



Alternative Fee Options Exist for the Public Employees Relations Commission

at a glance

Total revenue for the Public Employees Relations Commission consists of \$3.4 million with all but \$53,648 provided by state general revenue. Although funding PERC with general revenue is a reasonable use of these funds, the Legislature may wish to consider options for using assessments or fees from entities creating PERC caseload.

- Local government employer fees could generate \$1.7 million annually and recover PERC costs of providing this service, but would be difficult to administer.
- State government employer fees could generate \$1.6 million annually, of which half would be from trust funds.
- Petitioner filing fees could help encourage settlement and discourage frivolous petitions, and would provide an estimated \$84,000 annually.
- Increased union registration fees could help recover an estimated \$35,000 of PERC annual costs to register unions.

Introduction

Pursuant to s. 11.511, *Florida Statutes*, the Director of OPPAGA initiated this project in response to a legislative request to examine the

feasibility of charging fees to state and local government entities that create caseload for the Public Employees Relations Commission (PERC). This report examines various fee options.

Background

The Public Employees Relations Commission is a quasi-judicial tribunal whose primary function is to adjudicate labor and employment disputes among state and local government employees, their public employers, and job applicants. PERC responsibilities are categorized into three types of cases.

- **Career service cases.** PERC conducts hearings to resolve employment disputes between state government employees in career service and their employers.
- **Employment cases.** PERC conducts hearings to resolve employment disputes between state agencies and their employees regarding disciplinary actions, drug testing, whistle-blowers, forced retirement, and veterans' preference. The commission also conducts hearings to resolve disputes between local agencies and their employees regarding veterans' preference.
- **Labor cases.** PERC conducts hearings to resolve labor disputes regarding bargaining unit configuration and modification and alleged unfair labor practices involving state

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and local governments. This includes monitoring disputes that have the potential to result in strikes, working to prevent strikes, imposing punishment on strikers if necessary, and issuing declaratory statements to avoid future labor disputes. Further, PERC defines collective bargaining units, registers labor unions, and ensures that public sector unions and officers provide required financial disclosure. It also conducts elections for state and local government employees voting for establishing or maintaining union representation.

PERC provides these services as applicable to 117,934 state employees, 32 state entities, 615,623 local government employees, and over 1,675 local government entities.¹ As shown in Exhibit 1, PERC caseload during Fiscal Year 2001-02 split fairly evenly between state and local government employers, with the majority of cases in the labor category.

Exhibit 1 Labor Cases Comprised Most of PERC Fiscal Year 2001-02 Caseload

Type of Case ¹	Number of Cases		
	State	Local	Total
Labor	143	573	716
Career Service	424	0	424
Employment	11	10	21
Total Cases	578	583	1,161

¹All cases do not result in hearings. The above cases include disputes that were dismissed or resolved without a hearing and non-adversarial, non-hearing activities such as union elections and registrations.

Source: PERC records.

Program organization

The Public Employees Relations Commission is administratively housed within the Department of Management Services, but is not subject to the control, supervision, or direction of the department. The commission is composed of three commissioners appointed by the Governor, subject to Senate confirmation, for overlapping terms of four years. The chair of the

¹ Local government entities include 405 incorporated cities; 67 counties; 67 school districts; 11 state universities and colleges; and 1,125 special districts such as aviation and port authorities, community development districts, and water management districts.

commission serves as the chief executive and administrative officer of the agency.

The commission employs 13 hearing officers who are licensed attorneys with more than five years experience to preside over hearings throughout the state to resolve labor and employment-related disputes. After hearings, the officers write recommended orders. The commission reviews these orders and issues a final order.²

Program resources

PERC is predominantly funded from general revenue. For Fiscal Year 2002-03, the Legislature appropriated PERC \$3,361,647, of which \$3,307,999 (98.4%) was from general revenue and \$53,648 was from trust funds. The primary source of PERC trust fund revenues is reimbursement from unions and employers for expenses the commission incurs for conducting elections. PERC has 38 authorized employee positions.

The estimated allocation of PERC costs to its three categories of cases and state and local government is shown in Exhibit 2. These allocations are based on estimates by PERC administrators of the amount of staff time spent on various types of cases and its Fiscal Year 2001-02 caseload.

