

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEETING

Thursday January 12, 2012 – 9:30 A.M.
Department of Administration, Yahara Room
101 East Wilson Street
Madison, Wisconsin

MINUTES

Individuals Present:

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

Labor: Phil Neuenfeldt, Patty Yunk, Sally Feistel, Terrance McGowan, Anthony Rainey (Mr. Rainey by telephone)

Chairperson: Daniel LaRocque

Office of the Secretary of the Department of Workforce Development: Secretary of the Department of Workforce Development, Reggie Newson; Georgia Maxwell, Executive Assistant; Connie Schulze, Legislative Advisor.

Department Staff: Craig Barkelar (UI Administrator), Andrea Reid (UI Deputy Administrator), Daniel LaRocque, Susan Blesener, Scott Sussman, Eric Volkmann, Georgia Maxwell, Connie Schulze, Ben Peirce, Tom McHugh, Pam James, Ramon Natera, Timara Budach, Lutfi Shahrani, Jason Schunk, Emily Savard, Robin Gallagher

Others Present: Becky Kikkert (Office of the Governor), Representative Mark Pocan 78th Assembly District, Representative Mark Honadel 21st Assembly District, Representative Joan Ballweg 41st Assembly District, Rebecca Hogan, (Wisconsin Manufacturers & Commerce), Bob Andersen, (Legal Action of Wisconsin), Victor Forberger, (Attorney, Unemployment Compensation Appeals Clinic), Lindsay Kearl (Unemployment Compensation Appeals Clinic), Brian Dake (Wisconsin Independent Businesses, Inc.), Thomas Coomes (Director Public Finance Dept. Municipal Securities Division), Glenn Wavrunek, Christian Ullsrick, Rollie Boeding (Dept. of Administration), Mary Beth George (Office of Representative Christine Sinicki)

- 1. Call to Order and Introductions:** Mr. LaRocque called the meeting to order at 9:40 a.m. and acknowledged the presence of Assembly Representatives Mark Honadel and Mark Pocan.
- 2. September 22, 2011 Minutes—**Motion (Yunk), second (Petersen) to approve the minutes of September 1, 2011, approved 10 ayes, 0 noes. Mr. Gustafson has some minor corrections to the minutes that he will submit to Mr. LaRocque.
- 3. Reserve Fund Projection Update:** Mr. Craig Barkelar, Unemployment Insurance Division Administrator, updated the Council with regard to the current Reserve Fund projection. A yellow handout detailing the projection was included in the written materials distributed at the meeting. Mr. Barkelar indicated that he had only been able to provide a rough estimate in September because the Department of Revenue had not yet finished evaluating the fall

outlook indicators. The department completed its projections in November after the final numbers were available and indicated little change, leaving the fund basically at the same point with the expectation that the fund will be at solvency before the end of 2014.

Mr. Barkelar stated that 2011 is finished and the Reserve Fund balance is close to that projected, approximately a \$1.3 billion deficit, which is on target with what was expected. The 2011 revenue numbers were also about the same at a bit over \$1.1 billion which is a little over and within \$5 million of the forecast amount. The expenses were about \$60 million less than were forecast. The fund is on target, which is encouraging.

Mr. Barkelar reminded the Council that the first couple years of a forecast are much more reliable than the out years, which is why the forecast is updated quarterly. He advised that Tom McHugh, the director of the Bureau of Tax and Accounting, will present additional information on the 2011 financial statement at the next meeting.

Mr. Buchen noted that he had seen data that appeared to show that initial claims for November and December were about roughly half those of the same months last year.

Mr. Barkelar responded that the claims were 15-20% less than one year ago and 35-40% less than two years ago. That has been fairly constant. He foresees a continuing downward trend on claims with lower expenses, and noted that in January there was a 15% reduction in new claims from one year ago and a 10% reduction in continuing claims from last year, which is substantial. Mr. Barkelar also explained that expenses are projected to be lower over the next three years due to the significant downward trend in claims which has continued into January, which is substantial by any measure. He added that there could have been some weekly aberrations along the way.

Mr. Barkelar noted that the revenues are projected to increase a bit. Some employer accounts are going negative or more negative still, so their rates are going higher. There is some leveling out since some employers are reducing their rates because their accounts are becoming positive. There is an increase in taxable wages in 2013, but with the anticipated better economy no net increase in employer tax is anticipated.

