



Legislative Fiscal Bureau

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February 1, 2022

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: State Prosecutors Office and Public Defender Board: Section 13.10 Request for Attorney Pay Progression in 2021-23 -- Agenda Item II

REQUEST

On January 20 and 21, 2022, the State Public Defenders (SPD) and District Attorneys (DAs) submitted requests to provide full funding for pay progression provided in 2021 Act 58 (the budget bill). The SPD requests \$509,900 GPR and the DA requests \$554,500 GPR in 2022-23 from the Joint Committee on Finance (JFC) Supplemental Appropriation.

DISCUSSION

The SPD, assistant district attorney (ADA), and deputy district attorney (DDA) pay progression plan is merit-based and consists of 17 hourly salary steps, with each step equal to one-seventeenth of the difference between the lowest annual salary (\$54,434 as of January 3, 2021) and the highest annual salary (\$131,456 as of January 3, 2021). The value of one hourly salary step equals \$4,534 annually. Notwithstanding the creation of a 17 hourly salary step pay progression plan, the supervising DAs or the State Public Defender are authorized to: (a) deny annual salary increases to individual SPDs, ADAs, and DDAs; and (b) increase the salary of individual SPDs, ADAs and DDAs by up to 10% per year.

On June 10, 2021, JFC adopted a budget motion (incorporated in 2021 Act 58), which provided DA pay progression funding totaling \$471,500 GPR in 2021-22 and \$949,300 GPR in 2022-23, and SPD pay progression funding totaling \$434,200 GPR in 2021-22 and \$886,800 GPR in 2022-23. Funding was intended to provide for a half step increase starting January 1, 2022, and 2023. In addition, the motion adopted a non-statutory provision for the 2021-23 biennium to exempt the affected agencies from the requirement that pay progression be provided beginning with the first pay period after July 1 to instead provide pay progression beginning January 1, 2022, and January 1, 2023.

In October, 2021, it was determined that the funding provided in the 2021-23 budget was not sufficient to support the half step increase starting January 1, 2023. The issue was attributable to modification made to the starting date of pay progression (from July 1 to January 1) and the interaction of that change with calculating total funding in 2022-23. In order to address the issue, an additional funding of \$554,500 for ADAs and \$509,900 for the SPD would be necessary to fully support the intended half step increase starting January 1, 2023.

The requests from the SPD and DAs identify the JFC supplemental appropriation (s. 20.865 (4)(a)) as the source of funding. This appropriation is a biennial appropriation with total funding of \$31,606,900 GPR in 2021-22 and \$234,897,000 GPR in 2022-23. However, Act 58 reserved most of these monies for specific purposes to be released by the Committee during the current biennium. Of the total, only \$133,600 GPR is unallocated (\$267,200 GPR over the biennium).

Under s. 13.101, in addition to supplementing agencies from its supplemental appropriation, the Committee may also transfer between appropriations and programs if the Committee finds that legislative intent will be more effectively carried out because of such a transfer. In the Legislative Fiscal Bureau's January 25, 2022, revenue/expenditure estimates, anticipated lapses to the general fund were identified. A component of the lapse amount in 2021-22 was \$3.17 million GPR in the Department of Correction's appropriation for reimbursing counties for probation, extended supervision and parole holds. The appropriation is used to reimburse counties \$40 per day for the prior fiscal year for felons being held in county jails pending the revocation of their probation, parole, or extended supervision for non-criminal rules violations. Since reimbursements to counties for 2020-21 have already been provided in 2021-22, the funding remaining will lapse at the end of 2021-22. Expenditures in 2021-22 (paid for 2020-21) were lower than budgeted due to the impact of COVID-19. A similar lapse is not estimated to occur in 2022-23.

Given that the intent of Act 58 was to provide a half step increase for the SPD and ADAs/DDAs in January, 2022, and 2023, and sufficient funding was not calculated for this purpose at the time of enactment, the funding requested by the SPD and DAs could be provided. Therefore, if the Committee wishes, \$1,064,400 GPR in 2021-22 could be transferred from the probation, extended supervision and parole holds appropriation (s. 20.410 (1)(bn)) to the SPD (\$509,900 GPR in 2022-23) and DA (\$554,500 GPR in 2022-23). This transfer would lower the estimated 2021-22 general fund closing balance by a corresponding amount.

ALTERNATIVES

1. Approve the SPD and DA requests (\$509,900 for the SPD and \$554,500 for ADA/DDA in 2022-23) to fully fund the Act 58 half step pay progression in 2022-23. Transfer \$1,064,400 GPR in 2021-22 from the reimbursing counties for probation, extended supervision and parole holds appropriation (s. 20.410 (1)(bn)) to fund the request.

2. Deny the requests.

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