff positions authorized in 2014-15. The Department's 2014-15 administrative budget is \$42,854,200 (all funds) of which \$216,600 GPR is primarily for post-retirement annuity and health insurance supplements and \$42,637,600 SEG is budgeted for program administration. The SEG funds for administrative costs derive from allocations made from the several benefit plans administered by the Department.

Under the statutes, premium and benefit payments are not shown in the appropriated amounts budgeted to the Department. However, ETF expects to disburse segregated funds totaling approximately \$7.0 billion in 2014-15 for its various benefit plans including \$4,942.4 million for WRS benefit payments and \$1,745.0 million for health insurance premiums.

The WRS is administered by ETF under the supervision of a 13-member Employee Trust Funds Board. The WRS covers nearly all public employees in the state except employees of the City of Milwaukee and Milwaukee County, which maintain separate retirement systems. As of March, 2015, the WRS includes 1,474 public employers including state agencies, counties, cities, towns, villages, school districts, technical college districts, cooperative educational service

agencies, and special districts. As of March, 2015, the system covered 596,019 participants: 256,248 active employees, 183,973 annuitants, and 155,798 inactive (past) employees who have maintained their WRS accounts (rather than taking a separation benefit).

The Group Insurance Board (GIB) in ETF offers group health care coverage plans for state employees, local government employees, and WRS annuitants. For state employees, GIB must offer at least two insured or self-insured health care coverage plans providing substantially equivalent hospital and medical benefits, including a health maintenance organization or a preferred provider plan, if those health care plans are determined by GIB to be available in the area of the employee's place of employment and are approved by the Board. The Board is required to place each of the plans into one of three premium payment tiers established in accordance with standards adopted by the Board. The tiers must be separated according to the employee's share of premium costs.

The Deferred Compensation Board in ETF oversees the administration of the deferred compensation program. The program, authorized under s. 457 of the federal Internal Revenue Code, allows public employees to lower their taxable income by deferring on a pre-tax basis a portion of gross wages into a variety of investment options. These deferrals, plus earnings, accumulate as additional savings for retirement. Under this program, Roth-IRA type contributions (post-tax contributions) can now also be made by public employees as additional savings for retirement.

GOVERNOR

Delete \$79,400 SEG and 1.0 SEG position annually responsible for procurement and purchasing at ETF. Transfer the position to the Department of Administration (DOA). Provide \$79,400 SEG annually in supplies and services funding to ETF to permit ETF to fund the costs of procurement services provided to ETF by DOA.

Provide \$78,400 PR annually to DOA's procurement services appropriation to fund the transferred position (\$56,700 PR for salary and \$21,700 PR for fringe benefits).

Specify that on the effective date of the bill, a 1.0 FTE position and the incumbent employee holding the position in ETF who performs duties relating to procurement, as determined by the Secretary of DOA, would be transferred to DOA. Provide that the employee would have the same rights and status in DOA as he or she had at ETF immediately before the transfer. Further, provide that if the employee had obtained permanent status, he or she would not have to undergo a probationary period at DOA.

DISCUSSION POINTS

1. Under Chapter 16 of the statutes (Department of Administration), DOA has been granted broad authority to "purchase and may delegate to special designated agents the authority to purchase all necessary materials, supplies, equipment, all other permanent personal property and

miscellaneous capital, and contractual services and all other expenses of a consumable nature for all agencies."

2. The Department of Employee Trust Funds is responsible for administering Chapter 40 of the statutes (public employee trust fund). Chapter 40 governs administration of the WRS and group health insurance program for state agencies and participating units of local government, as well as other employee benefit programs including life insurance, income continuation insurance, long-term disability insurance, duty disability program (for protective occupation employees who are injured while performing their duties or contract a disease as a result of their occupation), sick leave conversion credit program, deferred compensation program, and employee reimbursement accounts (for pre-tax contributions to healthcare and daycare expenses). The Department of Employee Trust Funds indicates that:

The Department of Employee Trust Funds (ETF) responsibilities under Chapter 40 require the agency to purchase many types of goods and services to meet the mission of the agency in providing benefits to our members. Additionally, ETF engages in the oversight of many third party administrators [TPAs] for its unique programs and shares and exchanges data with these third parties. In order for ETF to maintain its legal and fiduciary responsibilities, clear purchasing rules must be followed and often complex, program-specific contractual relationships must be established.