Mr. Barkelar explained that the special assessment and interest costs are expected for three more years if we continue to rely on federal funds with a total of \$90 million due--\$47 million this year on through to \$11 million in the third year, 2014. The Council has approved the department seeking enabling legislation for bonding, and that is being worked on and may provide an option which will change some of this. The Council will know about the change well in advance.

Mr. Barkelar noted that many are concerned about the federal unemployment tax. Wisconsin will lose some of the tax credit offset because the fund has been in deficit for two years and has relied on federal funding. As a result, the credit reduction will be approximately \$50 million in 2012, \$100 million in 2013, and \$150 million in 2014. Mr. Barkelar explained that the federal government did not reduce the .02% surtax, so the state will actually get a \$37.5 million benefit in each of the next three years. While it goes up \$49 million this year, the net

effect in 2012 is approximately \$16 million. The issue will become a greater concern if the state does not get out of the deficit in 2014 because in 2015, it will go back to current. Mr. Barkelar reminded the Council that the increase in federal tax is not a penalty because the funds are applied to the reserve fund so basically lowers the deficit and the special assessment and generates some other benefits.

Mr. Barkelar closed by noting that the waiting week is now in effect and forecast to create \$54 million in savings this year, \$48 million in 2013, and \$37 million in 2014.

Mr. Neuenfeldt inquired whether the projections are based on the assumption that there will be no changes in benefit rates. Mr. Barkelar responded that Mr. Neuenfeldt is correct and that the projections are based on average payouts. He advised that if the Council and the legislature did something with regard to benefit rates, the changes will be reflected in future forecasts. He also indicated that if Mr. Neuenfeldt is interested in a benefits change scenario, the department can run numbers so the effects of a change can be seen.

4. Legislators' Comments:

Representative Mark Pocan addressed the Council: Representative Pocan appeared on behalf or himself and Senator Robert Wirsch in support of AB 346. Representative Pocan has been a small business owner for over 23 years and he appreciates the Council and the work it does. He seeks the Council's approval for AB 346 which removes the benefits exclusion for non-striking workers who are not members of a striking or participating unit and are unemployed due to strikes or other bona fide labor disputes against the employer. In the immediate case, the machinists are on strike, and the boilermakers who are also not working as a result cannot receive UI benefits. Representative Pocan pointed out that these employees are unemployed through no fault of their own, and, consistent with the public policy statement underlying the unemployment insurance law, should be entitled to benefits. Representative Pocan reported that the Governor, the affected business owner (Manitowoc Crane), and a good breadth of the legislators support the bill, lending "tri-partisan support" to the proposal. Representative Pocan seeks swift action by the Council, which he respects, to fix the loophole, as his hope is to move the legislation through in March of this year.

Mr. Gustafson noted recognition of the inequity resulting when individuals are not permitted to receive unemployment benefits when they are not participating in the job action, but asked for thoughts concerning the effects on employers who are then required to fund benefits to those who are laid off as a result of the job action and have their accounts charged for the benefits.

Representative Pocan, noting that we are in unusual economic times, responded that employers pay in for a reason and it is not the non-striking worker's fault. The mission of the unemployment insurance law is to provide access to benefits and the current exclusion is an error in the current law.

Mr. Buchen stated that a strike is a major breakdown between the union and the employer, and is the ultimate power the union has. The management side wants to have as much of an

impact as the union does, which creates a tension. He noted there are multiple unions and units, and that if the smallest goes on strike and all of the rest get benefits, there is less stress on the union and they can stay on strike longer, which upsets the existing balance in bargaining power.

Representative Pocan noted that during a strike the company is not producing and the workers are not working, so there is a benefit to both sides to resolve the matter. The current law pulls in uninvolved employees who are only watching the fight but then get pulled into the fight and affects those who should not be affected. There is a benefit to both sides to resolving the strike: the employer can make more money and striking workers need a salary. To pull others in does not seem right. The current provision does not meet the stated public policy mission.

Mr. McGowan stated he does not know how many states have a law similar to Wisconsin's and that his international was amazed that Wisconsin had a law that excluded non-striking workers from benefits eligibility. Mr. LaRocque responded that there are some states that have the law.

Mr. Buchen noted that the type of benefits exclusion law used to be more common, but that it has changed over the years. Mr. Gustafson indicated he believes California and Ohio, and perhaps Utah, have similar provisions.

