



2009 SENATE BILL 246

July 28, 2009 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Children and Families and Workforce Development.

1 **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45
2 (2) (a) 10. and 77.92 (4); and *to create* 71.05 (6) (a) 25., 71.05 (6) (a) 26., 71.05
3 (6) (b) 47., 71.05 (6) (b) 48., 71.05 (6) (b) 49., 71.07 (6s), 71.10 (4) (cs), 71.26 (2)
4 (a) 10., 71.28 (6s), 71.30 (3) (dn), 71.45 (2) (a) 19., 71.47 (6s), 71.49 (1) (dn) and
5 106.115 of the statutes; **relating to:** a lifelong learning accounts program and
6 creating income tax modifications and an income tax credit for contributions
7 and withdrawals related to lifelong learning accounts, providing an exemption
8 from rule-making procedures, and requiring the exercise of rule-making
9 authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

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JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Building Wisconsin's Workforce.

This bill creates a lifelong learning accounts program. Under the program, a lifelong learning accounts plan, and the accounts established and administered under the plan, must be approved by the Department of Workforce Development (DWD).

Under the program, a participating employee makes contributions to his or her lifelong learning account and a participating employer may make matching contributions to that account, but must make matching contributions of at least 25 percent of the amount contributed annually by the employer's participating employees in order to be eligible for the lifelong learning tax credit created under the bill. A participating employer that makes matching contributions must base those contributions on a percentage of a participating employee's annual contribution and must apply the same percentage to each participating employee. The combined contributions of the employer and employee may not exceed \$5,000 annually, as indexed for inflation, and contributions may not be made to an account with a balance in excess of \$25,000, as indexed for inflation.

Employee and employer contributions may be subtracted from the employee's or employer's taxable income, respectively. An employer may claim a nonrefundable income tax credit for certain contributions to the lifelong learning accounts of its employees if the employer matches at least 25 percent of the amount contributed annually by the employer's participating employees. The account must be used to pay for qualified education expenses. If a withdrawal from the account is made for any other purpose, the holder of the account incurs a penalty, unless the holder is 70 years of age or older, in which case the withdrawal is taxed as ordinary income.

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act
2 2, is amended to read:

3 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3r), (3s), (3t),
5 (3w), (5e), (5f), (5h), (5i), (5j), ~~and (5k)~~, and (6s) and not passed through by a
6 partnership, limited liability company, or tax-option corporation that has added that
7 amount to the partnership's, company's, or tax-option corporation's income under s.
8 71.21 (4) or 71.34 (1k) (g).

9 **SECTION 2.** 71.05 (6) (a) 25. of the statutes is created to read:

10 71.05 **(6)** (a) 25. For taxable years beginning after December 31, 2009, an
11 amount equal to 200 percent of the amount withdrawn by an individual, who is less
12 than 70 years of age at the time of the withdrawal, from a lifelong learning account
13 and not used for qualified education expenses under s. 106.115 (2) (e) or (3) (b).

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NOTE: This SECTION creates a penalty for nonqualified withdrawals from a lifelong learning account through an addition to an individual's taxable income. The penalty does not apply to persons 70 years of age or older.

1 **SECTION 3.** 71.05 (6) (a) 26. of the statutes is created to read:

2 71.05 (6) (a) 26. For taxable years beginning after December 31, 2009, the
3 amount withdrawn by an individual who is 70 years of age or older at the time of the
4 withdrawal, from a lifelong learning account and not used for qualified education
5 expenses under s. 106.115 (2) (e) or (3) (b).

NOTE: This SECTION includes nonqualified lifelong learning account withdrawals by an individual 70 years of age or older in the individual's taxable income.

6 **SECTION 4.** 71.05 (6) (b) 47. of the statutes is created to read:

7 71.05 (6) (b) 47. For taxable years beginning after December 31, 2009, for a
8 participating employee, as defined in s. 106.115 (1) (e), the amount contributed
9 during the taxable year by or on behalf of an individual to a lifelong learning account
10 established under s. 106.115.

