



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #155

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

[LFB 2021-23 Budget Summary: Page 53, #2]

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, industrial hemp, 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 revenues to the laboratory. BLS staffing currently totals 31.4 positions, consisting of: (a) 13.0 chemists and 2.0 chemist supervisors; (b) 6.0 microbiologists; (c) 5.4 laboratory technicians; (d) 2.0 policy staff; and (e) 3.0 supervisory staff, including the Bureau's director.

DISCUSSION POINTS

1. BLS reports significant increases in testing needs in recent years, with total testing increasing from 22,500 tests in 2013-14 to 29,500 tests in 2018-19, an increase of 31%. Further, BLS reports testing activity was on track to exceed 35,000 tests in 2019-20 until COVID-19 shutdowns slowed activity. BLS expects to reach these volumes in 2020-21 or 2021-22 as testing returns to previous levels.

2. To meet these increasing staffing needs over time, Assembly Bill 68/Senate Bill 111 would provide \$270,500 PR, \$101,500 SEG, \$22,500 GPR, and \$22,500 FED in 2021-22, and \$339,800 PR, \$127,700 SEG, \$28,200 GPR, and \$28,200 FED in 2022-23 to support an additional 3.0 PR positions. Funding for BLS staff is supported by expenditures in agency program areas using

testing services from the lab. Thus, the bill would provide \$208,500 PR in 2021-22 and \$261,900 PR in 2022-23 under BLS's operations appropriation and remaining amounts would be appropriated in respective agency program areas to support expenditures for new BLS staff.

3. DATCP contends that additional staff are essential to ongoing operation of BLS in response to increased testing volumes in recent years, and to meet evolving international laboratory standards and federal Food and Drug Administration requirements. As testing standards evolve, BLS must allocate staff time to research and development efforts. Ensuring testing meets international standards and FDA requirements ensures the confidence of regulated industries in BLS test results, and limits resulting disputes and open records requests related to contested test results.

4. In particular, hemp testing has represented a significant increase in workload for BLS staff during the summer and fall testing season. By law, industrial hemp grown in Wisconsin may not exceed a tetrahydrocannabinol (THC) concentration of 0.3% by dry weight. As hemp plants mature, THC concentration may increase quickly. However, all hemp must be tested for THC concentration prior to harvest. Thus, testing of hemp samples is time-sensitive to ensure prompt harvest of hemp before THC concentrations rise to unlawful levels and crops must be destroyed. Provision of additional BLS staff would ensure prompt testing of hemp samples, which would support ongoing participation and growth in Wisconsin's returning hemp industry. In addition to proposed staffing, a separate budget paper addresses reauthorizing an expiring 1.0 PR project position currently assigned to BLS for hemp testing.

5. To meet seasonal hemp testing needs, BLS has reallocated staff from food safety and agricultural chemical testing activities. During the 12-week hemp testing season in 2019, BLS at various times reallocated from eight to 14 permanent staff from food safety and agricultural chemical testing areas. BLS reports during the 12-week hemp testing season in 2019, agricultural chemical testing essentially halted. BLS has continued to reallocate non-hemp staff during the 2020 and 2021 hemp seasons. The Environmental Protection Agency (EPA) noted in its most recent review of DATCP testing efforts that agricultural chemical testing capacity had declined relative to previous years, and EPA expressed need for a resolution to testing shortfalls for agricultural chemicals to ensure sufficient capacity to meet pesticide regulatory needs.

6. Regardless of hemp testing demands, non-hemp program areas are seeing similar increases in testing needs over time. Since 2015, BLS reports animal feed tests have increased from 2,200 per year to approximately 6,000 per year. Further, pesticide testing has become more precise, requiring more sophisticated testing to identify contamination at concentrations 20 times lower than previous testing required. Finally, groundwater testing now requires identification of approximately 110 chemicals per sample, rather than 30, significantly increasing processing time per sample.

7. 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 typically limited to 1,040 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. During the 2019 hemp testing season, BLS began recruitment for four LTE chemists but failed to identify any qualified applicants over a three-month recruitment period. Similarly in 2020, BLS sought to hire 12 LTE

chemists. BLS reposted job announcements several times and lowered job requirements before eventually hiring 9 LTE staff. The Bureau has retained only one of these LTE chemists as other staff have moved on to permanent employment opportunities. Further, due to the highly technical nature of laboratory testing practices, training of LTE staff may be prohibitively time- and cost-intensive. BLS reports LTEs may require two to four months of training before being sufficiently qualified to test hemp samples, 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.

8. DATCP reports it has already exhausted options to maximize efficiency and use of current staff. For example, BLS continues to implement lean projects to use more efficient testing methods and instruments. BLS also reorganized staff in 2018 to improve supervision and leadership within the Bureau, and has implemented cross-training of staff to ensure flexibility in testing capacity as sample types vary throughout the year. BLS estimates that if no additional staffing is provided, testing times for pesticide drift and misuse may be delayed by an average of 60 to 120 days, hemp testing could be delayed from four days to 10 to 45 days, animal feed testing could be delayed by 30 to 75 days, and agrichemical management testing provided to industry participants related to ensuring adequate cleanup of pesticide spills could be suspended.

9. BLS testing activities ensure safety and quality in dairy, meat, and other food and beverage products. Certainty in product quality and safety may increase consumer confidence in Wisconsin agricultural products and support continued growth in Wisconsin's agriculture industry. Further, testing ensures regulatory compliance with health, safety, and quality requirements of animal feed, pesticide products, and industrial hemp. Provision of additional funding for BLS testing would reduce wait times for regulatory programs and ensure certainty for regulated industries.

10. As BLS is funded from chargebacks on agency programs, additional funding would need to be authorized in the respective programs using BLS services. The additional funding in programs outside BLS would consist of: (a) \$101,500 SEG in 2021-22 and \$127,700 SEG in 2022-23 for regulation of agricultural chemicals from the agrichemical management fund; (b) \$62,000 PR in 2021-22 and \$77,900 PR in 2022-23 for regulation of food, lodging, and recreational facilities from fees on those entities; and (c) \$45,000 in 2021-22 and \$56,400 in 2022-23 split equally between GPR and FED for the meat safety inspection program. The SEG and PR sources have sufficient annual revenue and available balances to support additional expenditures for BLS charges.

11. Given increasing testing needs, regulatory requirements, and testing standards for BLS, and the opportunity to ensure robust testing for food safety, public and environmental health, and regulated industry needs, the Committee could consider providing an additional 3.0 PR staff and \$208,500 PR in 2021-22 and \$261,900 PR in 2022-23 under BLS's operations appropriation, as well as associated funding to respective programs [Alternative 1]. The Committee could also take no action [Alternative 2].

ALTERNATIVES

1. Provide 3.0 PR positions and \$270,500 PR, \$101,500 SEG, \$22,500 GPR, and \$22,500

FED in 2021-22, and \$339,800 PR, \$127,700 SEG, \$28,200 GPR, and \$28,200 FED in 2022-23 to support increased staffing needs in the Bureau of Laboratory Services.

ALT 1	Change to Base	
	Funding	Positions
PR	\$610,300	3.00
SEG	229,200	0.00
GPR	50,700	0.00
FED	<u>50,700</u>	<u>0.00</u>
Total	\$940,900	3.00

2. Take no action.

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