Representative Pocan stressed that the mission statement is explicit that those who lose their jobs through no fault of their own are entitled to benefits. He also reminded the Council that the Governor and the owner of the company support the legislation. Finally, Representative Pocan noted that the legislature is only in session until March, that there likely are only 6 session days between now and March, and that legislature tends to move slowly so it might be good for the Council to try to do something with it.

Mr. Gustafson noted there are arguments on both sides of the issue, but indicated he understands the point Representative Pocan was making.

Mr. LaRocque indicated that the fiscal analysis of the bill was circulated the prior evening.

Mr. Gustafson inquired whether there were any documents in the department's file addressing the exclusion and noted that Wisconsin has long been a leader in UI law. Mr. LaRocque responded that there is research and quite a bit of history of the Council discussing this kind of proposal in years past and that he believes a similar provision existed in Wisconsin law back into the 1930's.

Department attorney Robert Junceau explained that the law has been in place in Wisconsin since the 1930's. The policy was designed to assure the neutrality of the state in employment disputes, the concept being that having unemployed people puts pressure on strikers to go back to work. This is the argument that countervails the policy that we allow benefits to people who are unemployed through no fault of their own. Mr. Junceau estimated that 48 states and territories allow the non-striking employees to receive benefits and the other 5, a

minority, disallow it. He emphasized the policy of neutrality by the State in collective bargaining and not forcing the employer to finance strikes against itself.

Mr. Lump observed that in looking at the fiscal note there are not many trying to claims benefits. He noted that the 1100 weeks of benefits that the fiscal note referenced was likely due to the length of the strike.

Mr. Neuenfeldt noted that he was aware of a situation in which the GM plant was idle because of a strike, and that some affected workers filed for benefits and received them. He wondered if the proposed law was codifying current practice. Mr. LaRocque responded that the proposal is not codifying practice, but that the situations Mr. Neuenfeldt described likely involved different employing units.

Mr. Buchen added that the issue has been litigated and there are establishment and geographic proximity considerations that come into play. He believed the plant Mr. Neuenfeldt was referring to that went on strike was in Ohio—a different plant and different bargaining unit. It did not meet the definitions in the case law. Here the workers are in the same facility.

Mr. Gustafson noted issues that arose with Northwest Airlines grounds crews, a Milwaukee cement contractor, and Milwaukee Brewers' vendors during the Major League Baseball strike, and considerations of a three-part test including proximity and integration that arose.

Mr. LaRocque discussed the “establishment” consideration and noted there are not many cases. Mr. Buchen observed that there are not many strikes anymore.

Representative Mark Honadel addressed the Council:

Mr. LaRocque introduced Representative Honadel and noted that the Council previously indicated its support for the concept addressed in Representative Honadel's bill (AB 450), and advised that the legislation and related fiscal materials are included in the distributed written materials.

Representative Honadel updated the Council on his bill, “Wisconsin Wins” (AB 450), noting it was an interesting journey which garnered bipartisan support. He advised that the year is off to a good start with a good piece of legislation which gets something done. The bill has had a hearing in the Assembly and in the Senate. He learned that the best description of the bill is “the best way to get a job is to *do* the job.” He noted the importance of putting an unemployed Wisconsin citizen in the workplace, training him for 6 weeks while he is receiving benefits and having a company which is committed to hiring since the employer would not get a person to train in the first place if the employer did not have an opening for him.

Representative Honadel expressed appreciation that Democrats as well as Republicans are interested in the proposal, and advised that a lot of work investigating new things for Wisconsin. He noted the one “quirk” is finding the money to pay for the program and

expressed hope (in jest) that if a philanthropist with an extra \$500,000 comes forward, we could get the program going right away.

Representative Honadel advised that many individuals have expressed interest in keeping the legislation moving forward, and he intends to do it.

Mr. LaRocque inquired whether Representative Honadel was seeking the Council's approval for the bill, noting the Council has already approved the concept. Representative Honadel responded that he is.

Mr. Neuenfeldt expressed his hope that a way is found to tie the proposed legislation to a broader strategy dealing with the current skill shortage in the state. He related that he was contacted by friends in Virginia who told him that employers in Wisconsin are advertising in Virginia for welders, fabricators, and engineers, and noted that Wisconsin is facing a growing skills shortage and losing jobs due to a global marketplace and bad trade bills. He also noted the effects of off-shoring and lamented that when creating jobs now in Wisconsin, employers have to go to other states to find workers or relocate the business. Mr. Neuenfeldt noted there has never been a labor shortage, just a skills shortage. He emphasized that this is a small piece of what is needed as a larger strategy and is non-partisan issue that affects labor and management.

