STATE OF WISCONSIN

DWD

Department of Workforce Development

Unemployment Insurance Advisory Council

Council Members: Please bring your calendars to schedule future meetings.
https://dwd.wisconsin.gov/uibola/uiac/

MEETING

Date: July 18, 2019

Time: 10:00 a.m. – 4:00 p.m.

Place: Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room F305

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the June 20, 2019 Council Meeting
3. Department Update
4. Brief Update on the Unemployment Insurance Reserve Fund
5. Correspondence
6. Department Proposals for Agreed Bill
7. Labor and Management Proposals for Agreed Bill
8. Research Requests
9. Agreed Bill Timeline
10. Future Meeting Dates
11. Adjourn

Notice:

- The Council may not address all agenda items or follow the agenda order.

- The Council may take up action items at a time other than that listed.
- The Council may discuss other items, including those on any attached lists.
- The Council members may attend the meeting by telephone.
- The employee or employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items posted in this agenda, under sec. 19.85(1)(ee), Stats. The employee or employer members of the Council may thereafter reconvene again in open session after completion of the closed session.
- This location is accessible to persons with disabilities. If you have a disability and need assistance (such as an interpreter or information in an alternate format), please contact Robin Gallagher, Unemployment Insurance Division, at 608-267-1405 or dial 7-1-1 for Wisconsin Relay Service.
- Today's meeting materials will be available online at 10:00 a.m. at https://dwd.wisconsin.gov/uibola/uiac/meetings.htm

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 E. Washington Avenue, GEF 1, Room F305
Madison, WI

June 20, 2019

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members Present: Janell Knutson (Chair), Scott Manley, Susan Quam, Mike Gotzler, John Mielke, Di Ann Fechter, Sally Feistel, Shane Griesbach and Terry Hayden.

Department Staff Present: Mark Reihl (UI Division Administrator), Amy Banicki, Andrew Rubsam, Jennifer Wakerhauser (DWD Deputy Legal Counsel), Patrick Lonergan, Tom McHugh, Pam James, Jill Moksouphanh, Robert Usarek, Emily Savard, Maureen McShane, Karen Schultz, and Robin Gallagher.

Members of the Public Present: Brian Dake (Wis. Independent Businesses, Inc.), Chris Reader (WI Manufacturers & Commerce), Mary Beth George (Office of Representative Sinicki), BJ Dernbach (Office of Representative Petryk), Tyler Longsine (Office of Representative Edming), Anita Krasno (General Counsel, Labor & Industry Review Commission), Michael Gillick (Chairperson, Labor & Industry Review Commission), Mike Duchek (Legislative Reference Bureau), Representative Michael Schraa (Assembly District 53), and Linda Palmer (Office of Representative Schraa).

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:05 a.m. under Wisconsin's Open Meetings law. Council members introduced themselves and Ms. Knutson recognized Representative Michael Schraa and Lisa Palmer of Rep. Shraa's Office, BJ Dernbach of Rep. Petryk's Office, Tyler Longsine of Rep. Edming's Office, Mary Beth George of Rep. Sinicki's Office, Michael Gillick and Anita Krasno of LIRC, Mike Duchek of the Legislative Reference Bureau (LRB) and DWD Deputy Legal Counsel Jennifer Wakerhauser.

2. Approval of Minutes of the May 22, 2019 Meeting

Motion by Mr. Mielke, second by Mr. Hayden to approve the May 22, 2019 meeting minutes without correction. The motion carried unanimously.

3. Department Update

Ms. Knutson reported on the following:

- The Scope Statement for chs. DWD 102 and 147 (changing SIC to NAICS codes) has been approved by the Governor. The department will begin drafting the rule for Council consideration.
- The administrative rule on minor and technical changes to the UI program became effective June 1, 2019.

4. Brief Update on the Unemployment Insurance Reserve Fund

Ms. Knutson reported the Unemployment Insurance Reserve Fund balance as of May 31, 2019 was $1.8 billion. The financial statement for May is included in the Council materials.

Section 108.155(6), Wis. Stats., provides that the Treasurer will provide a report to the Council on the amount set aside in the balancing account to cover identify theft charges against reimbursable employer accounts. To date, less than $1,500 has been charged against this amount and the balance of this set aside amount is over $2.1 million. The increase in value is attributable to interest earned.

5. Program Integrity Assessment

The 2015 Agreed Bill contained a provision (Wis. Stat. § 108.19(1f)) that allows a program integrity assessment of 0.01% of an employer's payroll or solvency contribution, whichever is less, that is offset by a corresponding reduction in the employer's solvency tax. Proceeds are deposited into the Program Integrity Fund and used for program integrity purposes. The law requires that the DWD Secretary consider the balance in the Trust Fund and consult with the Council before the department may levy the assessment. The department must publish notice of the assessment by November 30 for it to be effective the following year.

Ms. Knutson presented Secretary Frostman's letter to the Council recommending that the department invest the 0.01% assessment into the Program Integrity Fund. In making his recommendation, the Secretary considered:

- The US Department of Labor eliminated the 5% stop-loss maximum on federal UI operating grants to states in 2018, and as a result our federal FY19 UI operating budget was decreased by $5.9 million. A 10% stop-loss maximum is currently in effect, and the potential exists to see another $5.3 million reduction in our federal FY20 UI operating grant in the upcoming year.
- The projected Trust Fund balance at the end of the fiscal year (June 30) is $1.87 billion.
- The Wisconsin Department of Revenue projects the Wisconsin economy to grow through calendar year 2020.
- The projected amount generated from this assessment is estimated to be $3.2 million, which is approximately 4.6% of the total UI operating budget for FY20.

- The department's program integrity efforts are working as shown in the March 2019 fraud report.

Motion

Motion by Mr. Hayden to approve the program integrity assessment of 0.01% for calendar year 2020. Second by Mr. Manley. Motion approved unanimously.

6. Department Proposals for Agreed Bill

D19-19 Department Reports to the Legislature

Ms. Knutson requested the Council's consideration of D19-19 (Department Reports to the Legislature), relating to the due dates of the Financial Outlook Report and the UIAC Activities Report. The department would like to provide a meaningful opportunity for the Council to consider the projections in the financial outlook and any recommendations the department includes in the report when deliberating on the Agreed Bill. The Agreed Bill, the Financial Outlook Report and the UIAC Activities Report will then be sent to the Legislature at the same time and any action taken on department recommendations will be included in the UIAC Activities Report.

In addition, the proposal makes the following changes:

- Repeals Wis. Stat. § 16.48 (1)(a)5., which requires the department to explain why significant cash reserves should be retained in the Trust Fund. Federal law requires that any withdrawal of funds from the Trust Fund be used for the payment of UI benefits only.
- Amends Wis. Stat. § 16.48(1)(a)6., which requires the department to explain why it is not proposing to liquidate any UI program debt. The amendment would instead require the department to propose methods to liquidate the debt. The purpose of the change is to provide options to reduce or eliminate any UI program debt.
- Repeals Wis. Stat. § 16.48(2), which permits the Governor to convene a special committee to review the Financial Outlook Report and attempt to reach a consensus regarding proposed changes to UI law. A special committee described in this section has not been convened since the 1980s; and the Governor is allowed to convene a special committee described in this section by executive order.

This proposal is expected to have no fiscal impact on the Trust Fund.

Mr. Rubsam provided information on the following department proposals:

D19-20 Effect of a Criminal Conviction

Typically, when the department refers matters for criminal prosecution, an administrative determination has been issued. There are situations, however, where criminal prosecution may

result in a court-ordered restitution order or judgment when the department has not issued an administrative determination that a debt is owed.

The department is proposing a statutory change to make criminal conviction judgments binding on criminal defendants for the purposes of proceedings that arise under UI law. The change would be consistent with federal law.

The proposal is expected to have a positive impact on the Trust Fund.

D19-21 Eligibility for Certain Employees

During the early 2019 partial federal government shutdown, certain employees were required to work without pay and were ineligible for UI benefits because they were working full time. Current state law provides an employee who works 32 hours or more per week is considered full time and is ineligible for UI benefits, even if that employee is not currently getting paid for that work. Furloughed employees (employees neither working nor being paid) may be eligible for UI benefits. If the furloughed employees receive backpay for the shutdown when they did not work, they are required to repay the UI benefits they received during that period of unemployment.

The department proposes a law change similar to what was presented to the Council by Senator Lena Taylor on March 21, 2019, to provide UI benefits to excepted federal employees (employees required to work but not receiving pay) during a future federal shutdown. The statutory changes are drafted to cover all workers in the state. If the workers receive pay retroactively they must repay any UI benefits they received. In the proposal, a contingency provision is added to state law to ensure that if federal agencies refuse to reimburse the state for the UI benefits paid, those benefit payments will be restored to the Trust Fund.

The proposal is anticipated to have a negligible to no impact on the Trust Fund.

7. Agreed Bill Timeline

The Agreed Bill Timeline was included in the Council's packet.

8. Future Meeting Dates

The next regularly scheduled meeting date is July 18, 2019.

9. Motion to Caucus

Motion by Mr. Gotzler, second by Mr. Hayden, to go into closed caucus under Wis. Stat. § 19.85(1)(ee), to deliberate items on the agenda and report back after caucus. The motion carried unanimously, and the Council convened in closed caucus at 10:29 a.m.

10. Report out of Caucus

The Council reconvened the public meeting at 12:57 p.m. and provided a report from caucus. The Council has reached an agreement on three department proposals and will exchange proposals.

Motion

Motion by Mr. Hayden, second by Mr. Manley to approve the following department proposals:

- D19-01 - Reimbursable Employer Debt Assessment Charging;
- D19-03 - Fiscal Agent Election of Employer Status; and,
- D19-07 - Departmental Error

The motion carried unanimously.

Pending Department Proposals

Mr. Manley requested statutory language on department proposal D19-09 (Creation of Administrative Fund) to assist in better understanding the intent of the proposal. Mr. Rubsam provided additional background on how department proposal D19-08 (Appropriation Revisions and Technical Corrections) ties in with D19-09 as it relates to the Administrative Account. Mr. Manley expressed concern that the amount of proposed statutory changes and lack of full knowledge of everything that is in the proposal, may prevent approval. Ms. Knutson stated the department will provide additional notes and information for each section before the next meeting.

Exchange of Labor and Management Proposals

Mr. Hayden reported that Labor Members are introducing the following nine proposals:

- Increased Penalties for Willful Worker Misclassification;
- Amend UI Tax Schedule Triggers Based on Average High Cost Multiple;
- Increase Taxable Wage Base and Index in Future Years;
- Repeal Waiting Week;
- Increase Maximum Weekly Benefit Rate to $406;
- Repeal of Substantial Fault and restore prior Wis. Stat. § 108.04(5g);
- Quit Exception for Relocating Spouse;
- Increase and Index Maximum Wage Cap for the Partial Benefits Formula; and,
- Define Suitable Work by Administrative Rule.

Mr. Manley reported that Management Members are introducing the following six proposals:

- Summer Camp Counselor Exclusion;
- Union Referral Service Work Search Criteria;
- Definition of Employee vs. Independent Contractor;

- Repeal Quit Exception in Wis. Stat. § 108.04(7)(e);
- Link Benefit Eligibility Weeks to State Unemployment Rate; and,
- Clarify Definitions of Misconduct and Substantial Fault.

Copies of the proposals are available on the department's internet website.

Based on the proposals presented, the department will prepare the following Council research requests:

- Increase the Taxable Wage Base and Index in Future Years – the department will determine what the wage base would be today if the wage base in 2013 had been adjusted for inflation.
- Amend UI Tax Schedule Triggers Based on Average High Cost Multiple – the department will provide fiscal estimates on what the change in dollar amount would be for the triggers proposed and what the dollar amount in the Trust Fund would be over the past five years; and, how the change would impact the Trust Fund during times of a recession.
- Summer Camp Counselor Exclusion – the department will provide the federal regulation containing the summer camp counselor exclusion that this proposal would mirror in state law.
- Link Benefit Eligibility Weeks to State Unemployment Rates – the department will provide information on what the impact would have been to UI benefits, taxes, and the Trust Fund had this been in place over the last ten years.

The department will provide an analysis of each Labor and Management proposal for at the next meeting, and fiscal estimates if possible.

11. Adjourn

Motion by Ms. Feistel, second by Mr. Manley to adjourn. The motion carried unanimously, and the Council adjourned at 1:31 p.m.

UI Reserve Fund Highlights

July 18, 2019

The June 30, 2019 Trust Fund ending balance was $1,863,852,608, an increase of $247,607,000 when compared to $1,616,245,608 at the same time last year.

Department of Workforce Development
Unemployment Insurance Division
Unemployment Insurance Advisory Council
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STATE OF WISCONSIN
DWD
Department of Workforce Development

Tony Evers, Governor
Caleb Frostman, Secretary

July 10, 2019

Mr. Wayne Griesbach
1930 N. 8th Street
Sheboygan, WI 53081

Dear Mr. Griesbach:

Thank you for contacting the Department of Workforce Development and submitting your comments regarding Wisconsin's Unemployment Insurance (UI) program. I received your letter dated June 21, 2019 and appreciate you sharing your input.

The Council holds a public hearing each biennium for members of the public to offer their recommendations on possible changes to Wisconsin's UI program. Prior to the public hearing, the Council also invites the public to submit written comments for improvements to the UI program to the Department. Most recently, the Council held a public hearing in November 2018. The comments received during the public hearing, along with the written comments submitted to the Department, were presented to the Council at their January 2019 meeting and are being taken into consideration by the Council as they develop potential reform ideas to the state's UI law.

Although the input that was provided during the public hearing comment period has already been presented to the Council, correspondence sent to the Council outside of the comment period is shared with the Council at its next regularly scheduled meeting. The next Council meeting is scheduled for July 18, 2019 at 10:00 a.m. and your letter will be shared with the Council at that time. Information on Council meetings can be found on our website at: https://dwd.wisconsin.gov/uibola/uiac/ .

I hope this information has been helpful. Thank you again for sharing your comments and for your interest in the UI program.

Sincerely,

Janell Knutson, Chair
Unemployment Insurance Advisory Council

Family Service Association

1930 N. 8th Street
Sheboygan, WI 53081
(920) 458-3784 FAX (920) 458-3785
E-mail: info@cccsonline.org Web Site: www.cccsonline.org

Consumer Credit Counseling Services *Educational Programs*

June 21, 2019

Ms. Janel Knutson
Bureau of Legal Affairs
201 E. Washington Ave.
Room E300
Madison, WI 53703

RE: In the matter of the Unemployment compensation for reimbursable employers.
SSN. [redacted]

Dear Ms. Knutson:

We are a 501C3, non-profit, founded in 1912. Our mission is to bring financial stability to individuals and families through Budget and Credit Counseling, Representative Payee and Corporate Guardianship work. The majority of our clients are low to median income.

We currently are on the reimbursable program for unemployment.

Twice in the last two years, we have had employees quit their employment with us, to seek other opportunities. Both times, many months later, we are given notice that we are responsible for paying out their unemployment.

I would like to reiterate that they voluntarily quit their employment with us. I believe it is a gross injustice for us to have to pay unemployment under these circumstances. We ask that you would change the law in order to reduce the financial burden for this unfair practice.

Thank you.

Wayne Griesbach

Wayne Griesbach
Executive Director
Family Service Assn. of Sheboygan

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D19-08
Appropriations Revisions and Technical Corrections

Date: July 17, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs
Re: LRB-3683/P1

The Department asked the Legislative Reference Bureau to split the preliminary draft of LRB-0378/P2, which was included with the original proposal for D19-08, into two separate preliminary drafts without adding new provisions. This memo summarizes the draft of LRB-3683/P1.

