

**2001 Jr2 DRAFTING REQUEST**

**Senate Amendment (SA-SSA1-AB1)**

Received: **03/27/2002**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Senate Democratic Caucus 6-9220**

By/Representing: **Engel**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Addl. Drafters:

Subject: **Public Assistance - Wis works**

Extra Copics:

Submit via email: **NO**

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**Pre Topic:**

SCC:.....Engel - CN6134,

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**Topic:**

Wisconsin works fair hearing process

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**Instructions:**

See Attached--provide for a fair hearing process for review of Wisconsin works agency decisions, but do not permit participants to receive benefits while decision is pending.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 03/27/2002	kfollet 03/28/2002		_____			
/1			jfrantze 03/28/2002	_____	lrb_docadmin 03/28/2002		
/2	malaigm 03/28/2002	jdyer 03/28/2002	kfollet 03/28/2002	_____	lrb_docadmin 03/29/2002		
			jfrantze 03/29/2002	_____	lrb_docadmin 03/29/2002		

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/3	malaigm 03/29/2002	jdye 03/29/2002	haugca 03/29/2002	_____	lrb_docadmin 03/29/2002		
/4	malaigm 04/01/2002	jdye 04/01/2002	jfrantze 04/01/2002	_____	lrb_docadmin 04/01/2002		

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		14 4/1 jld	jfrantze 03/29/2002	_____	lrb_docadmin 03/29/2002		

*[Handwritten signatures and initials]*

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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		<i>13 3/28 jld</i>	jfrantze 03/29/2002	_____	lrb_docadmin 03/29/2002		
			<i>ck 3/29</i>	<i>ck 3/29</i>			

03/29/2002 09:55:29 AM  
Page 2

FE Sent For:

**<END>**

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/?	malaigm 03/27/2002	kfollet 03/28/2002					
/1		1/2 3/8 Jld	jfrantze 03/28/2002		lrb_docadmin 03/28/2002		

FE Sent For:

*Jld*  
*Jb 3/29*  
*Ch*  
*3/29*  
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/?	malaigm	1/1 3/28 kif	6/28	6/28 3/28			
		1/1 3/28 jld					

FE Sent For:

<END>



CN 6134

Senator Moore

GMR

**Department of Workforce Development**

Relating to Restoring a Fair Hearing Process Under Wisconsin Works

Motion:

Move to incorporate certain provisions of Senate Substitute Amendment to Senate Bill 123 (1999 Session), the W-2 fair hearing bill, and LFB Motion #309. Move to exclude SB 123 provision allowing for continuing benefits for participants. LRB Attorney Gordon Malaise is working on drafting this budget amendment.

Therefore, this motion would:

- restore a fair hearing process for participants;
- allow W-2 applicants or participants who have been either wrongly denied assistance or inappropriately placed to receive retroactive benefits;
- not allow for continuing benefits for appealing participants; and
- would not restore any entitlement to W-2.

---

Fiscal Effect: \$0

This legislation would allow those individuals an opportunity to appeal directly to the State by eliminating the current W-2 dispute resolution process, known as the "fact-finding" procedure.

Under the current W-2 dispute resolution process, an individual must first petition a W-2 agency requesting a remedy to mistakes the agency made in handling the case.

The current fact finding procedure is tantamount to asking "the fox to watch the hen house."

Enactment of this modified Senate Bill 123 would allow an individual who believes a W-2 Agency made an error in handling her case the opportunity to petition DWD directly for a fair hearing on the grievance.

The current fact-finding process is not simple, cheap, or client-friendly.

According to an April 23, 2001, memo from non-partisan Legislative Fiscal Bureau:

- ESI had in-house attorneys to represent the agency in fact-findings, which it charged to its W-2 contract as administrative expenses;
- YW Works had a subcontract with an outside lawyer to represent the agency in fact-findings. According to DWD, YW Works had spent over \$12,000 on this outside council; and
- OIC had a \$5,000 per month subcontract with a private attorney to represent the agencies at fact-findings.

The fact-finding process, which pits low-income people with little formal education against lawyers, is intimidating for participants.

DWD Secretary Jennifer Reinert has indicated her support for providing Retroactive W-2 Benefits for applicants. See attached letter of support.

**Additional Talking Points for Fair Hearing Legislation and Providing Retroactive Benefits for applicants:**

**Why should W-2 agencies provide retroactive benefits to participants who have been inappropriately placed?**

According to the April 2001 evaluation of the W-2 program, LAB reviewed the current W-2 fact finding process and found that 69.9% of appeals to the Division of Hearings and Appeals, were decided *in favor* of the W-2 participants.

The percentage of Milwaukee County cases found in favor of the participant was 78.7%, compared to 51% for the balance of the state.

Any increased costs incurred as of result of this motion would be borne by the W-2 agencies as cash benefits.

A W-2 agency would only incur increased costs as a result of this motion if it is determined that **it erred** by either inappropriately denying an eligible applicant assistance or inappropriately placing a participant into the wrong job category.

We must not allow W-2 agencies to save money by inappropriately denying appropriate assistance to those in need.

It is completely inappropriate to argue that our most vulnerable citizens should bear the financial costs of an agency's error.

WORKFORCE DEVELOPMENT

Retroactive W-2 Benefits for Applicants

Motion:

Move to specify that Wisconsin Works (W-2) applicants who were denied benefits or were placed in an inappropriate W-2 employment position and successfully petitioned the W-2 agency or Department of Workforce Development (DWD), would be eligible for W-2 cash benefits or increased benefits beginning on the day the application was denied in whole or in part or on the day the individual began participation in an inappropriate W-2 position. Specify that this provision would take effect on the first day of the sixth month beginning after publication of the bill.