Mr. Buchen agreed that the skills shortage is a real problem. It seems counterintuitive in this economy, but it is very real and he hears about it everyday too.

Mr. Neuenfeldt noted that there is a tendency to rely on individual programs with no comprehensive strategy, with the result that it gets even more confusing and less connected to the private sector than it was before. He also acknowledged Representative Honadel's skill at reaching out.

Representative Honadel explained that he was in business and that he is happy to sit on any panel that deals with the skills gap facing Wisconsin. He noted that he has been discussing it since 1985.

Mr. Neuenfeldt stated that the problems are known, and that commissions and panels are not needed. His organization has done needs analyses and has a data base that has allowed it to predict over the past 5 years when businesses are going to close and when there will be layoffs. Although there are philosophical differences about this, the tax base is not the problem. The problem is the state must try to modernize and train future workers and find a working policy to make us competitive.

Representative Honadel noted that the market trends among employees have changed over time and that the day has passed when a worker could spend 35 years with one employer and get a retirement. Now someone might work 10-15 years in one industry and then maybe go to a completely different industry for 10-15 years or become an independent businessperson. The legislation provides an avenue for those with moxie. A person who used to work in a

factory and now the job is gone and who recognizes that he has talent can go into a training program.

Mr. Neuenfeldt responded that on the job training only works following some sort of skills training and education through tech colleges or other sorts of means and then the on-the-job training will only fit that workplace. He reiterated his hope that the legislature look at how the program fits in with a broader agenda in terms of building a skills path; otherwise, it will be just another program hanging out there that is not connected to the skills shortage. Then there will likely be people screaming about employer abuse and other things. There may be unintended consequences of the legislation.

Mr. Gustafson asked Mr. Neuenfeldt whether he is seeing a turn around in students' interests as it relates to the skills shortage whether there are students in the pipeline. He also stated that he has seen decreases in the interest in associate degrees in paper science in the paper industry. The students would rather be designing computer games in Silicon Valley. There seems to have been a lot of work to address the skilled worker shortage, but with no real results yet.

Mr. Neuenfeldt responded that students end up with a dilemma: they choose careers in manufacturing and then hear about plants closing. He has concerns about what messages are being sent and noted it is very confusing for those making career choices.

Mr. Buchen stated that for every closing, someone is growing, but the public does not hear about it. The economy is dynamic with winners and losers. Some companies shrink and some grow. There is a tendency to dwell on the negative and it is discouraging to those who do not see the positive. There are different facets to the problems. There are various ranges of training needs: some jobs do not need a lot of training and employers cannot fill those sometimes. More opportunities to talk about the issues are needed. Mr. Buchen's organization had 50 meetings set up with businesses around the state, but they usually just hear the problems while hoping to find answers. The tech college system is a jewel in many respects, but its core mission needs to be reviewed.

Mr. Neuenfeldt suggested the Council could discuss customized training at some point.

Representative Honadel closed by emphasizing that parents and grandparents should be proud when their children become doctors and lawyers, but also should be proud when they become welders, chefs, and earth movers. He added that that is something that has been lost in the last thirty years, and it is a shame.

Mr. LaRocque indicated that Representative Honadel is looking for action from the Council on the bill.

Motion to approve Representative Honadel's bill, AB 450 (McGowan), second (Buchen).
Discussion: None. Ayes 10; noes 0.

(Mr. Rainey advised that he was ending his participation in the meeting.)

Representative Joan Ballweg addressed the Council:

Representative Ballweg, the chairperson of the Assembly Labor Committee, appeared to discuss AB 457 which includes items Representatives Kapenga and Wynn discussed at the September, 2011 Council meeting. She indicated that there has been an active unofficial working group since the beginning of the term with many different ideas coming from it being presented to the Council. AB 457 includes provisions she and others felt are key to making administrative reforms. Representative Ballweg advised that the public hearing held yesterday provided good discussion, and noted that several legislators have come to the Council today and to the past couple of meetings. Representative Ballweg acknowledged the special role of the Council and noted that legislators as elected representatives have a special responsibility to listen and bring forward areas of concern on behalf of their constituents. That is where many of the ideas came from and the legislators believe it is their responsibility to work with the Council to try to move the ideas and concerns forward.

