

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEETING
Wednesday August 24, 2011 – 9:30 A.M.
Department of Workforce Development
Room D203
201 East Washington Avenue
Madison, Wisconsin

Individuals Present:

Management: James Buchen, Edward Lump, Michael Gotzler, Dan Petersen and Earl Gustafson

Labor: Sally Feistel, Phil Neuenfeldt, Patty Yunk

Chair: Dan LaRocque

1. Call to Order and Introductions - Mr. LaRocque calls the meeting to order at 9:45 a.m. Mr. LaRocque acknowledges the presence of Senator Pam Galloway, Representative Mark Honadel and Representative Mike Kuglitsch and Rob Kovach from the office of State Senator Frank Lasee.

2. June 23, 2011 and July 26, 2011 Minutes – Motion (Neuenfeldt), second (Petersen) to approve the minutes of July 23, 2011 and July 26, 2011, approved 8 ayes, 0 noes.

3. Senator Pam Galloway and constituents, Interim Health Care and 5R Processors Ltd

Mr. LaRocque introduces Senator Galloway and her constituents Jennifer Juntunen and Krista Kocha from Interim Healthcare and Staffing. The Senator explains that she is from the 29th Senate District and explains that she has several constituents with her. She indicates she has been out in the district conducting business roundtables and one of the recurring complaints from small business owners has to do with problems with unemployment insurance. As a former small business owner the Senator indicates she is familiar with problems such as potential employees turning down a job offer while on unemployment, employees fired for cause that continue to receive unemployment benefits, recurring issues with administrative law judges, and concerns about job searches being limited to two per week and controlling fraud and abuse. In addition to the two constituent businesses she has brought to the meeting, the Senator shares an email complaint where a claimant worked every other week after he found out he could get unemployment filed a claim for benefits. The Senator asks how many of the Council members have owned a small business. 3 of the 8 present raise their hands. The Senator then indicates that she looks forward to working with the Council. Mr. LaRocque thanks the Senator.

Interim Health Care

Krista Kocha and Jennifer Juntunen introduce themselves from Interim Healthcare and Staffing. Ms. Kocha explains that they have worked for almost 10 years and on many unemployment cases. We have had increasing concerns about more recent determinations of eligibility and contacted the Senator and met with a representative from unemployment insurance that discussed three of the cases with us and gave us good input and pointers on how we could do things a bit differently so

that we are on the same page on unemployment but we still have some concerns. We have many jobs still open for CNAs (Certified Nursing Assistants) and PCWs (Personal Care Workers) and yet we have seen CNAs and PCWs on unemployment for extended periods of time.

There are home care workers between jobs and it is a legitimate time for them to be collecting unemployment and we are glad that system is in place until we are able to find another job. Wausau is a manufacturing area and there have been many layoffs due to lack of work. We are concerned that reserve funds are being depleted and when we have employees terminated for misconduct, individuals you would not want caring for a patient, for example verbal abuse of a client, continue to receive benefits. We have a shortage of direct care staff and continue to have a shortage.

Ms. Kocha refers to the bullet point summary prepared by the department of 3 cases and adds some information. The first case, RG, was discharged for attendance. She had a non work related injury and had been with us for five months. She signed our attendance policy. We ask that staff find a replacement upon request for their shift. RG made an effort to find a replacement on first day. After February 5th, she never offered to find a replacement. She would not accept lists of employees to call. I counseled her and told the employer to find the replacement. For almost two months she would not find a replacement. She was warned if she did not call for a replacement it will cost you her job. We are still paying unemployment and the judge in that case called the policy bizarre and unreasonable. During the hearing, the judge asked her about her injury and asked her if she had applied for worker's comp even though the injury was work related. Mr. Gustafson asks and clarifies that the claimant had no limitation that would have not allowed her to seek replacements. Mr. Kocha explains that the limitation was no lifting over 30 pounds.

The second case, JL., started off with an incredibly bad attitude. We had numerous complaints from co-workers and managers. She was removed from first facility to which she was assigned and told if it happened again, she would be discharged. Then she showed up a half hour late and walked in with an incredible chip on her shoulder. Although the determination said she was tardy on the last occasion, she showed up with a bad attitude. The employee was also overheard yelling at a resident, which bordered on patient abuse. Ms. Yunk asks whether the incident was referred to the state for caregiver misconduct. Ms. Juntunen indicates it was not. Sometimes these situations are bordering on a fine line but our concern is still that they are receiving unemployment.