NOTE: This SECTION subtracts employee and employer lifelong learning account contributions from an individual's federal adjusted gross income (AGI).

11 **SECTION 5.** 71.05 (6) (b) 48. of the statutes is created to read:

12 71.05 (6) (b) 48. For taxable years beginning after December 31, 2009, any
13 increase in value of a lifelong learning account established under s. 106.115, except
14 that the subtraction under this subdivision may not be claimed by any individual
15 who makes a withdrawal for a purpose other than for qualified education expenses
16 under s. 106.115 (2) (e) or (3) (b).

NOTE: This SECTION subtracts from federal AGI any gain generated from a lifelong learning account if the withdrawal is used for qualified education expenses.

17 **SECTION 6.** 71.05 (6) (b) 49. of the statutes is created to read:

18 71.05 (6) (b) 49. For taxable years beginning after December 31, 2009, for a
19 participating employer, as defined in s. 106.115 (1) (f), the amount contributed by a

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1 participating employer to a lifelong learning account pursuant to a lifelong learning
2 account plan approved under s. 106.115 (2), to the extent not otherwise subtracted
3 in the computation of the employer's taxable income.

NOTE: This SECTION subtracts an employer's lifelong learning account contributions made on behalf of the employer's employees from the employer's Wisconsin taxable income.

4 **SECTION 7.** 71.07 (6s) of the statutes is created to read:

5 71.07 (6s) LIFELONG LEARNING ACCOUNT CREDIT. (a) *Definition.* In this
6 subsection, "claimant" means a participating employer, as defined in s. 106.115 (1)
7 (f), who is not an individual.

8 (b) *Filing claims.* For taxable years beginning after December 31, 2009, subject
9 to the limitations provided in this subsection, a claimant may claim as a credit
10 against the tax imposed under s. 71.02, up to the amount of those taxes, an amount
11 equal to 50 percent of the claimant's lifelong learning account contributions under
12 s. 106.115 (2) (d) paid in the taxable year.

13 (c) *Limitations.* 1. No credit may be claimed on contributions in excess of
14 \$1,000 per employee.

15 2. The amount claimed by a claimant under par. (b) for a taxable year may not
16 exceed \$50,000.

17 3. Partnerships, limited liability companies, and tax-option corporations may
18 not claim the credit under this subsection, but the eligibility for, and the amount of,
19 the credit are based on their payment of amounts under par. (b). A partnership,
20 limited liability company, or tax-option corporation shall compute the amount of
21 credit that each of its partners, members, or shareholders may claim and shall
22 provide that information to each of them. Partners, members of limited liability

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1 companies, and shareholders of tax-option corporations may claim the credit in
2 proportion to their ownership interests.

3 4. No credit may be claimed under a plan in which employer matching
4 contributions are less than 25 percent of the amount contributed annually by
5 participating employees.

6 (d) *Administration.* The provisions of s. 71.28 (4) (e) to (h), as they apply to the
7 credit under s. 71.28 (4), apply to the credit under this subsection.

NOTE: This SECTION creates a nonrefundable employer credit for employer contributions to lifelong learning accounts. The SECTION grants a credit equal to 50 percent of the employer's first \$1,000 contributed per employee. Employers must make matching contributions of at least 25 percent in order to claim the credit. The SECTION places a \$50,000 yearly aggregate limit on the credit available to an employer. The credit may be carried forward and credited against taxes due for the following 15 years.

8 **SECTION 8.** 71.10 (4) (cs) of the statutes is created to read:

9 71.10 (4) (cs) Lifelong learning account credit under s. 71.07 (6s).

10 **SECTION 9.** 71.21 (4) of the statutes, as affected by 2009 Wisconsin Act 2, is
11 amended to read:

12 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
13 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3r), (3s), (3t), (3w), (5e),
14 (5f), (5g), (5h), (5i), (5j), and (5k), and (6s) and passed through to partners shall be
15 added to the partnership's income.