Representative Ballweg highlighted several of the ideas. One is the violation of work rule issue and proposal. She noted she wished to reinforce that the proposal is very important to the legislators and is one she hopes the Council will revisit. She noted that the department had provided information at the committee hearing on the bill for information only and did not take a position on it. She also noted that the fiscal analysis indicates that implementation of the proposal will result in major savings for the UI fund. Representative Ballweg added that there may be some tweaks to the violation of work rule provision, but hopes for some agreement. With regard to the proposal related to the 26 weeks extended benefits training provision, Representative Ballweg noted that the legislators are offering a compromise with a sunset provision that is triggered off when the unemployment level is at 6.5% and indicated that they are looking for triggers and sunset provisions for benefits. She said this is how it is set up on the federal side of things now. She added that the discussion at the committee hearing digressed into a discussion of technical colleges and training, and that is important, but emphasized that it is important to get to a sunset level that is adequate.

With regard to the current provision that permits a spouse who voluntarily quits to follow a spouse to receive benefits, Representative Ballweg stated that it is reasonable to remove it. Doing so will result in savings. She noted that as a strictly administrative matter, adjusting the interest rate for employers who have not met the deadline for making their UI payments, which is currently 1% a month, and tying it to the prime rate, at 2% over prime, which fluctuates based on the market is reasonable.

Referring to the proposal related to receipt of benefits by incarcerated claimants and their availability for work, Representative Ballweg stated that she believes that the department is handling the issue well. She indicated the department has a handle on it administratively and has worked with the department of corrections and knows where the claimants are and whether they are available. She suggested the department is probably in a good position to deal with this issue.

Representative Ballweg stated that the public committee hearing on AB 457 focused more on a discussion of process and not as much on the meat of the bill. She also noted that Bob Andersen from Legal Action of Wisconsin went through specific points and addressed the bill as proposed. She appreciated that he addressed the bill as proposed, as well as the process.

Representative Ballweg added that Mr. Andersen commented at the committee hearing that the legislature was acting outside of the process and that he (Mr. Andersen) supported the current process. She also noted that another individual had spoken in favor of the proposal. Representative Ballweg advised that Georgia Maxwell had minor suggestions regarding the work rule violation provision and the provision relating to the appeal tribunal, suggesting that the Labor and Industry Review Commission be a part of that amendment (which requires as proposed that administrative law judges make decision consistent with state and federal law).

Representative Ballweg stated that after digging in matters at the Legislative Reference Bureau, it appears that it is not entirely unusual that the legislature has made changes different from those in the Council bill and noted that the Council is advisory in nature. She observed that we need people working on the items everyday at a higher level and that tweaks are not outside of the Council process and that some issues can be addressed through the legislature with many examples going back many years of amendments and suggestions. Representative Ballweg noted that the suggestions the legislators brought to the Council in September were a compilation of many members of the legislature doing their duty as representatives of the citizens of Wisconsin and what they feel is important. Not everyone is a member of the AFL-CIO or WMC and may not have the access to make suggestions, but can contact legislators.

Representative Ballweg stated that she hopes the Council will revisit the bill and that the point of introducing the bill was to bring the ideas forward and to have a closer look at the language. She noted that there are many other ideas floating around, but that those in the AB 457 proposal are the ones she hopes the Council and the legislature will be able to coalesce around.

Mr. LaRocque advised that Secretary Newson had arrived and was on a tight schedule. He asked that Representative Ballweg permit the Secretary to speak and asked that she stay and complete her remarks afterward. After Secretary Newson completed his remarks, Representative Ballweg returned to resume her presentation.

Mr. Neuenfeldt asked whether the working group to which Representative Ballweg referred was bi-partisan and whether it was comprised of private sector participants.

Representative Ballweg replied that the group was comprised of Republican legislators from the Assembly and Senator Lasee.

Mr. Neuenfeldt indicated that he gets public input, just as legislators do, and hears complaints about the benefit levels that have been frozen for years. He asked whether the

working group had discussed relief for individuals receiving unemployment benefits as part of its compromise.

Representative Ballweg responded that benefit levels was not an issue that was brought up, and noted that the folks who contact Mr. Neuenfeldt know about the Council. Most of the population is not aware of the Council.