Ms. Juntunen explains that J is the last person on the list of 3 cases. She was working in homecare and was discharged for the amount of complaints against her. She was outspoken, lazy and at times her behavior crossed professional boundaries. I spoke with her about client she had worked with but continued to get complaints. Then she borrowed a company vehicle and we received a complaint about driver honking, swearing and flipping off another driver. She was written up for the incident and warned if she had another complaint she would be terminated. She did and she was discharged. The unemployment system encourages quick turnover. We counseled her and the adjudicator found the last incident was less egregious incident. Because we gave her an opportunity she is on unemployment.

In all three they were warned, it wasn't a surprise they were terminated. Ms. Juntunen says there is an impact on society and solutions. I have seen a great increase in people applying on line, being no call no shows at interviews and not applying in person. One day four were scheduled and only one showed up. Ms. Kocha then states that in those instances where the employee or employer

fails show up for the hearing, the other party should prevail without a hearing. Why waste the time of the law judge and the party that shows up, unless there are extenuating circumstances. Ms. Juntunen suggests that the Council might look at redefining or clarifying what misconduct is.

Mr. Lump asks whether at hearings the law does not already provide for dismissals. Mr. LaRocque explains that there is there are hearings, which results from an appeal, as distinct from adjudication, which is the first level. Ms. Kocha indicates she is talking about an appeal hearing. Mr. LaRocque explains that when the employee does not show up for the hearing and the employer does, the Labor and Industry Review Commission has given the administrative law judge direction that the job of the judge is to determine the facts regardless of who has the burden of proof. So, in a misconduct issue for example, the employer generally has the burden of proving misconduct. The employer still has the burden of proof, even though the employee is not there. The Commission and the formal rules say that.

There is less emphasis on burden of proof then on trying to find the truth and get the correct result. It is often within the control of the employer to prove misconduct. It is not difficult if you have the facts and the witnesses are there. Without the employee present there is no resistance. That tends to be the reward you get for showing up. I guess the system could be redesigned to provide you with a different reward for showing up; that would require that we change the rule. Perhaps we could make it more like circuit court.

Mr. Lump says while he understands Mr. LaRocque's explanation that was not his understanding. Mr. LaRocque says that during his tenure a few years ago the Commission made that decision with that emphasis because some administrative law judges were letting the employee off the hook. The employer didn't show up. The employee was getting a pass when the administrative law judge could question the employee about the facts on misconduct that were evident from the claims file.

Ms. Kocha explains that her suggestion is that if either the employer or employee doesn't show up, the other side prevails. Save the system the time and money when or if you are not interested. Mr. LaRocque says the hearings average about 33 minutes. The question is whether we try to get the truth out or decide the case based on who shows up. Ms. Kocha points out that the information is already provided during the investigation.

Ms. Yunk indicates when the UIAC has held hearings throughout the state we have heard testimony from both sides and we are not hearing testimony from one side right now. As a representative of labor there are reasons a worker does not show up, such as they have another job and are working, they have child care problems or transportation problems the employer does not have. I guess I find it difficult in this forum to get into the "nitty gritty" of each case. Ms. Kocha says it was a telephone interview. Ms. Yunk replies it could have been all kinds of sorts of things and not everyone who is unemployed has a telephone.

Ms. Kocha explains that speaking with other business owners we share the other side of it. We have good work available and when we ask people to fill shifts they have told us they have been counseled by unemployment not to pick up extra shifts because it messes with their eligibility for benefits. That is a huge struggle with us when they are being coached by unemployment with "Hey you don't want to earn too much pay it will reduce your benefits." We have positions open. We have had people go so far as to disconnect their phone because when we go to fill in the sheet for unemployment to show she was offered hours, she left her phone off so it wouldn't mess with

her eligibility. We had legitimate work for her. Ms. Juntunen suggests programs on interviewing, showing up on time, hygiene, how to interview would help as well.

Ms. Kocha says job search requirements should require you show up for interview and that you try to interview for the job. She explains 95% of those that work for us want to be there. Our frustration is that we spend 95% of our time on the 5% that don't want to be there.

