



Wisconsin Ethics Commission

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DATE: For the Commission Meeting on September 10, 2020

TO: Members, Wisconsin Ethics Commission

FROM: Daniel A. Carlton, Jr., Administrator

SUBJECT: Decision Item 4000- Additional Position Alternatives

FOR COMMISSION ACTION

For Biennial Budget Request Decision Item 4000, the Commission may:

1. Adopt the draft decision item included in the draft in the meeting materials;
2. Adopt the alternative below;
3. Adopt another alternative based on today's discussion; or
4. Choose not to create an additional position.

The Commission has a need for an additional staff member based on the significant increase in the Commission's volume since its inception. The most readily quantifiable representation of that increase in volume is the increase in the number of requests for advice that are logged in for issuance by the Administrator or the Commission and the number of complaints that have been filed. In the first two years of the Commission's existence, the Commission received 27 requests for advice that were logged in. In 2018 and 2019, that number increased to 72 requests. These numbers do not include the significant numbers of informal questions answered via email and telephone. Regarding complaints, the Commission received 48 complaints in the first two years of its existence. Then, in 2018 and 2019, the Commission received 169 complaints. The number of complaints and advice requests this year is on pace to match or beat prior year totals. Staff anticipates these levels to remain the same with the caveat that, as the Commission's staff engages more with local governments, those numbers may increase further.

The Commission has considered the increased workload and has considered creating a deputy administrator position and funding that position with an increase in principal registration fees and lobbyist authorization fees. The biennial budget for the upcoming biennium would not take effect until July 2021. Principals start registering and authorizing lobbyists in December 2020. This leaves a period of at least six months where the increased fee would not be assessed.

To predict the impact of this six-month period before an increase would become effective, one can examine the historical data related to paying these fees. Between December 2016 and June 2017, 88% of the principal registration fees were paid (688 of 780). Then, between December 2018 and June 2019, 92% of the principal registration fees were paid (704 of 765). A similar trend is seen with lobbyist authorization fees. Between December 2016 and June 2017, 82% of the lobbyist authorization fees were paid (1496 of 1808). Then, between December 2018 and June 2019, 87%

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of the lobbyist authorization fees were paid (1535 of 1762). Based on historical data, it is reasonable to expect that for the period between December 2020 and June 2021 at least 90% of both sets of fees would be paid before any increase was effective. As a result, the Commission could not reasonably expect to fund a new position during this biennium from an increase in these fees. If the Commission would like to proceed with creating a new position, there are a number of alternatives. Each alternative would boil down to a decision of what position to create and how to fund it. There are multiple combinations possible based on the information below.

Deputy Administrator

The draft budget in the Commission's meeting memo contains one alternative way to fund a new position. The draft of Decision Item 4000 that was included would fund a new deputy administrator position from the Investigation appropriation. If created, this position would be a permanent addition to the Commission's staff. Based on information provided, the closest comparable position has a base salary of \$94,931.20. Including fringe, the total cost for a comparable position is expected to be approximately \$130,000.

State policy provides that agencies should only request 9 months of funding in the first year of a new position. It is unclear whether that policy would affect funding a deputy administrator position. The draft accounts for 9 months of funding in the first year and full funding the second year. The cost in the first year could increase if the Commission is allowed to hire for the entire fiscal year. One other thing to note, in the event that the position was filled with an internal candidate, there would be a period of time where a vacancy exists in the internal candidate's position. As a result, there will be additional savings realized because the Commission would only be paying one person during that period. This would offset some of the costs of the new position.

Project Permanent Attorney Position

The Commission could choose to create a project permanent attorney position. Generally, these positions last a maximum of 4 years. A project permanent attorney position can be converted to a different position in the future. For example, the project permanent attorney position could be converted to a regular attorney position. It also likely could be converted to another type of position, such as a deputy administrator position. (These conversions could require approval and budget changes.) The Commission could take the ability to convert the position and create a plan where for the first 4 years it would be a project permanent attorney position. After the first two years, the Commission would have the opportunity to review the position and convert it to a full attorney position, convert it to another position such as deputy administrator, continue reviewing the justification for the position, or end the position.