Exhibit 2 Estimates of PERC Fiscal Year 2002-03 General Revenue Costs for Services Provided to State Versus Local Government Entities

PERC Case Types	OPPAGA Estimate of Fiscal Year 2002-03 General Revenue Budget Allocation		
	State	Local	Total
Labor	\$ 430,040	\$1,720,159	\$2,150,199
Career Service	1,124,720	0	1,124,720
Employment	16,540	16,540	33,080
Total	\$1,571,300	\$1,736,699	\$3,307,999

Source: OPPAGA analysis of information obtained from PERC.

² A recommended order is the official recommendation of a hearing officer for the final disposition of a proceeding. A final order is the written final decision of the commission that results from the hearing officer's recommendation and is filed with the agency clerk. A final order is directly appealable to a district court of appeal.

Feasibility of User Fees—

General revenue is PERC's primary funding source. Funding PERC with general revenue is a reasonable use of these funds because it serves public employees. Public employees directly benefit general taxpayers by providing numerous services, such as education, health and human services, and law enforcement and fire protection. Similar programs in other states are typically funded from general funds.

Nonetheless, the Legislature faces many competing needs for general revenue and may wish to consider other funding sources when possible. Trust-funded state agencies and local government entities receive PERC services but contribute nothing towards its funding.

To evaluate the feasibility of charging fees for PERC services, we interviewed and surveyed state, local government, labor union, and PERC administrators; interviewed and surveyed administrators of similar programs in other states; and reviewed literature and statutory and constitutional provisions governing PERC. Based on this research, we identified four fee options:

- assessing local government employer fees,
- assessing state government employer fees,
- assessing petitioner filing fees, and
- increasing the union registration fee.

Although these options are feasible, none is decidedly advantageous. The options and their various benefits and drawbacks are described in the remainder of this report.

Local government employer fees

PERC will spend an estimated \$1,736,699 to provide services to local government entities during Fiscal Year 2002-03. We identified two options for assessing local government user fees for PERC services: a per-employee assessment, or billing for the time PERC commissioners and hearing officers spend on cases for local government.

A per-employee assessment is sometimes used as a means to fund employment-related services provided to government employees and employers. For example, the Department of Management Services collects a per-employee

assessment through funding transfers from state agencies to cover the cost of its personnel data system and other personnel services.³ Oregon charges state employers a monthly per-employee assessment (\$1.62) to partially fund its public employees relations program.⁴ If PERC were to collect an annual fee of \$2.82 per employee from local government employers, this would generate an estimated \$1,736,057 per year and recover the state's costs of providing these services.⁵

However, a per-employee assessment for local government employers would be difficult to administer and an efficient collection mechanism does not currently exist. To assess and collect the fees, PERC would need to annually determine the number of workers employed by the 1,675 local government entities, some of which have very few employees. PERC would experience increased administrative costs identifying the entities to bill, sending out bills, and conducting follow-up with local government entities that do not pay the assessments. It is unclear what enforcement mechanisms would be available should a local government entity fail to report its number of employees or submit fee payments.

The second local fee option is for PERC to bill for the time commissioners and hearing officers spend on cases for local government, which is an option exercised by other programs that provide legal services, such as the Florida Office of the Attorney General and the Division of Administrative Hearings (DOAH), to a limited extent.⁶ An average fee of \$2,979 per case would generate an estimated \$1,736,757 annually to

³ The department formerly collected this fee to cover the cost of administering the Cooperative Personnel Employment System or COPEs. As of Fiscal Year 2002-03, the department is contracting this service out to a private vendor. The vendor also will provide other human resource services such as applicant services, employee benefits, and payroll preparation. The department continues to fund these activities with a per-employee assessment.

⁴ According to an Oregon administrator, legislative bills to charge a local government fee have been defeated three times due to heavy lobbying from local governments and school districts.

⁵ There are an estimated 615,623 local government employees in Florida.