Section	Change	Reason
1, 66	Specifies the appropriation for assessments under s. 108.19(1).	Clarifies appropriation language if the assessment were ever assessed.
2	Amends the "employer interest and penalty" appropriation in s. 20.445(1)(gd) to repeal references to repealed laws and to update cross-references.	For clarification of statutes.
2, 4, 5, 6, 7, 12, 13, 15, 16, 17, 18, 22, 23, 24, 25, 29, 30, 31, 33, 34, 37, 38, 41, 49, 50, 51, 52, 53, 54, 55, 57, 58, 61, 70, 79, 82, 86	Amends references to federal laws in ch. 108 to the specific federal statute.	For clarification and ease of checking cross-references. Corrects some outdated and incorrect references to federal laws.
3	Repeal reference to 1997 WI Act 39 from s. 20.445(1)(gh).	Delete a reference to a temporary provision that is no longer in effect.

D19-08
Appropriations Revisions and Technical Corrections

8-11, 46, 62, 63, 69-75	Restructure the statutes regarding the unemployment interest payment fund, which relates to the special assessments for interest.	To ensure that the statutes are properly organized based on current drafting conventions and to better organize these sections.
14	Amend definition of "employer's account."	Clarifies statute by incorporating cross-reference to s. 108.16(2)(a).
19	Repeal the exclusion from gross income for amounts received under qualified group legal services plans in s. 108.02(26)(c)9.	Corresponding federal exclusion in 26 USC § 120 has been repealed.
20	Repeal the exclusion from gross income for amounts received under the federal Medicare Catastrophic Coverage Act in 108.02(26)(c)14..	Corresponding federal Act has been repealed.
21	Move s. 108.04(7)(h) to s. 108.04(7)(u).	Moves statute related to charging benefits so that it appears after the quit exceptions.
26-27, 32, 39-40	Amend various statutes related to charging of benefits related to substantial fault.	Updates statutes regarding charging of benefits related to substantial fault to ensure proper charging.
28	Repeals "in this state" from s. 108.10.	Clarifies that the procedures for appeals of tax matters apply to all employing units, not just those in Wisconsin.
28, 36, 87, 88	Adds cross-reference to s. 108.095.	These changes should have been made when s. 108.095 was created.
33-34	Amend s. 108.14(a) to (d).	Modernize language related to federal conformity requirement.
35	Renumber s. 108.14(18).	Move the provision to be near the related statute.
42, 43, 44, 45, 48	Add "fund's" before "balancing account" in various statutes.	To be consistent with the rest of ch. 108.
47	Amend s. 108.16(6m).	Correct cross-references.
56	Amend and consolidate sections of 108.161.	For clarification.
64-68, 76-77	Reorganization of statutes related to assessments.	For clarification and simplification.
78	Repeal s. 108.19(3).	Repeal outdated section.
80-81	Creates s. 108.195	Better organization of the various funds.
83	Amend s. 108.22(1m).	To include amounts due by Indian Tribes. This reference should have been added when s. 108.22(1m) was created.
84	Amend s. 108.22(8e).	Add reference to the balancing account for consistency.
85	Amend s. 108.223(2)(b).	Improve style of statute.

State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-3683/P1
MED:cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 108.02 (26) (c) 9., 108.02 (26) (c) 14. and 108.19 (3); ***to renumber*** 108.04 (7) (h); ***to renumber and amend*** 108.14 (12) (e), 108.14 (18), 108.19 (1), 108.19 (1m), 108.19 (1n), 108.19 (1p), 108.19 (1q), 108.19 (1s), 108.19 (2) and 108.19 (2m); ***to consolidate, renumber and amend*** 108.14 (12) (a) to (d), 108.161 (1) and (1m) and 108.161 (5) and (6); ***to amend*** 20.445 (1) (gc), 20.445 (1) (gd), 20.445 (1) (gh), 20.445 (1) (n), 20.445 (1) (nb), 20.445 (1) (nd), 20.445 (1) (ne), 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf), 108.02 (2) (c), 108.02 (13) (c) 2. a., 108.02 (14), 108.02 (15) (j) 5., 108.02 (15) (k) 5., 108.02 (17m), 108.02 (19), 108.04 (12) (b), 108.04 (16) (d) 1., 108.04 (18) (a), 108.04 (18) (b), 108.07 (5) (intro.), 108.07 (5) (c), 108.10 (intro.), 108.13 (4) (a) 2., 108.14 (3m), 108.14 (8n) (a), 108.14 (8n) (e), 108.14 (26), 108.141 (1) (h), 108.141 (3g) (a) 3. b., 108.141 (7) (a), 108.141 (7) (b), 108.145, 108.15 (3) (d), 108.151 (2) (d), 108.152 (1) (d), 108.155 (2) (a) and (d), 108.16 (6) (m), 108.16 (6m) (a), 108.16 (6x), 108.16 (9) (a), 108.161 (title), 108.161 (2), 108.161 (3), 108.161 (3e), 108.161 (4), 108.161 (7), 108.161 (8), 108.161 (9), 108.17 (2m), 108.18 (3) (c),

108.18 (7) (a) 1., 108.18 (7) (h), 108.19 (1f) (a), 108.19 (1f) (c), 108.19 (4), 108.20 (2m), 108.22 (1m), 108.22 (8e), 108.223 (2) (b), 108.23, 108.24 (3) (a) 3. a. and 108.24 (3) (a) 4.; ***to repeal and recreate*** 108.19 (title); and ***to create*** 108.19 (1) (d), 108.19 (1e) (cm), 108.19 (1m) (e), 108.195 (title) and 108.195 (2) (title) of the statutes; **relating to:** correcting and updating cross–references and making organizational changes in the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.445 (1) (gc) of the statutes is amended to read:

20.445 **(1)** (gc) *Unemployment administration.* All moneys received by the department under s. 108.19 ~~not otherwise appropriated under this subsection~~ (1) for the administration of ch. 108.

****NOTE: See the note under SECTION 66.

SECTION 2. 20.445 (1) (gd) of the statutes is amended to read:

20.445 **(1)** (gd) *Unemployment interest and penalty payments.* All moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) ~~and (13) (c)~~ and 108.22 except interest and penalties deposited under s. ~~108.19 (1q), and forfeitures under s. 103.05 (5)~~ 108.195 (1), all moneys not appropriated under par. (gg) ~~and~~, all moneys received as forfeitures under s. 103.05 (5), and all moneys transferred to this appropriation account from the appropriation account under par. (gh), for the payment of benefits specified in s. 108.07 (5) ~~and 1987 Wisconsin Act 38,~~

~~section 132 (1) (c)~~, for the payment of interest to employers under s. 108.17 (3m), for research relating to the condition of the unemployment reserve fund under s. 108.14 (6), for administration of the unemployment insurance program and federal or state unemployment insurance programs authorized by the governor under s. 16.54, for satisfaction of any federal audit exception concerning a payment from the unemployment reserve fund or any federal aid disallowance concerning the unemployment insurance program, for assistance to the department of justice in the enforcement of ch. 108, for the payment of interest due on advances from the federal unemployment account under ~~title XII of the social security act~~ 42 USC 1321 to 1324 to the unemployment reserve fund, and for payments made to the unemployment reserve fund to obtain a lower interest rate or deferral of interest payments on these advances, except as otherwise provided in s. 108.20.

****NOTE: This is the so–called "I&P fund." However, it is not a separate segregated fund, but rather an appropriation account in the general fund. Except as described below, the changes in this SECTION constitute clarifications or correspond to other changes in the bill, including cross–reference changes.

****NOTE: Section 108.04 (13) (c) 2., 1985 stats., required $15 tardy filing fees to be paid in certain circumstances. 1987 Act 38 renumbered s. 108.04 (13) (c) to s. 108.04 (13) (b) and changed existing cross–references accordingly. However, due to the passage of 1987 Act 27 that same session that created a *new* reference to the (old) s. 108.04 (13) (c) in s. 20.445 (1) (gf) but that was not taken into account by Act 38 and the fact that Act 38 reused the numbering for (13) (c) for something else, references to "(13) (c)" appear to have perpetuated to this day. As such, the reference to (13) (c) is struck, as it has not referenced any amounts collected since the 1985 statutes.

****NOTE: 1987 Act 38, SECTION 132 (1), was a nonstatutory transitional provision that provided how certain benefits were to be charged for periods in 1989 and 1990. The reference to this provision is struck, as this transitional period has long since passed.

SECTION 3. 20.445 (1) (gh) of the statutes is amended to read:

20.445 **(1)** (gh) *Unemployment information technology systems; assessments.* All moneys received from assessments levied under s. 108.19 (1e) (a) ~~and 1997 Wisconsin Act 39, section 164 (2)~~, for the purpose specified in s. 108.19 (1e) (d). The

treasurer of the unemployment reserve fund may transfer moneys from this appropriation account to the appropriation account under par. (gd).

****NOTE: This deletes a reference to a temporary provision from 1997 Act 39.

SECTION 4. 20.445 (1) (n) of the statutes is amended to read:

20.445 **(1)** (n) *Employment assistance and unemployment insurance administration; federal moneys.* All federal moneys received, as authorized by the governor under s. 16.54, for the administration of employment assistance and unemployment insurance programs of the department, for the performance of the department's other functions under subch. I of ch. 106 and ch. 108, and to pay the compensation and expenses of appeal tribunals and of employment councils appointed under s. 108.14, to be used for such purposes, except as provided in s. 108.161 (3e), and, from the moneys received by this state under ~~section 903~~ 42 USC 1103 (d) ~~of the federal Social Security Act, as amended~~, to transfer to the appropriation account under par. (nb) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the appropriation account under par. (nd) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the appropriation account under par. (ne) an amount not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under par. (ne) and the amount determined by the treasurer of the unemployment reserve fund that is required to pay for the cost of banking services incurred by the unemployment reserve fund, and to transfer to the appropriation account under s.

20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve fund.

SECTION 5. 20.445 (1) (nb) of the statutes is amended to read:

20.445 **(1)** (nb) *Unemployment administration; information technology systems.* From the moneys received from the federal government under ~~section 903~~ 42 USC 1103 (d) ~~of the federal Social Security Act, as amended~~, as a continuing appropriation, the amounts in the schedule, as authorized by the governor under s. 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in s. 108.19 (1e) (d).

SECTION 6. 20.445 (1) (nd) of the statutes is amended to read:

20.445 **(1)** (nd) *Unemployment administration; apprenticeship and other employment services.* From the moneys received from the federal government under ~~section 903~~ 42 USC 1103 (d) ~~of the federal Social Security Act, as amended~~, the amounts in the schedule, as authorized by the governor under s. 16.54, to be used for administration by the department of apprenticeship programs under subch. I of ch. 106 and for administration and service delivery of employment and workforce information services, including the delivery of reemployment assistance services to unemployment insurance claimants. All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purposes specified in this paragraph.

SECTION 7. 20.445 (1) (ne) of the statutes is amended to read:

20.445 **(1)** (ne) *Unemployment insurance administration and bank service costs*. From the moneys received by this state under ~~section 903 of the federal Social Security Act, as amended~~ 42 USC 1103, all moneys transferred from the appropriation account under par. (n) to be used for the administration of unemployment insurance and for the payment of the cost of banking services incurred by the unemployment reserve fund. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in this paragraph.

SECTION 8. 20.445 (1) (u) of the statutes is amended to read:

20.445 **(1)** (u) *Unemployment interest payments and transfers*. From the unemployment interest payment fund, all moneys received from assessments under s. 108.19 (1m) (a) for the purpose of making the payments and transfers authorized under s. 108.19 (1m) (f).

****NOTE: Reflects changes in SECTION 70.

SECTION 9. 20.445 (1) (v) of the statutes is amended to read:

20.445 **(1)** (v) *Unemployment program integrity*. From the unemployment program integrity fund, all moneys received from sources identified under s. ~~108.19 (1s)~~ 108.195 (2) (a) for the purpose of making the payments authorized under s. ~~108.19 (1s)~~ 108.195 (2) (b).

****NOTE: Reflects changes in SECTION 75.

SECTION 10. 25.17 (1) (xe) of the statutes is amended to read:

25.17 **(1)** (xe) Unemployment interest payment fund (s. ~~108.19 (1q)~~ 108.195 (1));

****NOTE: Reflects changes in SECTION 74.

SECTION 11. 25.17 (1) (xf) of the statutes is amended to read:

25.17 **(1)** (xf) Unemployment program integrity fund (s. ~~108.19 (1s)~~ 108.195 (2));

****NOTE: Reflects changes in SECTION 75.

SECTION 12. 108.02 (2) (c) of the statutes is amended to read:

108.02 **(2)** (c) In connection with the production or harvesting of any commodity defined as an agricultural commodity ~~in s. 15 (g) of the federal agricultural marketing act, as amended (46 Stat. 1550, s. 3;~~ under 12 USC 1141j~~) or~~ (f), in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

****NOTE: This updates a cross–reference to federal law to reflect the correct provision. (Note that the U.S. Code still has it as "(g)" but notes that "Section 1141j(g) of title 12, referred to in subsec. (f)(3), was redesignated section 1141j(f) by Pub. L. 110–246.")

SECTION 13. 108.02 (13) (c) 2. a. of the statutes is amended to read:

108.02 **(13)** (c) 2. a. Such crew leader holds a valid certificate of registration under ~~the federal farm labor contractor registration act of 1963~~ 29 USC 1801 to 1872; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

****NOTE: The Farm Labor Contractor Registration Act of 1963 was repealed by P.L. 97–470, the Migrant and Seasonal Agricultural Worker Protection Act. This substitutes in the correct cross–references in current federal law.

SECTION 14. 108.02 (14) of the statutes is amended to read:

108.02 **(14)** EMPLOYER'S ACCOUNT. "Employer's account" means ~~a~~ an employer's separate account in the fund~~, reflecting the employer's experience with respect to~~

~~contribution credits and benefit charges under this chapter~~ maintained as required under s. 108.16 (2) (a).

****NOTE: This adds a cross–reference to this definition, in place of the current generic description, for additional clarity.

SECTION 15. 108.02 (15) (j) 5. of the statutes is amended to read:

108.02 **(15)** (j) 5. In any quarter in the employ of any organization exempt from federal income tax under ~~section~~ 26 USC 501 (a) ~~of the internal revenue code~~, other than an organization described in ~~section~~ 26 USC 401 (a) or 501 (c) (3) ~~of such code~~, or under section 26 USC 521 ~~of the internal revenue code~~, if the remuneration for such service is less than $50;

SECTION 16. 108.02 (15) (k) 5. of the statutes is amended to read:

108.02 **(15)** (k) 5. With respect to which unemployment insurance is payable under ~~the federal railroad unemployment insurance act (52 Stat. 1094)~~ 45 USC 351 to 369;

SECTION 17. 108.02 (17m) of the statutes is amended to read:

108.02 **(17m)** INDIAN TRIBE. "Indian tribe" has the meaning given in 25 USC ~~450b~~ 5304 (e), and includes any subdivision, subsidiary, or business enterprise that is wholly owned by such an entity.

****NOTE: 25 USC 450b was editorially reclassified in the U.S. Code as 25 USC 5304.

SECTION 18. 108.02 (19) of the statutes is amended to read:

108.02 **(19)** NONPROFIT ORGANIZATIONS. "Nonprofit organization" means an organization described in ~~section~~ 26 USC 501 (c) (3) ~~of the Internal Revenue Code~~ that is exempt from federal income tax under ~~section~~ 26 USC 501 (a) ~~of the Internal Revenue Code~~.

SECTION 19. 108.02 (26) (c) 9. of the statutes is repealed.

****NOTE: This repeals a provision that referenced a federal law provision concerning qualified group legal services plans. The provision in federal law had been terminated for taxable years beginning after June 30, 1992, and has since been repealed outright by P.L. 113–295.

SECTION 20. 108.02 (26) (c) 14. of the statutes is repealed.

****NOTE: This repeals a reference to the federal Medicare Catastrophic Coverage Act of 1988, which was subsequently repealed by P.L. 101–234, the Medicare Catastrophic Coverage Repeal Act of 1989.