- Current law - not retroactive -- benefits begin on day individual begins participation

Motion - retroactive - benefits begin on day application was

Note:

denied or began participation in inappropriate position

Under current law, an individual may petition a W-2 agency if the individual's application is not acted upon by the W-2 agency with reasonable promptness or the application is denied in whole or in part. If the W-2 agency or DWD determines that the individual was eligible or was placed in an inappropriate W-2 employment position, the W-2 agency is required to place the individual in the first available W-2 position that is appropriate for that individual. An individual is eligible for cash benefits beginning on the day that the individual begins participation in the assigned employment position.

The motion would modify the date successful petitioners would be eligible for cash benefits. The motion would allow individuals to be eligible for cash benefits beginning on the day the application was denied, instead of beginning on the day that the individual begins participation in the assigned employment position. Retroactive payment would also be provided in cases where the W-2 agency or Department decides that the applicant was placed in an inappropriate W-2 position.

The motion would increase cash benefit payments by an unknown amount. Since the motion does not provide additional funding, W-2 agencies would be required to absorb any additional costs within their W-2 agency contract allocations.

2001

Date (time) needed \_\_\_\_\_

LRB b 2841 / 11

**CAUCUS BUDGET AMENDMENT**  
[CAUCUS AMDTS. ONLY]

GMM : jld & KF

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT**  
**TO SENATE SUBSTITUTE AMENDMENT 1**  
**TO 2001 SPECIAL SESSION ASSEMBLY BILL 1**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page 37, line 25: after that line insert:



~~#. Page . . . . ., line . . . . .:~~

~~#. Page . . . . ., line . . . . .:~~

~~#. Page . . . . ., line . . . . .:~~

~~#. Page . . . . ., line . . . . .:~~

~~#. Page . . . . ., line . . . . .:~~

**2001 BILL**

1 **AN ACT** *to repeal* 49.152 (2) and 49.152 (3) (a); *to renumber* 49.152 (title); *to*  
2 *renumber and amend* 49.152 (1); *to consolidate, renumber and amend*  
3 49.152 (3) (title) and (b); *to amend* 49.195 (3) and 49.26 (1) (h) 1.; and *to create*  
4 49.16 (2), (3), (4) and (6) of the statutes; **relating to:** a fair hearing process for  
5 review of Wisconsin works agency decisions.

---

***Analysis by the Legislative Reference Bureau***

Under current law, an individual whose application for Wisconsin works (W-2) is not acted upon by the W-2 agency with reasonable promptness or is denied in whole or in part, whose benefit is modified or canceled, or who believes that the benefit was calculated incorrectly or that the employment position in which the individual was placed is inappropriate, may petition the W-2 agency for a review of that action or decision. With certain exceptions, the W-2 agency must grant the petition for review, and the department of workforce development (DWD) may review the decision of the W-2 agency if the applicant or participant or the W-2 agency petitions DWD for a review of the W-2 agency's decision.

This bill permits an individual whose application for W-2 is not acted upon with reasonable promptness or is denied in whole or in part, whose benefit is modified or canceled, or who believes that the benefit was calculated incorrectly or that the employment position in which the individual was placed is inappropriate to petition DWD for a review of the action or decision of the W-2 agency. With certain exceptions, DWD must give the individual an opportunity for a hearing. Under the

**BILL**

bill, if a participant in the W-2 program requests a hearing before the effective date of the W-2 agency's action, or within ten days after the mailing of the notice of the action, whichever is later, the participant's benefits may not be suspended, reduced, or discontinued, except under limited circumstances, until DWD renders a decision after the hearing.

For further information see the *state and local* 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:*

- ① SECTION 1. 49.152 (title) of the statutes is renumbered 49.16 (title). 119g
- ② SECTION 2. 49.152 (1) of the statutes is renumbered 49.16 (1) and amended to read: 119gd
- 4 49.16 (1) PETITION FOR REVIEW. Any individual whose application for any  
5 component of Wisconsin works is not acted upon by the Wisconsin works agency with  
6 reasonable promptness after the filing of the application, as defined by the  
7 department by rule, or is denied in whole or in part, whose benefit is modified or  
8 canceled, or who believes that the benefit was calculated incorrectly or that the  
9 employment position in which the individual was placed is inappropriate, may  
10 petition the ~~Wisconsin works agency~~ department for a review of such action. Review  
11 is unavailable if the action by the Wisconsin works agency occurred more than 45  
12 days prior to submission of the petition for review. 119gg
- ③ SECTION 3. 49.152 (2) of the statutes is repealed. 119gj
- ④ SECTION 4. 49.152 (3) (title) and (b) of the statutes are consolidated,  
15 renumbered 49.16 (5) and amended to read:
- ⑤ 49.16 (5) REMEDIES. (b) If, following review under sub. (2), the ~~Wisconsin works~~  
17 agency or the department determines that an individual's application was not acted  
18 upon with reasonable promptness or was denied in whole or in part, that a

## BILL

1 participant's benefit was improperly modified or canceled, or was calculated  
 2 incorrectly, or that a participant was placed in an inappropriate Wisconsin works  
 3 employment position, the Wisconsin works agency shall grant the appropriate  
 4 benefit, or restore the benefit to the level determined to be appropriate by the  
 5 ~~Wisconsin works agency or by the department,~~ retroactive to the date on which the  
 6 individual's application was first not acted upon with reasonable promptness or  
 7 denied in whole or in part, the individual's benefit was first improperly modified or  
 8 canceled or incorrectly calculated, or the individual was first placed in an  
 9 inappropriate Wisconsin works position. 119 gm and (4)