To enact and oversee these purchasing and contracting duties, ETF employs two (2.0 FTE) Purchasing Agents and one (1.0 FTE) Contract Specialist. These three positions work collaboratively to administer purchasing, procurement and contracts on behalf of the department under **both** Chapter 16 (state) and Chapter 40 (Board) statutory authority. The Employee Trust Funds, Group Insurance and Deferred Compensation Boards each engage in their own contracting and procurement responsibilities for their programs under their jurisdiction under Chapter 40. ETF trains and specializes these procurement staff in retirement and health and other benefits so they need to know both Chapter 16 and Chapter 40 purchasing requirements. Also, given the complexity of many ETF contracts, the Contract Specialist works closely with procurement staff, due to ETF being a Health Insurance Portability and Accountability Act (HIPAA)-regulated agency, they must coordinate with the Office of Policy, Privacy and Compliance (OPPC) to ensure business associate agreements and other information (PHI [personal health information] or other member demographics including SSN) is protected and covered in procurement and contract language (for Chapter 16 or 40) and later monitored for compliance.

Each Purchasing Agent is needed to conduct procurements under both statutory authorities- there is not one Chapter 16 agent and one Chapter 40 agent. Due to the complexities of benefits administration and oversight for the WRS and all other benefit programs in addition to GASB/GAAP audit requirements and other annual program/financial/compliance audits, ETF's procurement and contractual workload demands currently exceed the need for 2.0 FTE. We rely and expect these procurement staff to be extremely knowledgeable about all ETF benefit programs and don't delineate from a Chapter 16 or Chapter 40 procurement. Removing any Chapter 16 responsibility would have detrimental impact on ETF providing the services our staff and customers (TPAs, etc.) are accustomed to and will affect our ability to serve our members and business and program areas in an expeditious manner.

In addition, ETF is currently in the beginning of the four-year implementation of our benefit administration system (BAS) requiring information technology, project management and

business area resources. The ability to react quickly to additional contractual resource needs (i.e., change orders of existing contracts) of the BAS to ensure we stay on the timeline for our three major rollouts has required procurement staff to have specific and detailed knowledge of past procurements and contract language (in RFPs [request for proposals], etc.) as well as business/operational expertise to respond accordingly. Any elimination of a procurement resource or Chapter 16 responsibility in this area during such a critical project could potentially create a delay in our agency meeting our timeline causing significant costs. Also, ETF plays an important role in the coordination with the STAR project [a statewide information technology project] on benefits administration for the state. We also view our ability to maintain all Chapter 16 procurement authority in our agency to be a benefit to the state during this STAR transition.

3. Current state and federal law provides limitations on the ability of the state to utilize public employee trust fund balances for purposes other than the administration of benefits programs by ETF. First, Wisconsin statute provides that public employee trust funds may only be utilized to fulfill benefit commitments to participants at the lowest possible cost, and may not be used for any other purpose. Second, federal law prohibits the use of tax-qualified plan funds (the WRS) for any purposes other than for the sole benefit of WRS participants and beneficiaries. The Department indicates that, "Failure to comply with the relevant provisions of the IRC [Internal Revenue Code] could result in the disqualification of the WRS by the Internal Revenue Service, which could mean immediate taxability of accrued benefits for WRS participants." Finally, utilization of public employee trust fund balances for purposes other than the administration of benefit programs by ETF could violate Article I, Section 13 of the Wisconsin Constitution which provides that, "The property of no person shall be taken for public use without just compensation therefore."

4. In describing the recommended transfer of a 1.0 SEG procurement and purchasing position annually from ETF to DOA under the budget, the Executive Budget Book indicates that the transferred position in DOA would be responsible for: (a) ETF procurement; (b) Historical Society procurement and purchasing; (c) State Fair Park Board procurement and purchasing; and (d) procurement and purchasing for agencies participating in the shared agency services pilot program. Under the shared agency services pilot program, responsibility for procurement and other administrative services would transfer from several agencies to DOA. [This issue will be addressed in a separate budget paper.]

5. If the recommended transfer of a 1.0 procurement and purchasing FTE from ETF is approved, the position would transfer to the Consolidated Agency Purchasing Services (CAPS) Section at DOA. The administration has subsequently indicated that, "Assigning the position transferred from ETF to ETF procurement responsibilities in the CAPS Section would be a logical choice, but that decision will be made at the discretion of DOA. Other decisions to be made would include whether the transferred position would also take on responsibilities for the Historical Society and State Fair Park Board specifically, as well as whether ETF responsibilities would take up all of the individual's time and therefore preclude the individual from working on procurement responsibilities for any other consolidated agencies."