SECTION 21. 108.04 (7) (h) of the statutes is renumbered 108.04 (7) (u).

****NOTE: This provision, relating to charging benefits when a quit exception applies, is moved so that it appears after all of the quit exceptions, not in the middle of them.

SECTION 22. 108.04 (12) (b) of the statutes is amended to read:

108.04 **(12)** (b) Any individual who receives, through the department, any other type of unemployment benefit or allowance for a given week is ineligible for benefits for that same week under this chapter, except as specifically required for conformity with ~~the federal trade act of 1974 (P.L. 93–618)~~ 19 USC 2101 to 2497b.

SECTION 23. 108.04 (16) (d) 1. of the statutes is amended to read:

108.04 **(16)** (d) 1. The department shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training, as a result of the individual's leaving work that the individual engaged in on a temporary basis during a break in the training or a delay in the commencement of the training, or because the individual left on–the–job training not later than 30 days after commencing that training because the individual did not meet the requirements ~~of the federal trade act~~ under 19 USC 2296 (c) (1) (B); and

SECTION 24. 108.04 (18) (a) of the statutes is amended to read:

108.04 **(18)** (a) The wages paid to an employee who performed services while the employee was an alien shall, if based on such services, be excluded from the employee's base period wages for purposes of sub. (4) (a) and ss. 108.05 (1) and 108.06

(1) unless the employee is an alien who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of ~~section 212 (d) (5) of the federal immigration and nationality act (~~8 USC 1182 (d) (5)~~)~~. All claimants shall be uniformly required to provide information as to whether they are citizens and, if they are not, any determination denying benefits under this subsection shall not be made except upon a preponderance of the evidence.

SECTION 25. 108.04 (18) (b) of the statutes is amended to read:

108.04 **(18)** (b) Any amendment of ~~s.~~ 26 USC 3304 (a) (14) ~~of the federal unemployment tax act~~ specifying conditions other than as stated in par. (a) for denial of benefits based on services performed by aliens, or changing the effective date for required implementation of par. (a) or such other conditions, ~~which~~ that is a condition of approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, shall be applicable to this subsection.

SECTION 26. 108.07 (5) (intro.) of the statutes is amended to read:

108.07 **(5)** (intro.) Except as provided in sub. (7), whenever benefits ~~which~~ that would otherwise be chargeable to the fund's balancing account are paid based on wages paid by an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, and the benefits are so chargeable under sub. (3) or s. 108.04 (1) (f) ~~or~~, (5), or (5g) or 108.14 (8n) (e), or under s. 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), the department shall charge the benefits as follows:

****NOTE: This subsection governs the charging of benefits that would otherwise be chargeable to the balancing account in certain situations where one employer is a reimbursable employer. This provision originated in 1987 Act 38, and the drafting file

indicates that it was intentionally written to omit certain cases where benefits are charged to the balancing account (i.e., s. 108.04 (7) and (8)). However, s. 108.04 (5g) did not exist at that time, and when it was created, it appears that it should have been added here.

SECTION 27. 108.07 (5) (c) of the statutes is amended to read:

108.07 **(5)** (c) If 2 or more employers from which the claimant has base period wages are not subject to the contribution requirements of ss. 108.17 and 108.18, and one or more employers from which the claimant has base period wages are subject to the contribution requirements of ss. 108.17 and 108.18, that percentage of the employee's benefits which would otherwise be chargeable to the fund's balancing account under sub. (3) or s. 108.04 (1) (f) ~~or~~, (5), or (5g), or under s. 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), shall be charged to the administrative account and paid from the appropriation under s. 20.445 (1) (gd).

****NOTE: See the note under SECTION 26.

SECTION 28. 108.10 (intro.) of the statutes is amended to read:

108.10 Settlement of issues other than benefit claims. (intro.) Except as provided in s. 108.245 (3), in connection with any issue arising under this chapter as to the status or liability of an employing unit ~~in this state~~, for which no review is provided under s. 108.09, 108.095, or 108.227 (5) and whether or not a penalty is provided in s. 108.24, the following procedure shall apply:

****NOTE: This adds a cross–reference to s. 108.095, which provides a separate procedure from s. 108.09 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

****NOTE: This deletes "in this state" to clarify that the procedures in this section apply to issues involving the status or liability of any employing unit, not only an employing unit located in this state.

SECTION 29. 108.13 (4) (a) 2. of the statutes is amended to read:

108.13 **(4)** (a) 2. "Legal process" has the meaning given under 42 USC ~~662 (e)~~ 659 (i) (5).

****NOTE: The definition referenced here was moved by P.L. 104–193 from 42 USC 662 to 42 USC 659.

SECTION 30. 108.14 (3m) of the statutes is amended to read:

108.14 **(3m)** In any court action to enforce this chapter the department, the commission, and the state may be represented by any licensed attorney who is an employee of the department or the commission and is designated by either of them for this purpose or at the request of either of them by the department of justice. If the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of ~~Title IX of the social security act~~ 42 USC 1101 to 1110, the expenses and compensation of the special counsel and of any experts employed by the department in connection with that proceeding may be charged to the administrative account. If the compensation is being determined on a contingent fee basis, the contract is subject to s. 20.9305.

SECTION 31. 108.14 (8n) (a) of the statutes is amended to read:

108.14 **(8n)** (a) The department shall enter into a reciprocal arrangement ~~which is~~ approved by the U.S. secretary of labor ~~pursuant to section~~ under 26 USC 3304 (a) (9) (B) ~~of the internal revenue code~~, to provide more equitable benefit coverage for individuals whose recent work has been covered by the unemployment insurance laws of 2 or more jurisdictions.

SECTION 32. 108.14 (8n) (e) of the statutes is amended to read:

108.14 **(8n)** (e) The department shall charge this state's share of any benefits paid under this subsection to the account of each employer by which the employee claiming benefits was employed in the applicable base period, in proportion to the total amount of wages he or she earned from each employer in the base period, except that if s. 108.04 (1) (f), (5), (5g), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a)

~~or (b)~~ to (c), 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to employment by such an employer who is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on employment with that employer to the fund's balancing account, or, if s. 108.04 (1) (f) ~~or~~, (5), or (5g) or 108.07 (3) would have applied to an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the fund's balancing account with any other state's share of such benefits pending reimbursement by that state.

****NOTE: In the first string of cross–references, missing cross–references are added to provisions that provide for charging to the balancing account.

****NOTE: A reference to s. 108.04 (5g) is added in the second–to–last sentence to correspond to the changes in SECTIONS 26 and 27. See the note under SECTION 26.

SECTION 33. 108.14 (12) (a) to (d) of the statutes are consolidated, renumbered 108.14 (12) (am) and amended to read:

108.14 **(12)** (am) ~~Consistently~~ Consistent with the provisions of ~~pars. (8) and (9) of section 303 (a) of Title III of the federal social security act,~~ 42 USC 503 (a) (8) and (9), the department shall expend all moneys received in the federal administrative financing account from any federal agency under ~~said Title III shall be expended~~ 42 USC ch. 7 subch. III solely for the purposes and in the amounts found necessary by ~~said~~ that agency for the ~~proper and efficient~~ administration of this chapter. ~~(b) Consistently with said provisions of said Title III, any~~ The department shall replace, within a reasonable time, any such moneys~~,~~ that were received ~~prior to~~ before July 1, 1941, and ~~remaining~~ remained unencumbered on ~~said~~ that date, or that were received on or after ~~said~~ that date, ~~which, because of any action or contingency, have been~~ if the moneys are lost or have been expended for purposes

other than, or in amounts in excess of, those found necessary by ~~said~~ the federal agency for the ~~proper~~ administration of this chapter~~, shall be replaced within a reasonable time. This paragraph is the declared policy of this state, as enunciated by the 1941 legislature, and shall be implemented as further provided in this subsection. (c)~~. If ~~it is believed that~~ any amount of money thus received ~~has been thus~~ is lost or improperly expended, the department, on its own motion or on notice from ~~said~~ the federal agency, shall promptly investigate and determine the matter and shall, depending on the nature of its determination, take such steps as it ~~may deem~~ considers necessary to protect the interests of the state. ~~(d)~~ If it is finally determined that moneys ~~thus received~~ have been ~~thus~~ lost or improperly expended, ~~then~~ the department shall either make the necessary replacement from those moneys in the administrative account specified in s. 108.20 (2m) or shall submit, at the next budget hearings conducted by the governor and at the budget hearings conducted by the next legislature convened in regular session, a request that the necessary replacement be made by an appropriation from the general fund.

****NOTE: Modernizes and streamlines language that was written to fulfill the conformity requirement under 42 USC 503 (a) (8) and (9).

SECTION 34. 108.14 (12) (e) of the statutes is renumbered 108.14 (12) (bm) and amended to read:

108.14 **(12)** (bm) This subsection shall not be construed to relieve this state of any obligation existing ~~prior to its enactment~~ before July 1, 1941, with respect to moneys received ~~prior to~~ before July 1, 1941~~, pursuant to said Title III~~ under 42 USC ch. 7 subch. III.

****NOTE: See the note under the previous SECTION.

SECTION 35. 108.14 (18) of the statutes is renumbered 108.19 (1e) (e) and amended to read:

108.19 **(1e)** (e) No later than the end of the month following each quarter in which the department expends moneys derived from assessments levied under ~~s. 108.19 (1e)~~ this subsection, the department shall submit a report to the council on unemployment insurance describing the use of the moneys expended and the status at the end of the quarter of any project for which moneys were expended.

****NOTE: Moves this requirement to the provision to which it closely relates.

SECTION 36. 108.14 (26) of the statutes is amended to read:

108.14 **(26)** The department shall prescribe by rule a standard affidavit form that may be used by parties to appeals under ss. 108.09, 108.095, and 108.10 and shall make the form available to employers and claimants. The form shall be sufficient to qualify as admissible evidence in a hearing under this chapter if the authentication is sufficient and the information set forth by the affiant is admissible, but its use by a party does not eliminate the right of an opposing party to cross examine the affiant concerning the facts asserted in the affidavit.

****NOTE: This adds a cross–reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

SECTION 37. 108.141 (1) (h) of the statutes is amended to read:

108.141 **(1)** (h) "State law" means the unemployment insurance law of any state~~,~~ that has been approved by the U.S. secretary of labor under ~~section~~ 26 USC 3304 ~~of the internal revenue code~~.

SECTION 38. 108.141 (3g) (a) 3. b. of the statutes is amended to read:

108.141 **(3g)** (a) 3. b. The gross average weekly remuneration for the work exceeds the claimant's weekly benefit rate plus any supplemental unemployment benefits, as defined in ~~section~~ 26 USC 501 (c) (17) (D) ~~of the internal revenue code~~, then payable to the claimant;

SECTION 39. 108.141 (7) (a) of the statutes is amended to read:

108.141 **(7)** (a) The department shall charge the state's share of each week of extended benefits to each employer's account in proportion to the employer's share of the total wages of the employee receiving the benefits in the employee's base period, except that if the employer is subject to the contribution requirements of ss. 108.17 and 108.18 the department shall charge the share of extended benefits to which s. 108.04 (1) (f), (5), (5g), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) ~~or (b)~~ to (c), 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing account.

****NOTE: As in SECTION 32, this adds a reference to substantial fault in the extended benefits provision.

SECTION 40. 108.141 (7) (b) of the statutes is amended to read:

108.141 **(7)** (b) The department shall charge the full amount of extended benefits based on employment for a government unit to the account of the government unit, except that if s. 108.04 (5), (5g), or (7) applies and the government unit has elected contribution financing the department shall charge one–half of the government unit's share of the benefits to the fund's balancing account.

****NOTE: This adds a reference to substantial fault in the extended benefits provision.

SECTION 41. 108.145 of the statutes is amended to read:

108.145 Disaster unemployment assistance. The department shall administer under s. 108.14 (9m) the distribution of disaster unemployment assistance to workers in this state who are not eligible for benefits whenever such assistance is made available by the president of the United States under ~~26~~ 42 USC 5177 (a). In determining eligibility for assistance and the amount of assistance payable to any worker who was totally self–employed during the first 4 of the last 5

most recently completed quarters preceding the date on which the worker claims assistance, the department shall not reduce the assistance otherwise payable to the worker because the worker receives one or more payments under the social security act ~~(~~,42 USC ~~301 et seq.)~~ ch. 7, for the same week that the worker qualifies for such assistance.

****NOTE: The cross–reference to "26 USC 5177 (a)" appears to have been an error from when this provision was enacted. It is corrected to the proper cross–reference, "42 USC 5177 (a)."

SECTION 42. 108.15 (3) (d) of the statutes is amended to read:

108.15 **(3)** (d) If a government unit elects contribution financing for any calendar year after the first calendar year it becomes newly subject to this chapter, it shall be liable to reimburse the fund for any benefits based on prior employment. If a government unit terminates its election of contribution financing, ss. 108.17 and 108.18 shall apply to employment in the prior calendar year, but after all benefits based on such prior employment have been charged to its contribution account any balance remaining in such account shall be transferred to the fund's balancing account.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 43. 108.151 (2) (d) of the statutes is amended to read:

108.151 **(2)** (d) Sections 108.17 and 108.18 shall apply to all prior employment, but after all benefits based on prior employment have been charged to any account it has had under s. 108.16 (2) any balance remaining therein shall be transferred to the fund's balancing account as if s. 108.16 (6) (c) or (6m) (d) applied.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 44. 108.152 (1) (d) of the statutes is amended to read:

108.152 **(1)** (d) If the Indian tribe or tribal unit is an employer ~~prior to~~ before the effective date of an election, ss. 108.17 and 108.18 shall apply to all employment ~~prior to~~ before the effective date of the election, but after all benefits based on prior employment have been charged to any account that it has had under s. 108.16 (2), the department shall transfer any positive balance or charge any negative balance remaining therein to the fund's balancing account as if s. 108.16 (6) (c) and (6m) (d) applied.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 45. 108.155 (2) (a) and (d) of the statutes are amended to read:

108.155 **(2)** (a) On October 2, 2016, the fund's treasurer shall set aside $2,000,000 in the fund's balancing account for accounting purposes. On an ongoing basis, the fund's treasurer shall tally the amounts allocated to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. and deduct those amounts from the amount set aside plus any interest calculated thereon.

(d) If the department assesses reimbursable employers under par. (c), the department shall determine the amount of assessments to be levied as provided in sub. (3), and the fund's treasurer shall notify reimbursable employers that the assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall be payable by each reimbursable employer that is subject to this chapter as of the date the assessment is imposed. Assessments imposed under this section shall be credited to the fund's balancing account.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 46. 108.16 (6) (m) of the statutes is amended to read:

108.16 **(6)** (m) Any amounts transferred to the balancing account from the unemployment interest payment fund under s. 108.19 (1m) (f).

****NOTE: This adds a cross–reference to the provision that provides for the transfers that are referenced.

SECTION 47. 108.16 (6m) (a) of the statutes is amended to read:

108.16 **(6m)** (a) The benefits thus chargeable under sub. (7) (a) or (b) or s. 108.04 (1) (f), (5), (5g), (7) ~~(h)~~ (u), (7m), (8) (a) ~~or (b)~~ to (c), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), or (6), 108.133 (3) (f), 108.14 (8n) (e), 108.141, 108.15, 108.151, or 108.152 ~~or sub. (6) (e) or (7) (a) and (b)~~.

****NOTE: See the note under SECTION 21 regarding the change of "(7) (h)" to "(7) (u)."

****NOTE: This adds a missing cross reference to s. 108.04 (7m).

****NOTE: This adds a cross–reference to s. 108.15. Sections 108.15, 108.151, and 108.152 all call for benefits to be paid from a reimbursement account for an employer that is a subaccount of the balancing account.