The anticipated salary for a project permanent attorney position would be approximately \$82,908.80. Fringe costs would result in a total cost to the Commission of approximately \$116,072.32. In the first year, the Commission can expect to fund this position for a maximum of 9 months resulting in an anticipated first year cost of \$87,054.24. The second year of the position would need to be funded at the full \$116,072.32. As noted above, if an internal candidate were chosen, the Commission would realize additional savings that would offset some of these costs while there was a vacancy.

Budgetary Considerations

The Commission could choose to create either new position and include it in the budget request (subject to the necessary approvals). The Commission will also want to consider how the position is funded. The following information will be helpful in making those decisions:

- If the Commission chose to fund the new position through the Investigative appropriation, the Commission could fully fund either position through that line. However, the Commission does not have sufficient data to anticipate its investigative needs. The Commission needs to maintain its ability to investigate and its independence in doing so. Maintaining sufficient funding to conduct any investigation assures that it has the ability to do so.
- If the Commission sought to request a fee increase, an increase in fees for principal registrations and lobbyist authorizations would not be effective until at least July 1.
- Assume for the sake of illustration, each fee was increased by \$50 (it is important to remember that these fees cover a two-year period. As such, an increase would represent a \$25/year increase).
- If consistent with the current biennium, the Commission can assume about 60 principals being registered between the effective date of the increase and the end of the session. If an increase of \$50 was authorized, the result would be an increase in revenue of \$3000 in the first biennium of the new fees.
- Assuming 750 principals register in the next biennium, the second biennium revenues would increase by \$37,500.
- If consistent with the current biennium, the Commission can assume 227 lobbyist authorizations between the effective date of the increase and the end of the session. Assuming that same \$50 increase was authorized, that would result in increased revenue of \$11,350.
- Assuming that there are 1700 lobbyist authorizations in the next biennium after the increase, the fee increase would generate additional revenue of \$85,000.

In terms of funding either position, the Commission could choose from three options. First, the Commission could request to fully fund the position from the Investigations appropriation. Second, the Commission could request fee increases such as hypothetically discussed above and fund the position solely from the fee increases. If this approach were chosen, the needed position would not be available to be filled until early 2023. Third, there is an option of a hybrid approach. This approach would fund the position from the Investigative appropriation for this biennium and seek an increase in fees such as described above. In this request, the Commission would want to note in its justification for the needed position that the approach is being pursued only due to the unusual circumstances of the pandemic and its intention for each biennium thereafter is to return to current levels of funding in its Investigation appropriation and fund this position from the fee increase. This will allow the Commission to fill the position it needs in the next biennium primarily from Investigative funds while establishing a plan to fund the new position once those fee increases are able to support the costs of the new position (this would be January 2023 at the earliest). If the Commission chose this route, there would be approximately \$14,350 to offset the additional costs from the Investigative Appropriation in the first biennium. In each future biennium thereafter, the Commission could anticipate approximately \$122,500 in additional revenues to fund the position.

Alternative

Based on the foregoing information and considerations, as an alternative to the draft Decision Item 4000, the Commission could consider the following: Create a project permanent attorney position, which would have the least fiscal impact. Before it ended in 4 years, the Commission could convert it to another position or eliminate it. A hybrid funding model would result in the ability to make the hire in the next fiscal year, temporarily funding it for the next biennium from the Investigative appropriation out of necessity. The Decision Item would expressly state the Commission's intention that the need for the position requires it to be filled as soon as possible. In order to accomplish that under the circumstances of the pandemic, the Commission has requested use of the Investigative appropriations to fund it and will request to return to its historic funding levels once the increased fees are able to support the position. There would be a minimal offset during this biennium for any increased revenue realized from the few remaining registrations and authorizations. When the increased fees can fully support the position in early 2023, the Commission's 2022 budget request (for the fiscal biennium beginning July 2023 through July 2025) will contain a request that the Investigative appropriation be restored to current levels and that the salary will be paid by the fee increase.

Conclusion

In light of the considerations concerning fee increases, the Commission may want to consider alternative approaches to creating a new position. The draft Decision Item 4000 creates a new deputy administrator position and funds it for this biennium through the Investigative appropriation. While there are drawbacks to this alternative, it allows the Commission to proceed in hiring an additional position. Alternatively, the Commission could create a project permanent attorney position as described above. Third, the Commission could choose to fund a position through increased fees and not request the ability to fill the position until early 2023. Finally, the Commission could choose not to seek a new position at this time.