10 SECTION 5. 49.152 (3) (a) of the statutes is repealed. 119 j

11 SECTION 6. 49.16 (2), ~~(4)~~ and (6) of the statutes are created to read:

12 49.16 (2) REVIEW. Upon receipt of a timely petition under sub. (1), the  
 13 department shall give the applicant or participant reasonable notice and  
 14 opportunity for a fair hearing. The department may make any additional  
 15 investigation that it considers necessary. Notice of the hearing shall be given to the  
 16 applicant or participant, to the Wisconsin works agency, and, if appropriate, to the  
 17 county clerk. The Wisconsin works agency and, if appropriate, the county may be  
 18 represented at the hearing. The department shall render its decision as soon as  
 19 possible after the hearing and shall send a certified copy of its decision to the  
 20 applicant or participant, the Wisconsin works agency, and, if appropriate, the county  
 21 clerk. The decision of the department shall be final, but may be revoked or modified  
 22 as altered conditions may require. The department shall deny a petition for a  
 23 hearing or shall refuse to grant relief if any of the following applies:

24 (a) The applicant or participant withdraws the petition in writing.

**BILL**

1 (b) The sole issue in the petition concerns an automatic grant adjustment or  
2 change for a class of participants as required by state or federal law, unless the issue  
3 concerns an incorrect computation of the participant's benefit.

4 (c) The applicant or participant abandons the petition. Abandonment occurs  
5 if the applicant or participant fails to appear in person or by a representative at a  
6 scheduled hearing without providing the department with good cause for that failure  
7 to appear.

8 ~~(3) SUSPENSION OF BENEFITS. If a participant requests a hearing prior to the~~  
9 ~~effective date of the action by the Wisconsin works agency or within 10 days after the~~  
10 ~~mailing of the notice of the action, whichever is later, benefits may not be suspended,~~  
11 ~~reduced, or discontinued until a decision is rendered after the hearing but may be~~  
12 ~~recovered by the department if the contested decision or failure to act is upheld.~~  
13 ~~Until a decision is rendered after the hearing, the manner or form of benefit payment~~  
14 ~~to the participant may not change to a protective, vendor, or 2-party payment.~~  
15 ~~Benefits shall be suspended, reduced, or discontinued if any of the following applies:~~  
16 ~~(a) The participant is contesting a state or federal law or a change in state or~~  
17 ~~federal law and not the participant's benefit computation.~~  
18 ~~(b) The participant is notified of a change in his or her benefit while the hearing~~  
19 ~~decision is pending but the participant fails to request a hearing on the change.~~

20 ~~(4) NOTICE TO PARTICIPANT. The participant shall be promptly informed in~~  
21 ~~writing if benefits are to be suspended, reduced, or terminated pending the hearing~~  
22 ~~decision.~~

23 ~~(6) NONENTITLEMENT. This section does not create an entitlement to any~~  
24 ~~services or benefits under Wisconsin works.~~

(4)



# Page 38, line 6: after that line insert:  
2001 - 2002 Legislature - 5 -

LRB-3879/1  
GMM:rs&cmh:jf  
SECTION 7

BILL

119b

1 SECTION 7. 49.195 (3) of the statutes, as affected by 2001 Wisconsin Act 16, is  
2 amended to read:

3 49.195 (3) A county, tribal governing body, Wisconsin works agency or the  
4 department shall determine whether an overpayment has been made under s. 49.19,  
5 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment. The county, tribal  
6 governing body, Wisconsin works agency or department shall provide notice of the  
7 overpayment to the liable person. The department shall give that person an  
8 opportunity for a review following the procedure specified under s. ~~49.152~~ 49.16, if  
9 the person received the overpayment under s. 49.141 to 49.161, and for a hearing  
10 under ch. 227. Notwithstanding s. 49.96, the department shall promptly recover all  
11 overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already  
12 been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing  
13 policies and procedures to administer this subsection. The rules shall include  
14 notification procedures similar to those established for child support collections.

# Page 38, line 20: after that line insert;

15 SECTION 9. 49.26 (1) (h) 1. as. of the statutes is amended to read:  
16 49.26 (1) (h) 1. as. The individual has failed to request a hearing or has failed  
17 to show good cause for not cooperating with case management efforts in a hearing.  
18 The hearing shall be requested and held under s. ~~49.152~~ 49.16. The department shall  
19 determine by rule the criteria for good cause.

20 ~~SECTION 9. Initial applicability.~~

21 (1) FAIR HEARING PROCESS FOR REVIEW OF WISCONSIN WORKS AGENCY DECISIONS.  
22 This act first applies to petitions filed under section 49.16 (1) of the statutes, as  
23 affected by this act, on the effected date of this subsection.

The treatment of sections 49.152 (Title), (1), (2) (and (3) (Title), (a) and (b)), 49.16 (2) and (4), 49.195 (3), and 49.26 (1) (h) 1. as. of the statutes

(END)

# Page 438, line 8: after that line insert:

**EFFECTIVE DATE**

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → \*NS: → **effdate**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

**SECTION #** \_\_\_\_ . **Effective date.**

( #1 ) ( ) ..... This act takes effect on .....

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → \*NS: → **effdateE**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

**SECTION #** \_\_\_\_ . **Effective dates;** .....

..... This act takes effect on the day after publication, except as follows:  
( #1 ) ( ) ..... The treatment of sections ..... of the statutes takes effect on .....

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → \*NS: → **94XX**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9400 department code.

**SECTION 94** \_\_\_\_ . **Effective dates;** .....

49.195 (3)  
and  
49.26  
(1)(b)1.  
as.