****NOTE: Material that was formerly in s. 108.16 (6) (e) was relocated to s. 108.16 (6m) (f) and (11). See 1999 Wisconsin Acts 15 and 83. The reference to (6) (e) here appears to be a vestige of the former law and it is therefore deleted.

****NOTE: This extends a cross–reference to s. 108.04 (8) (c), which also provides for charging to the balancing account.

SECTION 48. 108.16 (6x) of the statutes is amended to read:

108.16 **(6x)** The department shall charge to the uncollectible reimbursable benefits account the amount of any benefits paid from the fund's balancing account that are reimbursable under s. 108.151 but for which the department does not receive reimbursement after the department exhausts all reasonable remedies for collection of the amount.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 49. 108.16 (9) (a) of the statutes is amended to read:

108.16 **(9)** (a) Consistently with ~~section~~ 26 USC 3305 ~~of the internal revenue code~~, relating to federal instrumentalities ~~which~~ that are neither wholly nor

partially owned by the United States nor otherwise specifically exempt from the tax imposed ~~by section~~ under 26 USC 3301 ~~of the internal revenue code~~:

1. Any contributions required and paid under this chapter for ~~1939 or~~ any ~~subsequent~~ year by any such instrumentality, including any national bank, shall be refunded to ~~such~~ that instrumentality in case this chapter is not certified with respect to such year under ~~s.~~ 26 USC 3304 ~~of said code~~.

2. No national banking association ~~which~~ is ~~subject to this chapter shall be~~ required to comply with any ~~of its~~ provisions or requirements under this chapter, to the extent that such compliance would be contrary to ~~s.~~ 26 USC 3305 ~~of said code~~.

SECTION 50. 108.161 (title) of the statutes is amended to read:

108.161 (title) **Federal administrative financing account; Reed Act distributions.**

****NOTE: This section was created by 1957 Act 235 following the enactment of the Federal Employment Security Administrative Financing Act of 1954, the relevant portion of which is known as the "Reed Act" and provides for periodic distributions of money to states, the last of which occurred in 2002. This amends the title here to make it more apparent what this section is about. The treatments below aim to eliminate antiquated language (i.e., "hereunder") and use U.S. Code cross–references instead of references to the Social Security Act.

SECTION 51. 108.161 (1) and (1m) of the statutes are consolidated, renumbered 108.161 (1) and amended to read:

108.161 **(1)** The fund's treasurer shall maintain within the fund an employment security "federal administrative financing account~~",~~" and shall credit ~~thereto~~ to that account all amounts credited to the fund ~~pursuant to the federal employment security administrative financing act (of 1954) and section 903 of the federal social security act, as amended.~~ ~~**(1m)** The treasurer of the fund shall also credit to said account~~ under 42 USC 1101 to 1103 and all federal moneys credited to the fund ~~pursuant to~~ under sub. (8).

SECTION 52. 108.161 (2) of the statutes is amended to read:

108.161 **(2)** The requirements of ~~said section 903~~ 42 USC 1103 shall control any appropriation, withdrawal, and use of any moneys in ~~said~~ the federal administrative financing account.

SECTION 53. 108.161 (3) of the statutes is amended to read:

108.161 **(3)** ~~Consistently~~ Consistent with this chapter and ~~said section 903, such~~ 42 USC 1103, moneys in the federal administrative financing account shall be used solely for benefits or employment security administration by the department, including unemployment insurance, employment service, apprenticeship programs, and related statistical operations.

SECTION 54. 108.161 (3e) of the statutes is amended to read:

108.161 **(3e)** Notwithstanding sub. (3), any moneys allocated under ~~section 903 of the federal Social Security Act, as amended,~~ 42 USC 1103 for federal fiscal years 2000 and 2001 and the first $2,389,107 of any distribution received by this state under ~~section 903 of that act~~ 42 USC 1103 in federal fiscal year 2002 shall be used solely for unemployment insurance administration.

SECTION 55. 108.161 (4) of the statutes is amended to read:

108.161 **(4)** ~~Such moneys~~ Moneys in the federal administrative financing account shall be encumbered and spent for employment security administrative purposes only pursuant to, and after the effective date of, a specific legislative appropriation enactment that does all of the following:

(a) ~~Stating~~ States for which such purposes and in what amounts the appropriation is being made to the administrative account created by s. 108.20.

(b) ~~Directing~~ Directs the fund's treasurer to transfer the appropriated amounts to the administrative account only as and to the extent that they are currently

needed for such expenditures, and ~~directing~~ directs that there shall be restored to the federal administrative financing account ~~created by sub. (1)~~ any amount thus transferred ~~which~~ that has ceased to be needed or available for such expenditures.

(c) ~~Specifying~~ Specifies that the appropriated amounts are available for obligation solely within the 2 years beginning on the appropriation law's date of enactment. This paragraph does not apply to the appropriations under s. 20.445 (1) (nd) and (ne) or to any amounts expended from the appropriation under s. 20.445 (1) (nb) from moneys transferred to this state on March 13, 2002, pursuant to ~~section 903 (d) of the federal Social Security Act~~ 42 USC 1103 (d).

(d) ~~Limiting~~ Limits the total amount ~~which~~ that may be obligated during any fiscal year to the aggregate of all amounts credited under sub. (1), including amounts credited ~~pursuant to~~ under sub. (8), reduced at the time of any obligation by the sum of the moneys obligated and charged against any of the amounts credited.

SECTION 56. 108.161 (5) and (6) of the statutes are consolidated, renumbered 108.161 (5m) and amended to read:

108.161 **(5m)** The total of the amounts ~~thus~~ appropriated under sub. (4) for use in any fiscal year shall in no event exceed the moneys available for such use ~~hereunder~~ under this section, considering the timing of credits ~~hereunder~~ under this section and the sums already spent or appropriated or transferred or otherwise encumbered ~~hereunder. **(6)**~~ under this section. The fund's treasurer shall keep a record of all such ~~times and amounts; shall charge~~ transactions and shall do all of the following:

(a) Charge each sum against the earliest credits ~~duly~~ available therefor~~; shall include~~.

(b) Include any sum ~~thus~~ that has been appropriated but not yet spent ~~hereunder~~ under this section in computing the fund's net balance as of the close of any month, in line with the federal requirement that any such sum shall, until spent, be considered part of the fund~~; and shall certify~~.

(c) Certify the relevant facts whenever necessary ~~hereunder~~.

SECTION 57. 108.161 (7) of the statutes is amended to read:

108.161 **(7)** If any moneys appropriated ~~hereunder~~ under this section are used to buy and hold suitable land~~, with a view to the future construction of an~~ and to build a suitable employment security building thereon, and if such land is later sold or transferred to other use, the proceeds of such sale ~~(~~, or the value of such land when transferred~~)~~, shall be credited to the federal administrative financing account ~~created by sub. (1)~~ except as otherwise provided in ss. 13.48 (14) and 16.848.

SECTION 58. 108.161 (8) of the statutes is amended to read:

108.161 **(8)** If any sums are appropriated and spent ~~hereunder~~ under this section to buy land and to build a suitable employment security building thereon, or to purchase information technology hardware and software, ~~then~~ any federal moneys thereafter credited to the fund or paid to the department by way of gradual reimbursement of such employment security capital expenditures, or in lieu of the estimated periodic amounts ~~which~~ that would otherwise ~~(~~, in the absence of such expenditures~~)~~, be federally granted for the rental of substantially equivalent quarters, shall be credited to the federal administrative financing account ~~created by sub. (1)~~, consistently with any federal requirements applicable to the handling and crediting of such moneys.

SECTION 59. 108.161 (9) of the statutes is amended to read:

108.161 **(9)** Any land and building or office quarters acquired under this section shall continue to be used for employment security purposes. Realty or quarters may not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am) or 16.848 (1) and may not be sold or transferred without the governor's approval. The proceeds from the sale, or the value of realty or quarters upon transfer, shall be credited to the federal administrative financing account ~~established in sub. (1)~~ or credited to the ~~fund established in s. 108.20~~ administrative account, or both as determined by the department in accordance with federal requirements. Equivalent substitute rent–free quarters may be provided, as federally approved. Amounts credited under this subsection shall be used solely to finance employment security quarters according to federal requirements.

****NOTE: There is no longer a fund established under s. 108.20, which instead refers to an "administrative account."

SECTION 60. 108.17 (2m) of the statutes is amended to read:

108.17 **(2m)** When a written statement of account is issued to an employer by the department~~, showing as duly credited~~ that shows a specified amount received from the employer under this chapter as having been credited, no other form of state receipt ~~therefor~~ is required.

SECTION 61. 108.18 (3) (c) of the statutes is amended to read:

108.18 **(3)** (c) Permitting the employer to pay such lower rate is consistent with the relevant conditions then applicable to additional credit allowance for such year under ~~section~~ 26 USC 3303 (a) ~~of the federal unemployment tax act~~, any other provision to the contrary notwithstanding.

SECTION 62. 108.18 (7) (a) 1. of the statutes is amended to read:

108.18 **(7)** (a) 1. Except as provided in pars. (b) to (i), any employer may make payments to the fund during the month of November in excess of those required by this section and s. 108.19 ~~(1), (1e), and (1f)~~. Each payment shall be credited to the employer's account for the purpose of computing the employer's reserve percentage as of the immediately preceding computation date.

****NOTE: This cross–reference range omitted s. 108.19 (1m), so this is amended to refer to s. 108.19 generally so as to include s. 108.19 (1m).

SECTION 63. 108.18 (7) (h) of the statutes is amended to read:

108.18 **(7)** (h) The department shall establish contributions, other than ~~those~~ contributions required by this section and assessments required under s. 108.19 ~~(1), (1e), and (1f)~~ and contributions other than those submitted during the month of November or authorized under par. (f) or (i) 2., as a credit, without interest, against future contributions payable by the employer or shall refund the contributions at the employer's option.

****NOTE: See the previous SECTION'S note.

SECTION 64. 108.19 (title) of the statutes is repealed and recreated to read:

108.19 (title) **Special assessments.**

****NOTE: This section is modified so as to have it deal primarily with assessments. Provisions establishing segregated funds are moved to s. 108.195, and remaining material is renumbered to improve organization and readability.

SECTION 65. 108.19 (1) of the statutes is renumbered 108.19 (1) (a) and amended to read:

108.19 **(1)** (a) Each employer subject to this chapter shall regularly ~~contribute to the administrative account at the rate of two–tenths of one~~ pay an assessment equal to 0.2 percent per year on its payroll, except that the department may prescribe at the close of any fiscal year such lower rates ~~of contribution~~ under this ~~section~~ subsection, to apply to classes of employers throughout the ensuing fiscal year, as will

in the department's judgment adequately finance the administration of this chapter, and as will in the department's judgment fairly represent the relative cost of the services rendered by the department to each such class.

****NOTE: Changes reference to "this section" to acknowledge other assessments in s. 108.19.

SECTION 66. 108.19 (1) (d) of the statutes is created to read:

108.19 **(1)** (d) Assessments under this subsection shall be credited to the appropriation account under s. 20.445 (1) (gc).

****NOTE: If DWD ever were to assess employers under s. 108.19 (1), the contributions would probably have to be deposited in the appropriation account under s. 20.445 (1) (gc) given how the relevant statutes are currently worded, so this change provides as such. (Because assessments under s. 108.19 (1e) and (1m) are directed elsewhere, assessments under this subsection appear to be the only moneys that would conceivably ever go to the appropriation under s. 20.445 (1) (gc).)

SECTION 67. 108.19 (1e) (cm) of the statutes is created to read:

108.19 **(1e)** (cm) Assessments under this subsection shall be credited to the appropriation under s. 20.445 (1) (gh).

****NOTE: Adds a reference to the receiving appropriation for consistency within this section.

SECTION 68. 108.19 (1f) (a) of the statutes is amended to read:

108.19 **(1f)** (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable under s. 108.18 and this section, pay an assessment for each year equal to the lesser of 0.01 percent of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

(d) Assessments under this ~~paragraph~~ subsection shall be deposited in the unemployment program integrity fund.

****NOTE: Makes slight organizational changes for consistency within this section.

SECTION 69. 108.19 (1f) (c) of the statutes is amended to read:

108.19 **(1f)** (c) Notwithstanding par. (a), the department may, if it finds that the full amount of the levy is not required to effect the purposes specified in ~~sub. (1s)~~ s. 108.195 (2) (b) for any year, prescribe a reduced levy for that year and in such case shall publish in the notice under par. (b) the rate of the reduced levy.

****NOTE: Changes made due to the renumbering in SECTION 75.

SECTION 70. 108.19 (1m) of the statutes is renumbered 108.19 (1m) (a) and amended to read:

108.19 **(1m)** (a) Each employer subject to this chapter as of the date a rate is established under this subsection shall pay an assessment ~~to the unemployment interest payment fund~~ at a rate established by the department sufficient to pay interest due on advances from the federal unemployment account under ~~Title XII of the federal social security act,~~ 42 USC 1321 to 1324. The rate established by the department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75 percent of the rate established for other employers. The amount of any employer's assessment shall be the product of the rate established for that employer multiplied by the employer's payroll of the previous calendar year as taken from quarterly employment and wage reports filed by the employer under s. 108.205 (1) or, in the absence of the filing of such reports, estimates made by the department.

(d) Each assessment made under this subsection is due within 30 days after the date the department issues the assessment. ~~If the~~

(f) The department shall use amounts collected from employers under this subsection ~~exceed the amounts needed~~ to pay interest due on advances from the federal unemployment account under 42 USC 1321 to 1324. If the amounts collected exceed the amounts needed to pay that interest for a given year, the department shall

use ~~any~~ the excess to pay interest owed in subsequent years on advances from the federal unemployment account. If the department determines that additional interest obligations are unlikely, the department shall transfer the excess to the fund's balancing account ~~of the fund~~, the unemployment program integrity fund, or both in amounts determined by the department.

SECTION 71. 108.19 (1m) (e) of the statutes is created to read:

108.19 **(1m)** (e) Assessments under this subsection shall be deposited in the unemployment interest payment fund.

****NOTE: Adds a reference to the receiving fund for consistency within this section.

SECTION 72. 108.19 (1n) of the statutes is renumbered 108.19 (1m) (b) and amended to read:

108.19 **(1m)** (b) The department shall publish as a class 1 notice under ch. 985 any rate established under ~~sub. (1m)~~ par. (a) within 10 days ~~of~~ after the date that the rate is established.

SECTION 73. 108.19 (1p) of the statutes is renumbered 108.19 (1m) (c) and amended to read:

108.19 **(1m)** (c) Notwithstanding ~~sub. (1m)~~ par. (a), an employer having a payroll of $25,000 or less for the preceding calendar year is exempt from any assessment under ~~sub. (1m)~~ this subsection.

SECTION 74. 108.19 (1q) of the statutes is renumbered 108.195 (1) and amended to read:

108.195 **(1)** UNEMPLOYMENT INTEREST PAYMENT FUND. There is created a separate, nonlapsible trust fund designated as the unemployment interest payment fund consisting of all amounts collected under ~~sub.~~ s. 108.19 (1m) (a) and all interest and penalties on those amounts collected under s. 108.22.

SECTION 75. 108.19 (1s) of the statutes is renumbered 108.195 (2), and 108.195 (2) (a) 3., as renumbered, is amended to read:

108.195 **(2)** (a) 3. Amounts transferred under ~~sub. (1m)~~ s. 108.19 (1m) (f).

SECTION 76. 108.19 (2) of the statutes is renumbered 108.19 (1) (b) and amended to read:

108.19 **(1)** (b) If the department finds, at any time within a fiscal year for which it has prescribed lower contribution rates to the administrative account than the maximum rate permitted under ~~sub. (1)~~ par. (a), that such lower rates will not adequately finance the administration of this chapter or are excessive for that purpose, the department may by ~~general~~ rule prescribe a new schedule of rates in no case exceeding the specified maximum to apply under this ~~section~~ subsection for the balance of the fiscal year.