Ms. Juntunen cites decisions that state although it was a good business decision, the individual is still eligible for unemployment, and says that if it was a good business decision you shouldn't be eligible for unemployment. Ms. Yunk indicates that she appreciates that they appeared and offered what you have but from my point of view of the Council's relationship this becomes very arduous to hear individual cases and to spend 45 minutes going over this and we should find different forum where there is some balance because I don't think that we want to become a secondary hearing process for those cases that have come out one way or the other. Mr. LaRocque points out that he spent a lot of time with you outside the meeting and we will spend time to do that but I want to give the Council members an opportunity to speak.

Mr. Gustafson asks about people making a half hearted effort to seek work. Ms. Juntunen explains we have seen an increase in people not showing up for interviews at all, particularly in the last year. Mr. Gustafson asks Mr. LaRocque to in the future give the Council "ALJ 101" as to how much weight goes into the precipitating event and how much weight goes into the cumulative history that the claimant would present. Mr. LaRocque says the short answer is that it is a murky area. The statute is clear on one thing and that is that the issue is "discharge for misconduct." There is behavior in the workplace and the issue becomes: was the discharge for misconduct. Say the discharge happens on a day when tardiness was the issue, but the fact is that you are also motivated to fire the employee by a series of prior events unrelated to tardiness. That is what I mean by a murky issue – was the discharge for misconduct?

Mr. Lump explains that as an employer he has learned that discharge is a cumulative process. The last item that you are discharged for may be the last straw that breaks the camel's back. Mr. Lump also says he doesn't want to discourage anyone from coming here to talk about an issue. We do have a history on the Council of providing public hearings for people to comment on the program and say what they have to say. We haven't had such hearings for a couple of years now. So, I find the presentation helpful.

Mr. Buchen said in the main the issues you present are consistent with the issues we see presented by employers. There is a frustration with problems with consistency. Unemployment is intended to provide assistance to individuals who are discharged for no fault of their own. The kinds of cases you have are cases where they are discharged for fault of their own and their behavior is not consistent with maintaining a job and the concern a lot of employers have. The misconduct statute is old and has been interpreted over a long period of time and so I think we need to take a look at it.

Mr. Barkelar indicates he was on the conference call with Ms. Juntunen and Ms. Kocha and thanks them for appearing. Mr. Barkelar then adds the department is trying to make it a priority to get claimants into reemployment services with the Division of Employment and Training because there are jobs available and getting more results from the work search requirements. If you have anything else send us your ideas.

Mr. Neuenfeldt asks about the pay and benefits package. Ms. Juntunen indicates personal care workers start at \$9.00 per hour not including third shift or weekend differential, certified nursing assistants at \$10 per hour and for home care, \$10 and \$15 respectively. Benefits include health, dental and life insurance with the employee paying a percentage of the cost.

Mr. Gustafson asks whether there has been difficulty complying with OSHA requirements. Ms. Kocha indicates that has not been a problem for them but there have been issues in hospitals and other large healthcare facilities.

5R Processors Ltd

Mr. Thomas Drake, CEO, and Toby Krisik from 5R Processors introduce themselves. 5R is an electronic recycling company located in Ladysmith, Wisconsin. Mr. Drake reads from a written statement. He explains that if you look at 5R's unemployment experience, we were at a rate of 4.6% in 2007. In October 2008 we laid off about 60 people. We had to refinance the company. I borrowed against my home to try to get the company back on its feet. We haven't been able to do that yet and we are struggling with paying unemployment as well as other debts that we got behind on. So, we are here again to get some understanding.

We met with Peter Goertz of the Unemployment Division. He did introduce the idea of making payments. We decided to make payments but it turned out not to be such a good idea. The next year we got an additional 2% tacked onto our tax rate. With an additional our tax rate will be 10.6%. We don't know how to get out of this. We also got an assessment for interest and noticed that the loans you get from the federal government are at 4%. Mr. Drake suggested a proposal that would allow unemployment to lend employers money at 5%.

Mr. Buchen asks if 5R is paying the unemployment tax. He indicates yes and points out with the other debts we have in 2011 it is more difficult for us to meet the payment requirements. We did well until 2008-2009. A lot of people in our business went out of business. Mr. Yunk asks your rate went up because your reserves were drawn down but you really don't owe money but it's the rate at which you are required to pay the tax owed? Ms. Pamela James, department staff, explains that there is a delinquency but 5R will be current as of August; that will not immediately affect the tax rate.