(#1) ( ) (2) FAIR HEARING PROCES. The treatment of sections 49.152 (1)(b), (1)(2), and (3) (1)(b), (a5), and (b), 49.16 (2) and (4), of the statutes takes effect on the first day of the 6th month beginning after the effective date publication.

and SECTION 9358 (2) of this act take

(E n2)



State of Wisconsin  
2001 - 2002 LEGISLATURE  
January 2002 Special Session

LRBb2841/1  
GMM:jld&kjf:jf  
DNR

(p 4, l 20) Dvxi

SCC:.....Engel - CN6134, Wisconsin works fair hearing process

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 1

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 37, line 25: after that line insert:

3 "SECTION 119g. 49.152 (title) of the statutes is renumbered 49.16 (title).

4 SECTION 119gd. 49.152 (1) of the statutes is renumbered 49.16 (1) and  
5 amended to read:

6 49.16 (1) PETITION FOR REVIEW. Any individual whose application for any  
7 component of Wisconsin works is not acted upon by the Wisconsin works agency with  
8 reasonable promptness after the filing of the application, as defined by the  
9 department by rule, or is denied in whole or in part, whose benefit is modified or  
10 canceled, or who believes that the benefit was calculated incorrectly or that the

1 employment position in which the individual was placed is inappropriate, may  
2 petition the ~~Wisconsin works agency~~ department for a review of such action. Review  
3 is unavailable if the action by the Wisconsin works agency occurred more than 45  
4 days prior to submission of the petition for review.

5 **SECTION 119gg.** 49.152 (2) of the statutes is repealed.

6 **SECTION 119gj.** 49.152 (3) (title) and (b) of the statutes are consolidated,  
7 renumbered 49.16 (3) and amended to read:

8 49.16 (3) REMEDIES. ~~(b)~~ If, following review under sub. (2), the ~~Wisconsin works~~  
9 ~~agency or the department~~ determines that an individual's application was not acted  
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11 participant's benefit was improperly modified or canceled, or was calculated  
12 incorrectly, or that a participant was placed in an inappropriate Wisconsin works  
13 employment position, the Wisconsin works agency shall grant the appropriate  
14 benefit, or restore the benefit to the level determined to be appropriate by the  
15 ~~Wisconsin works agency or by the department,~~ retroactive to the date on which the  
16 individual's application was first not acted upon with reasonable promptness or  
17 denied in whole or in part, the individual's benefit was first improperly modified or  
18 canceled or incorrectly calculated, or the individual was first placed in an  
19 inappropriate Wisconsin works position.

20 **SECTION 119gm.** 49.152 (3) (a) of the statutes is repealed.

21 **SECTION 119j.** 49.16 (2) and (4) of the statutes are created to read:

22 49.16 (2) REVIEW. Upon receipt of a timely petition under sub. (1), the  
23 department shall give the applicant or participant reasonable notice and  
24 opportunity for a fair hearing. The department may make any additional  
25 investigation that it considers necessary. Notice of the hearing shall be given to the

1 applicant or participant, to the Wisconsin works agency, and, if appropriate, to the  
2 county clerk. The Wisconsin works agency and, if appropriate, the county may be  
3 represented at the hearing. The department shall render its decision as soon as  
4 possible after the hearing and shall send a certified copy of its decision to the  
5 applicant or participant, the Wisconsin works agency, and, if appropriate, the county  
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9 (a) The applicant or participant withdraws the petition in writing.

10 (b) The sole issue in the petition concerns an automatic grant adjustment or  
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13 (c) The applicant or participant abandons the petition. Abandonment occurs  
14 if the applicant or participant fails to appear in person or by a representative at a  
15 scheduled hearing without providing the department with good cause for that failure  
16 to appear.

17 (4) NONENTITLEMENT. This section does not create an entitlement to any  
18 services or benefits under Wisconsin works.”.

19 **2.** Page 38, line 6: after that line insert:

20 “SECTION 119r. 49.195 (3) of the statutes, as affected by 2001 Wisconsin Act 16,  
21 is amended to read:

22 49.195 (3) A county, tribal governing body, Wisconsin works agency or the  
23 department shall determine whether an overpayment has been made under s. 49.19,  
24 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment. The county, tribal

1 governing body, Wisconsin works agency or department shall provide notice of the  
2 overpayment to the liable person. The department shall give that person an  
3 opportunity for a review following the procedure specified under s. ~~49.152~~ 49.16, if  
4 the person received the overpayment under s. 49.141 to 49.161, and for a hearing  
5 under ch. 227. Notwithstanding s. 49.96, the department shall promptly recover all  
6 overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already  
7 been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing  
8 policies and procedures to administer this subsection. The rules shall include  
9 notification procedures similar to those established for child support collections.”.

10 **3.** Page 38, line 20: after that line insert:

11 “**SECTION 121k.** 49.26 (1) (h) 1. as. of the statutes is amended to read:

12 49.26 (1) (h) 1. as. The individual has failed to request a hearing or has failed  
13 to show good cause for not cooperating with case management efforts in a hearing.  
14 The hearing shall be requested and held under s. ~~49.152~~ 49.16. The department shall  
15 determine by rule the criteria for good cause.”.

16 **4.** Page 438, line 8: after that line insert:

17 “(2f) **FAIR HEARING PROCESS FOR REVIEW OF WISCONSIN WORKS AGENCY DECISIONS.**

18 The treatment of sections 49.152 (title), (1), (2) and (3) (title), (a), and (b), 49.16 (2)  
19 and (4), 49.195 (3), and 49.26 (1) (h) 1. as. of the statutes first applies to petitions filed  
20 under section 49.16 (1) of the statutes, as affected by this act, on the ~~effective~~ <sup>effective</sup> date of  
21 this subsection.”.

22 **5.** Page 449, line 5: after that line insert:

23 “(2f) **FAIR HEARING PROCESS FOR REVIEW OF WISCONSIN WORKS AGENCY DECISIONS.**

24 The treatment of sections 49.152 (title), (1), (2), and (3) (title), (a), and (b), 49.16 (2)

1 and (4), 49.195 (3), and 49.26 (1) (b) 1. as. of the statutes and SECTION 9358 (2f) of this  
2 act take effect on the first day of the 6th month beginning after publication.”.

