



## Legislative Fiscal Bureau

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May, 2021

Joint Committee on Finance

Paper #295

### Deputy Administrator Position and Lobbying Fee Increase (Ethics Commission)

[LFB 2021-23 Budget Summary: Page 187, #2]

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#### CURRENT LAW

The Ethics Commission administers state laws relating to campaign finance, lobbying, and the code of ethics. Under current law, the Ethics Commission may employ an administrator and a deputy ("assistant") administrator in the unclassified service. However, the agency is currently only provided authority for 1.0 unclassified administrator position. The Commission is authorized 8.0 total positions (one administrator, one attorney, one office management specialist, and five ethics specialists).

The Ethics Commission is responsible for the regulation of lobbyists and is required under statute to charge certain fees for lobbying activities. Each principal (defined as a person who employs a lobbyist) that spends more than \$500 in a calendar year on lobbying activities must pay to file a principal registration form with the Ethics Commission. In addition, the principal (or employed lobbyist) must pay to file an authorization form allowing each lobbyist to represent the principal. Registrations are based on each two-year legislative session and are valid from January of each odd-numbered year to December of each even-numbered year. The Commission currently charges \$375 per two-year session for principal registration and \$125 for lobbyist authorization. These fees were last modified in 1995.

#### DISCUSSION POINTS

1. In its 2021-23 agency budget request, the Commission requested that 1.0 unclassified position be provided to serve as a deputy administrator. The position would be allocated \$97,600 PR in 2021-22 and \$130,000 PR in 2022-23 for salary and fringe benefits, supported by lobbying fees. The deputy administrator would be responsible for processing complaints, conducting research and

analysis, preparing recommendations for the Commission, and assisting with the supervision of agency staff. According to Commission staff, creating a deputy administrator position would provide the administrator the ability to focus on rulemaking, legislation, and improvements to program operations. As noted below, the administrator has increasingly needed to devote time to responding to complaints and requests for advice as one of two staff primarily assigned this responsibility.

2. Staff indicate that the Commission's workload has increased significantly since its inception and exceeds current capacity. For example, the number of complaints filed with the Commission has more than doubled since the Commission was established, increasing from 31 complaints in 2017 to 75 complaints in 2020. Meanwhile, formal requests for advice have increased from 20 requests in 2017 to 35 requests in 2020. Responses to complaints and requests for advice are provided primarily by the administrator and the attorney, as they have the authority and knowledge to provide formal advice. Responding to complaints and requests includes time spent processing the work, conducting research, analyzing the matter, and preparing accurate recommendations for the Commission. The Commission anticipates that the workload will continue to increase and place further demands on agency resources. Limited staff capacity has also had the effect of delaying completion of projects, such as necessary upgrades to the state's lobbying and campaign finance websites.

3. The Commission has requested an increase to principal registration and lobbyist authorization fees to pay for the position. Under the agency request, the principal registration fee would increase by \$55 (from \$375 to \$430) and the authorization statement fee would also increase by \$55 (from \$125 to \$180) per session. The additional fees would be assessed as a one-time surcharge for the 2021-22 legislative session and as a permanent increase starting with the 2022-23 legislative session. According to the Commission, the provision would apply to lobbying principals, a class composed mostly of corporations that hire lobbyists. Each registration and authorization applies to the two-year session; therefore, each fee increase would be equivalent to \$27.50 annually. The fees were last changed under 1995 Act 27, when the principal registration fee was modified from \$300 to the current amount of \$375 and the authorization statement fee was modified from \$100 to the current amount of \$125. The agency's request for 1.0 PR unclassified position funded from increases to lobbying fees was included in 2021 Assembly Bill 68/Senate Bill 111. It is estimated that the agency's request would provide sufficient revenue to support the position during the 2021-23 biennium, but not enough to support the position during subsequent biennia. The receipt of lobbying fees occurs primarily in each odd-numbered year of the biennium, and the proposed fee increase would fund approximately half the cost of the position in 2023-25 and later biennia.