Mr. Neuenfeldt noted that he gets calls asking about the process and asked what the compromise process had been, noting that compromise means coming from different opinion points different backgrounds to figure out how things work, which is the value we have seen here. He added that the people at the Council represent different areas too, both on the labor and management side and that they look at things from different perspectives. The point of compromise is trying to figure out how to meet the needs of people on the labor side and on the management side. Mr. Neuenfeldt stated that when the Democrats were in control the Council decisions never went one way and when the economy was really strong we did not get as many benefits as other states, but likewise, when the economy was on the flip, we always brought some level of steadiness to the system. He noted that things have been rocked lately because many do not appreciate history and the future in terms of what this can do. He added it is important to look at all things—who was the working group and who was it compromising with if the working group was a smaller, insular group.

Representative Ballweg stated that the working group had common interests and that she was quite sure that the group was all Republican. She noted that several of the ideas raised are more administrative and that the department would do them on its own if it could, but cannot because of the statutes.

Mr. Neuenfeldt pointed out that the bill the Council approved consisted of many administrative items and that it had approved most of the changes the department requested. Mr. LaRocque advised that the Council had approved ten law changes in its earlier proposal, which encompassed a variety of things.

Mr. LaRocque inquired whether Representative Ballweg was seeking approval of or comment on her ten proposals.

Representative Ballweg responded that she hopes that all of the proposals will be considered, and that she was not necessarily seeking a stamp of approval as a whole, but approval of individual items or suggestions for improving the bill. She noted she is trying to bring additional information and asks for additional consideration for items brought forward by the legislators.

Mr. LaRocque stated that AB 457 had been circulated to the Council for consideration.

UI Administrator Craig Barkelar read a statement from Senator Frank Lasee:

“Senator Lasee supports Representative Ballweg’s bill, AB 457, and would like to see additional reform items added to the agreed upon UI Advisory Council bill. More

unemployment reform is needed in Wisconsin and this bill will address most of the needed reforms.”

5. Secretary Reggie Newson:

Secretary Newson stated that it was an honor to be with the Council and that he would not make a formal presentation, but that he wanted to come and meet the Council face-to-face. He noted that he is honored and privileged to serve in the cabinet and is looking forward to working with the Council which has done great work over the years for which he is very appreciative for all the Council has done. He thanked the Council for supporting Representative Honadel’s bill and indicated the bill offers a great opportunity to get Wisconsinites back to work.

Secretary Newson stated that customer service is an important strategic goal for DWD. He added that customer service is important in working with employers and claimants. He noted that while the Council has been very deliberative in the past and has taken great care with matters it enacts. He noted that we are now in an interesting time which is fast paced. Secretary Newson also indicated he hopes that the Council will be flexible with the department and the administration and will be nimble and flexible in getting the fund solvent and in coming up with ideas to get Wisconsinites back to work.

Secretary Newson closed his remarks saying that he is very appreciative of the Council and wants to stay engaged with it.

6. Federal Legislation Update:

Department attorney, Scott Sussman, explained that in November Congress enacted federal legislation requires that Wisconsin make some changes to current law. He noted that one of the provisions requires states to assess a 15% penalty for fraudulent overpayments and noted that the provision is identical to that the Council approved in September, 2011, with the exception that on and after October 21, 2013, the penalty monies collected would be deposited into the UI Reserve Fund, rather the program integrity fund as set forth in the original proposal (AB 310/SB 219). It is a technical difference between what the Council passed and what the federal legislation requires. Mr. Sussman also presented a federally mandated proposal that the required national data bank new hire reports employers file must also include employees rehired. It is also a technical change. Both the first and the second federal provisions will require law changes. The final federal provision relating to a prohibition on relieving employers of charges when the overpayment results from employer fault will not require a law change, as Wisconsin is already in compliance. Mr. LaRocque added that Wisconsin’s employer fault provision the Council brought and which passed in 2006 or 2007 was used as the model for the federal legislation. The Council’s work became a national standard.

Mr. Sussman also noted that the federally funded benefits, which were scheduled to expire December 31, 2011, have been extended for two additional months, through February, 2012,

and that a federal joint House and Senate panel has been created to consider extending them beyond February.

Mr. Lump requested that he be provided a brief written summary of the federal legislative update Mr. Sussman provided.