Ms. Yunk asks about 5R's tax rate going forward. Ms. James explains that the employer's reserve percentage needs to get healthier. 5R's benefit amounts have been declining so that will happen over time. Ms. Yunk asks what is the current ratio. Ms. James replies the current reserve ratio is negative 6.4%. Ms. Yunk asks when will 5R see an improvement in its rate. Ms. James explains that in 2012 it will first go up and then as the reserve ratio improves the tax rate will go down.

Mr. Buchen asks how the write offs affect the situation. Ms. James explains the write off has not affected this employer's situation. Ms. Krisik explains that reserve fund balances are determined on June 30 and while 5R has made payments we are still seeing our tax rate go up. Mr. Drake indicates that it seems the department is in a big rush and what we are looking for is some forbearance. Mr. Gustafson asks what the interest rate is on his account. Ms. James replies 1% per month.

Mr. Gustafson asks what is the radius 5R's operations in Ladysmith. Mr. Drake replies primarily Wisconsin, Illinois and Iowa. Of the primary materials we collect, 60% is close to worthless. We survive on 40%. Mr. Buchen asks whether employment has been steady. Mr. Drake replies, pretty much. We had 140 people in 2008 and have been staying between 90 and 116 and hiring temporary people to fill in the gap. The most difficult part of this business is the flow of materials. Mr. Gustafson asks and Mr. Drake confirms that all of the main processing is done in Ladysmith. Mr. Buchen points out that even though the rates were set up to lag the recession when you get in a recession like this the rate catches up. It is a real dilemma to figure out how to stretch the tax system when the economy is not in a recession. Mr. Drake asks if maybe there is some other way in the government to address this problem. Banks aren't excited about lending. Mr. Buchen says he does not know what we have in the unemployment program to address the problem and you already have a payment plan. Drake explains that in one quarter he paid \$60,000 in one quarter and then the next quarter they were billed \$50,000. We are better able to pay small amounts weekly than large amounts quarterly. Ms. James suggests you can pay more frequently than quarterly and spread the payments out.

4. Representative Mark Honadel and Representative Mike Kuglitsch

Mark Honadel, State Representative for the 21st District introduces himself and Representative Mike Kuglitsch, representing the 84th Assembly District. Rep. Honadel explains they are here to present a legislative proposal to the UIAC. They acknowledge that the Council has many issues before it. Rep. Honadel appreciates what the Council has done and understands that Wisconsin's unemployment program was the first in the nation. The proposal, which he explains should not be labeled as "Georgia Works" but rather "Wisconsin Wins", because it stimulates growth, reduces unemployment and allows unemployed Wisconsinites to take training jobs with employers while continuing to draw unemployment benefits.

Rep. Honadel states that today we are not going to figure out every little detail in this proposed training program. This proposal is a 6-week program. It ranges for 20 to 24 hours per week. It will accept applicants from DWD, those who have passed 12-14 weeks of benefits. That is after they have received about half of the benefits they are eligible for. The idea is that such recipients are more likely to participate in a voluntary program such as this. The employee would get a chance to be placed in two companies per year. The employee also gets an extra \$75 per week stipend for additional child care, transportation to work or school or other costs. And, the employer must have training program in place so that DWD will approve the employer. We chose 20 to 24 hours per week of training because my employment relations experience taught me that training is best conducted after a shift has started and production is running smoothly. The employee remains a product of the state. The employer is not liable for workers compensation. The state is.

The employee continues to receive unemployment while working to acquire a new skill or improve on an existing skill. Now we are at the place where we can debate number of weeks, dollars and so on, but what we need to do is put people back to work. This program does that. Sixty (60) percent of those participating in this type of program accept full time work. Mr. Honadel asks the UI Council to embrace this plan and make it part of the agreed upon bill. If you have advice, we will talk about it. I am here first because I appreciate your input and advice.