SECTION 77. 108.19 (2m) of the statutes is renumbered 108.19 (1) (c) and amended to read:

108.19 **(1)** (c) Within the limit specified ~~by sub. (1)~~ under par. (a), the department may by rule prescribe at any time as to any period any such rate or rates or schedule as it deems necessary and proper ~~hereunder~~ under this subsection. Unless thus prescribed, no such rate or rates or schedule shall apply under ~~sub. (1) or (2)~~ par. (a) or (b).

SECTION 78. 108.19 (3) of the statutes is repealed.

****NOTE: This provision is repealed as it appears to have been rendered out-of-date.

SECTION 79. 108.19 (4) of the statutes is amended to read:

108.19 **(4)** If ~~section 303~~ 42 USC 503 (a) (5) ~~of title III of the social security act~~ and ~~section~~ 26 USC 3304 (a) (4) ~~of the internal revenue code~~ are amended to permit

a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, some part of the moneys collected or to be collected under the state unemployment insurance law, in partial or complete substitution for grants under ~~title III~~ 42 USC 501 to 506, then this chapter shall, by rule of the department, be modified in the manner and to the extent and within the limits necessary to permit such use by the department under this chapter; and the modifications shall become effective on the same date as such use becomes permissible under the federal amendments.

SECTION 80. 108.195 (title) of the statutes is created to read:

108.195 (title) **Segregated funds.**

****NOTE: This puts put the creation of the funds in a separate section for better organization.

SECTION 81. 108.195 (2) (title) of the statutes is created to read:

108.195 **(2)** (title) UNEMPLOYMENT PROGRAM INTEGRITY FUND.

SECTION 82. 108.20 (2m) of the statutes is amended to read:

108.20 **(2m)** From the moneys not appropriated under s. 20.445 (1) (gg) that are received by the administrative account as interest and penalties under this chapter, the department shall pay the benefits chargeable to the administrative account under s. 108.07 (5) and the interest payable to employers under s. 108.17 (3m), and may expend the remainder to pay interest due on advances to the unemployment reserve fund from the federal unemployment account under ~~title XII of the social security act,~~ 42 USC 1321 to 1324, to conduct research relating to the condition of the unemployment reserve fund under s. 108.14 (6), to administer the unemployment insurance program and federal or state unemployment insurance programs authorized by the governor under s. 16.54, to assist the department of

justice in the enforcement of this chapter, to make payments to satisfy a federal audit exception concerning a payment from the fund or any federal aid disallowance involving the unemployment insurance program, or to make payments to the fund if such action is necessary to obtain a lower interest rate or deferral of interest payments on advances from the federal unemployment account under ~~title XII of the social security act~~ 42 USC 1321 to 1324, except that any interest earned pending disbursement of federal employment security grants under s. 20.445 (1) (n) shall be credited to the general fund.

SECTION 83. 108.22 (1m) of the statutes is amended to read:

108.22 **(1m)** If any person owes any contributions, reimbursements or assessments under s. 108.15, 108.151, 108.152, 108.155, or 108.19 ~~(1m)~~, benefit overpayments, interest, fees, payments for forfeitures, other penalties, or any other amount to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the right, title, and interest in all of the person's real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective upon the earlier of the date on which the amount is first due or the date on which the department issues a determination of the amount owed under this chapter and shall continue until the amount owed, plus costs and interest to the date of payment, is paid, except as provided in sub. (8) (d). If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

****NOTE: This adds a missing cross–reference to s. 108.152, which provides for reimbursement financing by Indian tribes.

****NOTE: This broadens a reference to s. 108.19 to make it clear it applies to all assessments under s. 108.19, not just those under s. 108.19 (1m).

SECTION 84. 108.22 (8e) of the statutes is amended to read:

108.22 **(8e)** If the department determines a payment has been made to an unintended recipient erroneously without fault on the part of the intended payee or payee's authorized agent, the department may issue the correct payment to the intended payee if necessary, and may recover the amount of the erroneous payment from the recipient under this section or s. 108.225 or 108.245. Any amount so recovered shall be credited to the fund's balancing account.

****NOTE: This adds a reference to the balancing account, consistent with s. 108.16 (6) (o).

SECTION 85. 108.223 (2) (b) of the statutes is amended to read:

108.223 **(2)** (b) The department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under this section. An agreement shall require the financial institution to participate in the financial record matching program by electing either the financial institution matching option under sub. (3) or the state matching option under sub. (4). The financial institution and the department may by mutual agreement ~~make changes to~~ amend the agreement. A financial institution that wishes to choose a different matching option shall provide the department with at least 60 days' notice. The department shall furnish the financial institution with a signed copy of the agreement.

SECTION 86. 108.23 of the statutes is amended to read:

108.23 Preference of required payments. In the event of an employer's dissolution, reorganization, bankruptcy, receivership, assignment for benefit of

creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in circuit courts, the payments required of the employer under this chapter shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages. If the employer is indebted to the federal government for taxes due under the federal unemployment tax act and a claim for the taxes has been duly filed, the amount of contributions which should be paid to allow the employer the maximum offset against the taxes shall have preference over preferred claims for wages and shall be on a par with debts due the United States, if by establishing the preference the offset against the federal tax can be secured under ~~s.~~ 26 USC 3302 (a) (3) ~~of the federal unemployment tax act~~.

SECTION 87. 108.24 (3) (a) 3. a. of the statutes is amended to read:

108.24 **(3)** (a) 3. a. Refrain from claiming or accepting benefits, participating in an audit or investigation by the department, or testifying in a hearing held under s. 108.09, 108.095, or 108.10.

****NOTE: This adds a cross–reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

SECTION 88. 108.24 (3) (a) 4. of the statutes is amended to read:

108.24 **(3)** (a) 4. Discriminates or retaliates against an individual because the individual claims benefits, participates in an audit or investigation by the department under this chapter, testifies in a hearing under s. 108.09, 108.095, or 108.10, or exercises any other right under this chapter.

****NOTE: This adds a cross–reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

(END)

D19-08
Appropriations Revisions and Technical Corrections

Date: July 17, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs
Re: LRB-3684/P1

The Department asked the Legislative Reference Bureau to split the preliminary draft of LRB-0378/P2, which was included with the original proposal for D19-08, into two separate preliminary drafts without adding new provisions. This memo summarizes the draft of LRB-3684/P1.

Section	Change	Reason
1 & 12	Create an appropriation for LIRC to receive transcript and copying fees.	Originally requested by LIRC in the 2015 State Budget process. Provides an appropriation for receiving fees currently collected by LIRC.
2	Clarifies location for deposit of assessment for program administration.	Department may assess employers an assessment to ensure funding for the UI program. This clarifies which appropriation would handle the funds.
3	Amendment to the appropriation that primarily receives employer interest and penalties to receive additional sources of funds.	Consolidates certain appropriations and clarifies language.
4	Repeals the appropriation in s. 20.445(1)(gg).	Repeals an appropriation that is no longer used, related to technology assessments.
5	Repeals the appropriation in s. 20.445(1)(gm).	Repeals an appropriation related to the employer handbook because those funds are redirected to the (gd) appropriation (employer interest and penalties).
6 & 31	Repeals SWIB authority to manage the unemployment administration fund.	The unemployment administration fund no longer exists, so this should have been repealed when the fund ceased to exist.
7 & 31	Repeal "administrative account."	The "administrative account" replaced the unemployment administrative fund. State moneys are supposed to be handled by appropriations and funds, not accounts. This removes the references to the account in favor of citation to the specific appropriation for the moneys.

8, 9, 10, 11, 12, 13, 14, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32	Repeals references to the "administrative account" and replaces those references with the specific appropriation in s. 20.445(1).	This change ensures that the unemployment appropriations are drafted consistent with current State budget practices and removes ambiguity regarding the appropriate appropriation applicable to certain moneys.
15, 17, 18	Repeals and amends references regarding costs of printing certain materials.	Consolidates language regarding printing forms and handbooks. Replaces references to the "administrative account" with a specific appropriation for consistency. *See* Section 5.
30	Amends and moves statute regarding use of contributions for administrative purposes.	If federal law is changed to permit this purpose, the Department prefers the proposed language in Section 30. This statutory language has apparently not been updated since 1943.
33	Transfers funds to the appropriation in s. 20.445(1)(gd).	It is necessary to transfer any remaining funds in these appropriations, which are being repealed. *See* Sections 4 and 5.

State of Wisconsin
2019 - 2020 LEGISLATURE

LRB–3684/P1
MED:cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 20.445 (1) (gg), 20.445 (1) (gm), 25.17 (1) (x), 108.02 (1), 108.14 (7) (c), 108.14 (23) (d) and 108.20; ***to renumber and amend*** 108.19 (4); ***to amend*** 20.445 (1) (gc), 20.445 (1) (gd), 108.04 (11) (f), 108.07 (5) (a), 108.07 (5) (c), 108.07 (6), 108.09 (5) (b), 108.14 (2m), 108.14 (3m), 108.14 (12) (d), 108.14 (16), 108.16 (5) (c), 108.16 (6) (k), 108.16 (8) (f), 108.161 (4) (a) and (b), 108.161 (9), 108.162 (7), 108.17 (3), 108.17 (3m), 108.19 (1), 108.19 (1e) (a), 108.19 (2) and 108.22 (1) (am); and ***to create*** 20.427 (1) (g) of the statutes; **relating to:** various changes relating to financing of and appropriations for the unemployment insurance program.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.427 (1) (g) of the statutes is created to read:

20.427 **(1)** (g) *Agency collections.* All moneys received from fees or other charges for copying of documents, generation of copies of documents from optical disc or electronic storage, publication of books, and other services provided in carrying out the functions of the commission.

****NOTE: This creates an appropriation for LIRC to receive moneys for various purposes, including transcript fees under s. 108.09 (5) (b).

SECTION 2. 20.445 (1) (gc) of the statutes is amended to read:

20.445 **(1)** (gc) *Unemployment administration.* All moneys received by the department under s. 108.19 ~~not otherwise appropriated under this subsection~~ (1) for the administration of ch. 108.

****NOTE: If DWD ever were to assess employers under s. 108.19 (1), the contributions would probably have to be deposited in the appropriation account under s. 20.445 (1) (gc) given how the relevant statutes are currently worded, so this change provides as such.

SECTION 3. 20.445 (1) (gd) of the statutes is amended to read:

20.445 **(1)** (gd) *Unemployment interest and penalty payments.* All moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13) (c) and 108.22 except interest and penalties deposited under s. 108.19 (1q), and forfeitures under s. 103.05 (5), ~~all moneys not appropriated under par. (gg) and~~ all moneys received under s. 108.09 (5) (c), all moneys received under s. 108.14 (16), all moneys received under s. 108.18 (1) (c), all moneys transferred to this appropriation account from the appropriation account under par. (gh), and all other nonfederal moneys received for the employment service or for the administration of ch. 108 that are not otherwise appropriated under this subsection, for the payment of benefits specified in s. 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the payment of interest to employers under s. 108.17 (3m), for research relating to the

condition of the unemployment reserve fund under s. 108.14 (6), for administration of the unemployment insurance program and federal or state unemployment insurance programs authorized by the governor under s. 16.54, for satisfaction of any federal audit exception concerning a payment from the unemployment reserve fund or any federal aid disallowance concerning the unemployment insurance program, for assistance to the department of justice in the enforcement of ch. 108, for the payment of interest due on advances from the federal unemployment account under title XII of the social security act to the unemployment reserve fund, and for payments made to the unemployment reserve fund to obtain a lower interest rate or deferral of interest payments on these advances~~, except as otherwise provided in s. 108.20~~.

****NOTE: This is the so-called "I&P fund." However, it is not a separate segregated fund, but rather an appropriation account in the general fund. The changes in this SECTION direct certain moneys to this account, as further explained in other SECTIONS of the bill.

SECTION 4. 20.445 (1) (gg) of the statutes is repealed.

****NOTE: As currently written, this is a separate appropriation used to dedicate some I&P money to DWD for IT upgrades, etc. It is repealed due to the fact that it is no longer being used.

SECTION 5. 20.445 (1) (gm) of the statutes is repealed.

****NOTE: This repeals an appropriation that receives moneys paid for printed copies of a UI Handbook for employers. This money is instead directed to the appropriation under s. 20.445 (1) (gd) along with fees charged for other printed materials.

SECTION 6. 25.17 (1) (x) of the statutes is repealed.

****NOTE: See the note under SECTION 31 regarding the former unemployment administration fund. Section 25.17 (1), which gives the SWIB authority to manage the various segregated funds, was apparently erroneously not amended to remove the reference to the fund. This repeals that obsolete reference.

SECTION 7. 108.02 (1) of the statutes is repealed.

****NOTE: See the note under SECTION 31 regarding the former unemployment administration fund.

SECTION 8. 108.04 (11) (f) of the statutes is amended to read:

108.04 **(11)** (f) All amounts forfeited under par. (c) and all collections from administrative assessments under par. (cm) shall be credited to the ~~administrative account~~ appropriation under s. 20.445 (1) (gd).

****NOTE: This is amended to simply reference s. 20.445 (1) (gd), which provides that this money goes into that account.

SECTION 9. 108.07 (5) (a) of the statutes is amended to read:

108.07 **(5)** (a) If no employer from which the claimant has base period wages is subject to the contribution requirements of ss. 108.17 and 108.18, the benefits shall be ~~charged to the administrative account and~~ paid from the appropriation under s. 20.445 (1) (gd).

****NOTE: See the note under SECTION 31.

SECTION 10. 108.07 (5) (c) of the statutes is amended to read:

108.07 **(5)** (c) If 2 or more employers from which the claimant has base period wages are not subject to the contribution requirements of ss. 108.17 and 108.18, and one or more employers from which the claimant has base period wages are subject to the contribution requirements of ss. 108.17 and 108.18, that percentage of the employee's benefits which would otherwise be chargeable to the fund's balancing account under sub. (3) or s. 108.04 (1) (f) or (5), or under s. 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), shall be ~~charged to the administrative account and~~ paid from the appropriation under s. 20.445 (1) (gd).

****NOTE: See the note under SECTION 31.

SECTION 11. 108.07 (6) of the statutes is amended to read:

108.07 **(6)** The department may initially charge benefits otherwise ~~chargeable to the administrative account~~ payable from the appropriation under s. 20.445 (1) (gd) as provided under this section to the fund's balancing account, and periodically

reimburse the charges to the balancing account from the ~~administrative account~~ appropriation under s. 20.445 (1) (gd).

****NOTE: See the note under SECTION 31.

SECTION 12. 108.09 (5) (b) of the statutes is amended to read:

108.09 **(5)** (b) All testimony at any hearing under this section shall be recorded by electronic means, but need not be transcribed unless either of the parties requests a transcript before expiration of that party's right to further appeal under this section and pays a fee to the commission in advance, the amount of which shall be established by rule of the commission. When the commission provides a transcript to one of the parties upon request, the commission shall also provide a copy of the transcript to all other parties free of charge. The transcript fee collected shall be ~~paid to the administrative account~~ credited to the appropriation account under s. 20.427 (1) (g).

****NOTE: See the note under SECTION 1.

SECTION 13. 108.14 (2m) of the statutes is amended to read:

108.14 **(2m)** In the discharge of their duties under this chapter an appeal tribunal, commissioner, or other authorized representative of the department or commission may administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas, served in the manner in which circuit court subpoenas are served, compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any investigation, hearing, or other proceeding under this chapter. A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must

be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding. However, in any investigation, hearing, or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and travel expenses involved in proceedings under this chapter may be allowed by the appeal tribunal or representative of the department at rates specified by department rules, and shall be paid from the ~~administrative account~~ appropriation under s. 20.445 (1) (n).