⁶ DOAH tracks time spent on cases for local government agencies and bills them \$100 per hour. DOAH does not track the time spent on cases for state agencies and instead assesses state agencies through budget transfers for scheduled hearing hours. OPPAGA is currently conducting an examination of whether DOAH's fee assessment method is equitable to state agencies.

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recover costs for providing services to local government agencies, assuming PERC caseload distribution remains constant from year to year.⁷ To implement this option, PERC would need to develop or purchase a time tracking system.

An advantage of billing for the time spent on cases is that the fees would directly relate to use of services. However, a disadvantage is that the fees would be relatively high and the financial burden on local government agencies would be unpredictable and might create a relatively significant burden for small local government entities. PERC does not collect data on the annual number of cases per local government, but an agency administrator stated that the number of cases per entity could be significant and provided an example of one local government that had 14 cases in one year. If PERC had assessed an average fee of \$2,979 per case for 14 cases, this would have resulted in the entity paying PERC \$41,706 for that year.

Another drawback to billing local governments is that PERC might have difficulty enforcing payment of the fees, particularly if the state does not provide funding to the entity.⁸ (It might be feasible for the state to withhold funds such as local option sales taxes if a local government that collects such taxes through the state fails to pay PERC user fees). Due to constitutional due process provisions, PERC cannot deny access to an employee of a local government that did not pay the fees.

State government employer fees

Services to state government entities represent an estimated \$1,571,300 of PERC budget for Fiscal Year 2002-03. We identified two fee options for state employers: a per-employee assessment, or assessment of state agencies through budget transfers for the time PERC commissioners and hearing officers spent on cases in a prior year.

A primary advantage of a per-employee fee assessment is that it would be predictable and easy to collect. A per-employee fee assessment

of \$13.32 per employee would generate an estimated \$1,570,881 annually to fund PERC, of which an estimated \$769,732 would be from trust funds.⁹ As with the current per-employee assessment for state personnel services, the Legislature could assess this cost to state agencies as part of the appropriations process. Appendix A shows the estimated assessment for each state agency based on authorized positions for Fiscal Year 2002-03.¹⁰

Assessing state agencies through budget transfers would be similar to the method the state uses to fund the Division of Administrative Hearings. DOAH prorates its annual budget request among state agencies using data on the number of hearing hours scheduled on their behalf during the fiscal year two years prior to the fiscal year being budgeted. After DOAH submits its budget request, the annual general appropriations act charges an assessment to each state agency based on DOAH's budget request.

PERC could use a similar funding method and prorate its estimated \$1,571,300 budget for state agency workload based on the amount of time PERC commissioners and hearing officers spent on cases. To implement this option, PERC would need to develop or purchase a time tracking system. Assessing state agencies for the time PERC spent on their cases in a prior year would more directly reflect use of PERC services than would a per-employee assessment.

A drawback to funding PERC with budget transfers is that the savings in general revenue would fluctuate from year to year depending on caseload. According to its administrators, PERC caseload for various agencies varies widely. If a largely general revenue-funded agency represented a significant portion of PERC workload in one year, that agency would be charged for a significant portion of the PERC

⁷ This fee is based on an average of all categories of cases.

⁸ Although DOAH successfully bills local governments for the time spent on cases, DOAH's situation differs from that of PERC. DOAH provides services to local government entities with which it has entered into contracts and those specifically required in the annual general appropriations act to use DOAH's services and pay DOAH's contract rate.

⁹ The general appropriations act for Fiscal Year 2002-03 authorized 117,934 full-time equivalent positions in Florida state government. Thus, an assessment of \$13.32 per employee would generate \$1,570,881. However, the total positions do not include OPS employees. The Legislature would need to determine if the agencies would be assessed for those employees since they could have access to PERC services for labor-related issues. We assumed that the trust fund portion of this amount would be the same as the trust fund portion of the per-employee assessment for state personnel services, or 49%.

¹⁰ PERC would need to identify all costs currently included in the Statewide Cost Allocation Plan so that the affected agencies can continue to receive federal funds for these assessments.

budget in a future year. For example, the Department of Corrections had 209 career service cases (50% of PERC total career service cases) in Fiscal Year 2001-02. PERC administrators told us that this was largely due to agency reorganization.