Rep. Kuglitsch points out that both he and Rep. Honadel are members of the Labor Committee. People on unemployment told us during hearings on extended benefits that we do not want the

money, we want the jobs. As legislators and Council members we need to find the bridge to get them back into the work force. As we investigated Georgia works, we felt we needed to come up with solutions. We need to get people back to work and develop their skill set. This proposal allows the employer to take a chance on an employee that does not have the exact skill set that is needed. We know that if people in the workforce get an opportunity to get trained and they bring the soft skills, such as showing up to work on time into a training environment, and employer can give them an opportunity for full time work. The success rate is over sixty (60) percent. With that kind of success rate, this is something that we should try.

Rep. Honadel adds that for the employer we hope the DWD will have these workers prescreened. Mr. Buchen asks what has happened in Georgia. Mr. Kuglitsch answers, 8,000 employees have gone through it. This program is improving every year. Mr. Honadel adds in response to a question that the UI benefit would come from the UI fund and the additional \$75 stipend will come from general purpose revenue.

Mr. Petersen asks are there existing businesses that are doing this now or are you anticipating employers will start training programs. Mr. Honadel replies that he thinks this will give businesses a little more certainty about what they are getting. Mr. Kuglitsch adds that earlier today there was an inference that people don't want to get off unemployment. This gives them an opportunity to try a different career. Ms. Feistel asks whether this might be a revolving door for an employer to keep bringing new people in to take advantage of cheap labor and is there anything in your bill that would require an employer to hire these folks. Mr. Honadel says there is nothing specific in the bill but DWD could red flag an employer that treated the program as a way to obtain cheap labor. Ms. Feistel asks what Georgia Works does to prevent this. Mr. Kuglitsch explains that employers are certified annually and review the practices the employer has. Mr. Lump points out that in any employment and training program the employer has to be approved by DWD. And, when an employer invests weeks in training there is no upside to then letting that person go. The employer is invested in the program as well. I like Wisconsin wins.

Ms. Yunk asks how this would coordinate with programs in Workforce Development and Technical Schools that we already have. Are we underutilizing what we have right now? I think we need to understand that as well. Mr. Buchen points out that when an employer is training a worker for a specific job that is the best type of training program you are going to get and more likely will lead to a job. Mr. Kuglitsch says this is not a program to supplant other programs but is a program that compliments those already in existence. We have 927,000 people on unemployment and 34,000 people on job training sites with DWD right now, so imagine if we have more people looking for work. Ms. Feistel says it reminds her of an internship after you get out of college where the participant gets a job or has the value of the training learned on the resume. Rep. Honadel adds both the employer and employee have an assurance by the action of each; the employee showing that I want to try and learn this skill and the employer wants to try and train them. Both are going into this together to get people back to work and off the unemployment rolls. The comfort level is a little better than just getting my soft skills done, but what if I can fix a computer or run this crane after I am finished. Mr. Neuenfeldt says this integrates with DWD on the job training programs. The difference is in on the job training unemployment is not used to subsidize pay. Mr. Neuenfeldt asks whether employers use temporary services to train workers much as in this proposal. Mr. Gotzler finds this proposal very intriguing and thinks it can work alongside the temporary employer's programs. He then asks, how long has Georgia program been in place. Mr. Honadel replies that it started in 2003 or 2004. New Hampshire also has a program.

Mr. Gotzler says it is an investment to find managers and trainers to do the training. Rep. Honadel explains everyone is on the hook. The employee has to step up to the plate to learn a new skill. The employer has to step up to the plate and pay the cost of training and take the chance that this will result. Mr. LaRocque asks whether one of the objectives would be to lower unemployment and are you looking for employers that are more likely to hire. New Hampshire requires the employer to have a job open. Rep. Honadel says he is quite comfortable with DWD prescreening employers based on the requirement that going into program the employer intends to hire the employee full time. Rep. Kuglitsch says the criteria as how you certify a company that is a necessary requirement, not churn and earn. Rep. Honadel worked with the legislative reference bureau to produce the draft and my door is open.

The Council takes a break at 11:16 a.m. and reconvenes at 11:27 a.m.

5. Monica Vomastic of Landmark Staffing Resources

Ms. Vomastic introduces herself and explains that she is here representing her staffing company and to follow up on her appearance before the Council earlier this year. She is here to impress upon the Council the effect of that the recession and unemployment have had on small business and to suggest possible changes that would create jobs and also help business. A recession usually lasts about 18 months, but this recession has gone on for more than 3 years. For some, such as the construction industry, it is ongoing.