7. Status of the Unemployment Insurance Advisory Council Bill:

Mr. LaRocque advised that the ten-point Unemployment Insurance Advisory Council law change proposal passed in the Senate (SB 219). The Assembly bill (AB 310), however, was amended and referred to the Joint Committee on Finance where it has resided since late October.

8. Department Law Change Proposals:

The department presented three law change proposals which were distributed at the meeting: (1) Tighten requirement of availability for work; (2) Remove limits of department's hiring of temporary appeals judges; (3) Conform to federal law requirement that the 15% penalty on fraudulent overpayments be paid into the Reserve Fund.

Department Attorney, Susan Blesener, addressed the first law change proposal, and explained that it tightens the benefits eligibility requirement for availability for work and is consistent with current department policy. The proposal provides that to be considered available for work and eligible for benefits, the individual must be located in the United States, or one of its territories, Canada, or a country in which the individual is authorized to work and with which the United States has a reciprocal UI agreement. Currently, the United States only has such an agreement with Canada. The proposal places a reasonable geographic restriction on where a claimant can be located and still be considered available for purposes of benefits eligibility. The proposal converts department policy to law.

Mr. LaRocque explained that the law has evolved across the states to permit UI eligibility when claimants are available for work in other the states and territories. He noted that the department had reviewed the Utah provision which is very clear that a claimant is only deemed available if located in a country with which the United States shares a reciprocal UI agreement. The proposal permits a 48-hour absence and is consistent with current department policy.

Reviewing the proposals distributed at the meeting, Ms. Yunk inquired with regard to the first proposal why it included a comment about a decision from the Labor and Industry Review Commission. Mr. LaRocque responded that the case concerned a claimant who was in a foreign country on a permanent basis. Ms. Yunk asked whether the proposal reverses LIRC through creation of a new statute. Mr. LaRocque answered that that is essentially what the proposal would do and noted that LIRC interprets statutes. Mr. Buchen added that there are many requirements in the law and that if there is no agreement with a country to enforce our law, it is possible to pay benefits without oversight. Mr. LaRocque agreed and indicated

we have an agreement with Canada and have reason to believe that it administers its program similar to the way the department administers its own.

Mr. LaRocque addressed the second department proposal and explained that the department is allowed to appoint temporary administrative law judges and has done so in the past, but is currently required to shop among only retired unemployment insurance law judges, which is a little too restrictive. He noted that while retired ALJs have expertise, the department does not want the market to be cornered, but wants to have the freedom to hire someone who is not necessarily a former UI administrative law judge.

Ms. Yunk inquired the department has undertaken any studies on continuity of interpretation if the law is changed. She noted there is supervision and oversight now. She noted it is good to assume some consistency in rulings and interpretation, and added concern about going outside. She reminded the Council that there were several occasions in the past when the Council received letters of concern from ALJs.

Mr. LaRocque responded that he is in charge of the appeals operation and understands and agrees that it is important to have continuity, knowledge, and expertise related to the UI law. He added that the department trains its ALJs and assigns them a narrower scope of issues until they gain more experience with the law. Mr. LaRocque explained that he has thought a lot about the issue and his preference is to hire retirees that know the UI law, but that he runs out of candidates at times and is currently prohibited from going to the general market of lawyers.

Mr. Yunk asked what is “temporary” about the positions if they require the training.

Mr. Barkelar replied that the limited term employee restrictions apply—20 hours per week on average for a year. He also noted that it is only the unemployment insurance division that has the requirement and assured that the department would not put the attorneys into hearings without training and support.

Mr. LaRocque added that the department gets strapped for help and needs options, mentioning that also former circuit court judges with the skills to hold hearings who have expressed interest in this work.

Ms. Yunk inquired whether there were letters from ALJs as individuals or as a group that may play any role in this issue. Mr. LaRocque responded that he is not aware of any.

Ms. Yunk mentioned that the earlier letters expressed concerns about not having adequate staff. Mr. LaRocque responded that he can lighten the load on the staff if he is able to add staff.

Department attorney, Scott Sussman, addressed the third department proposal and explained that the UIAC previously passed the 15% penalty and that the proposal changes the previous one by directing that the funds be directed to the Reserve Fund after October 21, 2013 in

order that Wisconsin comply with the new federal law. He noted that the proposed change requires state legislation.

Mr. LaRocque noted that the legislative season is short and that the department would like to get a bill in which encompasses the three department proposals.