3 (END)

DNOTE

Andy:

This redraft corrects a typographical error on page 4, line 20. It changes "effective date" to "effective date" on page 4, line 20. NO other changes were made.

GMM

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBb2841/2dn  
GMM;jld&kjf:jf

March 29, 2002

Andy:

This redraft changes "effected date" to "effective date" on page 4, line 20. No other changes were made.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.state.wi.us](mailto:gordon.malaise@legis.state.wi.us)



**Malaise, Gordon**

**From:** Bablitch, Kelly  
**Sent:** Thursday, March 28, 2002 4:55 PM  
**To:** Malaise, Gordon  
**Subject:** Fair Hearings

Gordon, I have reviewed LRBb2841/1, Wisconsin Works Fair Hearing Process. Thank you for getting this draft to me in such a timely manner.

I recommend the following changes:

1. At page 2, line 10, insert the word "improperly" between the words "was" and "denied." ) (ok)
2. Page 2, line 14, substitute the word "and" for "or" to make it clear that the agency does not have a choice between granting the correct benefit henceforth, and granting the benefit retroactively.
3. On page 2, line 24, after "opportunity for a fair hearing." Insert an additional line that reads something like, "The department shall promptly notify the W-2 agency, and, if appropriate, the county clerk upon receipt of the petition." Then leave next sentence, "The department may make....."
3. At page 4, line 20, I think "effected" should be changed to "effective."
4. If we want to give DWD 6 months in order to change their CARES system, Page 5, line 2, should read the "7th" month, instead of the first day of the "6th" month. ) (ok)

already fixed in 1/2

No - already covered p2, l 25 to p3, l 2

no "Grant" - refers to app. not action or denial = never rec'd  
"restore" refers to improperly modified or corrected = not benefit at all  
calculated incorrectly = once  
= better to delete "restore" = receive benefit but incorrectly changed

## Malaise, Gordon

---

**From:** Malaise, Gordon  
**Sent:** Friday, March 29, 2002 11:07 AM  
**To:** Bablitch, Kelly  
**Subject:** RE: Fair Hearings

Kelly:

Addressing your recommended changes:

1. Inserting "improperly" before "denied" at page 2, line 10, appears to be a good change. The same change should also be made at the beginning of line 17.

2. I would not recommend changing "or" to "and" at page 2, line 14, because "granting the appropriate benefit" and "restoring the benefit" refer to two separate situations. "Granting the benefit" refers back to the new language on lines 9 and 10, that is, an application that was not acted on or was denied, i.e., the participant has never received a benefit. "Restoring the benefit" refers to the current law language on line 11, that is, a benefit that was improperly modified or canceled or calculated incorrectly, i.e., the participant has previously received a benefit but it was incorrectly changed. "Retroactive" modifies both scenarios as well as the scenario of being placed in an inappropriate work position.

Indeed, what might make the sentence clearer would be to delete the entire "restore the benefit . . ." phrase because "grant the appropriate benefit" is broad enough to cover both initially granting a benefit and restoring a previous benefit level.

3. I would not recommend that notification of the W-2 agency and the county clerk be inserted on page 2, line 24, because that is already covered on page 2, line 25 to page 3, line 2.

4. Changing "effected" to "effective" and "6th month" to "7th month" appear to be good changes.

I will go ahead and make the changes described in items 1 and 4, above. If you want me to delete "restore the benefit . . .", please advise. Otherwise I will leave "or" as is on page 2, line 14.

Gordon

-----Original Message-----

**From:** Bablitch, Kelly  
**Sent:** Thursday, March 28, 2002 4:55 PM  
**To:** Malaise, Gordon  
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State of Wisconsin  
2001 - 2002 LEGISLATURE

January 2002 Special Session

DNSTE

LRBb2841/2-3  
GMM:jld&kjf:jf (JNR)

SCC:.....Engel - CN6134, Wisconsin works fair hearing process

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT ,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 1

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 37, line 25: after that line insert:

3 "SECTION 119g. 49.152 (title) of the statutes is renumbered 49.16 (title).

4 SECTION 119gd. 49.152 (1) of the statutes is renumbered 49.16 (1) and  
5 amended to read:

6 49.16 (1) PETITION FOR REVIEW. Any individual whose application for any  
7 component of Wisconsin works is not acted upon by the Wisconsin works agency with  
8 reasonable promptness after the filing of the application, as defined by the  
9 department by rule, or is denied in whole or in part, whose benefit is modified or  
10 canceled, or who believes that the benefit was calculated incorrectly or that the

1 employment position in which the individual was placed is inappropriate, may  
2 petition the ~~Wisconsin works agency~~ department for a review of such action. Review  
3 is unavailable if the action by the Wisconsin works agency occurred more than 45  
4 days prior to submission of the petition for review.

5 **SECTION 119gg.** 49.152 (2) of the statutes is repealed.

6 **SECTION 119gj.** 49.152 (3) (title) and (b) of the statutes are consolidated,  
7 renumbered 49.16 (3) and amended to read: improperly ✓

8 49.16 (3) REMEDIES. (b) If, following review under sub. (2), the Wisconsin works  
9 agency ~~or the department~~ determines that an individual's application was not acted  
10 upon with reasonable promptness or was denied in whole or in part, that a  
11 participant's benefit was improperly modified or canceled, or was calculated  
12 incorrectly, or that a participant was placed in an inappropriate Wisconsin works  
13 employment position, the Wisconsin works agency shall grant the appropriate  
14 benefit, or restore the benefit to the level determined to be appropriate by the  
15 Wisconsin works agency or by the department, retroactive to the date on which the  
16 individual's application was first not acted upon with reasonable promptness or  
17 denied in whole or in part, the individual's benefit was first improperly modified or  
18 canceled or incorrectly calculated, or the individual was first placed in an  
19 inappropriate Wisconsin works position.