We are the industry that is bringing the jobs back. She describes increases in her companies' unemployment tax rate and explains that this effects job opportunities. Most companies and 95% of our payroll are subject to unemployment tax. We, staffing, are also the same industry that is bringing the jobs back. It is time to look at the tax rates. If Mr. Drake knew that his rate was going to max at 5.9% that would ease his financial burden and he and other employers would be employing more people. 25% of state employer's are at the maximum rate and the wage base has increased. As a result, for employers in that position it is much more difficult to pay back their balances. In addition, the majority of that SUTA tax is incurred in the first quarter and businesses affected have to pay the majority of their taxes in the first quarter. You have slow job growth during the winter months in January and February in part because of unemployment tax. She says the Reserve Fund is resting on the shoulders of the small business owners who first have to get their account balance healthy and lower their tax rates.

Ms. Vomastic proposes establishing the calculation for the first \$13,000 in wages at a maximum tax rate of 9.8% and reducing the maximum rate to 5.4% and adjust the tables to allow assessment to be spread over the first three quarters, eliminate the present "accrual method" and allow employers to pay monthly, January tax paid in January, February tax paid in February. These changes will reduce the unemployment tax burden and would have a positive impact on all Wisconsin businesses. It would also allow better cash flow management.

Last, we are being proactive about preventing fraud. We post a notice that we are working with the Unemployment Insurance program to prevent fraud. We are reporting when individuals do not accept a job offer. As a result claims have dropped significantly. Our account balance has not improved but at least the drain on our account is less.

For staffing firms 80% of the people we place are hired by the client company. Once they are hired

by our client, our client pays unemployment taxes all over again. Ms. Vomastic recommends for temporary staffing companies that the first \$3,000 not count towards a defined payroll. As a result, that would bring them into parity and a more balanced unemployment tax. That would apply to those positions that are temporary to permanent and the individual is hired by the client company only. Ms. Vomastic also recommends the Council look at minority and women owned businesses to provide some hardship positions that will allow them to have the opportunity to rebuild their reserves.

Ms. Vomastic thanks the Council for the opportunity to make this presentation. Mr. Gustafson asks if he understood correctly that her proposal would establish taxes with a floor of \$3,000 and a ceiling of \$24,000. Ms. Vomastic says that is correct. Mr. Lump asks how raising the wage base to \$24,000 helps small business. Ms. Vomastic says she looked at a 4% tax rate on \$13,000 in wages and a 4% tax rate on \$24,000 in wages and compared that to the present. Mr. Lump points out that not every employer is at a 4%. We are one of the top twelve states in terms of tax rates and it would be interesting to see how many businesses have gone to a negative balance since 2006 in Wisconsin and how much their out of pocket reserve payments have increased. Ms. Vomastic mentions that national staffing companies move headquarters to states with more favorable unemployment laws. Mr. Buchen points out that where the employees perform services determines in what state an employer pays tax. Ms. Vomastic says the national companies stop writing offers in Wisconsin and write them in other states.

6. Reserve Fund Financial Condition

Mr. McHugh refers to a summary handed out to the Council and reports the July unemployment rate is 7.7% versus the rate for the U.S. which is 9.3%. The federal loan balance is \$1.1 billion and will continue to rise. The current interest accrued is \$36 million and it is estimated that it will reach \$43 million on September 30, 2011. The interest accrued is \$125,000 per day. We mailed 76,250 special assessments for interest payments, of which 2,906 were reimbursable employers. Item 6 shows outstanding loans by states. We are number 11. Wisconsin owes \$1.1 billion and our interest is 36.7 which is at its high as of August 18th. On page 2, employer tax revenue is up 31% over 2010 at this time. As of July 31 we probably have about 85% of the revenue that we will receive for the year. Number 8 shows gross payroll is up 3.6% this year over 2010 while taxable payroll is up 9 % over 2010.

Why are receipts growing, compared to prior years? Reasons are employers are paying at higher tax rates and payrolls are increasing. Look at red 6.9%; up from 2010 but down 3.6% from 2007. If you look at the second quarter 2007 even though our gross was up from 2010, the gross is still down 1.6% compared to 2007. In the last column on the right, the red 6.8% shows taxable payroll in the first quarter is up from 2010. For the second quarter taxable payroll went up 9%. So, payrolls are increasing as well. Item 9 shows regular unemployment insurance payments are down 22.9% but federal payments which come out of the trust fund are down 34.2% 2010 year to date. Item 10 shows claimant overpayment collections through August 22, 2011, are \$29.5 million for all overpayments versus \$23.1 million last year at this time. Of the \$29.5 million are for regular UI overpayments. Page 3 is a trust fund balance graph over time. Page 4 is a graph that represents benefit payments in the millions of dollars.