****NOTE: This specifies for witness and travel fees to be paid from the federal appropriation.

SECTION 14. 108.14 (3m) of the statutes is amended to read:

108.14 **(3m)** In any court action to enforce this chapter the department, the commission, and the state may be represented by any licensed attorney who is an employee of the department or the commission and is designated by either of them for this purpose or at the request of either of them by the department of justice. If the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of Title IX of the social security act, the expenses and compensation of the special counsel and of any experts employed by the department in connection with that proceeding may be charged to the ~~administrative account~~ appropriation under s. 20.445 (1) (gd). If the compensation is being determined on a contingent fee basis, the contract is subject to s. 20.9305.

****NOTE: This provides for the charging of these costs to the I&P account.

SECTION 15. 108.14 (7) (c) of the statutes is repealed.

****NOTE: This provision about printing of various types of documents is repealed, with the language incorporated into s. 108.14 (16) instead.

SECTION 16. 108.14 (12) (d) of the statutes is amended to read:

108.14 **(12)** (d) If it is finally determined that moneys thus received have been thus lost or improperly expended, ~~then~~ the department shall either make the necessary replacement from ~~those moneys in the administrative account specified in s. 108.20 (2m)~~ the appropriation under s. 20.445 (1) (gd) or shall submit, at the next budget hearings conducted by the governor and at the budget hearings conducted by the next legislature convened in regular session, a request that the necessary replacement be made by an appropriation from the general fund.

****NOTE: See the note under SECTION 31.

SECTION 17. 108.14 (16) of the statutes is amended to read:

108.14 **(16)** The department shall have duplicated or printed~~, and shall distribute without charge, such employment security~~ any reports, studies ~~and~~, forms, records, decisions, regulations, rules, or other materials, including the text of this chapter ~~and~~, the handbook under sub. (23), and other instructional or explanatory pamphlets for employers or workers, ~~as~~ that it deems necessary for public information or for the proper administration of this chapter~~; but the~~. The department may collect a reasonable charge, which shall be credited to the ~~administrative~~ appropriation account under s. 20.445 (1) (gd), for any such item the cost of which is not fully covered by federal administrative grants.

****NOTE: This directs moneys received for printed materials to the I&P account. See SECTION 31.

****NOTE: See also the notes under SECTIONS 15 and 18.

SECTION 18. 108.14 (23) (d) of the statutes is repealed.

****NOTE: This repeals a provision specifically governing charges for printed copies of a UI Handbook for employers. This would instead be governed by s. 108.14 (16), and the handbook is referenced there instead. (This does not repeal the requirement that DWD create the handbook.) See the note under SECTION 17.

SECTION 19. 108.16 (5) (c) of the statutes is amended to read:

108.16 **(5)** (c) While the state has an account in the "Unemployment Trust Fund~~"~~," public deposit insurance charges on the fund's balances held in banks, savings banks, savings and loan associations, and credit unions in this state, the premiums on surety bonds required of the fund's treasurer under this section, and any other expense of administration otherwise payable from the fund's interest earnings, shall be paid from the ~~administrative account~~ appropriation under s. 20.445 (1) (n) or (ne).

****NOTE: This adds cross–references to s. 20.445 (1) (n) and (ne), both of which could be used to pay banking costs.

SECTION 20. 108.16 (6) (k) of the statutes is amended to read:

108.16 **(6)** (k) All payments to the fund from the ~~administrative account as authorized under s. 108.20 (2m)~~ appropriation under s. 20.445 (1) (gd).

****NOTE: Sections 20.445 (1) (gd) and 108.20 (2m) allow for "payments to the fund if such action is necessary to obtain a lower interest rate or deferral of interest payments on advances from the federal unemployment account under title XII of the social security act." This therefore replaces this language with a reference to s. 20.445 (1) (gd), the I&P account.

SECTION 21. 108.16 (8) (f) of the statutes is amended to read:

108.16 **(8)** (f) The successor shall take over and continue the transferor's account, including its positive or negative balance and all other aspects of its experience under this chapter in proportion to the payroll assignable to the transferred business and the liability of the successor shall be proportioned to the extent of the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor ~~to the fund and to the administrative account~~ under this chapter at the time of the transfer, but a successor under par. (c) is not liable for the debts of the transferor except in the case of fraud or malfeasance.

****NOTE: Deletes a reference to the administrative account (see SECTION 31) in favor of a more general reference to ch. 108.

SECTION 22. 108.161 (4) (a) and (b) of the statutes are amended to read:

108.161 **(4)** (a) Stating for which such purposes and in what amounts the appropriation is being made ~~to the administrative account created by s. 108.20~~.

(b) Directing the fund's treasurer to transfer the appropriated amounts to ~~the administrative account~~ the appropriation account under s. 20.445 (1) (n) only as and to the extent that they are currently needed for such expenditures, and directing that there shall be restored to the account created by sub. (1) any amount thus transferred ~~which~~ that has ceased to be needed or available for such expenditures.

****NOTE: See the note under SECTION 31.

SECTION 23. 108.161 (9) of the statutes is amended to read:

108.161 **(9)** Any land and building or office quarters acquired under this section shall continue to be used for employment security purposes. Realty or quarters may not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am) or 16.848 (1) and may not be sold or transferred without the governor's approval. The proceeds from the sale, or the value of realty or quarters upon transfer, shall be credited to the account established in sub. (1) or credited to the ~~fund established in s. 108.20~~ appropriate appropriation account under s. 20.445, or both as determined by the department in accordance with federal requirements. Equivalent substitute rent–free quarters may be provided, as federally approved. Amounts credited under this subsection shall be used solely to finance employment security quarters according to federal requirements.

****NOTE: As described in the note under SECTION 31, there is no longer a fund established under s. 108.20.

SECTION 24. 108.162 (7) of the statutes is amended to read:

108.162 **(7)** Any amount appropriated under s. 20.445 (1) (na) ~~which~~ that has not been obligated shall be available for employment security local office building projects, consistent with this section and ~~ss.~~ s. 108.161 ~~and 108.20~~.

****NOTE: See the note under SECTION 31.

SECTION 25. 108.17 (3) of the statutes is amended to read:

108.17 **(3)** If an employing unit ~~makes application~~ applies to the department to adjust an alleged overpayment by the employer of contributions or interest under this chapter, and files such an application within 3 years after the close of the calendar year in which such payment was made, the department shall ~~make a determination~~ determine under s. 108.10 ~~as to the existence and~~ whether and to what extent ~~of any such~~ an overpayment~~, and said section shall apply to such determination~~ exists. Except as provided in sub. (3m), the department shall allow an employer a credit for any amount determined under s. 108.10 to have been erroneously paid by the employer, without interest, against its future contribution payments; or, if the department finds it impracticable to allow the employer such a credit, it shall refund ~~such~~ the overpayment to the employer, without interest, from the fund or the ~~administrative account, as the case may be~~ appropriate appropriation under s. 20.445.

****NOTE: This substitutes a reference to "the appropriate appropriation," though it would most likely be the s. 20.445 (1) (gd) account in the case of a refund of any interest or penalties.

SECTION 26. 108.17 (3m) of the statutes is amended to read:

108.17 **(3m)** If an appeal tribunal or the commission issues a decision under s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is determined that an amount has been erroneously paid by an employer, the department shall, from the ~~administrative account~~ appropriation under s. 20.445 (1)

(gd), credit the employer with interest at the rate of 0.75 percent per month or fraction thereof on the amount of the erroneous payment. Interest shall accrue from the month which the erroneous payment was made until the month in which it is either used as a credit against future contributions or refunded to the employer.

****NOTE: This substitutes a reference to the I&P account for these payments. See SECTION 31.

SECTION 27. 108.19 (1) of the statutes is amended to read:

108.19 **(1)** Each employer subject to this chapter shall regularly ~~contribute to the administrative account at the rate of two–tenths of one~~ pay an assessment equal to 0.2 percent per year on its payroll, except that the department may prescribe at the close of any fiscal year such lower rates ~~of contribution~~ under this ~~section~~ subsection, to apply to classes of employers throughout the ensuing fiscal year, as will in the department's judgment adequately finance the administration of this chapter, and as will in the department's judgment fairly represent the relative cost of the services rendered by the department to each such class.

****NOTE: Deletes reference to the administrative account. See the note under SECTION 31.

SECTION 28. 108.19 (1e) (a) of the statutes is amended to read:

108.19 **(1e)** (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable under s. 108.18 and this section, pay an assessment ~~to the administrative account~~ for each year ~~prior to~~ before the year 2010 equal to the lesser of 0.01 percent of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

****NOTE: Deletes a reference to the administrative account. See SECTION 31.

SECTION 29. 108.19 (2) of the statutes is amended to read:

108.19 **(2)** If the department finds, at any time within a fiscal year for which it has prescribed lower ~~contribution~~ rates ~~to the administrative account~~ than the maximum rate permitted under sub. (1), that such lower rates will not adequately finance the administration of this chapter or are excessive for that purpose, the department may by ~~general~~ rule prescribe a new schedule of rates in no case exceeding the specified maximum to apply under this section for the balance of the fiscal year.

****NOTE: Deletes a reference to the administrative account. See SECTION 31.

SECTION 30. 108.19 (4) of the statutes is renumbered 108.18 (1) (c) and amended to read:

108.18 **(1)** (c) ~~If~~ Notwithstanding par. (b), if section 303 (a) (5) of title III of the social security act and section 3304 (a) (4) of the internal revenue code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, ~~some~~ any part of ~~the moneys collected or to be collected under the state unemployment insurance law,~~ an employer's contributions in partial or complete substitution for grants under title III, then ~~this chapter shall, by rule of the department, be modified in the manner and to the extent and within the limits necessary to permit such use by the department under this chapter; and the modifications shall become effective on the same date as such use becomes permissible under the federal amendments~~ the department may credit any portion of that part of an employer's contributions to the appropriation under s. 20.445 (1) (gd).

****NOTE: This provision dates to Chapter (Act) 181, Laws of 1943, and reads essentially the same today as it did then. The changes here move the provision to s. 108.18, where it is more relevant, and specifically provide that, in the event that federal law is changed so as to allow a portion of contributions to be used for administrative purposes, those moneys would be directed to the I&P account.

1 **SECTION 31.** 108.20 of the statutes is repealed.

****NOTE: This section provides for the creation of an administrative account and is a relic from when moneys were formerly deposited in a segregated fund known as the "Unemployment Administration Fund." 1985 Act 29 amended this section to eliminate that fund and transferred its appropriations to the general fund. It also amended references to the fund to instead refer to the "administrative account." In reality, however, state moneys are received and spent pursuant to appropriations under s. 20.445, with, for example, federal moneys being received by the appropriation account under s. 20.445 (1) (n) and other moneys being credited to the so–called I&P account, s. 20.445 (1) (gd). This section is repealed in favor of references to specific appropriations where it is currently referenced. Most of the repealed language is already stated elsewhere.

2 **SECTION 32.** 108.22 (1) (am) of the statutes is amended to read:

3 108.22 **(1)** (am) The interest, penalties, and tardy filing fees levied under pars.
4 (a), (ac), (ad), and (af) shall be paid to the department and credited to the
5 ~~administrative account~~ appropriation under s. 20.445 (1) (gd).

****NOTE: This is amended to simply reference s. 20.445 (1) (gd), which provides that this money goes into that account.

6 **SECTION 33. Fiscal changes.**

7 (1) The unencumbered balance in the appropriation account under s. 20.445 (1)
8 (gg), 2017 stats., immediately before the effective date of the repeal of s. 20.445 (1)
9 (gg), 2017 stats., and the unencumbered balance in the appropriation account under
10 s. 20.445 (1) (gm), 2017 stats., immediately before the effective date of the repeal of
11 s. 20.445 (1) (gm), 2017 stats., are transferred to the appropriation account under s.
12 20.445 (1) (gd), as affected by this act.

****NOTE: This transfers whatever may be remaining in the two repealed appropriation accounts into the I&P account.

13 **(END)**

2019 UIAC Agreed Upon Bill

Labor Proposals

1. Address employer fraud in UI System due to intentional mis-classification of workers
    a. Increase administrative penalties for Employers who intentionally mis-classify workers (tax owed + 40% administrative penalty)
    b. Criminal Felony for employers or principals of a corporation who owe $2,500 or more in UI taxes for intentionally mis-classifying workers
    c. Establish equal liability to Prime employer when Sub-Employer intentionally misclassifies workers

2. Restructure UI Tax Schedules based upon "AHCM" (Average High Cost Multiple) status of WI UI Trust Fund
    a. (Schedule A) = When WI UI Trust Fund is below .5 AHCM
    b. (Schedule B) = When WI UI Trust Fund is between .5 to .85 ACHM
    c. (Schedule C) = When WI UI Trust Fund is between .86 to 1.0 ACHM
    d. (Schedule D) = When WI UI Trust Fund is above 1.0 ACHM

    Retain current status of "Tax Schedule D" until UI Trust Fund drops below .95 ACHM

3. Increase UI Wage Base and index for inflation
    a. Increase UI Wage Base for 2020, based on inflation since it was last adjusted in 2013. Readjust annually based on inflation.

4. Eliminate 1-week waiting period to receive UI Benefits

5. Increase maximum weekly benefit Rate to $406 for 2020 and readjust annually based on inflation

6. Repeal Substantial Fault from Statute and restore the prior s.108.04(5g), as created in 2005, to address violations of an employer's attendance policy

7. Expand Quit Exception for relocating spouse, to include all spouses who move with a relocating spouse, not just the U.S. Armed Forces

8. Increase and Index Maximum Wage Cap for the Partial Benefit Formula based upon the U.S. Consumer Price Index for all Urban Consumers, U.S. City Average

9. Remove definition of Suitable Work from Statute and require the Department (DWD) to define the meaning by Administrative Rule, which shall specify different levels of suitable work based on the number of weeks that a claimant has received benefits in a given year

UIAC 2019 Management Proposals

- **Summer Camp UI Taxes** – Exempt summer camps from the requirement to pay taxes on the wages of students working as summer employees. Students working at summer camps are ineligible to collect unemployment benefits, so it is unfair and inequitable to require employers to pay unemployment taxes on their wages.

- **Union Referral Service Work Search Criteria** – Require union hiring halls/referral services to conduct at least four work searches per week for each employee exempt from work search requirements per s. 108.04(2)(b)3., and require the union referral service to submit work search documentation to DWD for each exempt employee for each week of benefits claimed. Require DWD staff to conduct the same level of work search verification for employees utilizing the union referral exemption under s. 108.04(2)(b)3. as the department does for claimants who conduct work searches on their own.

- **Definition of Employee vs. Independent Contractor** – Establish a clear, consistent and objective standard to define the difference between an employee and an independent contractor. The definition should apply universally across all chapters of the statutes (e.g. UI, Workers Compensation, Wage & Hour, Equal Rights, DOR tax administration, etc.), and should account for new "gig economy" economic opportunities. Specific language attached.

- **Quit Good Cause Revision** – Repeal the quit good cause exception under s. 108.04(7)(e).

  Under current law if you quit a job within the first 30 days of hire and you could have refused the offer of work under the "suitable work" provisions you can collect benefits. This proposal would eliminate that quit exception.

- **Link Benefit Eligibility Weeks to Unemployment Rate** – Reduce weeks of unemployment eligibility as follows.

  Under current law individuals that are eligible for unemployment are generally entitled to 26 weeks of benefits. Reduce the maximum benefit duration to 14 weeks when the unemployment rate drops below 5%. Increase the number of weeks of benefit eligibility by 1 week for every 0.5% increase in the unemployment rate, up to a maximum of 20 weeks of eligibility up to 10% unemployment. Benefit eligibility would be 22 weeks of unemployment when the unemployment rate is greater than 10%

State Unemployment Rate	Weeks of Benefit Eligibility
Less than or equal to 5.4%	14
5.5% to 5.9%	15
6.0% to 6.4%	16
6.5% to 6.9%	17
7.0% to 7.4%	18
7.5% to 7.9%	19
8.0% to 10%	20
Greater than 10%	22

  Determine the applicable unemployment rate and corresponding benefit eligibility, by using the seasonally adjusted statewide unemployment rate published by the US Department of Labor for April and October. The benefit eligibility for January through June would be based on the prior October unemployment rate, while the benefit eligibility for July through December would be based on the April unemployment rate.