16 **SECTION 10.** 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Act
17 2, is amended to read:

18 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
19 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3r), (3t), (3w),
20 (5e), (5f), (5g), (5h), (5i), (5j), and (5k), and (6s) and not passed through by a
21 partnership, limited liability company, or tax-option corporation that has added that

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1 amount to the partnership's, limited liability company's, or tax-option corporation's
2 income under s. 71.21 (4) or 71.34 (1k) (g).

3 **SECTION 11.** 71.26 (2) (a) 10. of the statutes is created to read:

4 71.26 (2) (a) 10. For taxable years beginning after December 31, 2009, for a
5 participating employer, as defined in s. 106.115 (1) (f), minus the amount contributed
6 by a participating employer to a lifelong learning account pursuant to a lifelong
7 learning account plan approved under s. 106.115 (2), to the extent not otherwise
8 subtracted in the computation of the employer's net income.

NOTE: This SECTION subtracts an employer's lifelong learning account contributions made on behalf of the employer's employees from the employer's net income.

9 **SECTION 12.** 71.28 (6s) of the statutes is created to read:

10 71.28 (6s) LIFELONG LEARNING ACCOUNT CREDIT. (a) *Definition.* In this
11 subsection, "claimant" means a participating employer, as defined in s. 106.115 (1)
12 (f).

13 (b) *Filing claims.* For taxable years beginning after December 31, 2009, subject
14 to the limitations provided in this subsection, a claimant may claim as a credit
15 against the tax imposed under s. 71.23, up to the amount of those taxes, an amount
16 equal to 50 percent of the claimant's lifelong learning account contributions under
17 s. 106.115 (2) (d) paid in the taxable year.

18 (c) *Limitations.* 1. No credit may be claimed on contributions in excess of
19 \$1,000 per employee.

20 2. The amount claimed by a claimant under par. (b) for a taxable year may not
21 exceed \$50,000.

22 3. Partnerships, limited liability companies, and tax-option corporations may
23 not claim the credit under this subsection, but the eligibility for, and the amount of,

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1 the credit are based on their payment of amounts under par. (b). A partnership,
2 limited liability company, or tax-option corporation shall compute the amount of
3 credit that each of its partners, members, or shareholders may claim and shall
4 provide that information to each of them. Partners, members of limited liability
5 companies, and shareholders of tax-option corporations may claim the credit in
6 proportion to their ownership interests.

7 4. No credit may be claimed under a plan in which employer matching
8 contributions are less than 25 percent of the amount contributed annually by
9 participating employees.

10 (d) *Administration.* The provisions of sub. (4) (e) to (h), as they apply to the
11 credit under sub. (4), apply to the credit under this subsection.

NOTE: This SECTION creates a nonrefundable employer credit for employer contributions to lifelong learning accounts. The SECTION grants a credit equal to 50 percent of the employer's first \$1,000 contributed per employee. Employers must make matching contributions of at least 25 percent in order to claim the credit. The SECTION places a \$50,000 yearly aggregate limit on the credit available to an employer. The credit may be carried forward and credited against taxes due for the following 15 years.

12 **SECTION 13.** 71.30 (3) (dn) of the statutes is created to read:

13 71.30 (3) (dn) Lifelong learning account credit under s. 71.28 (6s).

14 **SECTION 14.** 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Act 2,
15 is amended to read:

16 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
17 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
18 (3), (3g), (3h), (3n), (3p), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), and (5k), and (6s)
19 and passed through to shareholders.