Mr. Buchen points out that there is problem with the graph, which Mr. McHugh agrees with, so page 4 is not correct and should be disregarded [later determined that the numbers a year-to-date

and correct]. The graph on page.5, the red line shows benefits paid versus money we take in or cash increases. In 2011 you can see expenditures coming down while cash increases are increasing.

Mr. Barkelar reports on the projections on the financial condition of the Reserve Fund. Unemployment insurance relies on economic outlook data that is prepared by the Department of Revenue on a quarterly basis. This model will be and has been updated quarterly and if you notice the performance to date this year is much better than projected last year. You do need to look at it frequently to ensure you have the pulse of the economy. Based on the projections, we started off the year with about a \$1.4 billion dollar deficit and, that is pretty much what we expect the deficit to be at the end of the year. That amount is covered by a federal loan.

Over the next couple years this shows improvement for a variety of reasons and at by the end of 2014 there is a projected \$400 million positive balance. The reasons for the improvements relate to actions taken by the Advisory Council; the amount of revenue from increases in the scheduled tax rate, the taxable wage base has increased to \$13,000 per year and will increase to \$14,000 in 2013, which will provide additional revenue. There are two lines related to our special assessment that show truly what employer costs are. We estimate this year the special assessment will cost employers \$45 million, next year \$47 million and then the following year \$25 million according to our best estimates. The federal revenues increase as well. The net federal tax will increase, 0.3% in 2012.and 0.6% in 2013 and in 2014. This generates additional money that is paid to the federal government that is applied to our loan balance. The expenses are shown to go down based on job growth and other factors considered by the department of revenue and it goes down substantially.

If there is a possibly a weakness in the projection it could be in the benefit pay out. The further out you get each year it is something you should rely on less. We will continually update the information. It is encouraging that using this model which has been used for some time, suggests that we will have a positive balance in three years and have repaid the federal loan. We hope to have footnotes that help explain the projections and will take calls anytime you have questions. Mr. Barkelar indicates the projections are calendar year.

Mr. Barkelar adds that we have heard several concerns expressed about employer taxes. That is one of those things that we have to everything we can to address. Since 1991, the average percentage of taxable wages has been less as an average than 1%. There hasn't been anything done to raise the revenue stream until we got near the recession when we went through the revenue fund balance very rapidly. This is a learning experience for us. This is a deep recession, the most serious in memory. We do need to propose automatic triggers or other adjustments that will help us monitor the balance better and look forward to see if there are other things we need to do to ensure incremental change. Along with that we have four proposals for your consideration.

7. Possible Program Improvements

Authorize borrowing

Ms. James presents the proposals. The first proposal to authorize borrowing as an option for repaying the federal government using to allow bonding or private or public borrowing. Mr. Gustafson asks if you touched on this in a previous meeting, which Ms. James confirms. Ms. James also indicates the legislative draft is not complete but would provide statutory authority to

do so. We suggest the Council limit the period for financing and debt repayment, provide a mechanism to charge employers for the interest and for repayment, a mechanism to charge a short term surtax, authority to issue bonds, to borrow money as approved by the advisory council, require that state capital financing guidelines be followed and that any borrowing be approved by the Building Commission. Mr. Lump asks how is the mechanism for repaying a bond differs from repaying the federal government loans as we do now. Ms. James says those are some of the details that are not determined yet.

Mr. Buchen says to issue a bond you have to have a dedicated revenue stream. Mr. Buchen refers to the projections presented by Mr. Barkelar, specifically the special assessment employer revenue and the federal reserve (FUTA tax credit reduction); those amounts are extra amounts that we need to add to the existing tax structure. We probably have to dedicate existing tax to paying off the bond. The point of this is you would never do this unless it would be cheaper. In these years, the projections show you could pay off a bond and a bond will be available at about half the interest rate. We have to make a determination about whether it is worth it. This proposal makes that consideration possible.