- **Clarify Definitions/Grounds for Misconduct and Substantial Fault** – Based upon a number of appellate court decisions and case-specific experiences of employers, make changes to these definitions to more accurately capture the intent and spirit of the 2013-2014 session reforms. Draft language attached.

Misconduct & Substantial Fault Clarification – Draft Language

(5) DISCHARGE FOR MISCONDUCT. An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. For purposes of this subsection, "misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer. In addition, "misconduct" includes:

(a) A violation by an employee of an employer's reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee:
   1. Had knowledge of the alcohol beverage or controlled substance policy; and
   2. Admitted to the use of alcohol beverages or a controlled substance or controlled substance analog or refused to take a test or tested positive for the use of alcohol beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department.

(b) Theft or unauthorized possession of an employer's property or services ~~with intent to deprive the employer of the property or services permanently~~, theft or unauthorized distribution of an employer's confidential or proprietary information, use of an employer's credit card or other financial instrument for an unauthorized or non-business purpose without prior approval from the employer, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes the destruction of an employer's records or substantial damage to his or her employer's property.

(c) Conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for his or her employer.

(d) One or more threats or acts of harassment, assault, or other physical violence instigated by an employee at the workplace of his or her employer.

(e) Absenteeism or tardiness by an employee that constitutes any of the following, unless the employee provides his or her employer with both advance notice and one or more valid reasons for each instance of absenteeism or tardiness:
   1. More than 2 ~~occasions~~ absences within the ~~120~~ 180-day period before the date of the employee's termination; or
   2. One or more ~~occasions~~ absences if prohibited by ~~unless otherwise specified by~~ his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature~~.~~; or

3. More than 3 instances of ~~excessive~~ tardiness by an employee in violation of the employer's normal business hours or a policy of the employer that has been communicated to the employee.~~, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.~~

(f) Unless directed by an employee's employer, falsifying business records of the employer.

(g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.

(h) A violation by an employee of an employer's written policy concerning the use of social media, if the employee had knowledge of the social media policy.

(5g) DISCHARGE FOR SUBSTANTIAL FAULT.

(a) An employee whose work is terminated by an employing unit for substantial fault by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's benefit rate shall be the rate that would have been paid had the discharge not occurred. For purposes of this paragraph, "substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer but does not include any of the following:

1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.

2. One or more inadvertent errors made by the employee, unless the error violates a written policy of the employer, endangers the safety of the employee or another person, causes bodily harm to the employee or another person, or the error is repeated after the employer warns the employee about the error.

3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

(b) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by the employer and paragraph (a) applies.

Worker Classification Proposed Language

s. 111.xx Worker Classification (1) It is in the best interests of workers, business, and government to have clear, objective, and uniform standards for determining who is an employee and who is an independent contractor. Clarity in a worker's classification allows businesses to comply with applicable laws, provides workers with certainty as to their benefits, legal rights, and obligations, and minimizes unnecessary mistakes, litigation, risk, legal exposure, and noncompliance.

(2) Except as provided in sub. (3), a person shall be classified as an independent contractor for all purposes under the laws of this state, including but not limited to laws governing unemployment insurance, workers compensation, wage and hour, fair employment, and tax administration, if all of the following apply:

(a) The person signs a written contract with the employer, in substantial compliance with the terms of this subsection, that states the employer's intent to retain the services of the person as an independent contractor and contains acknowledgements that the person understands that he or she is:

1. Providing services for the employer as an independent contractor;

2. Not going to be treated as an employee of the employer;

3. Not going to be provided by the employer with either worker's compensation or unemployment compensation benefits;

4. Obligated to pay all applicable federal and state income taxes, if any, on any monies earned pursuant to the contractual relationship, and that the employer will not make any tax withholdings from any payments from the employer;

5. Responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted services unless the expenses are for travel that is not local; the expenses are reimbursed under an express provision of the contract; or the supplies and/or expenses reimbursed are commonly reimbursed under industry practice.

(b) Except as provided in par. (c), the person provides his or her services through a business entity, including but not limited to, a partnership, limited liability company or corporation, or through a sole proprietorship, registered as required under state law.

(c) The requirement in par. (b) does not apply if the person has either filed, intends to file, or is contractually required to file, in regard to the fees from the work, an income tax return with the Internal Revenue Service for a business or for earnings from self-employment.

(d) The person satisfies four or more of the following criteria:

1. With the exception of the exercise of control necessary to ensure compliance with statutory, regulatory, licensing, permitting, contractual or other similar obligations, or to protect persons and/or property, or to protect a franchise brand, the person has the right to control the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work. This provision is satisfied even though the employer may provide orientation, information, guidance, or suggestions about the employer's products, business, services, customers and operating systems, and training otherwise required by law.

2. Except for an agreement with the employer relating to final completion or final delivery time or schedule, range of work hours, or the time entertainment is to be presented if the work contracted for is entertainment, the person has control over the amount of time personally spent providing services.

3. Except for services that can only be performed at specific locations, the person has control over where the services are performed.

4. The person is not required to work exclusively for one employer unless:

    i. A law, regulation or ordinance prohibits the person from providing services to more than one employer; or

    ii. A license or permit that the person is required to maintain in order to perform the work limits the person to working for only one employer at a time or requires identification of the employer.

5. The person is free to exercise independent initiative in soliciting others to purchase his or her services.

6. The person is free to hire employees or to contract with assistants, helpers, and/or substitutes to perform all or some of the work.

7. The person cannot be required to perform additional services without a new or modified contract.

8. The person obtains a license or other permission from the employer to utilize any workspace of the employer in order to perform the work for which the person was engaged.

9. The employer has been subject to an employment audit by the Internal Revenue Service or the department and the IRS or the department has not reclassified the person to be an employee or has not reclassified the category of workers to be employees.

10. The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications or permits required to perform the services.

(3) All workers who do not satisfy the criteria set forth in sub. (2) shall be classified as employees. In addition, nothing in sub. (2) shall require an employer to classify a worker who meets the criteria contained therein as an independent contractor; the employer is free to hire the worker as an employee.

(4) The legislature finds that worker classification criteria used to determine independent contractor status that are uniform throughout the state is a matter of statewide concern and that the enactment of an ordinance by a city, village, town, or county regulating the worker classification criteria used to determine independent contractor status would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of the worker classification criteria used to determine independent contractor status set forth in this section. Therefore, the worker classification criteria used to determine independent contractor status in this section shall be construed as an enactment of statewide concern for the purpose of providing worker classification criteria used to determine independent contractor status that are uniform throughout the state.

(a) No city, village, town, or county may enact or enforce an ordinance regulating worker classification or the criteria used to determine independent contractor status.

2019 UIAC Exchanged Proposals

High-Level Preliminary Fiscal Information

Prepared by: TSS
7/18/2019

Labor Proposals

1. **Address employer fraud in UI system due to intentional misclassification of workers:**
   a. Increase administrative penalties for employers who intentionally misclassify workers (tax owed + 40% administrative penalty)
   b. Criminal felony for employers or principals of a corporation who owe $2,500 or more in UI taxes for intentionally mis-classifying workers
   c. Establish equal liability to prime employer when sub-employer intentionally misclassifies workers

   Notes:
   In 2018, Wisconsin UI auditors conducted 2,459 audits and reclassified 8,677 workers as employees, which resulted in employer contribution assessments of $1.4 million and over $170,000 in interest.

   This proposal would result in increased penalty assessments, which flow to Program Integrity Fund. However, the increase cannot be determined at this time. Intentional misclassification is currently not tracked separately from all misclassification determinations.

   This proposal may have a positive impact to the UI Trust Fund due to increased compliance.

2. **Restructure UI Tax Schedules based upon "AHCM"** (Average High Cost Multiple) status of WI UI Trust Fund:
   a. (Schedule A) = When WI UI Trust Fund is below .5 AHCM
   b. (Schedule B) = When WI UI Trust Fund is between .5 to .85 AHCM
   c. (Schedule C) = When WI UI Trust Fund is between .86 to 1.0 AHCM
   d. (Schedule D) = When WI UI Trust Fund is above 1.0 AHCM

   **Retain current status of "Tax Schedule D" until UI Trust Fund drops below .95 AHCM*

Changes in the UI Tax Trigger Schedule $Millions						
Year	**UI Tax Schedule in Effect**	**UI Tax Schedule Under Proposal**	**UI Tax Amount**	**UI Tax Amount Under Proposal**	**UI Trust Fund Balance**	**UI Trust Fund Balance Under Proposal**
2016	B	A	$841	$939	$1,165	$1,263
2017	C	B	$683	$721	$1,480	$1,614
2018	D	C	$598	$618	$1,731	$1,893
2019	D	C	$498	$518	$1,905	$2,092

Notes:
If the above triggers were implemented in 2001, ***UI Trust Fund loan balances would been approximately $1 billion less during the recession****. This may have avoided a round of FUTA credit reductions that increased FUTA taxes for Wisconsin employers by $148 million. The reduced UI Trust*

Fund loan balances would have reduced the $78 million of interest assessments on employers to approximately $26 million, saving Wisconsin employers about $52 million.

Per previous fiscal information, any one-time IT impact and any administrative considerations may depend on the effective date of this proposal. It is expected to be minimal.

3. **Increase UI Wage Base and index for inflation:**
   Increase UI Wage Base for 2020, based on inflation since it was last adjusted in 2013. Readjust annually based on inflation.

Wage Base Increase by Wisconsin Inflation and by Wisconsin Wage Growth - **$ Millions**												
	Baseline Projection				Wage Base Increase by WI CPI				Wage Base Increase by WI Wage Growth			
	Wage Base	UI Tax Revenue (Millions)	Effective Tax Rate	UI Trust Fund Balance (Millions)	Wage Base	UI Tax Revenue (Millions)	Effective Tax Rate	UI Trust Fund Balance (Millions)	Wage Base	UI Tax Revenue (Millions)	Effective Tax Rate	UI Trust Fund Balance (Millions)
2019	$14,000	$498	0.46%	$1,905	$14,000	$498	0.46%	$1,905	$14,000	$498	0.46%	$1,905
2020	$14,000	$462	0.41%	$2,013	$14,000	$462	0.41%	$2,013	$14,000	$462	0.41%	$2,013
2021	$14,000	$455	0.38%	$2,064	$15,214	$479	0.40%	$2,089	$16,581	$516	0.44%	$2,126
2022	$14,000	$467	0.38%	$2,091	$15,505	$546	0.44%	$2,197	$17,109	$670	0.53%	$2,350
2023	$14,000	$489	0.38%	$2,111	$15,798	$585	0.45%	$2,316	$17,700	$707	0.55%	$2,597
2024	$14,000	$512	0.38%	$2,126	$16,116	$604	0.45%	$2,429	$18,358	$719	0.54%	$2,834
2025	$14,000	$527	0.38%	$2,146	$16,443	$617	0.44%	$2,549	$19,056	$738	0.53%	$3,085
2026	$14,000	$537	0.37%	$2,176	$16,785	$629	0.43%	$2,683	$19,786	$754	0.52%	$3,358
2027	$14,000	$541	0.36%	$2,208	$17,128	$642	0.42%	$2,829	$20,575	$774	0.51%	$3,655

Notes:
These projections all assume UI benefits to remain similar to what Wisconsin has experienced in the past three years. Wage bases for a given year are based upon growth in prices or wages from 2 years prior (the 2022 wage base is based upon increases in 2020). WI CPI and WI Wage Growth are based upon IHS projections.

Per previous fiscal information, the one-time IT impact is minimal. This proposal may have an ongoing administrative impact of 250 hours annually. IT changes could be made to automate forms to reduce these costs.

4-9 were included in the Budget Bill/Department Proposals – Fiscals previously completed

4. **Eliminate 1-week waiting period** to receive UI benefits:

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Repeal the Waiting Week	$27.20	$8.49	-$16.98	*240 hours*

**UI benefits include reimbursable and taxable benefits

Note: *This estimate is based on current claim levels. If claim levels rise, UI benefits payments will increase, having a greater impact on UI tax revenue and the UI Trust Fund.*

5. **Increase MBA to $406** for 2020 and readjust annually based on inflation:

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Increase Maximum Weekly Benefit Rate to $406	$31.06	$9.69	-$19.39	*250 hours*

**UI benefits include reimbursable and taxable benefits

Notes:
In 2018, 55% of claimants (approx. 75,000 individuals) received the maximum weekly benefit rate of $370. If the rate was $406 in 2018, 54% of claimants would have received a higher weekly benefit rate with 48% receiving the new maximum weekly benefit rate of $406.

This estimate is based on current claim levels. If claim levels rise, UI benefits payments will increase, having a greater impact on UI tax revenue and the UI Trust Fund.

6. **Repeal Substantial Fault** from statute and restore the prior s.108.04(5g), as created in 2005, to address violations of an employer's attendance policy:

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Repeal Substantial Fault Provision	$6.06	$1.89	-$3.78	*80 hours*

**UI benefits include reimbursable and taxable benefits

7. **Expand quit exception for relocating spouse,** to include all spouses who move with a relocating spouse, not just the U.S. Armed Forces:

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Amend Quit Exception s. 108.04(7)(t)	$0.587	$0.183	-$0.366	*10 hours*

**UI benefits include reimbursable and taxable benefits

Note*: This proposal would affect approximately 200 claimants annually based on current claim levels.*

8. **Increase and Index Maximum Wage Cap for the Partial Benefit Formula** based upon the U.S. Consumer Price Index for all Urban Consumers, U.S. City Average:

Annual Impact - $ Millions				
Proposal – Assumes WBR of $370	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Index the Weekly Maximum Disqualifying Earned Amount to Inflation (wage threshold)	$0.033	$0.010	-$0.020	*150 hours*

Annual Impact - $ Millions				
Proposal – Assumes WBR of $406	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Index the Weekly Maximum Disqualifying Earned Amount to Inflation (wage threshold)	$0.055	$0.017	-$0.034	*150 hours*

**UI benefits include reimbursable and taxable benefits

Notes:
It is assumed the inflation rate is a 2% increase in the Consumer Price Index (CPI). The initial maximum disqualifying earned income would be $510. This proposal would affect approximately 630 claimants based on current claim levels. Additional claimants would potentially be affected; however; they would still be disqualified based on the weekly 32-hour cap despite any increases to the maximum earned income amount.

At a $370 maximum weekly benefit rate, the partial wage benefit rate limits the amount that can be earned to $575. At a 2% inflation rate, this amount would be reached in 7 years at which point the index would no longer have any impact.

At a $406 maximum weekly benefit rate, the partial wage benefit rate limits the amount that can be earned to $629. At a 2% inflation rate, this amount would be reached in 12 years at which point the index would no longer have any impact.

9. **Remove definition of Suitable Work from statute and require the Department (DWD) to define the meaning by Administrative Rule,** which shall specify different levels of suitable work based on the number of weeks that a claimant has received benefits in a given year:

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Repeal Changes related to Suitable Work	$0.00	$0.00	$0.00	*10 hours*

**UI benefits include reimbursable and taxable benefits

Note: *Impact determined based on DWD administrative rule.*

2019 UIAC Exchanged Proposals

High-Level Preliminary Fiscal Information

Prepared by: TSS
7/18/2019

Management Proposals

1. **Summer Camp UI Exclusion –** Exempt from the definition of "employment" services performed by students working at summer camps.

Fiscal previously completed

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Camp Counselor Exclusion	$0.00	-$0.077	-$0.077	*minimal*

Notes:
This proposal may result in a decrease in UI tax revenue by $77,000 annually. It is difficult to determine the reduction in UI benefit payments. A requirement is that the employee is a full-time student, these employees may already be ineligible for UI benefits based on their school enrollment status. Based on the number of potentially affected employees, and based on the school enrollment status, it is estimated that this proposal would have a negligible to no impact on reducing benefit payments.

