



Legislative Fiscal Bureau

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June 21, 2006

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Administration: Section 13.10 Request to Restore 270.92 FTE Permanent Positions at State-Owned Power Plants and Wastewater Treatment Facilities -- Agenda Item VII

The Department of Administration (DOA) is requesting that the Joint Committee on Finance, acting under its s. 13.101(2) authority, restore 270.92 full-time equivalent (FTE) permanent positions in 2006-07 associated with the operation of state-owned power plants and wastewater treatment facilities at six different state agencies (the Departments of Administration, Corrections, Health and Family Services, Public Instruction, and Veterans Affairs, and the University of Wisconsin System). While DOA's request is for the positions to be restored effective July 1, 2007, the positions were deleted effective April 1, 2007, and any positions restored should be reauthorized as of that date.

BACKGROUND

As passed by the Legislature, the 2005-07 biennial budget bill [2005 Assembly Bill 100] would have required DOA to undertake one of the following actions by April 1, 2007, with respect to each state-owned power plant and wastewater treatment facility: (1) sell the plant or facility; or (2) contract with a private entity for the operation of the plant or facility.

On April 1, 2007, the bill would have deleted 270.92 FTE permanent power plant and wastewater treatment facility operator and supervisory positions in six state agencies and would have directed DOA to transfer the remaining budgeted salary and fringe benefit funding for these positions in 2006-07 to unallotted reserve to support agency costs relating to the provision of utility services after that date.

The bill would also have: (1) specified the manner by which outstanding bonded indebtedness would be retired in the event of the sale of any of the plants or facilities with such debt; (2) exempted the sale of a state-owned plant or facility to a regulated utility from any review or approval by the Public Service Commission; (3) required any power plant or waste water treatment facility operating contract with a private vendor to include a provision offering employment to the former state employees of those affected plants and facilities; and (4) deleted a variety of statutory provisions related to DOA's supervision of the operation of the state's power plants and wastewater treatment facilities.

The Governor item vetoed all of the proposed statutory modifications in the bill intended to implement the sale or contracting out of the state's power plant and wastewater treatment facility operations. However, a reversal of the deletion of the 270.92 FTE state agency positions on April 1, 2007, could not be effected through the exercise of the Governor's veto authority. Accordingly, the Governor indicated in his veto message that he would request the Secretary of DOA "to pursue the restoration of these positions through procedures authorized under current law to ensure continuity of basic services."

ANALYSIS

The Secretary of DOA is now requesting that the Joint Committee on Finance act to restore all 270.92 FTE power plant and wastewater treatment facility operator and supervisory positions on behalf of the six affected state agencies. The following table identifies the state agencies and the number of positions, by funding source, that would be restored under the request.

**Requested Power Plant and Wastewater Treatment Facility Position Restorations
(by State Agency and Funding Source)**

| <u>Agency</u> | <u>Number FTE</u> | <u>Funding Source</u> | <u>Appropriation</u> |
|----------------------------|-----------------------|---------------------------|----------------------|
| Administration | 23.25 | PR | s. 20.505(5)(ka) |
| Corrections | 20.25 | GPR | s. 20.410(1)(a) |
| | 19.00 | PR | s. 20.410(1)(kk) |
| | 5.00 | PR | s. 20.410(3)(hm) |
| Health and Family Services | 33.00 | PR | s. 20.435(2)(gk) |
| | 8.00 | PR | s. 20.435(2)(kx) |
| Public Instruction | 10.00 | GPR | s. 20.255(1)(a) |
| UW System | 146.42 | GPR | s. 20.285(1)(a) |
| Veterans Affairs | <u>6.00</u> | PR | s. 20.485(1)(gk) |
| Totals | 176.67 | GPR | |
| | 94.25 | PR | |

The Secretary of DOA has requested that the Committee restore these positions under its s. 13.101(2) authority. This provision authorizes the Committee to create or abolish state agency positions. The Committee also has the authority under s. 13.101(2) to approve a different number of authorized positions than is requested.

In general, this Committee has always applied the statutory criteria under s. 13.101(3) of the statutes (governing requests for appropriation supplementations) to requests for additional agency position authority. These criteria require that the Committee make the following findings in determining whether or not the request should be granted: (1) an emergency exists; (2) no funds are available for such purposes; and (3) the request does not violate formally established legislative intent.