Mr. Petersen asks why the Building Commission is involved in this proposal. Mr. Barkelar states that the Commission gives us the authority to use private borrowing underwritten by the program revenue coming in but I would hope that we would have an opportunity to consider G-O (government obligation) bonds which would be an even lower interest payment and you wouldn't have to borrow money through private bonding where if the reserves are low there may be concern about your ability to make the first payment. You may save a percentage when compared to the federal government when compared to larger balance, so savings may be limited. We are asking for the greatest flexibility to provide the tools not understanding what circumstances we might encounter. Many states have similar enabling legislation in place. It also isn't a bad idea to rely on DOA expertise and their financial advisors even when borrowing privately. It's just being cautious. Mr. Buchen asks whether in order to use GO bonding would you have to have the Building Commission involved? Mr. Barkelar answers yes.

Successor tax rates

The second proposal changes the redetermination of the subject successor tax contribution rates from the first day of the quarter following the date of the business transfer to the first day of the calendar year after the transfer for successors that were already subject employers prior to the transfer. Ms. James explains the last time the statute was amended; it was in anticipation of a federal law that did not pass. This proposal reverses that prior change. There is no significant fiscal effect. The only downside is that some employers won't experience a decreased tax rate until the following calendar year.

Choice of employer

The third proposal creates a standard for "choice of employer" and establishes an exception for certain home care providers. In home health care industry we have situations where in our home health care industry where three parties are involved; a corporate health care provider, the provider that provides the care and the recipient of the care. Under our current law the care *recipient* is often determined to be the employee of the recipient. The corporate health care provider acts as the care recipient's agent but is not considered the employer for unemployment insurance purposes.

This proposal allows the corporate health care provider in some cases to elect to be the employer. The one caveat is that in order to protect the recipient, that there is something in writing agreed to by the recipient designating the corporate health care provider as the employer. Mr. Buchen clarifies that this is an option the corporate provider can elect.

Mr. Lump refers to legislation in the past and asks what is prompting this. Mr. LaRocque explains that last year the unemployment bill made a change -- a care provider employed in the home by a family member of the provider is excluded from the unemployment insurance program. Here if you are employed by an *entity*, someone other than a family member care provider, you are still covered. An incidental effect of this proposal is that a family member provider will be covered for unemployment even though they are working with the family when the corporate agency takes on the status as employer. We are creating general criteria to determine who the employer in these types of situations is. Lately, we have had entities saying they want to be the employer, even though the criteria, largely based on direction and control of the services is in the home by the recipient of the care.

Mr. .Gotzler asks whether there are corporate care providers saying they do not want to be the employer, or are they all saying this is what they want. Ms. James says, not all; it varies. Mr. Gotzler asks if a majority of corporate providers want this change. Ms. James answers that there are situations where certain providers have asked to be treated as the employer. Mr. LaRocque says there is a case going with one employer where the corporate provider insists that they are the employer. Mr. Gotzler says it also seems that the recipients are not recognized in the same way and with other agencies that may affect benefit plans. Mr. LaRocque explains that this is where we draw the line. Our unemployment law does not allow the outcome to affect the status as employer for any other purpose. Mr. Gotzler says that it might be one item on a check list. This model is to allow entities to elect to be treated one way or the other but only for unemployment purposes and it is elective. Mr. Petersen asks whether this situation isn't covered by who is paying the provider. Mr. LaRocque explains that would be a factor. The proposal eliminates a hole in statute, where we have competing entities that may be the employer. In most cases the law would ordinarily make the recipient the employer but there is no interest in that outcome. Mr. Gotzler asks and Mr. LaRocque agrees to share the draft language with Council.

Fund for interest

Ms. James explains that the last proposal amends the law to create a fund for employer assessments for federal interest payment, allows the department to earn interest and carryover of interest for payment and to provide cash flow loans to the reserve fund and/or use to avoid FUTA tax reductions. This has been presented to the Council previously.

Motion (Buchen), second (Neuenfeldt) to meet in closed session pursuant to section 19.85(1)(ee) of the statutes for purpose of discussing changes to Chapter 108, the Unemployment Insurance law and rules. Ayes 8 – noes 0. Mr. LaRocque announces the motion carries and we are in closed session.

The meeting is adjourned at 3:00 p.m.