20 **SECTION 15.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act
21 2, is amended to read:

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1 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
2 computed under s. 71.47 (1dd) to (1dy), (3h), (3n), (3p), (3r), (3w), (5e), (5f), (5g), (5h),
3 (5i), (5j), ~~and (5k)~~, and (6s) and not passed through by a partnership, limited liability
4 company, or tax-option corporation that has added that amount to the partnership's,
5 limited liability company's, or tax-option corporation's income under s. 71.21 (4) or
6 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and
7 (5).

8 **SECTION 16.** 71.45 (2) (a) 19. of the statutes is created to read:

9 71.45 (2) (a) 19. For taxable years beginning after December 31, 2009, for a
10 participating employer, as defined in s. 106.115 (1) (f), by subtracting from federal
11 taxable income the amount contributed by a participating employer to a lifelong
12 learning account pursuant to a lifelong learning account plan approved under s.
13 106.115 (2), to the extent not otherwise subtracted in the computation of the
14 employer's net income.

NOTE: This SECTION subtracts an employer's lifelong learning account contributions made on behalf of the employer's employees from the employer's net income.

15 **SECTION 17.** 71.47 (6s) of the statutes is created to read:

16 71.47 (6s) LIFELONG LEARNING ACCOUNT CREDIT. (a) *Definition.* In this
17 subsection, "claimant" means a participating employer, as defined in s. 106.115 (1)
18 (f).

19 (b) *Filing claims.* For taxable years beginning after December 31, 2009, subject
20 to the limitations provided in this subsection, a claimant may claim as a credit
21 against the tax imposed under s. 71.43, up to the amount of those taxes, an amount
22 equal to 50 percent of the claimant's lifelong learning account contributions under
23 s. 106.115 (2) (d) paid in the taxable year.

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1 (c) *Limitations.* 1. No credit may be claimed on contributions in excess of
2 \$1,000 per employee.

3 2. The amount claimed by a claimant under par. (b) for a taxable year may not
4 exceed \$50,000.

5 3. Partnerships, limited liability companies, and tax-option corporations may
6 not claim the credit under this subsection, but the eligibility for, and the amount of,
7 the credit are based on their payment of amounts under par. (b). A partnership,
8 limited liability company, or tax-option corporation shall compute the amount of
9 credit that each of its partners, members, or shareholders may claim and shall
10 provide that information to each of them. Partners, members of limited liability
11 companies, and shareholders of tax-option corporations may claim the credit in
12 proportion to their ownership interests.

13 4. No credit may be claimed under a plan in which employer matching
14 contributions are less than 25 percent of the amount contributed annually by
15 participating employees.

16 (d) *Administration.* The provisions of s. 71.28 (4) (e) to (h), as they apply to the
17 credit under s. 71.28 (4), apply to the credit under this subsection.

NOTE: This SECTION creates a nonrefundable employer credit for employer contributions to lifelong learning accounts. The SECTION grants a credit equal to 50 percent of the employer's first \$1,000 contributed per employee. Employers must make matching contributions of at least 25 percent in order to claim the credit. The SECTION places a \$50,000 yearly aggregate limit on the credit available to an employer. The credit may be carried forward and credited against taxes due for the following 15 years.

18 **SECTION 18.** 71.49 (1) (dn) of the statutes is created to read:

19 71.49 (1) (dn) Lifelong learning account credit under s. 71.47 (6s).

20 **SECTION 19.** 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 2, is
21 amended to read:

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1 77.92 (4) “Net business income,” with respect to a partnership, means taxable
2 income as calculated under section 703 of the Internal Revenue Code; plus the items
3 of income and gain under section 702 of the Internal Revenue Code, including taxable
4 state and municipal bond interest and excluding nontaxable interest income or
5 dividend income from federal government obligations; minus the items of loss and
6 deduction under section 702 of the Internal Revenue Code, except items that are not
7 deductible under s. 71.21; plus guaranteed payments to partners under section 707
8 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
9 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3r), (3s), (3t),
10 (3w), (5e), (5f), (5g), (5h), (5i), (5j), ~~and (5k)~~, and (6s); and plus or minus, as
11 appropriate, transitional adjustments, depreciation differences, and basis
12 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
13 loss, and deductions from farming. “Net business income,” with respect to a natural
14 person, estate, or trust, means profit from a trade or business for federal income tax
15 purposes and includes net income derived as an employee as defined in section 3121
16 (d) (3) of the Internal Revenue Code.