6. While funding for the 1.0 FTE totals \$79,400 SEG annually at ETF, given a lower fringe benefit rate, the position would require \$1,000 less annually at DOA, or \$78,400 PR annually. Under the Governor's recommendation the funding associated with the position would

not be reduced or eliminated at ETF, but rather transferred to supplies and services so that ETF could pay DOA charges associated with procurement and purchasing. While the position requires \$78,400 PR annually at DOA, the administration nonetheless indicates that supplies and services funding at ETF should not be reduced by \$1,000 annually to reflect this lower fringe benefit cost, but rather be increased by the full \$79,400 SEG annually. The administration indicates that, "ETF would need the remaining authority to pay its portion of the DOA State Bureau of Procurement assessment. At this time, it is not known exactly what the assessment amount will be, as ETF would be invoiced for its respective portions of the State Bureau of Procurement's enterprise assessment and the CAPS assessment, both of which are based on ETF's procurements and purchasing."

7. The state is currently undertaking a project to replace various existing finance, procurement, human resource, payroll, benefits and budget information systems across state agencies with one consolidated system. The project is entitled the STAR (state transforming agency resources) project. The underlying software for the STAR project is PeopleSoft. The administration indicates that, "While PeopleSoft procurement functions are robust, the proper use of the system is not intuitive and will be difficult for staff to learn if they are not routinely using the system." The administration further indicates that, "By not allowing DOA to take on procurement and purchasing responsibilities for all three affected agencies (Chapter 16 for ETF), the state would forego some consistency and continuity in procurement, especially as an enterprise resource planning system is being implemented. With implementation of the new system, it is crucial that procurement processes and entry be done in a consistent manner to provide as accurate of a statewide picture of procurement as possible, which is more easily accomplished with centralized services. With three relatively small agencies (compared to other agencies that have been consolidated or have delegated authority) still conducting procurements on their own, there is some room for inconsistency in procurements and data collection that would adversely affect the ability to track and improve procurement on a statewide level."

8. The administration indicates that, "If the Legislature did not approve the position transfer, the department still intends to manage procurement and purchasing responsibilities for the three affected agencies [ETF, Historical Society and State Fair Park Board] to the extent that it can be supported by current staff. Taking on procurement and purchasing for Historical Society and State Fair Park could be accomplished with no additional staff. Without an additional position, the department could not take on all Chapter 16 procurement and purchasing for ETF, but DOA would require ETF to enter into a delegation agreement pursuant to s. 16.71, Wisconsin Statutes."

9. In order to concentrate the utilization of the STAR procurement functions at DOA, eliminate the need to train 1.0 ETF procurement position on STAR procurement functionality (although the same individual would still be trained on the system at DOA), and increase the number of DOA staff entering procurement data in a consistent manner, the Committee could consider approving the recommendation. [Alternative 1]

10. On the other hand, given the importance of Chapter 40 law related to various ETF benefit programs in ETF procurements, the Committee could determine that the transfer should not occur. There are a number of other factors that the Committee could consider in regards to the

recommendation: (a) there are no budgeted savings associated with the recommendation; (b) while the position, if transferred, could end up working full-time on ETF procurements, the position would be separated from other staff at ETF with whom the position would likely need to work collaboratively on a day to day basis; (c) if the transferred position did not work full-time on ETF procurements, ETF could potentially be billed by DOA an amount comparable to the cost of the current ETF procurement position even though the position no longer worked full-time on ETF procurements; (d) remaining procurement staff at ETF would still need to be trained on and utilize the new STAR procurement functions; (e) maintaining the procurement position at ETF could assist ETF as it seeks to implement its BAS information system and assist with the implementation of the STAR system; and (f) under the recommendation, DOA and ETF would have additional responsibilities to ensure that any transfer of public employee trust fund balances to DOA did not violate state or federal law. In light of these considerations, the Committee could delete the provision. [Alternative 2] As a result, the position would remain in ETF.

11. The administration has indicated that even if the Legislature deletes this provision, "DOA would require ETF to enter into a [procurement] delegation agreement pursuant to s. 16.71, Wisconsin Statutes." If the Committee believes that ETF should continue to carry out its own procurement activities under Chapters 16 and 40 of the statutes, the Committee could also consider specifying that DOA may not require ETF to utilize DOA procurement and purchasing services. [Alternative 3]

ALTERNATIVES

1. Approve the Governor's recommendation to delete \$79,400 SEG and 1.0 SEG position annually responsible for procurement and purchasing at the Department of Employee Trust Funds (ETF). Transfer the position to the Department of Administration (DOA). Provide \$79,400 SEG annually in supplies and services funding to ETF to permit ETF to fund the costs of procurement services provided to ETF by DOA. Provide \$78,400 PR annually to DOA's procurement services appropriation to fund the transferred position at DOA (\$56,700 for permanent salary funding and \$21,700 for fringe benefits funding).

2. Delete provision.

ALT 2	Change to Bill
PR	- \$156,800

3. *In addition to Alternative 2*, specify that DOA may not require ETF to utilize DOA procurement and purchasing services.

Prepared by: Paul Onsager