Another disadvantage is that the size of agencies' assessments could begin to affect administrators' personnel decision making. Agency administrators could have a disincentive to taking appropriate personnel action if they know the agency may have to pay a significant price for a case before PERC. The number of cases PERC handled for state agencies in Fiscal Year 2001-02 would have resulted in an estimated average assessment of \$2,719 per case in Fiscal Year 2002-03.¹¹

Petitioner filing fees

We identified three state public employees relations programs (Nebraska, Oregon, and Wisconsin) that charge petitioners filing fees. Nebraska's filing fee is \$100 and Wisconsin's is \$40.¹² Oregon charges a filing fee of \$250 for unfair labor practice cases.¹³ The petitioner in a case before PERC is usually an employee or job applicant, not the employer.

In addition to providing an additional source of revenue for PERC, filing fees would have the advantage of encouraging petitioners to settle cases. If a petitioner knows that a filing fee will be required to take a dispute before PERC, the petitioner may be more likely to settle earlier in the process. Filing fees may also discourage frivolous petitions.

One disadvantage of filing fees is the financial burden on petitioners. Another disadvantage is that the fees cannot be imposed at a high enough level to recover full costs because that amount could unreasonably limit the petitioner's constitutional right to due process by denying access to PERC. PERC received 837 requests for hearings in Fiscal Year 2001-02. A \$100 fee, which is conservative compared to that used in

Florida circuit courts for a civil appeal, would have recovered \$83,700.¹⁴ PERC would also legally have to provide a cost-free option whereby an indigent petitioner could still file a petition if he or she does not have the means to pay the filing fee. Therefore, PERC actual cost recovery would likely have been less than \$83,700.¹⁵

Increasing the union registration fee

Labor unions currently pay \$15 annually to register with PERC. These funds are intended to reimburse the state for PERC cost to process the paperwork involved in registration, including review of financial disclosure statements. The fees are deposited into general revenue. PERC collected \$4,215 from these fees in Fiscal Year 2001-02. PERC administrators estimated that that the annual employee salary and benefit cost of registering unions is \$39,208.¹⁶

The union registration fee has not been increased since 1975 when it was first established by state law. If the \$15 fee had been adjusted to keep pace with inflation since 1975, the fee would currently be \$50. We interviewed union officials, several of whom stated that they could understand the need to update the fee with a minor increase.

A drawback to increasing the union registration fee is that it is not likely to generate significant revenues. An increase in the fee from \$15 to \$50 would have generated \$9,835 in additional state funding for Fiscal Year 2001-02.¹⁷ A fee sufficient to cover the full cost of registering unions, or \$140 per registration, would have generated an additional \$35,125 and covered PERC costs of providing this service.¹⁸

Exhibit 3 summarizes the options for PERC fees and their various advantages and disadvantages.

¹¹ This fee is based on an average of all categories of cases.

¹² Wisconsin charges \$40 for any complaint and \$250 for mediation, interest arbitration and fact-finding, and grievance arbitration services, which is split between the parties. (The latter are not the types of services PERC provides.)

¹³ PERC handles other types of disputes, in addition to unfair labor practice cases.

¹⁴ Filing fees ranged from \$61.50 to \$206 in 38 counties for which information was readily available. The average fee for these counties was \$127.

¹⁵ If petitioner filing fees were implemented, PERC would need to subtract these revenues from its total budget before determining any fee levels for state or local government employers.

¹⁶ A deputy clerk, the clerk, a PERC commissioner, and legal counsel, as needed, review the paperwork.

¹⁷ PERC registered 281 labor unions in Fiscal Year 2001-02.

¹⁸ If union registration fees were increased, PERC would need to subtract these revenues from its total budget before determining any fee levels for state or local government employers.