17 **SECTION 20.** 106.115 of the statutes is created to read:

18 **106.115 Lifelong learning accounts program. (1)** In this section:

19 (a) “Account” means a lifelong learning account that is approved by the
20 department under sub. (3).

21 (b) “Eligible employee” means an employee who is eligible to participate in a
22 participating employer’s plan.

23 (c) “Full-time employee” means an employee who is employed by a
24 participating employer to work at least 2,080 hours per year, including paid leave
25 and holidays, and whose principal place of employment is in this state.

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1 (d) "Part-time employee" means an employee who is employed by a
2 participating employer to work less than 2,080 hours per year, including paid leave
3 and holidays, and whose principal place of employment is in this state.

4 (e) "Participating employee" means an eligible employee who participates in a
5 lifelong learning accounts program under this section.

6 (f) "Participating employer" means an employer that participates in a lifelong
7 learning accounts program under this section.

8 (g) "Plan" means a lifelong learning account plan that is approved by the
9 department under sub. (2).

10 (h) "Qualified education expenses" means expenses for tuition and fees, books,
11 equipment, and tools or supplies that may be retained by a participating employee
12 relating to a course of instruction provided by a postsecondary educational
13 institution that is accredited to the satisfaction of the department and moneys
14 transferred from a participating employee's account to the participating employee's
15 account established under the plan of another participating employer. "Qualified
16 education expenses" does not include expenses for meals, lodging, transportation, or
17 any course or other instruction involving sports, games, or hobbies.

18 **(2)** The department shall approve a plan that satisfies all of the following:

19 (a) Is in writing.

20 (b) Covers at least all full-time employees of the participating employer and,
21 if the participating employer elects to cover part-time employees under the plan, all
22 part-time employees.

23 (c) Provides for voluntary participation by eligible employees.

24 (d) 1. Establishes an account for each participating employee to which the
25 participating employee makes contributions for the payment of qualified education

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1 expenses and the participating employer may make matching contributions for the
2 payment of those expenses. A participating employer that makes matching
3 contributions under this subdivision shall base those contributions on a percentage
4 of a participating employee's annual contribution and shall apply the same
5 percentage to each participating employee. The combined contributions of the
6 participating employee and participating employer may not exceed \$5,000 annually.
7 A participating employee or participating employer may not make contributions to
8 an account that has a balance of more than \$25,000. A participating employee who
9 has multiple accounts may not contribute to any account if the aggregate balance of
10 all accounts is more than \$25,000. The account shall be owned by the participating
11 employee.

12 2. a. In this subdivision, "consumer price index" means the average of the
13 consumer price index for all urban consumers, U.S. city average, as determined by
14 the bureau of labor statistics of the U.S. department of labor.

15 b. Except as provided in this subd. 2. b., beginning on July 1, 2011, and on each
16 July 1 after that, the department shall adjust the annual contribution and aggregate
17 balance limits under subd. 1. by calculating the percentage difference between the
18 consumer price index for the 12-month period ending on December 31 of the
19 preceding year and the consumer price index for the 12-month period ending on
20 December 31 of the year before the preceding year and adjusting those limits by that
21 percentage difference. The department shall publish the adjusted limits calculated
22 under this subd. 2. b. in the Wisconsin Administrative Register. This subd. 2. b. does
23 not apply if the consumer price index for the 12-month period ending on December
24 31 of the preceding year did not increase over the consumer price index for the
25 12-month period ending on December 31 of the year before the preceding year.

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1 (e) Except as provided in sub. (5), provides that the account shall be used to pay
2 qualified education expenses incurred by a participating employee for education
3 selected at the sole discretion of the participating employee.