Mr. Lump inquired whether the department's law change proposals, if approved, would be added to the bill already pending. Mr. LaRocque responded that they could comprise a freestanding bill or that the previous bill could be amended.

Mr. Gustafson inquired with respect to the first proposal whether there would potentially be any impact on guest employees and the logging industry. He thought it likely related to visas, perhaps similar to the visa program used in the Wisconsin Dells. Mr. Lump responded that Mr. Gustafson is likely referring to J1 visas.

Mr. Barkelar pointed out that we have a compact with Canada, so the proposal will not affect Canada at all.

Mr. Neuenfeldt inquired whether there would be more bills, and Mr. LaRocque replied that there could be a new bill or an amendment to one of the pending bills. Mr. Barkelar also reminded the Council that the approved bonding legislation is on its second draft with state bond counsel and may be introduced in the next month or two or next fall.

Mr. Buchen inquired whether the bond legislation would not happen in the next month or two, and Mr. Barkelar responded that the proposal has been sitting for awhile and requires language from bond counsel.

Motion to approve department three proposals for law change (Neuenfeldt); second (Buchen)
No discussion. Ayes 8; noes 0.

Mr. LaRocque inquired whether the Council wanted to schedule a meeting for the third Thursday of the month and asked that it consider that the Council had before it a request on the bills from Representatives Ballweg and Pocan. He inquired whether the members wanted to go into closed session.

Mr. Buchen suggested the Council may not need to meet again in a month if the Council resolved matters today.

Mr. LaRocque responded that the bonding bill may be completed and the Council would decide if it needed a meeting to consider it. He also pointed out that the Council routinely would do public hearings in 2012 since it is an even numbered year. Mr. LaRocque asked whether there were things the members wanted to talk about today and get completed. Mr. Buchen replied that they would have to see how the rest of the meeting goes.

Motion to proceed to closed session (Buchen); second (Neuenfeldt). Ayes 8, noes 0. To closed session at 11:15 a.m.

Return from closed session at 12:25 p.m.

9. Council Action following closed session:

Mr. Buchen moved for approval of two of the provisions from Representative Ballweg's bill, AB 457; specifically, the Council supports the provision which modifies the interest rate employers pay on outstanding UI contributions (section 15), and the provision which clarifies the authority of appeal tribunals (section 10). Mr. Buchen indicated the Council members will continue to consider the other bills and portions thereof sponsored by Representatives Ballweg and Pocan, and hope to respond to those in early February when the Council meets again. The Council is still considering Representative Pocan's SB 346 and the remainder of Representative Ballweg's AB 457.

Motion to approve the Council's support of sections 10 and 15 of AB 457 (Buchen), second (Neuenfeldt). Mr. LaRocque inquired whether the Council was adopting the department's recommended language that added reference to the decisions of the Labor and Industry Commission. After discussion of the precedential value of Labor and Industry Review Commission decisions and whether such would be extended by the department proposal, the Council concluded that it will support the version of the amendment as stated in AB 457 rather than the version the department suggested. The motion to approve was stated again (Buchen) and seconded (Yunk). Discussion: Determined the legislative strategy for moving the department proposals forward would be developed by the department and Georgia Schulze. Ayes 8, noes 0.

10. Correspondence:

The Council received a letter from Governor Scott Walker dated December 29, 2011, which indicated his support for SB 346 and sought the Council's consideration of it, along with a copy of a letter to Governor Walker from the Chairman and Chief Executive Officer of The Manitowoc Company, Inc., supporting the proposed legislation. The Council also received a copy of a letter dated January 10, 2012, from three members of the Assembly Labor Committee to Representative Joan Ballweg, the Chair of the Assembly Labor and Workforce Development Committee asking that the public hearing on AB 457 be delayed until after the UIAC held its meeting on January 11, 2012.

At the request of the Council, Mr. LaRocque will prepare and circulate among the Council members correspondence from the Council to Assembly Representatives Ballweg, Honadel, and Pocan to advise them that the Council has voted a resolution favoring sections 10 and 15 of AB 457 and all of AB 450, and that the Council will continue to consider AB 346 and the remainder of AB 457.

11. Future Meetings: February 2, 2012 at 9:30 a.m. The Council intends to schedule public hearing sometime during the year.

12. Other Business: No additional business. Motion to Adjourn (Buchen), second (Yunk). Ayes 9; noes 0. Meeting is adjourned at approximately 12:35 p.m.