Exhibit 3
Fee Options for PERC Have Various Advantages and Disadvantages

Fee Paid By	Option	Advantages	Disadvantages
Local Government Employers	Assess fees to local government employers through a per-employee assessment	The fee would reduce PERC burden on general revenue by recovering the cost of services; an annual fee of \$2.82 per local government employee would generate an estimated \$1,736,057 annually.	An efficient collection mechanism does not exist. PERC would incur significant administrative costs collecting the fees. PERC may have difficulty enforcing the fees.
	Assess fees to local government employers through billing for time spent on their cases	The fee would reduce PERC burden on general revenue by recovering the cost of services; billing an average of \$2,979 for local government cases would generate an estimated \$1,736,757 annually. The fee would more directly relate to the level of service provided than would a per-employee assessment.	Fees would be relatively high and the financial burden on local government employers would be unpredictable. Small employers may not have the resources to pay the fees. PERC may have difficulty enforcing the fees.
State Government Employers	Assess fees to state employers through a per-employee assessment	The fee would reduce PERC burden on general revenue; an annual assessment of \$13.32 per state employee would generate an estimated \$1,570,881 annually, of which \$769,732 would be from trust funds. State revenues from this source would be predictable and easy to collect.	The assessment would constitute a new expense for trust funds and general revenue-funded agencies would require a general revenue appropriation. However, the government-wide effect on the general fund would be a reduction of \$769,732.
	Assess state agencies through budget transfers for the time PERC commissioners and hearing officers spent on cases in a prior year	The fee would reduce PERC burden on general revenue. The fee would more directly relate to the level of service provided than would a per-employee assessment.	The general revenue savings would be unpredictable. Agencies' caseloads could vary widely from year to year.
All Petitioners	Require petitioners to pay filing fees	The fee would reduce PERC burden on general revenue; a filing fee of \$100 would have generated up to \$83,700 in Fiscal Year 2001-02. The fee would encourage earlier settlement and discourage frivolous petitions.	The fee would impose a financial burden on petitioners. The fee would provide limited revenues. Petitioner filing fees cannot be used to fund the full cost of hearings because that amount could unreasonably limit the petitioner's constitutional right to due process by denying access to PERC.
All Unions	Increase union registration fees	The fee would reduce PERC burden on general revenue; increasing the fee from \$15 to \$50 fee would have generated an additional \$9,835 in Fiscal Year 2001-02. A fee sufficient to cover the full cost of registering unions, or \$140 per registration, would have generated an additional \$35,125.	The fee would provide limited revenues.

Source: OPPAGA analysis.

Appendix A

Estimated Annual State Agency Fees for a Per-Employee Assessment to Fund PERC

State Agency ¹	Number of Authorized Positions	Total Assessment at \$13.32 per Employee
Department of Corrections	26,064	\$ 347,172.48
Department of Children and Families	24,329	324,062.28
Department of Transportation	8,908	118,654.56
Justice Administration	8,348	111,195.36
Department of Revenue	5,587	74,418.84
Department of Juvenile Justice	5,283	70,369.56
Department of Highway Safety and Motor Vehicles	4,809	64,055.88
Department of Health	4,057	54,039.24
Department of Agriculture and Consumer Services	3,616	48,165.12
Department of Environmental Protection	3,607	48,045.24
State Courts System	3,131	41,704.92
Department of Education	2,055	27,372.60
Department of Law Enforcement	1,920	25,574.40
Department of Insurance	1,886	25,121.52
Fish and Wildlife Conservation Commission	1,820	24,242.40
Department of Management Services	1,789	23,829.48
Agency for Workforce Innovation	1,677	22,337.64
Agency for Health Care Administration	1,597	21,272.04
Department of Business and Professional Regulation	1,570	20,912.40
Department of Legal Affairs	1,263	16,823.16
Office of the Comptroller	886	11,801.52
Department of State	675	8,991.00
Department of Veterans' Affairs	556	7,405.92
Department of Lottery	502	6,686.64
Public Service Commission	386	5,141.52
Department of Elder Affairs	369	4,915.08
Department of Community Affairs	351	4,675.32
Executive Office of the Governor	280	3,729.60
Department of Military Affairs	279	3,716.28
Parole Commission	153	2,037.96
Department of Citrus	120	1,598.40
Administered Funds ²	61	812.52
TOTAL	117,934	\$1,570,880.88

¹ Authorized positions do not include legislative employees.

² Positions from administered funds are distributed across various state agencies.

Source: OPPAGA analysis of data from the Fiscal Year 2002-03 General Appropriations Act.

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