20 **SECTION 119gm.** 49.152 (3) (a) of the statutes is repealed.

21 **SECTION 119j.** 49.16 (2) and (4) of the statutes are created to read:

22 49.16 (2) REVIEW. Upon receipt of a timely petition under sub. (1), the  
23 department shall give the applicant or participant reasonable notice and  
24 opportunity for a fair hearing. The department may make any additional  
25 investigation that it considers necessary. Notice of the hearing shall be given to the

~~improperly~~ improperly ✓

1 applicant or participant, to the Wisconsin works agency, and, if appropriate, to the  
2 county clerk. The Wisconsin works agency and, if appropriate, the county may be  
3 represented at the hearing. The department shall render its decision as soon as  
4 possible after the hearing and shall send a certified copy of its decision to the  
5 applicant or participant, the Wisconsin works agency, and, if appropriate, the county  
6 clerk. The decision of the department shall be final, but may be revoked or modified  
7 as altered conditions may require. The department shall deny a petition for a  
8 hearing or shall refuse to grant relief if any of the following applies:

9 (a) The applicant or participant withdraws the petition in writing.

10 (b) The sole issue in the petition concerns an automatic grant adjustment or  
11 change for a class of participants as required by state or federal law, unless the issue  
12 concerns an incorrect computation of the participant's benefit.

13 (c) The applicant or participant abandons the petition. Abandonment occurs  
14 if the applicant or participant fails to appear in person or by a representative at a  
15 scheduled hearing without providing the department with good cause for that failure  
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19 **2.** Page 38, line 6: after that line insert:

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2 overpayment to the liable person. The department shall give that person an  
3 opportunity for a review following the procedure specified under s. ~~49.152~~ 49.16, if  
4 the person received the overpayment under s. 49.141 to 49.161, and for a hearing  
5 under ch. 227. Notwithstanding s. 49.96, the department shall promptly recover all  
6 overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already  
7 been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing  
8 policies and procedures to administer this subsection. The rules shall include  
9 notification procedures similar to those established for child support collections.”.

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19 and (4), 49.195 (3), and 49.26 (1) (h) 1. as. of the statutes first applies to petitions filed  
20 under section 49.16 (1) of the statutes, as affected by this act, on the effective date  
21 of this subsection.”.

22 **5.** Page 449, line 5: after that line insert:

23 “(2f) **FAIR HEARING PROCESS FOR REVIEW OF WISCONSIN WORKS AGENCY DECISIONS.**  
24 The treatment of sections 49.152 (title), (1), (2), and (3) (title), (a), and (b), 49.16 (2)

-5-  
7th

1 and (4), 49.195 (3), and 49.26 (1) (b) 1. as. of the statutes and SECTION 9358 (2f) of this  
2 act take effect on the first day of the ~~6th~~ month beginning after publication.”

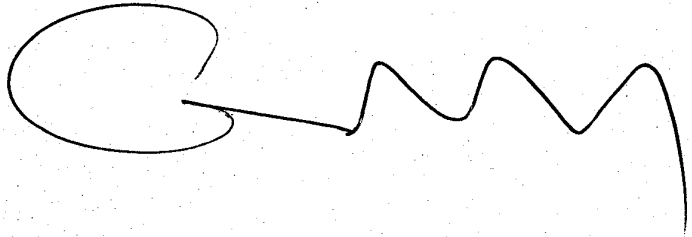
3

(END)

DN=TE

Andy:

On the advice of Kelly Bahlitch from Senator Moore's office, this redraft inserts "improperly" before "denied" at page 3, lines 10 and 17, of the draft and changes the effective date to the first day of the 7th, instead of the 6th, month <sup>beginning</sup> after publication.





**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBb2841/3dn  
GMM;jld:ch

March 29, 2002

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Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.state.wi.us](mailto:gordon.malaise@legis.state.wi.us)

## Malaise, Gordon

---

**From:** Malaise, Gordon  
**Sent:** Friday, March 29, 2002 2:00 PM  
**To:** Bablitch, Kelly  
**Subject:** RE: Fair Hearings

Kelly:

As currently drafted the W-2 agency would have the time between the receipt of notice of the hearing and the date of the hearing to resolve the complaint. Under your proposal, DWD would have to provide notice twice; first on receipt of a petition and again when DWD sets a date for the hearing, which seems to be a duplication of administrative effort. One solution would be to take out the current sentence about notice and instead to say something like "On receipt of a petition, the department shall set a date for a hearing and shall provide notice of the hearing . . .". That way notice would be provided on receipt of the petition and would only have to be provided once.

Gordon

-----Original Message-----

**From:** Bablitch, Kelly  
**Sent:** Friday, March 29, 2002 12:45 PM  
**To:** Malaise, Gordon  
**Subject:** RE: Fair Hearings

i like your suggestion on in #2, regarding granting the appropriate benefit.

as for suggestion # 3, I was trying to ensure the W-2 agencies were notified of when a petition is initially filed, as well as when a hearing has been granted. I want to grant the w-2 agencies an opportunity to time resolve any concerns at a local level.

thanks.