4 (f) Provides procedures for the dissemination of information about the plan,
5 including the federal and state income tax consequences of the plan.

6 **(3)** The department shall approve an account that satisfies all of the following:

7 (a) Is established and administered in accordance with a plan.

8 (b) Except as provided in sub. (5), is used to pay qualified education expenses
9 incurred by a participating employee for education selected at the sole discretion of
10 the participating employee.

11 (c) Is held by a trustee or fiduciary, including the state treasurer, as approved
12 by the department.

13 **(4)** A participating employer shall provide information to the department that
14 the department determines is necessary to approve a plan or account.

15 **(5)** A participating employee may withdraw the participating employee's
16 contribution to the account at any time for any purpose. If an amount is withdrawn
17 for a purpose other than to pay qualified education expenses under sub. (2) (e) or (3)
18 (b), the account shall incur a penalty under s. 71.05 (6) (a) 25.

19 **(6)** The department shall establish a program to provide information to
20 participating employers and eligible employees about the lifelong learning accounts
21 program established under this section.

22 **(7)** The department shall promulgate rules establishing a procedure for the
23 approval of plans under sub. (2) and accounts under sub. (3).

NOTE: This SECTION creates the lifelong learning accounts program. DWD must
establish a procedure to approve plans and accounts under the program.

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A plan or account must be approved by DWD if it satisfies the criteria outlined in this SECTION. A participating employer must provide information to DWD that DWD determines is necessary for approval of a plan or account. DWD must establish a program to provide information to participating employers and eligible employees about the lifelong learning accounts program.

A participating employee may withdraw the participating employee's contribution to the account at any time for any purpose. Generally, however, if an amount is withdrawn for a purpose other than to pay qualified education expenses, the account incurs a penalty. "Qualified education expenses" is defined in this SECTION as expenses for tuition and fees, books, equipment, and tools or supplies that may be retained by the employee relating to a course of instruction provided by a postsecondary educational institution that is accredited to the satisfaction of DWD and moneys transferred from a participating employee's account to the participating employee's account established under the plan of another participating employer. "Qualified education expenses" does not include expenses for meals, lodging, transportation, or any course or other instruction involving sports, games, or hobbies.

1 **SECTION 21. Nonstatutory provisions.**

2 (1) SUBMISSION OF PROPOSED RULES. The department of workforce development
3 shall submit in proposed form the rules required under section 106.115 (7) of the
4 statutes, as created by this act, to the legislative council staff under section 227.15
5 (1) of the statutes no later than the first day of the 4th month beginning after the
6 effective date of this subsection. Notwithstanding section 227.137 (2) of the statutes,
7 the secretary of administration may not require the department of workforce
8 development to prepare an economic impact report for the rules required under
9 section 106.115 (7) of the statutes, as created by this act.

NOTE: This SECTION requires that DWD submit proposed rules regarding the approval procedure for plans and accounts under the lifelong learning accounts program to the Legislative Council staff by the first day of the 4th month beginning after the effective date of this SECTION. [SECTION 22 provides that the effective date of this SECTION is the day after publication of the act.]

Current law provides that, under certain circumstances, the Secretary of the Department of Administration (DOA) may direct an agency to prepare an economic impact report for a proposed rule before the proposed rule is submitted to the legislature for review. [s. 227.137 (2), stats.] This SECTION provides that the Secretary of DOA may not require that DWD prepare an economic impact report for these proposed rules.

10 **SECTION 22. Effective dates.** This act takes effect on the first day of the 12th
11 month beginning after publication, except as follows:

12 (1) SECTION 21 (1) of this act takes effect on the day after publication.

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NOTE: This SECTION provides that the act is effective on the first day of the 12th month beginning after publication, except that the provision requiring that DWD submit proposed rules is effective on the day after publication of the act.

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(END)