With respect to the emergency standard, the Secretary of DOA has advised that with respect to the current request, "[h]aving no trained, professional employees available [beginning April 1, 2007] to staff the power plants serving university campuses, correctional facilities, veterans nursing homes, centers for the developmentally disabled and public instruction campuses, as well as state office buildings, not only is an emergency in the sense of placing billions of dollars of assets at risk, but also [affects] the health and well being of literally thousands of individuals." The lack of staffing at state-owned power plants and waste water treatment facilities commencing April 1, 2007, would appear to meet this existence of an emergency criterion.

With respect to the funding standard, this criterion is not relevant for the current request. Salary and fringe benefits amounts for the 270.92 FTE positions for the period April 1, through June 30, 2007, were never deleted from the six agencies' appropriations but were instead retained to fund likely contractual services costs for the operation of the plants and facilities. In the event that this Committee chooses to restore some or all of the requested positions, this base level funding would be available to support the salary and fringe benefits costs of the restored positions.

With respect to the final standard that the request does not violate established legislative intent, it could be argued that the Legislature acted through Assembly Bill 100 to delete the positions in question and to eliminate the state's operation of power plants and wastewater treatment facilities. However, since the Governor item vetoed all of the statutory modifications relating to modifications to the operation of state-owned power plants and wastewater treatment facilities, and the Legislature has to date failed to override this veto, there is currently no operational statutory expression of Legislative intent to eliminate the state's role in running these plants and facilities. In fact, under current law, DOA continues to be obligated under ss. 16.84(1) and 16.90 of the statutes to operate and fuel these facilities. If the Committee chooses to act to restore all or some of the requested 270.92 FTE positions, such an action would not appear to violate any current statutory expression of legislative intent.

Thus, based on findings that: (1) an emergency would exist if power plant and wastewater treatment facility staff were not restored by April 1, 2007; and (2) legislative intent would not be violated if the Committee restored such positions, the Committee could choose to address the

current request.

The current request seeks the restoration of all 270.92 FTE (176.67 GPR and 94.25 PR) positions as of April 1, 2007. The request appears to meet the relevant statutory criteria for its approval, and the Committee could choose to support it as submitted

However, the biennial budget bill enacted as 2005 Wisconsin Act 25 included provisions that eliminated a total of 2,069.07 FTE positions by 2006-07 (including the 270.92 FTE positions that are the subject of the current request). These actions reflected a commitment on the part of both the Legislature and the Governor to reduce the overall size of the state workforce. If the Committee concludes that it would be desirable to continue to limit growth in the state workforce, it could defer the Secretary of DOA's request at this time and instead direct the Secretary to review state agency current staffing vacancies and return to the Committee at a later date with recommendations for offsetting position deletions in these agencies for some or all of the 270.92 FTE power plant and wastewater treatment facility positions being recommended for restoration. The Committee could then restore the requested positions at that time but with offsetting position deletions, thereby moderating the impact of the current request on increasing the size of the state's workforce.

Alternatively, if the Committee concludes that it would be desirable not only to assure the continued near-term operation of the state's power plants and wastewater treatment facilities but also to pursue opportunities to limit growth in the state workforce, the Committee could modify DOA's request by: (1) restoring the 270.92 FTE positions as project positions for the period April 1, 2007, through December 31, 2007; and (2) directing DOA to identify feasible and appropriate offsetting position deletions as part of any 2007-09 biennial budget initiative to restore any of the state power plant and wastewater treatment facility project positions on a permanent basis. During the Committee's deliberations on the 2007-09 biennial budget, it could act to restore the requested positions at that time but with offsetting position deletions, thereby moderating the impact of the current request on increasing the size of the state's workforce.

ALTERNATIVES

1. Approve the Secretary of DOA's request to restore 270.92 FTE positions on April 1, 2007, rather than on July 1, 2007, (as originally requested) as follows: (a) for the Department of Administration: 23.25 PR positions; (b) for the Department of Corrections: 20.25 GPR and 24.0 PR positions; (c) for the Department Health and Family Services: 41.0 PR positions; (d) for the Department of Public Instruction: 10.0 GPR positions; (e) for the University of Wisconsin System: 146.42 GPR positions; and (f) for the Department of Veterans Affairs: 6.0 PR positions.

2. Defer the request at this time and direct the Secretary of DOA to review current vacant positions in state agencies and return to the Joint Committee on Finance at a later date with recommendations for offsetting position deletions in such agencies for some or all of the 270.92 FTE power plant and wastewater treatment facility positions being recommended for restoration.

3. Modify the Secretary of DOA's request by restoring the positions on a project basis for the period April 1, 2007, through December 31, 2007, and directing DOA to identify feasible and appropriate off-setting position deletions as part of any 2007-09 biennial budget initiative to permanently restore any of these project positions.

4. Deny the request.

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