-----Original Message-----

**From:** Malaise, Gordon  
**Sent:** Friday, March 29, 2002 11:07 AM  
**To:** Bablitch, Kelly  
**Subject:** RE: Fair Hearings

Kelly:

Addressing your recommended changes:

1. Inserting "improperly" before "denied" at page 2, line 10, appears to be a good change. The same change should also be made at the beginning of line 17.
2. I would not recommend changing "or" to "and" at page, 2, line 14, because "granting the appropriate benefit" and "restoring the benefit" refer to two separate situations. "Granting the benefit" refers back to the new language on lines 9 and 10, that is, an application that was not acted on or was denied, i.e., the participant has never received a benefit. "Restoring the benefit" refers to the current law language on line 11, that is, a benefit that was improperly modified or canceled or calculated incorrectly, i.e., the participant has previously received a benefit but it was incorrectly changed. "Retroactive" modifies both scenarios as well as the scenario of being placed in an inappropriate work position.  
  
Indeed, what might make the sentence clearer would be to delete the entire "restore the benefit . . ." phrase because "grant the appropriate benefit" is broad enough to cover both initially granting a benefit and restoring a previous benefit level.
3. I would not recommended that notification of the W-2 agency and the county clerk be inserted on page 2, line 24, because that is already covered on page 2, line 25 to page 3, line 2.
4. Changing "effected" to "effective" and "6th month" to 7th month" appear to be good changes.

I will go ahead and make the changes described in items 1 and 4, above. If you want me to delete "restore the benefit . . .", please advise. Otherwise I will leave "or" as is on page 2, line 14.

Gordon

-----Original Message-----

**From:** Bablitch, Kelly  
**Sent:** Thursday, March 28, 2002 4:55 PM  
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4. If we want to give DWD 6 months in order to change their CARES system, Page 5, line 2, should read the "7th" month, instead of the first day of the "6th" month.



State of Wisconsin  
2001 - 2002 LEGISLATURE

January 2002 Special Session

LRBb2841/B (4)  
GMM:jld&kjf:ch

NOTE

SCC:.....Engel - CN6134, Wisconsin works fair hearing process

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

**CAUCUS SENATE AMENDMENT ,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 1**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 37, line 25: after that line insert:

3 "SECTION 119g. 49.152 (title) of the statutes is renumbered 49.16 (title).

4 **SECTION 119gd.** 49.152 (1) of the statutes is renumbered 49.16 (1) and  
5 amended to read:

6 49.16 (1) PETITION FOR REVIEW. Any individual whose application for any  
7 component of Wisconsin works is not acted upon by the Wisconsin works agency with  
8 reasonable promptness after the filing of the application, as defined by the  
9 department by rule, or is denied in whole or in part, whose benefit is modified or  
10 canceled, or who believes that the benefit was calculated incorrectly or that the

1 employment position in which the individual was placed is inappropriate, may  
2 petition the ~~Wisconsin works agency~~ department for a review of such action. Review  
3 is unavailable if the action by the Wisconsin works agency occurred more than 45  
4 days prior to submission of the petition for review.

5 **SECTION 119gg.** 49.152 (2) of the statutes is repealed.

6 **SECTION 119gj.** 49.152 (3) (title) and (b) of the statutes are consolidated,  
7 renumbered 49.16 (3) and amended to read:

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9 agency ~~or the department~~ determines that an individual's application was not acted  
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14 ~~benefit, or restore the benefit to the level determined to be appropriate by the~~  
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16 individual's application was first not acted upon with reasonable promptness or  
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19 an inappropriate Wisconsin works position.

20 **SECTION 119gm.** 49.152 (3) (a) of the statutes is repealed.

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22 The 49.16 (2) REVIEW. Upon receipt of a timely petition under sub. (1), the  
23 department shall give <sup>an</sup> ~~the~~ applicant or participant ~~reasonable notice and~~  
24 opportunity for a fair hearing. (1) The department may make any additional  
25 investigation that it considers necessary. ~~Notice of the hearing shall be given to the~~

26 Upon receipt of a timely petition under sub. (1), the department shall provide reasonable notice of the hearing to the applicant or participant, the Wisconsin works agency, and, if appropriate, the county clerk.

1) ~~applicant or participant, to the Wisconsin works agency, and, if appropriate, to the~~

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18 services or benefits under Wisconsin works.”.

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7 been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing  
8 policies and procedures to administer this subsection. The rules shall include  
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21 of this subsection.”.

22 **5.** Page 449, line 5: after that line insert:

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2 act take effect on the first day of the 7th month beginning after publication.”.

3 (END)



NOTE

Andy:

Based on further correspondence with Kelly Babbich of office

Senator Moor's office, this redraft:

1. In s. 49.16 (3) relating to remedies, deletes

"restore the benefit to the level determined <sup>to be</sup> appropriate" <sub>AAA</sub>

became "grant the appropriate benefit" is broad enough

to include restoring the benefit

2. In s. 49.16 (2) relating to review, requires DWD

to provide notice of the hearing <sup>on</sup> receipt of a timely petition.

GMM

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb2841/4dn  
GMM:jld:jf

April 1, 2002

Andy:

Based on further correspondence with Kelly Bablitch of Senator Moore's office, this redraft:

1. In s. 49.16 (3) relating to remedies, deletes "restore the benefit to the level determined to be appropriate . . ." because "*grant* the appropriate benefit" is broad enough to include *restoring* the benefit.
2. In s. 49.16 (2) relating to review, requires DWD to provide notice of the hearing *on receipt* of a timely petition.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.state.wi.us](mailto:gordon.malaise@legis.state.wi.us)



State of Wisconsin  
2001 - 2002 LEGISLATURE  
January 2002 Special Session

LRBb2841/4  
GMM:jld&kjf:jf

SCC:.....Engel – CN6134, Wisconsin works fair hearing process

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1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 37, line 25: after that line insert:

3 **“SECTION 119g.** 49.152 (title) of the statutes is renumbered 49.16 (title).

