



Legislative Fiscal Bureau

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October 31, 2019

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Revenue: Section 16.515/16.505(2) Request to Provide 3.0 Permanent Positions and 1.0 Project Position and Additional Expenditure Authority for Enforcement of Alcohol Beverage Laws -- Agenda Item VI

REQUEST

On September 24, 2019, the Department of Administration (DOA) submitted a request under s. 16.515/16.505(2) for the creation of 3.0 PR permanent positions and 1.0 PR project position in the Alcohol and Tobacco Enforcement Unit (ATE) at the Department of Revenue (DOR). The request would provide additional expenditure authority in DOR's administration of liquor tax and alcohol beverages enforcement (alcohol administration) appropriation of \$328,700 PR in 2019-20 and \$395,800 PR in 2020-21.

On October 14, 2019, the Co-Chairs of the Joint Committee on Finance notified DOA of the Committee's desire to meet to consider the matter. As a result, the request is now before the Committee under s. 13.10.

BACKGROUND

Until 1975, alcohol and tobacco enforcement duties were assigned to the Department of Justice, at which time these duties were transferred to DOR. According to DOR, at that time, ATE had 21 excise tax agents, which were sworn law enforcement officers. At present, ATE consists of nine excise tax agent positions, as well as one excise tax agent supervisor. It should be noted that eight of the excise tax agents and the excise tax agent supervisor are supported by the alcohol administration appropriation, while the remaining excise tax agent is supported by a separate appropriation.

Generally, these agents are tasked with enforcement of Wisconsin's three-tier system of alcohol beverage production, distribution, and sale, as well as enforcement of the state's tobacco tax

laws. According to DOR, their responsibilities pertinent to this request include the examination and inspection of the premises where alcohol is sold, enforcement of the state's alcohol tax laws, conducting background checks for potential state alcohol permittees, training local law enforcement, and providing alcohol beverage enforcement outreach and education to industry members and the public.

The activities of ATE are primarily funded through DOR's alcohol administration appropriation. Under current law, expenditure authority in this appropriation is set at \$1,343,800 PR in 2019-20 and \$1,352,300 PR in 2020-21. The alcohol administration appropriation is supported by a fee of 11 cents per gallon on intoxicating liquor, as well as by the annual fees charged for obtaining a direct wine shipper's permit (\$200 every two years). Revenues generated by these fees are estimated at \$1,830,000 in 2019-20 and \$1,870,000 in 2020-21. At the close of a fiscal year, any unencumbered balance that exceeds 10% of the amounts encumbered and expended from this appropriation in that fiscal year is transferred to the general fund. Under current law, the transfer is estimated at \$482,000 in 2019-20 and \$516,900 in 2020-21.

ANALYSIS

The 4.0 additional positions would consist of 2.0 excise tax agents, 1.0 revenue agent, and 1.0 communication specialist project position. The excise tax agents would be primarily charged with enforcement of Wisconsin's alcohol beverage laws. The revenue agent would conduct background checks and site visits on applicants that seek state-issued alcohol permits, and the communication specialist would serve as a point of contact between DOR and the alcohol industry, local units of government, and local law enforcement.

According to DOR, the additional positions are needed to address the growing and changing nature of the alcohol industry. DOA indicates in its request that the issuance of several types of alcohol permits has increased by approximately 73% from 3,505 in 2010 to 6,050 in 2019. In addition, the state began issuing additional types of permits, such as brewpub (2007 Act 20), direct wine shipper (2007 Act 85), and beer wholesaler (2011 Act 32) permits.

In its request, DOR states that these additional permit types have increased ATE's overall workload. For example, data in the request show that the number of direct wine shipper's permits issued increased by approximately 138% from 494 in 2010 to 1,178 in 2019. DOR's request also states that the complexity of ATE's work has increased with the addition of these permit types because they require additional knowledge to administer and increased coordination with localities to ensure compliance. It should be noted that one additional excise tax agent position was provided to DOR in Act 32. Since that time, DOR's alcohol beverages enforcement staffing level has remained at 9.0 excise tax agents.

New permit types, as well as growing demand for existing permits, have increased the per-agent workload in ATE. Data included in DOA's request indicate that the ratio of active state alcohol permittees to DOR excise tax agents in 2010 was approximately 440:1, while the current ratio has increased to approximately 670:1. With the addition of two excise tax agents under the request, this ratio would decrease to approximately 550:1.

DOR notes that, because the added excise tax agent positions would enable ATE to spread its existing investigatory work among more agents, each agent would have more time to complete additional inspections and investigations. DOR also indicates that the revenue agent position being requested would assume some of the responsibilities currently being fulfilled by the excise tax agents, such as conducting background checks and qualification reviews for permit applicants. Moreover, the communication specialist would interact with and educate alcohol industry members on how to improve their compliance with the state's alcohol beverage laws. This would further allow the excise tax agents to focus on work related to investigations and inspections of permittees.

In the summer and fall of 2018, the Legislature convened a Study Committee on Alcohol Beverages Enforcement to examine overall enforcement of the state's alcohol beverage laws, including DOR's enforcement-related structure and staffing. Members of the Study Committee heard testimony from several industry groups who expressed uncertainty about how the state's current alcohol beverage laws apply to new and evolving business types. Several participants expressed a desire for improved communication and outreach by the Department relating to alcohol beverages enforcement, as well as for stronger enforcement of online sales of alcoholic beverages. DOR indicates that one goal of the requested positions is to address some of these issues that were raised by the Study Committee. For example, the Department notes that the additional excise tax agent positions being requested would allow ATE to focus on different types of investigations, such as those relating to the online sale of alcoholic beverages.

As stated above, at the close of a fiscal year, DOR transfers to the general fund any unencumbered balance in its alcohol administration appropriation that exceeds 10% of encumbrances and expenditures in that year. As a result, additional expenditure authority for this appropriation would decrease the amounts transferred to the general fund at the close of each fiscal year, relative to current law. DOR states that the increased expenditure authority being requested for this appropriation would enable it to ensure the associated liquor fee revenues are being utilized for their intended purpose of ensuring compliance with the state's alcohol beverage laws, rather than lapsing to the general fund.

In DOR's original August request, it was assumed that the additional positions, if approved, would start on October 1, 2019. According to DOR and DOA, this planned start date has since been revised to January 19, 2020. Therefore, Alternative 1 includes a reduction in the associated salary and fringe costs in 2019-20 relative to DOA's request to reflect the later start date for the positions.

DOR sought 4.0 PR permanent positions within ATE in its initial request. DOA revised the request to instead include 3.0 PR permanent positions and 1.0 PR project position for a communication specialist, which would expire on September 30, 2023. According to DOA, the communication specialist could be made a project position because the frequency of future alcohol law changes, which would require continual communication with the industry and other affected constituencies, is unknown. As noted above, one of the issues raised by the Study Committee was a desire for improved communication and outreach by DOR relating to alcohol beverages enforcement. The Committee could consider whether the communication specialist position should be provided as a permanent position (Alternative 2).

ALTERNATIVES

1. Approve DOA's request for 3.0 permanent PR positions and 1.0 PR project position, but reduce the expenditure authority requested by DOA by \$102,100 in 2019-20 to reflect the later start date for the positions. Estimate a decrease in the amounts transferred to the general fund relative to current law of approximately \$249,300 in 2019-20 and \$412,700 in 2020-21.
2. Approve Alternative 1, but specify that the communication specialist project position be provided as a permanent position.
3. Deny the request.

Prepared by: Dan Spika