4. It should be noted that state and federal district court cases have ruled that it is unconstitutional under the First Amendment to the U.S. Constitution to impose a lobbying fee that amounts to a tax, and that lobbying fees may only be imposed to offset the costs of regulating lobbying activity. [*Moffett v. Killian*, 360 F. Supp. 228 (D. Conn. 1973); *Georgia State AFL-CIO v. State of Georgia Ethics Commission*, United States District Court, Northern District of Georgia (September, 1995); *Common Cause, Inc., v. State of Indiana*, Marion Superior Court (September, 1996); and *Fidanque v. State of Oregon*, Oregon Supreme Court (November, 1998).]

5. Each of the Commission's current positions are funded by a combination of lobbying

fees and GPR to reflect that staff responsibilities are not limited to lobbying regulation. The deputy's responsibilities would also extend beyond lobbying regulation to include activities such as facilitating compliance with the state's campaign finance and ethics laws. Similar to other Commission positions, the deputy position could be funded equally from lobbying fees and GPR. Increasing the principal registration and authorization statement fees by \$50 per two-year session, starting in 2023-24, would generate sufficient revenue to create a 0.5 PR position annually and provide \$48,800 PR in 2021-22 and \$65,000 PR in 2022-23 for compensation (assuming a 0.5 GPR position and equivalent GPR funding were also provided). It would not be necessary to implement a one-time surcharge under this alternative because the \$50 fee increase would generate sufficient revenue to fund the 0.5 PR position during the 2021-23 and subsequent biennia.

6. Given that the Commission's recent workload increase is expected to continue, that principal registration and lobbyist authorization fees have not increased in 25 years, and that the position's responsibilities would not be limited to lobbying regulation, the Committee could: (a) increase each of the specified lobbying fees by \$50 beginning with the next two-year session; and (b) provide \$48,800 GPR and \$48,800 PR in 2021-22 and \$65,000 GPR and \$65,000 PR in 2022-23 and 1.0 unclassified position annually (0.5 GPR and 0.5 PR) for a deputy administrator position [Alternative 1]. Under this alternative, the principal registration fee would increase by \$50 (from \$375 to \$425) and the authorization statement fee would increase by \$50 (from \$125 to \$175), starting with the 2023-24 legislative session.

7. Alternatively, the Committee may wish to create the position without increasing lobbying fees. The Committee could, therefore, provide \$97,600 GPR in 2021-22 and \$130,000 GPR in 2022-23 to the Commission's general program operations appropriation and create 1.0 GPR unclassified position annually for a deputy administrator [Alternative 2].

8. If an unclassified position is not created, the Commission could not hire a deputy administrator, and current staff would be required to continue managing the Commission's workload, including any additional increases to its workload [Alternative 3]. According to Commission staff, without a deputy administrator, major projects (such as upgrades to the campaign finance information system) would be delayed, possibly incurring additional costs as a result, and engagement with local governments for training, advice, and complaints would be reduced.

## ALTERNATIVES

1. Provide 1.0 unclassified position annually (0.5 GPR and 0.5 PR) to serve as a deputy administrator. Provide \$48,800 GPR and \$48,800 PR in 2021-22 and \$65,000 GPR and \$65,000 PR in 2022-23 for salary and fringe benefits. Specify an increase of \$50 for principal registration and lobbyist authorization fees per legislative session starting with the 2023-24 legislative session.

ALT 1	Revenue	Change to Base Funding	Positions
GPR		\$113,800	0.50
PR	<u>\$113,300</u>	<u>113,800</u>	<u>0.50</u>
Total	\$113,300	\$227,600	1.00

2. Provide 1.0 unclassified GPR position annually to serve as a deputy administrator. Provide \$97,600 GPR in 2021-22 and \$130,000 GPR in 2022-23 for salary and fringe benefits to the Ethics Commission's general program operations; general purpose revenue appropriation [s. 20.521(1)(a)].

<b>ALT 2</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
GPR	\$227,600	1.00

3. Take no action.

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