4 **SECTION 119gd.** 49.152 (1) of the statutes is renumbered 49.16 (1) and  
5 amended to read:

6 49.16 (1) PETITION FOR REVIEW. Any individual whose application for any  
7 component of Wisconsin works is not acted upon by the Wisconsin works agency with  
8 reasonable promptness after the filing of the application, as defined by the  
9 department by rule, or is denied in whole or in part, whose benefit is modified or  
10 canceled, or who believes that the benefit was calculated incorrectly or that the

1 employment position in which the individual was placed is inappropriate, may  
2 petition the ~~Wisconsin works agency~~ department for a review of such action. Review  
3 is unavailable if the action by the Wisconsin works agency occurred more than 45  
4 days prior to submission of the petition for review.

5 **SECTION 119gg.** 49.152 (2) of the statutes is repealed.

6 **SECTION 119gj.** 49.152 (3) (title) and (b) of the statutes are consolidated,  
7 renumbered 49.16 (3) and amended to read:

8 49.16 (3) REMEDIES. ~~(b)~~ If, following review under sub. (2), the ~~Wisconsin works~~  
9 ~~agency or the department~~ determines that an individual's application was not acted  
10 upon with reasonable promptness or was improperly denied in whole or in part, that  
11 a participant's benefit was improperly modified or canceled, or was calculated  
12 incorrectly, or that a participant was placed in an inappropriate Wisconsin works  
13 employment position, the Wisconsin works agency shall ~~restore the benefit to the~~  
14 ~~level determined to be appropriate by the Wisconsin works agency or by the~~  
15 ~~department grant the appropriate benefit,~~ retroactive to the date on which the  
16 individual's application was first not acted upon with reasonable promptness or  
17 improperly denied in whole or in part, the individual's benefit was first improperly  
18 modified or canceled or incorrectly calculated, or the individual was first placed in  
19 an inappropriate Wisconsin works position.

20 **SECTION 119gm.** 49.152 (3) (a) of the statutes is repealed.

21 **SECTION 119j.** 49.16 (2) and (4) of the statutes are created to read:

22 49.16 (2) REVIEW. The department shall give an applicant or participant who  
23 files a timely petition under sub. (1) an opportunity for a fair hearing. Upon receipt  
24 of a timely petition under sub. (1), the department shall provide reasonable notice  
25 of the hearing to the applicant or participant, the Wisconsin works agency, and, if

1 appropriate, the county clerk. The department may make any additional  
2 investigation that it considers necessary. The Wisconsin works agency and, if  
3 appropriate, the county may be represented at the hearing. The department shall  
4 render its decision as soon as possible after the hearing and shall send a certified copy  
5 of its decision to the applicant or participant, the Wisconsin works agency, and, if  
6 appropriate, the county clerk. The decision of the department shall be final, but may  
7 be revoked or modified as altered conditions may require. The department shall deny  
8 a petition for a hearing or shall refuse to grant relief if any of the following applies:

9 (a) The applicant or participant withdraws the petition in writing.

10 (b) The sole issue in the petition concerns an automatic grant adjustment or  
11 change for a class of participants as required by state or federal law, unless the issue  
12 concerns an incorrect computation of the participant's benefit.

13 (c) The applicant or participant abandons the petition. Abandonment occurs  
14 if the applicant or participant fails to appear in person or by a representative at a  
15 scheduled hearing without providing the department with good cause for that failure  
16 to appear.

17 (4) NONENTITLEMENT. This section does not create an entitlement to any  
18 services or benefits under Wisconsin works.”.

19 **2.** Page 38, line 6: after that line insert:

20 “**SECTION 119r.** 49.195 (3) of the statutes, as affected by 2001 Wisconsin Act 16,  
21 is amended to read:

22 49.195 (3) A county, tribal governing body, Wisconsin works agency or the  
23 department shall determine whether an overpayment has been made under s. 49.19,  
24 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment. The county, tribal

1 governing body, Wisconsin works agency or department shall provide notice of the  
2 overpayment to the liable person. The department shall give that person an  
3 opportunity for a review following the procedure specified under s. ~~49.152~~ 49.16, if  
4 the person received the overpayment under s. 49.141 to 49.161, and for a hearing  
5 under ch. 227. Notwithstanding s. 49.96, the department shall promptly recover all  
6 overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already  
7 been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing  
8 policies and procedures to administer this subsection. The rules shall include  
9 notification procedures similar to those established for child support collections.”.

10 **3.** Page 38, line 20: after that line insert:

11 **“SECTION 121k.** 49.26 (1) (h) 1. as. of the statutes is amended to read:

12 49.26 (1) (h) 1. as. The individual has failed to request a hearing or has failed  
13 to show good cause for not cooperating with case management efforts in a hearing.  
14 The hearing shall be requested and held under s. ~~49.152~~ 49.16. The department shall  
15 determine by rule the criteria for good cause.”.

16 **4.** Page 438, line 8: after that line insert:

17 **“(2f) FAIR HEARING PROCESS FOR REVIEW OF WISCONSIN WORKS AGENCY DECISIONS.**  
18 The treatment of sections 49.152 (title), (1), (2) and (3) (title), (a), and (b), 49.16 (2)  
19 and (4), 49.195 (3), and 49.26 (1) (h) 1. as. of the statutes first applies to petitions filed  
20 under section 49.16 (1) of the statutes, as affected by this act, on the effective date  
21 of this subsection.”.

22 **5.** Page 449, line 5: after that line insert:

23 **“(2f) FAIR HEARING PROCESS FOR REVIEW OF WISCONSIN WORKS AGENCY DECISIONS.**  
24 The treatment of sections 49.152 (title), (1), (2), and (3) (title), (a), and (b), 49.16 (2)

1 and (4), 49.195 (3), and 49.26 (1) (b) 1. as of the statutes and SECTION 9358 (2f) of this  
2 act take effect on the first day of the 7th month beginning after publication.”.

3 (END)