This exclusion may be difficult for employers to administer and report correctly. This could lead to ongoing administrative costs for both the division and for employers due to investigations into benefit eligibility and employer audits. If the employer reports wages that should have been excluded, this could lead to employer fault, and the employer would still be charged if benefits were overpaid.

2. **Union Referral Service Work Search Criteria –** Require union hiring halls/referral services to conduct at least four work searches per week for each employee exempt from work search requirements per s. 108.04(2)(b)3 and require the union referral service to submit work search documentation to DWD for each exempt employee for each week of benefits claimed. Require DWD staff to conduct the same level of work search verification for employees utilizing the union referral exemption under s. 108.04(2)(b)3. as the department does for claimants who conduct work searches on their own.

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Union Referral Service Work Search Criteria	Minimal reduction	Minimal reduction	Negligible savings	*minimal*

Notes:
In 2018, approximately 192,600 weekly claims were filed where work search was waived due to obtaining work through an approved union affecting approximately 17,700 claimants. This proposal may result in a minimal decrease in benefit payments due to increased audits and a negligible savings to the UI Trust Fund. This proposal may result in additional ongoing administrative impact to process these work search audits

Under this proposal a claimant could be denied benefits for failure to complete the work search requirement when the work search actions are controlled by a third party. Claimants with a work search waiver due to "obtaining work through an approved union" (ERP 44) are audited to confirm "out-of-work but in good standing" with the union hall. Unions must go through a process to be considered an "approved" union with the Department. Criteria for being an "Approved" Union: Unions are added to the list of "approved" union when they have a "referral" or "hiring hall" process, maintain an "out-of-work" list for their members and have a written agreement on file with the Department that all conditions of DWD s. 127.02(4) are met.

3. **Definition of Employee vs. Independent Contractor** - Establish a clear, consistent and objective standard to define the difference between an employee and an independent contractor. The definition should apply universally across all chapters of the statutes (e.g. UI, Workers Compensation, Wage & Hour, Equal Rights, DOR tax administration, etc.), and should account for new "gig economy" economic opportunities. Specific language attached.

   Note: *This proposed change may be reviewed and determined by the Governor's Task Force on Payroll and Worker Misclassification.*

4. **Repeal Quit Good Cause Exception** – Repeal the quit good cause exception under s. 108.04(7)(e). Under current law, a claimant who quits a job within the first 30 days but could have refused the offer of work under the "suitable work" provisions may be eligible for unemployment benefits. This proposal would eliminate that quit exception.

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Eliminate Quit Exception s. 108.04(7)(e)	-$8.38	-$2.79	$5.59	*minimal*

Notes:
In 2018, there were 2,199 determinations allowing benefits under this quit exception.

The impact above does not take into consideration the claimants that may refuse the job outright, allowing benefits under "suitable work" standards. It may also disincentivize claimants from seeking work outside of the work they previously performed.

Prior to 2013 Wisconsin Act 20, this quit exception required that the claimant quit within the first 10 weeks. Effective 01/05/2014 this requirement was reduced to 30 calendar days.

5. **Link Benefit Eligibility Weeks to Unemployment Rate** – Reduce weeks of unemployment eligibility as follows.

   Under current law individuals that are eligible for unemployment are generally entitled to 26 weeks of benefits. Reduce the maximum benefit duration to 14 weeks when the unemployment rate drops below 5%. Increase the number of weeks of benefit eligibility by 1 week for every 0.5% increase in the unemployment rate, up to a maximum of 20 weeks of eligibility up to 10% unemployment. Benefit eligibility would be 22 weeks of unemployment when the unemployment rate is greater than 10%

State Unemployment Rate	Weeks of Benefit Eligibility
Less than or equal to 5.4%	14
5.5% to 5.9%	15
6.0% to 6.4%	16
6.5% to 6.9%	17
7.0% to 7.4%	18
7.5% to 7.9%	19
8.0% to 10%	20
Greater than 10%	22

The applicable unemployment rate and corresponding benefit eligibility would be determined by using the seasonally adjusted statewide unemployment rate published by the US Department of Labor for April and October. The benefit eligibility for January through June would be based on the prior October unemployment rate, while the benefit eligibility for July through December would be based on the April unemployment rate.

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Link Benefit Eligibility Weeks to Unemployment Rate	-$95 million	-$31 million	$64 million	*1,184 hours*

Notes:
Reducing the number of weeks of regular UI eligibility would reduce weeks of eligibility of federal and state extended programs enacted during recessionary periods. During the Great Recession this would have led to an estimated ***reduction of $1.4 billion in federally paid extended benefits.***

Under state law s. 108.141(5)(a), the maximum eligibility amount for the Extended Benefits (EB) program is set to be half the regular UI maximum benefit eligibility amount for an individual. Given the WBR remains the same under this proposal, a reduction in regular UI eligible weeks will lead to a reduction in EB. If a state's maximum duration of benefits is 26 weeks, the amount of EB would be 13 weeks. If the maximum duration of benefits is 22 weeks, EB would be 11 weeks; if the maximum duration is 14 weeks, EB would be 7 weeks. Similarly, under the Unemployment Compensation Extension Act of 2008, the payment of EUC was in proportion to the duration of the state's unemployment benefits. Attachment A of UIPL 23-08, details the reduction in EUC eligible weeks when a state does not have 26 weeks of eligibility. Like EB, under the 2008 EUC Act, the duration for EUC was 50% of the duration of regular benefits.

Depending upon the timing of the recession, there may be a 9-month lag between the onset of a recession and an increase in the number of weeks of eligibility. Economic stability of the local economy could decrease, which could increase and lengthen the effects of a recession.

This proposal may lead to inequities in the Maximum Benefit Amount (MBA) eligibility. (e.g. A claimant who files on June 30 may be eligible for 15 weeks, but, depending on the unemployment rate, a clamant who files on July 1 may be eligible for 20 weeks. If the proposal was in place in 2009, this is what would have occurred).

This proposal may lead to claimants backdating claims or waiting to file, which may result in additional administrative costs and claimant confusion.

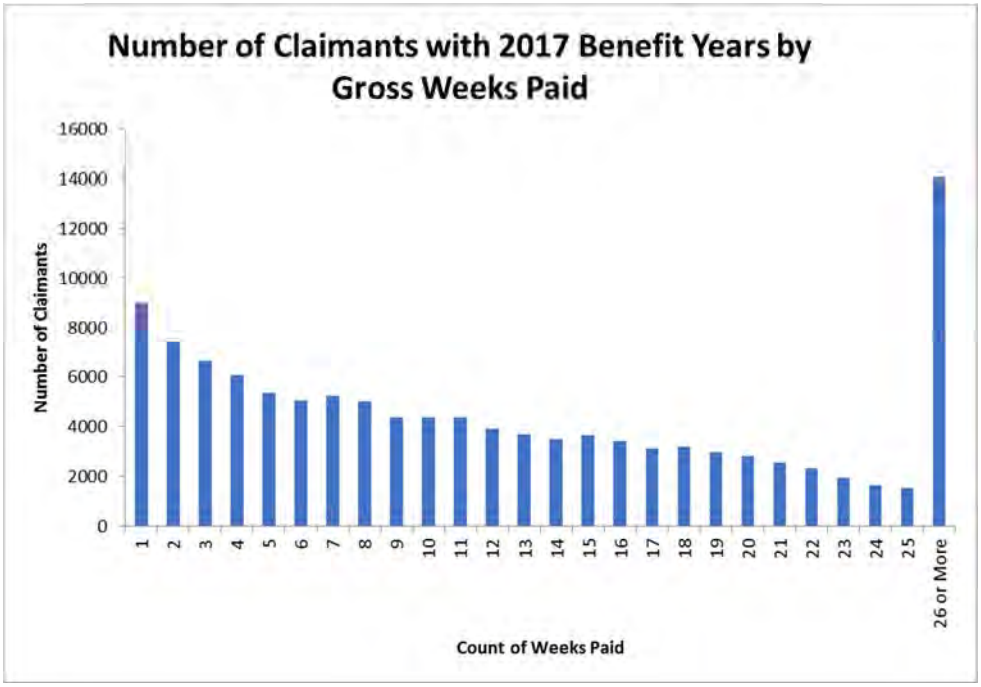
This proposal may result in the inability to collect overpayments via offsets as there will be fewer weeks of benefits to offset, which means collections will have to utilize other means.

This proposal could ***decrease UI federal administrative grant funding by roughly $8 to $10 million annually****. Above-base funding may also be affected. An additional employer administrative tax may need to be assessed to help pay to administer the program.*

Since 1985, the unemployment rate has never been above 8.6%. During a mild recession, like the one seen in the early 2000s, a claimant would not receive more than 15 weeks of benefit payments.

Wisconsin Annual Unemployment Rate by Year			
Year	Unemployment Rate	Year	Unemployment Rate
1985	7.2	2002	5.4
1986	7.0	2003	5.7
1987	5.9	2004	5.0
1988	4.4	2005	4.7
1989	4.3	2006	4.7
1990	4.4	2007	4.9
1991	5.5	2008	4.9
1992	5.1	2009	8.6
1993	4.8	2010	8.6
1994	4.5	2011	7.8
1995	3.8	2012	7.0
1996	3.6	2013	6.7
1997	3.6	2014	5.4
1998	3.4	2015	4.5
1999	3.1	2016	4.0
2000	3.5	2017	3.3
2001	4.5	2018	3.0

Even during years of low benefit payments, many claimants file for 26 weeks of UI benefits.



6. **Clarify Definitions/Grounds for Misconduct and Substantial Fault –** Based upon a number of appellate court decisions and case-specific experiences of employers, make changes to these definitions to more accurately capture the intent and spirit of the 2013- 2014 session reforms. Draft language attached.

Annual Impact - $ Millions				
Proposal	**UI Benefit****	**UI Tax**	**UI Trust Fund**	**One-time IT Impact**
Clarify Definitions/Grounds for Misconduct and Substantial Fault	Reduction may be substantial	Reduction may be substantial	Savings may be substantial	*minimal*

Notes:
Based on the proposed language changes to the "misconduct" and "substantial fault" sections, this law change proposal may result in additional denials of benefits under these provisions resulting in a reduction of benefit payments and a savings to the UI Trust Fund. The additional denials may be substantial; however, the impact cannot be determined at this time.

This proposed language change provides that one or more inadvertent errors will result in substantial fault if the employer had a policy regarding the conduct. This may no longer capture the original intent of substantial fault and instead result in almost all discharges for errors ruled as disqualifications under substantial fault.

UIAC Proposal Tracking – 2019

No.	Department Proposal Title	Proposal Subject	Presented to UIAC	Action
D19-01	Reimbursable Employer Debt Assessment Charging	REDA access to imposter funds	3-21-19	Approved on 6-20-19
D19-02	Assessment for Failure to Produce Records	Subpoena Penalty	3-21-19	
D19-03	Fiscal Agent Election of Employer Status	Fiscal Agents	3-21-19	Approved on 6-20-19
D19-04	Clarification of Employee Status Statute	Employee Status	3-21-19	
D19-05	Clarification of Exemptions Laws	Levy Exemptions	3-21-19	
D19-06	SUTA Dumping Penalty	SUTA Dumping	3-21-19	
D19-07	Departmental Error	Department Error	3-21-19	Approved on 6-20-19
D19-08	Appropriation Revisions and Technical Corrections	Cross Reference & Technical Clean-Up and Appr. Revisions	3-21-19	
D19-09	Creation of Administrative Fund	IP Lapse and Admin Fund	3-21-19	
D19-10	Update Administrative Rules to Convert SIC to NAICS	Amend SIC to NAICS Codes	3-21-19	Scope Approved on 3-21-19
D19-11	Repeal of UI Drug Testing	Drug Testing	3-21-19	
D19-12	Repeal of Substantial Fault	Substantial Fault	3-21-19	
D19-13	Define Suitable Work by Administrative Rule	Suitable Work	3-21-19	
D19-14	Quit Exception for Relocating Spouse	Quit Exception	3-21-19	
D19-15	Increase and Index Maximum Wage Cap for the Partial Benefits Formula	Wage Threshold	3-21-19	
D19-16	Repeal Waiting Week	Waiting Week	3-21-19	
D19-17	Repeal Work Search and Work Registration Requirements	Work Search & Work Registration	Tabled	
D19-18	Increase Maximum Weekly Benefit Rate to $406	Increase WBR to $406	3-21-19	
D19-19	Department Reports to Legislature	Department Reports	6-20-19	
D19-20	Effect of a Criminal Conviction	Department Determinations	6-20-19	
D19-21	Eligibility for Certain Employees	Benefit Eligibility	6-20-19	

No.	Labor Proposal Title	Proposal Subject	Presented to UIAC	Action
L19-01	Increased Penalties for Willful Worker Misclassification	Worker Misclassification	6-20-19	
L19-02	Amend UI Tax Schedule Triggers Based on AHCM	Tax Schedule Triggers	6-20-19	
L19-03	Increase Taxable Wage Base and Index in Future Years	Taxable Wage Base	6-20-19	
L19-04	Repeal Waiting Week	Waiting Week	6-20-19	
L19-05	Increase Maximum Weekly Benefit Rate to $406	Increase WBR to $406	6-20-19	
L19-06	Repeal of Substantial Fault and restore prior Wis. Stat. § 108.04(5g)	Substantial Fault	6-20-19	
L19-07	Quit Exception for Relocating Spouse	Quit Exception	6-20-19	
L19-08	Increase and Index Maximum Wage Cap for the Partial Benefits Formula	Wage Threshold	6-20-19	
L19-09	Define Suitable Work by Administrative Rule	Suitable Work	6-20-19	

No.	Management Proposal Title	Proposal Subject	Presented to UIAC	Action
M19-01	Summer Camp Counselor Exclusion	Excluded Employment	6-20-19	
M19-02	Union Referral Service Work Search Criteria	Work Search	6-20-19	
M19-03	Definition of Employee vs. Independent Contractor	Worker Misclassification	6-20-19	
M19-04	Repeal Quit Exception in Wis. Stat. § 108.04(7)(e)	Quit Exception	6-20-19	
M19-05	Link Benefit Eligibility Weeks to State Unemployment Rate	Duration of UI	6-20-19	
M19-06	Clarify Definitions of Misconduct and Substantial Fault	Misconduct & Substantial Fault	6-20-19	

Unemployment Insurance Advisory Council
Tentative Schedule
2019
(Updated 07/18/2019)

January 17, 2019	Scheduled Meeting of UIAC Discuss Public Hearing (Nov. 15, 2018) Comments
February 21, 2019	Scheduled Meeting of UIAC (Cancelled)
March 21, 2019	Scheduled Meeting of UIAC Introduce Department Law Change Proposals
April 18, 2019	Scheduled Meeting of UIAC Discuss Department Proposals
May 22, 2019	Re-Scheduled Meeting of UIAC Approve/Discuss Department Proposals Exchange of Labor & Management Law Change Proposals
June 20, 2019	Scheduled Meeting of UIAC Approve/Discuss Department Proposals Discuss Labor & Management Proposals
July 18, 2019	Scheduled Meeting of UIAC Approve/Discuss Department Proposals Discuss Labor & Management Proposals
August 2019	Tentative Meeting of UIAC Approve/Discuss Department Proposals Discuss Labor & Management Proposals
August 15, 2019	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
September 19, 2019	**Scheduled Meeting of UIAC** **Review and Approval of Department Draft of Agreed Upon Bill**
October 17, 2019	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
November 21, 2019	**Scheduled Meeting of UIAC** **Final Review and Approval of LRB Draft of Agreed Upon Bill**
December 2019	Tentative Meeting of UIAC – If Needed
January 2020	**Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2020 Legislative Session**